



Network Branded Prepaid Card Association
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September 22, 2014

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

Re: Consumer Financial Protection Bureau
Disclosure of Consumer Complaint Narrative Data [Docket No. CFPB–2014–0016]
Notice of Proposed Policy Statement with Request for Public Comment

Dear Ladies and Gentlemen:

This letter is submitted to the Consumer Financial Protection Bureau ("CFPB") on behalf of the Network Branded Prepaid Card Association ("NBPCA")¹ in response to the Notice of Proposed Policy Statement with Request for Public Comment published in the *Federal Register* on July 23, 2014, at 79 Fed. Reg. 42765. The CFPB currently discloses certain consumer complaint data regarding consumer financial products and services in its public-facing, web-based database (the "Consumer Complaint Database"). The CFPB has proposed a policy ("Proposed Policy") that would expand the Consumer Complaint Database to include consumer complaint narrative data, and has requested comments regarding the Proposed Policy. The NBPCA believes the Proposed Policy raises many serious issues that could negatively affect both consumers and financial services companies. For this reason, as discussed in more detail below, the NBPCA advises against expanding the Consumer Complaint Database in the manner set forth in the Proposed Policy.

The CFPB's Proposed Policy will harm consumers by leading them into negative purchasing decisions with factually inaccurate and unverified information.

¹ The NBPCA is a nonprofit, inter-industry trade association that supports the growth and success of network branded prepaid cards and represents the common interests of the many participants in this new and rapidly growing payments category. The NBPCA's members include banks and financial institutions, the major card networks, processors, program managers, marketing and incentive companies, card distributors, payment industry consultants and law firms. The comments made in this letter do not necessarily represent the position of all members of the NBPCA.



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According to the CFPB, the Proposed Policy will create incremental benefits for consumers by increasing the amount of information available in the marketplace, thereby enabling consumers to make better purchasing decisions. However, the potential negative effects the Proposed Policy will have on consumers and to the marketplace as a whole should also be taken into account by the CFPB. Consumers will likely assume that information posted by the CFPB to its website is vetted and factually accurate, but the CFPB has indicated that it does not intend to verify the accuracy of the facts alleged in the complaints, other than the identity of the issuer and that the complaint comes from a consumer. Consumers will nevertheless read the complainant narratives posted by the CFPB under the mistaken belief that the stories contained therein are true, notwithstanding any disclaimers made by the CFPB. As a result, consumers could be steered away from a particular product or provider due to potentially inaccurate information and led to make purchasing and other financial services decisions they may not have otherwise made.

For example, consider a consumer who is considering the financial services of Company A. Curious about Company A, the consumer searches for any relevant complaints on the CFPB's Consumer Complaint Database as modified by the Proposed Policy. The consumer reads a recently posted complaint about Company A. Unbeknownst to the consumer, the complaint is based on factually inaccurate and / or false information that is unverified by the CFPB. Nevertheless, because the consumer assumes that the CFPB would not post the story if there were not some validity to it, the consumer decides to either obtain the contemplated financial services from a different company or forego an otherwise appropriate or necessary transaction.

Such a scenario highlights the negative impact the Proposed Policy can have on a consumer, because it may have led the consumer to make a negative purchasing decision. Company A may offer benefits important to the consumer that other competitors offering similar services do not. Rather than enabling consumers to objectively evaluate the differing products and making a purchasing decision based on which one offers the greatest positive impact, the Proposed Policy may push the consumer to a decision based on bad information, and thereby cause the consumer to miss out on the product that may serve their needs most effectively or to forego the transaction altogether. Instead of enhancing transparency, the Proposed Policy could result in consumers acting on inaccurate information and making negative purchasing decisions rather than utilizing financial services in a manner that optimizes their best financial interests.

Expanding the Consumer Complaint Database to include unverified consumer narratives creates significant burdens for businesses and exposes them to substantial reputational risk.

The Proposed Policy also poses a significant risk to financial services companies. Specifically, the Proposed Policy will result in substantial compliance costs to businesses and likely will cause substantial reputational harm to those businesses as well, particularly if there are



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insufficient safeguards to ensure the accuracy, completeness, or adequacy of the information reported.

The Proposed Policy will increase operational burdens on affected businesses. Businesses will incur increased costs because they will need to devote and maintain additional personnel and other resources to investigate the facts and circumstances underlying any complaint filed with the CFPB, even when the business may have already conducted an error investigation or otherwise concluded that such a complaint is meritless, and then construct a separate response to be posted within the Consumer Complaint Database. Making this process even more difficult and costly is the fact that the CFPB instructs businesses not to include any personally identifiable information of a complainant in any response. Thus, the creation and review of a separate response will increase the operational burden on affected businesses while denying a business the opportunity to provide important details and context that could enable a meaningful response to a complaint. Moreover, to respond to posted complaints in the fifteen-day timeframe the CFPB proposes, businesses will need to engage even more personnel simply to monitor the CFPB's Consumer Complaint Database. Thus, the Proposed Policy will require businesses to increase their operational burdens and incur additional expense.

