



August 31, 2015

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20006

RE: Request for Information Regarding the Consumer Complaint Database: Data (CFPB-2015-0030)

Dear Ms. Jackson,

The Mortgage Bankers Association (MBA)¹ appreciates the opportunity to respond to the request for information issued by the Consumer Financial Protection Bureau (CFPB) regarding possible normalization of data contained in the CFPB's Consumer Complaint Database.

MBA has supported the CFPB's efforts to assist consumers in making responsible financial choices and its establishment of a portal or gateway so companies can give prompt attention to complaints from consumers filed with the CFPB. MBA and its members take consumer complaints seriously. The industry has invested considerable effort and financial resources into receiving, understanding, and responding to consumer feedback. Companies are in constant communication with their customers, through multiple channels, to improve the customer experience. Additionally, they have built reporting, analytics, and other platforms that enable them to enhance customer engagement and expeditiously address any complaints.

While MBA appreciates the opportunity to provide input on data normalization, this comment should not be regarded as in any way endorsing the public display of unsubstantiated narratives in CFPB's Database. In MBA's view, because more than 80 percent of complaints do not require action beyond an explanation, posting these unsubstantiated complaint narratives will only mislead the consumers the CFPB is charged with protecting.² We therefore urge that complaints be verified before narratives are posted. At the very least, the CFPB should establish procedures to take down complaints not requiring action.

MBA would also like to reiterate that it is not clear that posting unsubstantiated complaints is an effective use of the CFPB's time or resources.

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mba.org.

² CFPB, Consumer Response Annual Report (March 2015), p. 41.

As pointed out in several of our earlier comments, the internet already provides consumers ample opportunity to comment and rank through numerous channels virtually any company, product and service. Well-known websites such as Google, Yelp, Facebook, Angie's List, and the Better Business Bureau aggregate and publish consumers' reviews and ratings of financial service providers, both positive and negative. Many of these sites invite consumers' to rank their experiences in a nonbiased manner, rather than in the context of a "Consumer Complaint Database." As such, their rankings are likely to be more valuable as a consumer decision tool than rankings based almost exclusively on complaints. Considering the reach of these sites, it is unnecessary as well as unwise to also employ the imprimatur of the United States government in this work.

In the event the CFPB continues to post unverified complaints we believe that there should be normalization and changes to the database to make the information more accessible to consumers. In this regard we urge that the CFPB consider:

1. Better clarifying that the narratives themselves are not reviewed and that experience indicates most do not require action;
2. Establishing take down procedures for complaints that have not required action;
3. Separating servicing and origination complaints;
4. Including simpler subcategories;
5. Including ratios of complaints and resolutions requiring action for all lenders;
6. Including lending and servicing volume to normalize complaints for larger and midsize lenders and servicers; and
7. Including some information about the context for a complaints, for example a time frame describing the borrower's last payment date; and
8. Removing old complaints and unresolved complaints from the public database.

Nevertheless, since no specific proposals were provided, we urge the CFPB to issue at least another request for information if not a full rulemaking process to implement changes to normalize the Database.

These points are discussed in greater detail as follows:

- I. **Before making any additional changes to the Database, the CFPB should verify complaint data including complaint narratives before posting them in the Database or, if it will not do so, it should clearly and conspicuously disclose that it does not verify all information.**

MBA continues to believe that—as an agency charged with consumer protection—the CFPB should verify complaint narratives before they are posted, so that such postings do not mislead borrowers, since the vast number of complaints do not necessitate action. The CFPB should also consider synchronizing the unique identifiers associated with each complaint across all

portals to make it easier for the parties involved to verify the accuracy of the content and resolution of a complaint once it has been published for public view.

As indicated, both CFPB and industry data both show that a small fraction of consumer complaints warrant any real action. In a recent report on the Database the CFPB noted that a full 83 percent of mortgage complaints it receives from consumers are “closed with an explanation” or “closed (without relief or explanation)” by the responding entity.³ The reason is that any alleged problems were easily explicable and did not warrant action, i.e., the borrower didn’t understand the lending process, missed a payment or payments, didn’t qualify for the transaction, or the complaint itself was misdirected to the firm.

Data from MBA members on complaints shows an even smaller number of complaints requiring action. These data indicate that complaints requiring action ranges from as little as 2 to 19 percent of cases. Lenders also report that most “complaints” are not in fact “complaints” in the sense that the consumer is not alleging any wrongdoing. Rather, they are efforts to stop foreclosure or reverse a decision on a loan modification.

Many complainants file the same complaint multiple times. Moreover, based on lenders’ experiences, some narratives contain purely false information. In some business areas, members report that the level of inaccurate or false information is particularly high. Salient facts and legal issues are often distorted through the lens of an angry or emotional account that may also omit the consumer’s contribution to the problem.

