

Client Alert

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CFPB Requests Feedback on Public Reporting of Consumer Complaints

By Rick Fischer, Crystal N. Kaldjob, and Jennifer S. Talbert

On March 1, 2018, the Consumer Financial Protection Bureau (CFPB or “Bureau”) released its sixth Request for Information (RFI) as part of its initiative to reexamine the Bureau’s existing policies and procedures under Acting Director Mick Mulvaney’s leadership.¹ This RFI addresses how the Bureau analyzes and reports consumer complaint information. The RFI requests feedback to assist the Bureau in “assessing potential changes that can be implemented to the Bureau’s public reporting practices of consumer complaint information, consistent with law,” and solicits suggestions as to “whether any changes to the practices would be appropriate.” In this RFI, the Bureau specifically requests that commenters address (1) the usefulness of complaint reporting and analysis to stakeholders, and (2) specific suggestions for best practices for complaint reporting. The Bureau is seeking comments from financial industry participants, government agencies, consumer advocacy and financial education groups, trade associations, academic and research organizations, and consumers.

BACKGROUND

One of the Bureau’s primary functions under the Dodd-Frank Act is “collecting, investigating, and responding to consumer complaints.” Pursuant to this statutory directive, the CFPB began collecting consumer complaints about credit cards in 2011, and subsequently invited complaints regarding additional financial products and services. The Dodd-Frank Act requires the CFPB to provide an annual report to Congress analyzing complaints received, as well as semi-annual reports to the President, the Senate Banking Committee, and the House Committees on Financial Services and Energy and Commerce that include this type of information.² No further disclosure of complaint data is required under the Act. Nonetheless, the CFPB began making its complaint database available to the public in 2012.

Not without controversy, the CFPB’s consumer complaint database has served as both a mechanism for consumers to remain informed and as a vehicle for the CFPB to identify the supervised entities that may require enhanced supervision. As former CFPB Director Richard Cordray stated in 2013, consumer complaints, including those gleaned from the database, “inform[] our work and help[] us identify and prioritize problems.”

REQUEST FOR INFORMATION

The Bureau has invited commenters to provide feedback on *all* aspects of its consumer complaint reporting and publication practices, including:

- Statutorily permissible suggestions regarding the frequency of the Bureau’s consumer complaint reporting;
- Statutorily permissible suggestions on the content of the Bureau’s consumer complaint reporting, including:
 - The amount of reporting on state and local complaint trends;
 - Benefits (or consequences) of publication of the names of most-complained-about companies;
 - The number of data fields in the consumer complaint database;

¹ Our client alert on this initiative is available here.

² See 12 U.S.C. §§ 5493(b)(3)(C), 5496(c)(4).

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- The amount of context for complaint information, including product or service market size and a company's share in that market;
 - Whether the Bureau should supplement complaints with observations of company resources;
 - The amount of information on month-to-month trends; and
 - The amount of information on particular products and services.
- Reporting methodology, including the usefulness of seasonal fluctuation data analyses and the amount of context for complaint information; and
 - Statutorily specific suggestions for the consumer complaint publication process, including whether the CFPB should:
 - Provide the public with publication schedules;
 - Notify the most-complained-about companies of their inclusion in a report prior to publication, and afford such companies an opportunity to comment;
 - Build tools to enable users to analyze complaint information; and
 - Expand, limit, or maintain the same level of access to complaint information available to external stakeholders (e.g., financial institutions and the public).

The Bureau requests that commenters address best practices in light of the Bureau's statutory obligations under the Dodd-Frank Act, including its mandate to "ensure that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation."

TAKEAWAYS

The CFPB's public disclosure of consumer complaints has been controversial ever since the CFPB first began accepting credit card complaints and maintaining a complaint database in 2011.³ While it is unclear whether the CFPB plans to significantly change the way in which it publicly discloses consumer complaints or end the practice completely, the RFI and the topics for comment suggest that the Bureau may be open to painting a broader contextual picture of consumer complaint information in light of industry data. The most controversial aspect of the consumer complaint database has been the CFPB's practice of publishing unverified complaint information, so, although the topic of verification is not included in the RFI, we would expect commenters to focus on this aspect of the practice in particular.

Comments are due 90 days from the date of publication in the *Federal Register*, which is expected to occur on March 7, 2018. The CFPB expects to release several additional RFIs as part of its initiative, including one seeking public input regarding consumer inquiries and related process activities, in the near future.

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³ In 2012, the CFPB published a Final Policy Statement on public disclosure of credit card complaints; in 2013, a Final Policy Statement expanding public disclosure to include complaints about additional types of consumer financial products and services; and in 2015, a Final Policy Statement expanding public disclosure to include consumer complaint narrative data. Our client alert on the CFPB's 2015 Final Policy Statement is available here.

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