In addition to causing affected businesses to incur increased operational expenses, the Proposed Policy creates a substantial risk of reputational harm to those businesses. The CFPB itself points out how powerful "word of mouth" is to consumers in the process of making purchasing decisions. The CFPB, while recognizing the risk that "the narratives may contain factually incorrect information," nevertheless ignores such risk by not verifying the information contained in the narratives it receives. As a result, the Proposed Policy will facilitate the spread of inaccurate and / or false information into the marketplace. In 2013, nearly seventy percent of consumer complaints filed with the CFPB closed after a simple explanation.² This statistic provides strong evidence that most consumer complaints stem from a misunderstanding or misrecollection on the part of the complainant. Such inaccurate complaints are in addition to those filed by consumers who have a perceived negative experience with a business and, in retaliation, file a false or deliberately misleading complaint. Under the Proposed Policy, the CFPB will be disseminating such inaccurate or even false information to the public at large. The Proposed Policy could thus result in the spreading of negative "word-of-mouth" based on inaccurate and / or false information and could cause substantial reputational damage to affected businesses.

² CFPB.com, Consumer Response Annual Report: January 1 – December 31, 2013, (March, 2014) available at: http://files.consumerfinance.gov/f/201403_cfpb_consumer-response-annual-report-complaints.pdf (last visited, August 22, 2014).



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Allowing businesses to post side-by-side responses to consumer narratives does not ameliorate the negative impact of the Proposed Policy.

In anticipation of the concern that posting inaccurate and / or false complainant narratives could negatively affect businesses and consumers, the Proposed Policy would allow businesses to post side-by-side narratives explaining the business' side of a dispute. This feature of the Proposed Policy does not adequately address the potential negative impacts detailed above.

As discussed above, it may take affected businesses a significant amount of time to investigate and respond to a complaint that could exceed the fifteen-day response timeframe provided by the CFPB. Even if a company were to respond to say that additional time is necessary to investigate, if a complaint that contains inaccurate and / or false information is posted, that complaint will stand unchallenged and widely available until the business can complete its investigation and provide a complete response to rebut the initial post. By the time, therefore, that a business is able to adequately respond to an inaccurate and / or false complaint, substantial and irreparable reputational damage may have already occurred as a result of negative "word-of-mouth" and consumers may have already relied upon the bad information in making purchasing decisions. Moreover, consumer privacy constraints may also prevent the business from being able to fully respond to the consumer narrative. It is unlikely that the damage from such negative "word-of-mouth" to the businesses and the consumers could be completely redressed by later posting the businesses' own version of events. Affected business reputations would already have been diminished and the consumer purchasing decisions would already have been made. Thus, the Proposed Policy's feature of posting side-by-side narratives is unlikely to ameliorate the negative impacts described above.

For all of the reasons set forth above, the NBPCA believes the CFPB should not expand the Consumer Complaint Database as contemplated in the Proposed Policy.

If the CFPB Does Implement the Proposed Policy, it should give businesses more time to respond to consumer complaints and refrain from posting a consumer narrative until it can simultaneously post the responsive business narrative.

The NBPCA believes that, for all the reasons stated herein, the CFPB should not expand the Consumer Complaint Database to include unverified narrative statements from complainants. If the CFPB, however, does move forward with the Proposed Policy, the NBPCA respectfully asks that the CFPB implement two changes to mitigate the Proposed Policy's impact on businesses and consumers.

First, the NBPCA asks that the CFPB extend the time for businesses to respond to consumer



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complaints from fifteen to forty-five days. Currently, once an individual files a complaint with the CFPB, the implicated business must respond within fifteen days and resolve the individual's complaint within sixty days.³ Extending the time for the initial response from fifteen to forty-five days would be consistent with the investigation and response time generally given to financial institutions under Regulation E⁴ and will help businesses by providing them more time to gather information, complete their investigation, and prepare an appropriate narrative response. Such a modification to the Proposed Policy would result in more complete and accurate responses to complainant narratives, as well as decreased operational obligations on businesses.

Second, the NBPCA asks that if the CFPB moves forward with the Proposed Policy, it should modify it to require the posting of a complainant narrative and the responsive business narrative simultaneously. Posting both narratives at the same time will ensure that any inaccurate or false information contained in a complainant narrative is not disseminated into the marketplace unchallenged. Such a modification to the Proposed Policy would lesson, to some extent, the reputational risk posed to businesses. Moreover, posting the narratives simultaneously will also benefit consumers by providing them with access to all of the available information when making a purchasing decision, as opposed to just the complainant's version of events. Businesses should also be given the opportunity to update the record later should the consumer complaint be successfully resolved. Consumers would thus be able to make better informed decisions that would result in more positive purchasing experiences.

Conclusion

The NBPCA appreciates the opportunity to comment on this important subject and looks forward to working with the CFPB to address consumer complaints and better meet consumer needs in connection with financial products and services. The NBPCA strongly believes, however, that the CFPB's Proposed Policy to expand the Consumer Complaint Database to include unverified complainant narratives will negatively affect both businesses and consumers. For this reason, the NBPCA advises against expanding the Consumer Complaint Database in the manner set forth in the Proposed Policy. If the CFPB, however, decides to move forward with the Proposed Policy despite the negative impacts, the NBPCA respectfully asks that the CFPB increase the time businesses have to respond to complaints and refrain from posting complainant narratives until the CFPB can also post the businesses' response simultaneously.

³ CFPB.com, [Submit a Complaint](http://www.consumerfinance.gov/complaint/), available at <http://www.consumerfinance.gov/complaint/> (last visited, August 29, 2014).

⁴ 31 CFR § 1005.11 (2014).



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We hope this letter has been helpful. If you have any questions or require further information, please do not hesitate to contact us.

Sincerely,

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