May 26, 2015

Monica Jackson,
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW.,
Washington, DC 20552

RE: Request for Information Regarding the Consumer Complaint Database / Docket No. CFPB-2015-0013

Dear Ms. Jackson,

The Mortgage Bankers Association (MBA)[1] appreciates the opportunity to comment on the Request for Information (RFI) from the Bureau of Consumer Financial Protection (CFPB or Bureau) on its Consumer Complaint Database. In March of this year, CFPB published a final policy that will, for the first time, result in the addition of unstructured and unsubstantiated consumer narratives to its Consumer Complaint Database (Complaint Database). The policy will allow subjects of complaints to respond with one of nine structured responses. The Bureau is now requesting information on: (1) ranking or otherwise sorting service providers by certain metrics related to the complaints they receive, allowing complainants to rate service providers' responses to complaints; and (2) incorporating positive feedback on service providers on CFPB's website.

While MBA appreciates the opportunity to comment on these additional issues, this comment should not be regarded as in any way endorsing the underlying decision of the CFPB to publicly display unsubstantiated narratives in the CFPB's Complaint Database. As discussed further below, both CFPB and industry data both show that a small fraction of consumer complaints warrant any real action. Consequently, MBA maintains that disseminating such information under the imprimatur of the Federal government will mislead consumers rather than help them make informed choices.

Accordingly, prior to addressing the issues raised by the RFI, which are grounded in the decision to post unsubstantiated complaint narrative, this comment discusses our objection to the posting of complaint narratives at all. The comment then outlines MBA's concerns with ranking and rating service providers; and makes additional recommendations for the CFPB to improve the complaint database for consumers and service providers alike.

[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.

I. Concerns with Final Policy on Posting Consumer Complaints

In previous comments submitted on September 22, 2014 and February 27, 2015 and in meetings with CFPB staff MBA has strongly objected to the Bureau's plans to post unstructured and unsubstantiated consumer narratives to the Complaint Database.

Complaint narratives by their nature are more attention-grabbing than raw data on the number of complaints, making the publication of inaccurate or exaggerated narratives even more misleading than the publication of raw numbers of complaints, many of which do not merit relief.

In its most 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.[2] 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 the number of complaints is more expansive than the CFPB's and indicates the numbers of complaints requiring action ranges from as little as 2 to 19 percent of the cases. Lenders 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 Bureau's complaints portal are resolved with a simple explanation, MBA continues to urge CPFB to narrow the proposed expansion of the database to include only those consumer narratives where the accuracy of the complaint has been verified.

Instead of accepting this and other recommendations and addressing a range of consumer privacy, legal and other concerns that MBA and others voiced, the CFPB instead resolved to publish unstructured and unsubstantiated consumer narratives. The final policy makes no provision for ensuring that consumer complaints that the CFPB solicits and posts are valid.

II. Concerns with Structured Responses

The final policy does not allow financial institutions to provide a detailed public facing response. Instead, companies are limited to a single selection from among nine "structured" and predrafted responses. The nine responses are:

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

1. Company believes it acted appropriately as authorized by contract or law;
2. Company disputes the facts presented in the complaint;
3. Company can't verify or dispute the facts in the complaint;
4. Company believes the complaint is the result of a misunderstanding;
5. Company believes complaint relates to a discontinued policy or procedure;
6. Company believes complaint represents an opportunity for improvement to better serve consumers;
7. Company believes complaint is the result of an isolated error;
8. Company believes complaint caused principally by actions of third party outside the control or direction of the company; and
9. Company chooses not to provide a public response.

While MBA appreciates the Bureau's rationale for providing structured responses, i.e., alleviating service providers' burdens in posting responses, the availability of these responses alone is insufficient. Many of complaints will not fall neatly into these categories, and some complaints may in fact warrant a robust company rebuttal. Using only these responses will not offer companies the ability to correct any factual inaccuracies or customer misunderstandings that may be included in a narrative, nor will it provide consumers any insight into the considerable efforts many service providers made in addressing particular complaints.

MBA believes the drop down menus should be supplemented by an option for companies to provide a detailed response if they choose to, without leaving a blank space for those who choose not to. In many cases, service providers may find the drop down menus sufficient; however, the option to provide a detailed rebuttal should be provided for those cases where a service provider believes it appropriate.

III. Concerns with Ranking and Rating Service Providers

In the RFI the Bureau states it is "specifically interested in responses that identify potential ways the Bureau could record, calculate, standardize, sort, share, and visualize the data associated with the consumer complaints…." As a part of this effort the Bureau indicates it is considering allowing consumers to rate on scale of one to five a service provider's response to a complaint and possibly ranking service providers in different categories as a top or bottom ten.