Because the vast majority of consumer complaints lodged through the CFPB’s complaints portal are resolved with a simple explanation, MBA continues to urge CFPB to narrow the proposed expansion of the database to include only those consumer narratives where the accuracy of the complaint has been verified. MBA maintains that disseminating such unverified information under the imprimatur of the Federal government misleads consumers rather than helping them make informed choices.

II. Suggestions for Data Normalization

- a. If the Bureau continues to post unsubstantiated complaints, as a first step in normalizing the data, we urge the Bureau to add a far clearer and more conspicuous warning to consumers on the Complaint Database.**

The current disclaimer at the bottom of the Database homepage states *“We don’t verify all the facts alleged in these complaints but we take steps to confirm a commercial relationship between the consumer and company.”*

Under the circumstances, MBA believes a more appropriate disclaimer would state, *“The Bureau does not verify the facts alleged in consumer complaints; a significant number of complaints do not require action and a significant percentage may be inaccurate or incomplete. The Bureau does not endorse the conclusions contained in any complaint and does not contend that any complaint is suitable as a basis for consumer reliance.”*

³ CFPB, Consumer Response Annual Report (March 2015)

In order that consumers notice the disclaimer, we also urge that it be displayed prominently on all pages of the complaint database in 14-point type.

If the CFPB intends to maintain and expand the database notwithstanding these comments, MBA urges the CFPB to normalize the data to facilitate consumer understanding as follows:

b. The CFPB should distinguish mortgage origination and mortgage servicing-driven complaints.

The CFPB currently breaks Mortgage complaints into several categories:

Type of Complaint	Percent of Mortgage-Related Complaints
Loan modification, collection, foreclosure	55
Loan servicing, payments, escrow account	30
Application, originator, mortgage broker	7
Settlement process and costs	4
Credit decision/underwriting	2
Other	2

(Source: U.S. PIRG, *Mortgages and Mortgage Complaints: The CFPB's Consumer Complaint Database Gets Real Results for Victims of Mortgage Problems*, available at <http://www.uspirg.org/reports/usp/mortgages-and-mortgage-complaints>)

These data reveal that mortgage complaints fall into two major categories: mortgage servicing (85 percent) and mortgage origination (15 percent). The CFPB should consider first categorizing complaints into these two categories so that consumers with complaints can quickly and easily consider data relevant to the area about which they have concerns.

Mortgage origination and mortgage servicing are two very distinct processes and combining the two categories could lead to unnecessary confusion for consumers. For example, a potential borrower could find a lender with an excellent customer service record offering a well-suited loan product. That borrower might be deterred if the business has a number of complaints—legitimate or not—about its mortgage servicing, even if it is unlikely that that business will ultimately service the loan. In fact, it remains common practice for many lenders to sell the servicing rights for mortgage loans. It is not in the interests of consumers to forgo well-suited products based on potentially unrelated information.

In addition, splitting mortgage origination and mortgage servicing complaints will allow for more efficient and targeted research. Consumers seeking complaints filed specifically about a business' mortgage origination business or mortgage servicing business will not need to sort through unrelated complaints. Those consumers shopping for a loan who are also curious about any complaints about a business' mortgage servicing will in no way be prevented from doing so and could, in fact, have an easier experience identifying relevant complaints.

c. The CFPB should better subcategorize the different types of mortgage origination and servicing complaints.

The existing categories for mortgage complaints are confusing and difficult to apply. These categories include: 1) Application, originator, mortgage broker; 2) loan modification, collection, foreclosure; 3) credit decision/underwriting; 4) loan servicing, payments, escrow account; 5) settlement process and costs; and 6) other.

The CFPB has acknowledged that, while consumers' characterizations of their complaints are generally correct, consumers do have different interpretations of what many categories mean. For example, one consumer might choose "billing dispute" to categorize a problem that another would describe as a concern with a provider's setting or changing of an interest rate.⁴ Separating and simplifying the subcategories might help minimize incorrectly labeled or erroneous complaints, help businesses identify complaints, and help consumers more quickly locate specific and applicable information.

MBA believes the CFPB could make the Database more helpful for consumers if it suggested categories based on the aspect of the process the consumer experienced difficulties. MBA suggests that the origination categories might be divided into "applying for a loan," "decision on a loan" and, "closing." The servicing categories could be "collection," "loan modification," and, "foreclosure." Nevertheless, because it will be important for both consumers and industry to have a clear understanding of this categorization system, MBA urges the CFPB to issue any new categories as a proposal for further comment.

d. Include company profiles

The CFPB should consider including individual company information containing the following:

i. *Complaint : Complaint Resolution Ratio*

The CFPB should consider including a ratio that captures the number of complaints a company receives relative to the number of complaints it resolves. A complaint to resolution ratio could provide consumers with at least a somewhat effective indicator of a company's—at least a large company's—responsiveness to consumer complaints.

