



December 2, 2011

## **Proposed CFPB Policy Statement on the Public Release of Credit Card Complaint Information CFPB Receives Regarding Issuers with More than \$10 Billion in Assets**

The Consumer Financial Protection Bureau (CFPB) has issued for comment a proposed policy statement on the disclosure of credit card complaint data CFPB receives from consumers regarding banks and federally-insured credit unions (FICUs) with more than \$10 billion in assets. Complaints regarding FICUs with \$10 billion or less in assets would continue to be forwarded by CFPB to the National Credit Union Administration (NCUA) and complaints forwarded to NCUA are not proposed to be disclosed publicly in the online database or any other form at this time.

If CFPB finalizes the proposed policy statement in its current form, CFPB would release data about consumer credit card complaints involving large issuers in an online, searchable database, that would include information such as: the type of complaint (e.g., billing dispute); the name of the card issuing institution; the consumer's zip code; the date of the complaint; and whether and how the issuer responded (e.g., "closing the complaint with relief" to the consumer or "closing the complaint without relief" to the consumer). Ultimately, CFPB plans to disclose data about complaints it receives regarding other types of large institution financial products in a similar manner in the future.

A copy of CFPB's proposed policy statement can be accessed [here](#). CFPB has also recently released a [report](#) about the over 5,000 credit card complaints about large issuers that it has received since July 2011.

CFPB will be accepting comments until January 30, 2012; **please submit comments to CUNA by January 16, 2012**. Please feel free to e-mail your responses to SVP and Deputy General Counsel Mary Dunn ([mdunn@cuna.coop](mailto:mdunn@cuna.coop)) or Regulatory Counsel Jared Ihrig ([jihrig@cuna.coop](mailto:jihrig@cuna.coop)). You can also mail them to CUNA's Regulatory Advocacy Department, 601 Pennsylvania Avenue, NW, South Building, 6th Floor, Washington, DC 20004.

Comments can be submitted to CFPB using [www.regulations.gov](http://www.regulations.gov). If commenting directly to CFPB please include "Docket No. CFPB-2011-0040" on your comment.

## Summary

As noted above, CFPB has proposed to release data about consumer credit card complaints involving banks and FICUs with more than \$10 billion in assets using an online, searchable database that would include general information about each complaint and its resolution, or lack thereof. CFPB plans to disclose data about complaints it receives regarding other types of large institution financial products (e.g., mortgages) in a similar manner in the future.

The proposal states that the purpose of this public disclosure is “to provide consumers with timely and understandable information about credit cards and to improve the functioning of the credit card market. By enabling more informed decisions about credit card use, the CFPB intends for its complaint data disclosures to improve the transparency and efficiency of the credit card market.”

CFPB is claiming as the legal basis for this public disclosure its statutory requirement to provide reports to Congress regarding the complaints it receives,<sup>1</sup> 12 U.S.C. § 5493(b)(3)(C), its statutory authority to ensure that “consumers are provided with timely and understandable information to make responsible decisions about financial transactions” and that “markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation,” 12 U.S.C. § 5511(b)(1), (5), and CFPB’s obligation under the Freedom of Information Act (FOIA) to disclose publicly information that the agency releases in response to a FOIA request and that has been or is “likely to become the subject of subsequent requests” (meaning usually three or more requests) under FOIA.<sup>2</sup> 5 U.S.C. § 552(a)(2)(D); 12 C.F.R. § 1070.11(c).

CFPB’s consumer complaint process involves collecting both “non-narrative” information (e.g., name, address, the name of the credit card issuer, the type of complaint, and the consumer’s claimed loss) and “narrative” information (e.g., the consumer’s description of “what happened”) from both the complaining consumer and the issuer that is the subject of the complaint. According to CFPB’s recent [report](#) on credit card complaints, its credit card complaint system works as follows:

Once a consumer submits a formal credit card complaint and Consumer Response determines that it is within the Bureau’s jurisdiction [i.e. a bank or FICU is within CFPB’s jurisdiction if it has more than \$10 billion in assets; otherwise, in the case of a FICU with \$10 billion or less in assets, CFPB would forward the complaint to NCUA], the information is sent via a secure web portal to the credit

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<sup>1</sup> The proposed statement of policy includes the assertion that CFPB will periodically “publish reports about the consumer credit card complaints it handles.” These reports may be the same as those CFPB must periodically provide to Congress regarding the complaints it receives. In addition, these reports may also contain CFPB’s “analysis of patterns or trends that we identify in the complaint data.”

<sup>2</sup> Agencies posting on the internet records or other information that members of the public have or are likely to request multiple times under FOIA is not uncommon. CFPB’s proposal notes that other federal agencies, such as the [National Highway Traffic Safety Commission](#), already post similar consumer complaint data online. In addition, the Federal Bureau of Investigation (FBI) has [posted online](#) the FBI’s files regarding of a wide variety of people and events that it has received repeated FOIA requests regarding, including gangsters like [Al Capone](#), civil rights figures like [Dr. Martin Luther King, Jr.](#), celebrities like [Wilt Chamberlain](#) and [Michael Jackson](#), and the FBI’s “[unexplained phenomenon](#)” files.

card issuer. The issuer reviews the information, communicates with the consumer as appropriate, and determines what action to take in response. Then the issuer reports to the CFPB how it has responded, and the CFPB invites the consumer to review the issuer's response. Throughout this process, a consumer can log onto the CFPB's secure "consumer portal" or call the toll-free number to receive status updates, provide additional information, and review responses provided to the consumer by the credit card issuer. The CFPB performs additional review and investigation for complaints where the issuer fails to respond or where the response it provides is disputed by the consumer.

