

Client Alert

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Bureau Proposes Sharing Consumer Narratives in Complaints Database

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On July 17, 2014, the Consumer Financial Protection Bureau (“CFPB”) held a field hearing in El Paso, Texas to announce a new policy proposal (“Proposal”) that would expand the Consumer Complaint Database (“Database”) to allow consumers to share their views and individual stories publicly by including consumer complaint narratives in the Database. Specifically, the CFPB proposes to allow consumers to publish unstructured and unverified narratives describing their complaints when contributing to the CFPB’s Database.

The CFPB started taking consumer complaints immediately when it commenced operations in July of 2011, but it did not begin to publish those complaints in the Database until June 2012. Initially, the Database was limited to complaints about credit cards. Over the years, the CFPB has gradually expanded the Database to include more data fields and additional financial products, including mortgages, bank accounts, credit reporting and debt collection. On July 21, 2014, the CFPB announced it is now accepting complaints regarding prepaid cards and additional nonbank products such as credit repair and debt settlement services.

SUMMARY OF PROPOSAL

The Proposal continues the CFPB’s trend of gradually expanding the Database to include new data fields and additional types of financial products. Currently, the public Database includes information such as the consumer’s zip code and date of submission, the financial product type, and the company’s name and response to the consumer’s complaint. In the Proposal, the CFPB now puts forward for consideration the idea of adding the consumer’s personal description of the complaint to the publicly available materials. Although the CFPB already collects such descriptions with each complaint, the Proposal would make these narratives public for the first time, and potentially obligate financial institutions to provide both public-facing responses and personalized responses for consumers.

Under the Proposal, consumers wishing to include narratives in the Database would be required to provide informed consent before the narrative would be published. Specifically, consumers would be required to check a box on the complaint form to opt in to sharing their stories. Nevertheless, the CFPB would scrub personal information from the complaint before publication.

The CFPB contends that the Proposal would result in potential benefits at little to no cost to consumers. According to the CFPB’s [press release](#), publishing narratives along with the basic information already available in the Database would “provide important context to the complaint, help the public to detect specific trends in the market, aid consumer decision-making, and drive improved consumer service.” Currently, the Database displays only a high-level categorization of each complaint, such as “transaction issues” or “billing disputes.” Apparently, the CFPB believes that by accessing the consumer’s narrative description, Database viewers would gain more

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detail about a particular complaint. The CFPB compares its proposed expanded Database to the Consumer Product Safety Commission's "SaferProducts.gov" and the National Highway Traffic Safety Administration's "SaferCar.gov." According to the CFPB, "consumers often go online to research products before they make a decision to purchase. Including the details of a complaint would help inform consumers who are considering a particular product or service." The CFPB also said that consumers "could use the narrative to decide for themselves if the problems experienced by other consumers would stop them from purchasing the same product or service."

PROPOSAL STILL IGNORES THE PRINCIPAL PROBLEM

The Database's inherent nature as a complaints database assumes that any information contributed to the Database will be negative towards financial institutions, creating a serious risk of potential reputational harm. The CFPB still communicates no indication in the Proposal that it will make any attempt to verify the accuracy of the complaint or whether an institution's actions, even if the complaint were true, would be inconsistent with any law or regulation. And, presenting the words of angry consumers without validation would result in baseless or misleading statements that could damage an institution's standing in the public eye. Nevertheless, consumers are likely to view these unverified statements as reliable because a government agency has posted them on its official Web site.

In his remarks, Director Cordray states that the CFPB would "verify that a commercial relationship exists between the consumer and the company – that the consumer does in fact have an account or does in fact do business with that company," but that is not the same as verifying that a consumer's allegations are true or that the company's action was in any way inappropriate. While the CFPB says it intends to give financial institutions an opportunity to publish a response to each complaint, this would not be enough to cure the lopsided nature of the database, and the failure of the CFPB to perform any verification.

The skewed nature of the Database could even result in harm to consumers. The Database already contains over 400,000 complaints, and it soon could be far too vast for consumers to peruse every complaint narrative and response for a particular product or institution. Consumers may have little alternative to relying on raw numbers and browsing only a few complaints and fewer responses. And, as larger institutions are more likely, by dint of sheer numbers, to have more complaints against them than smaller companies, shortcuts for reviewing the Database could end up driving consumers away from safer institutions and, potentially, towards smaller institutions and non-banks that may not ultimately benefit the consumer most.

REQUEST FOR COMMENT

The CFPB's Proposal indicates that the Bureau is most interested in hearing public comment on how to communicate most effectively with consumers to ensure informed consent, whether the company response on the Database should be distinct from and in addition to a response the company provides directly to the consumer, and methods for ensuring the privacy of consumers by scrubbing personal information from complaints.

We will continue to follow the CFPB's work on the Consumer Complaints Database. Comments regarding the new proposed policy are due within 30 days of the Proposal's publication in the Federal Register.

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