CFPB could publish this metric only for lenders who are the subject of more than 100 complaints in a given year. This would bypass the need to categorize businesses based on size and would capture even small lenders who are the subject of a large number of unique complaints in any given year.

ii. *Complaints : Complaints Requiring Action Ratio*

Another way to normalize complaints might be to provide data for each lender on the ratio of complaints to the matters requiring action. Such an approach could help provide information to borrowers that complaints are handled effectively.

iii. Market Share

One item for consideration in the interest of normalization is that the CFPB should provide information accompanying the names of the company complained about that explains the extent of the company's business and the number of loans and/or mortgages currently serviced. For larger companies a very significant number of complaints and accompanying narratives can be anticipated and the volume of business should help explain the numbers.

⁴ CFPB, Consumer Response Annual Report, 2012, *available at* http://files.consumerfinance.gov/f/201204_cfpb_ConsumerResponseAnnualReport.pdf

It is important, however, that if the CFPB opts to include such a metric that it be applied only to large and mid-size lenders. There is concern that smaller lenders will have a disproportionately greater proportion of complaints as a function of lower volume or even happenstance. An elevated percentage of unsubstantiated complaints can be disastrous for a smaller lender.

e. Include some information about the consumer making the complaint

While robust protection of personal information should be a very high priority for the CFPB, some basic contextual information about borrowers could help consumers more effectively navigate the content in the Database. For example, including the “pay through date” would be helpful for separating those complaints for consumers on the verge of foreclosure and those who are multiple years into the process who might not have made a mortgage payment in several years.

MBA is not suggesting that either type of complaint has more or less merit, but rather that such information could provide more insight into the complaint as it relates to the individual reading it. Such an approach could allow consumers to more quickly identify with similarly situated borrowers.

f. Remove Old and Resolved Complaints

Aged complaints and complaint narratives where complaints have been resolved with no action needed should be removed from the Database. As a general rule, complaints and complaint narratives that are older than 24 months should be removed from the Database. Aged complaints and complaint narratives that did not require action should not be regarded as representative of a lender’s current performance.

III. Other Recommendations

The CFPB should consider synchronizing the case number in the database portals so that companies implicated can more swiftly work to address the complaint. This step will ultimately help the CFPB achieve its goal of making the database more user-friendly and accessible.

Once a complaint has been submitted to the CFPB and screened by staff it is submitted to the company identified in the complaint for review. The company reports back to the consumer and the CFPB via a secure “company portal,” that attaches a unique identifier to the complaint. Consumers can log onto the secure “consumer portal” available on the CFPB’s website to receive status updates, provide additional information, and review responses provided by the company. Complaints are listed in the database after the company responds or after they’ve had the complaint for 15 calendar days, whichever comes first.

Unfortunately, when a complaint is added to the public-facing Database it is assigned a unique identifier totally separate from the identifier assigned to it in the company portal. This process makes it challenging for companies and consumers to verify that the complaint—and the resolution of the complaint—is reflected accurately in the public Database.

MBA recommends that the CFPB devise a system to link the unique identifiers for each complaint case to allow for easier verification of publicly posted complaints.

IV. Any substantive change in the display or content of the Database should only occur at the very least with an additional RFI or, better yet, a notice and comment rulemaking to ensure full public participation and a rigorous assessment of its costs, benefits, and small business burdens.

Short of a formal hearing, notice and comment rulemaking is the best means to maximize public participation and full deliberation prior to agency action. It also affords an opportunity to consider the costs and effects of such action including the effects on small businesses. While MBA appreciates the opportunity to submit ideas on normalization, this particular initiative does not provide the opportunity to respond to specific proposals nor does it provide for a small business or economic analysis.

If the Bureau moves forward with a plan to normalize and alter the presentation of content in the Database as a result of this request for information, it should at the very least propose a more specific methodology accompanied by a rigorous analysis of the costs and benefits to consumers and industry and notice it for public comment. Given that consumers and industry are affected by the Database there is a great value in allowing stakeholders to respond to specific proposals. Such a process would allow stakeholders to consider whether better alternatives are available to address perceived consumer information needs.

Additionally, we would urge the Bureau to convene a panel pursuant to Small Business Regulatory Flexibility Act (SBRFA) to consider the impact of rankings on smaller entities.

Conclusion

MBA appreciates the opportunity to comment on this RFI. While we strongly object to the public display of unsubstantiated complaint narratives in the database, MBA believes taking the several steps we recommend, including seeking further comment, could improve the Database. Should the CFPB develop specific options to normalize this data, we urge at minimum the issuance of a new RFI.

Should you have questions or wish to discuss any aspect of these comments, please contact Ken Markison, Vice President and Regulatory Counsel, at (202) 557-2930 or at kmarkison@mba.org; or Elizabeth Kemp, Assistant Regulatory Counsel, at (202) 557-2941 or at ekemp@mba.org.

Thank you for your consideration of these views.

Sincerely,



Stephen A. O'Connor
Senior Vice President Public Policy & Industry Relations