As proposed, CFPB's online database of consumer credit card complaints it receives regarding banks and FICUs with more than \$10 billion in assets will include the following information received as part of the complaint process (as well as possibly additional information that CFPB may choose to add at a later date):

- The type of complaint (e.g., billing dispute, APR or interest rate, customer service, fraud/identity theft, collection practices, etc.);
- The name of the card issuing institution;
- The consumer's zip code;
- The date of the complaint; and
- Whether and how the issuer responded (e.g., "no response from issuer," "closing the complaint with relief" to the consumer, or "closing the complaint without relief" to the consumer).

CFPB currently only plans to release publicly "non-narrative" data—such as the types of information outlined above—and does not plan to release information about the consumer (e.g., the consumer's name, credit card number, or address).

CFPB also does not at this time plan to release the "narrative" data it receives from consumers and issuers as part of the complaint process (e.g., the consumer's descriptions of "what happened," whether the consumer believes that he or she received a "fair result," and the issuer's description of what it thinks happened).

CFPB's reason for not releasing the "narrative" data regarding each complaint is that consumers' and issuers' "narrative" responses may contain issuers' trade secrets and/or confidential consumer personal information that cannot be publicly disclosed by a government agency because of FOIA, the Privacy Act, and/or other laws. The proposed statement, however, says that CFPB will study the possibility of releasing complaint "narrative" data online at some future date, such as by possibly establishing a way for consumer's to "opt-in" or "opt-out" of disclosing a complaint's "narrative" information.

CFPB also notes, however, that not releasing the "narrative" information from its consumer complaint process—while releasing "non-narrative" information about the type of complaint made, the name of the issuer, and whether the issuer provided the

consumer with “relief” or not—may sometimes provide a misleading picture of the merit (or lack thereof) of the consumer complaints in question.

For example, a theoretical issuer that follows all applicable consumer protection laws in every situation but that is for some reason the subject of many frivolous consumer complaints may appear, based on the “non-narrative” database information, to be a serious infringer of the law that never grants consumers “relief.” In contrast, an issuer that frequently violates consumer protection laws but that regularly grants consumers “relief” regarding their legitimate complaints could appear to a user of the database to be more consumer friendly than the issuer that is subject to many frivolous complaints, even though the opposite would in fact be true.

The CFPB proposal also notes that “issuers would likely mine the [consumer complaint] data and might publicize to consumers how their complaint performance measures up against competitors.” Similarly, it stands to reason that some banker or consumer groups could mine the database for information about consumer complaints against credit unions and present that information in a misleading manner (although, at the time of this writing, only three FICUs have more than \$10 billion in assets and only these three would have consumer complaint information placed in CFPB’s online database).

## **Questions**

CFPB’s proposed policy statement includes several specific requests for comment that the agency would like commenters to address. These requests for comment are as follows:

1. CFPB seeks comment on “the interplay between the proposed Policy Statement and the possible application of the requirements of” 5 U.S.C. § 552(a)(2)(D), the provision of FOIA that requires agencies to “make available for public inspection and copying . . . copies of all records, regardless of form or format, which have been released to any person under [FOIA] and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records.”
2. “In addition to seeking comments on the proposed Policy Statement, the CFPB also invites comment on the appropriate ways to study the effectiveness of credit card complaint data disclosure. Although the present Policy Statement is limited to credit card complaints, what the CFPB learns about disclosure in this context may serve to inform disclosure of complaint data about other financial products and services.”
3. CFPB has identified several questions that will need to be answered in deciding whether to publish specific data aggregations; these are as follows:
  - i. “First, some trend and pattern data may need context to make the data informative to consumers. Complaint counts by issuer are one apparent example.

Unless weighted appropriately against the relative size of an issuer’s credit card business—a process commonly referred to as ‘normalization’—their disclosure may not offer consumers any meaningful information. The CFPB invites comment on how best to address this issue, including whether there is an available and appropriate normalization metric for these purposes.”

- ii. “Second, some products may, by their very nature, have higher complaint rates than others, even across all issuers that offer them. As a result, these products could cause issuers’ complaint incidence to vary more by product mix than by performance. The CFPB invites comment on how best to address this issue, including whether there is an available and appropriate normalization metric for these purposes.”
- iii. “Third, data on the rate at which the CFPB procures relief for consumers in response to credit card complaints may not be meaningful if broken out by issuer. If an issuer has a relatively low rate of offering responses that consumers accept, that may reflect its failure to respond to legitimate grievances. However, it may instead reflect that the issuer has effective internal complaint processes and/or low-complaint products, causing the complaints that reach the CFPB to lack merit. The CFPB invites comment on how best to address this issue.”

4. Regarding the possible disclosure of “narrative” data—which, as discussed above, CFPB is not currently proposing to disclose publicly but is studying possible ways to disclose “narrative” data in a fair and lawful manner in the future—CFPB is considering the possible approach of publishing the “narrative” data only if a consumer “opts-in” or, alternatively, fails to “opt-out” of the disclosure. “CFPB invites comment on the impact of a consumer opt-in (or, in the alternative, a consumer opt-out) on the merits of disclosing narrative data. The CFPB also seeks comment on whether issuers should have a parallel ability to opt into or out of publication of narrative responses, or the ability to provide a public and non-public response to a complaint.”