Allowing a consumer to have an additional bite at the apple and an opportunity to rate the lender without a similar right on the part of the lender is unfair. A more efficient and far fairer approach would be to simply allow a complaint and a response.

Under Dodd-Frank, one of the primary purposes of the Bureau is to conduct financial education programs.[3] Considering the statistical data on the merits of complaints, MBA believes ranking or rating service providers on their responses will not educate consumers, but divert them from better qualitative indicators. Accordingly, we believe any such rankings would be contrary to Congress's intention when it created the Bureau.

[3] 15 U.S.C. 5511(c).

- **Non-Government websites, and social media, already provide a forum for feedback about all manner of service providers**

  As pointed out in 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 provided through a rating only of the quality of responses to 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.

- **If the Bureau pursues ranking service providers it should undertake notice and comment rulemaking.**

  Considering the potential market effects of any proposal to rank or rate service providers, a more specific methodology should be developed and accompanied by a rigorous analysis of the costs and benefits to consumers and industry. Such an analysis should necessarily consider whether better alternatives are available to address perceived consumer information needs. Additionally, before engaging in a rulemaking of this nature, the Bureau would in our view be obliged to convene a panel pursuant to Small Business Regulatory Flexibility Act (SBRFA) to consider the impact of rankings on smaller entities.

IV. Collect positive comments on service providers and display them with all other feedback.

The RFI indicates the CFPB is thinking about ways to collect and display positive comments about service providers such as collecting and disseminating positive feedback through its "Tell Your Story" tool. MBA believes, however, any positive feedback should be displayed along other comments received by the Bureau.

It is unclear why the Bureau believes that positive feedback should be posted separate from the complaints. If the CFPB's objective is to provide consumers a full view of consumer reviews of service providers then all feedback should be published in the same database. To separate the positive from the negative risks misleading consumers since the totality of information is not available in one place. As stated, we do not favor the posting of complaint narratives but if that is the decision, positive feedback should be treated no differently than other complaints are handled and posted on the Complaint Database. Consumer consent should be received for posting positive feedback and the comments should be verified and scrubbed to assure that personal financial information is not disseminated to the public.

V. Improvements for the Complaint Database

If the Bureau continues to move forward to post unsubstantiated narratives and even rank responses to them, MBA makes several recommendations to facilitate and improve service providers' responses to complaints.

- **Clarify the consumer disclaimer to indicate the information in the complaint database is not verified.**

  The Bureau should add a far clearer disclaimer to the Complaint Database that should be displayed prominently on all pages of the complaint database in 14-point type. The disclaimer currently 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." To mitigate some of the harm that will come with the release of this information, 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."

- **Avoid publishing complaint narratives that have been misdirected or are not from consumers.**

  MBA members continue to report that a large number of the complaints are misdirected. Essential to properly focusing on complaints is assuring that complaints are sent to the right company. The CFPB also should not only definitively confirm the relationship between parties, but it should cull out complaints by competitors, duplicative complaints and products of organized campaigns by those hostile to a particular company. Only complaints that allege an actual harm to a consumer should be considered for posting.

- **Provide adequate notice and time to address complaints collected before any narrative is posted and only post those where the complaint is valid and unaddressed.**

  If narratives are displayed, MBA maintains invalid complaints should not be allowed to mislead consumers. In order to address both imperatives, the CFPB should notify a company against which the complaint is filed and provide the company sufficient time to address the complaint before a narrative is posted. If a complaint is misdirected, timely explained or resolved, the narrative should not be posted. In addition, if a consumer is allowed to provide a rebuttal to a company response, then the lender should be provided sufficient time to respond before the rebuttal is posted. Finally, if a consumer rebuttal is received, companies should be given the opportunity to petition for an extension if additional time is needed to adequately respond.

- **Take down complaint narratives that are published and are subsequently found to be not valid.**

  If the CFPB moves forward it should ensure on an ongoing basis, as MBA has recommended previously, that the information displayed on its website is true and complaints are valid to the greatest extent feasible. A policy such as this should include take down or removal procedures based on reports from companies that complaints are resolved. We urge the CFPB to devote resources to efficiently carrying out this function.

- **Remove aged complaints and compliant narratives from the Complaint Database.**

  Finally, complaints and complaint narratives collected through the Intake Form that are older than 24 months should be removed from the Complaint Database. Aged complaints and complaint narratives should not be regarded as representative of a lender's current performance.

VI. Conclusion

MBA appreciates the opportunity to comment on this RFI. While we strongly object to the posting of complaint narratives, proposals to rank service providers and limiting subjects' responses, MBA believes taking the several steps we recommend, including instituting a public rulemaking, would help lessen the harm from these choices by the CFPB.

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.

Thank you for your consideration of our comments.

Sincerely,

Pete Mills
Senior Vice President
Residential Policy and Member Services