

REINVESTMENT PARTNERS

"ADVOCATING FOR ECONOMIC JUSTICE AND OPPORTUNITY"



September 22, 2014

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

RE: Docket CFPB-2014-0016, Notice of Proposed Policy Statement on the Disclosure of Consumer Complaint Narrative Data

Dear Sirs:

We appreciate the opportunity to comment on the proposed process for consumer complaints at the Consumer Financial Protection Bureau. We believe that the CFPB's intention to include consumer narratives in the database will greatly enhance its value.

We believe that narratives will greatly enhance how outside groups make use of the database. The first-person narrative holds power to truly amplify the voices of impacted consumers. It is not just that the harm will be better understood – although it certainly will be – but it is also that the inclusion of personal comments will add valuable nuance to the process.

About Reinvestment Partners

Reinvestment Partners is a non-profit advocacy and service agency based in Durham, North Carolina. Please accept these comments and recommendations for the CFPB complaint process.

Reinvestment Partners is familiar with the CFPB complaint process. Our agency files complaints directly as a result of working with clients through our housing counseling and legal services programs. We have filed Equal Credit Opportunity Act ("ECOA") complaints as a result of our fair lending investigations as a private fair housing enforcement agency. Our policy and research activities have provided detailed analysis of institutional financial practices as the basis of complaints regarding unfair and deceptive trade practices. We have provided training to more than sixty non-profit agencies in North Carolina on how to file a complaint through the CFPB

web portal. We understand the importance of how the complaint process informs supervision and enforcement action for the CFPB.

From this experience, we have recommendations for improvements in the complaint process. Our recommendations are outlined below, and further detailed later in this document.

I. The CFPB needs to improve how it works with third party agencies to generate and file complaints.

- a) The CFPB needs to establish a protocol for the Office of Fair Lending to work with private fair housing enforcement agencies in filing ECOA complaints.
- b) The CFPB needs to establish a more formal process for taking complaints from third party agencies that are able to discern patterns and practices or have technical skills that can differentiate complaints from citizens.

II. Data analysis shows that complaints from minority neighborhoods to the CFPB are under-represented and complaints are not screened for fair lending trends.

- a) On a volunteer basis, race, ethnicity, gender and age need to be collected as a data point for complaint intake so that fair lending violations maybe better identified and corrected.
- b) Minority neighborhoods are under-represented in complaints made to the CFPB. This indicates a need for greater outreach to involve these communities, which have been historically over-represented in fringe financial services, subprime lending and foreclosures.

III. The CFPB can improve its intake process and follow up.

- a) In cases where a company is non-responsive, or the initial complaint is escalated, such changes in the complaint's status should be communicated to the consumer in order to build confidence in the CFPB process.
- b) The web portal to file complaints can be improved to make it easier and quicker to file a complaint.

DETAIL

(I)(a) The CFPB needs to establish a protocol for the Office of Fair Lending to work with private fair housing enforcement agencies in filing ECOA complaints.

The CFPB April 2014 Fair Lending Report states on page 12 that “We consider fair lending complaints received by the Bureau’s Office of Consumer Response or brought to the Office of Fair Lending’s attention by advocacy groups, whistleblowers, and other government agencies (at the local, state and federal levels).”

It should be noted that the CFPB Office of Fair Lending and Equal Opportunity does not respond to or investigate individual consumer complaints regarding discrimination. Unlike the United States Department of Housing and Urban Development, it does not advertise to the public to file discrimination complaints with the agency. While considering complaints, it does not ask for them or have a process to respond to them from individuals or agencies.

It is very difficult for consumers to know if they have been discriminated against. Testing by a fair housing enforcement agency is necessary to determine if disparate treatment exists. Because the CFPB does not conduct testing in the pre-application or application phase of obtaining credit, it does not have the capacity itself to investigate discrimination prior to and during the application process.

Reinvestment Partners has advocated on several occasions to create a process for fair housing enforcement agencies to work with the CFPB. The CFPB should provide a protocol for how to file a fair lending complaint, what standards are expected in the burden of proof, and what protocol is preferred in conducting fair lending investigations. There is no process for providing feedback to agencies on the quality or veracity of filed complaints. Meetings are an ad hoc process based on the non-profit initiative. The CFPB Office of Fair Lending and Equal Opportunity should develop a process of working with third parties to conduct investigations and a protocol for accepting complaints that allow for follow up.

(I)(b) The CFPB needs to establish a more formal process for taking complaints from third party agencies that are able to discern patterns and practices or have technical skills that can differentiate complaints from citizens.

Legal services attorneys, advocates, and housing counselors are able to identify trends and problems that individual consumers are not. Filing complaints through the Consumer Complaint portal allows the CFPB to see the individual complaint, but lacks the contextual and broader analysis that professionals can bring. CFPB staff has consistently been responsive to our requests for meetings and have listened professionally to our analysis. However, our agency has the privilege of receiving funding and our existing relationships that enable us to advocate from North Carolina to Washington, DC. Local service providers often do not. We encourage the CFPB to develop a means for professionals serving clients to make complaints in a fashion that allows for supervisor and policy responses, as well as responses to individual complaints. This process allows for a cross disciplinary response to what is happening on the ground.

(II)(a) Race needs to be collected as a data point for complaint intake so that fair lending violations maybe better identified and corrected.

By not collecting race, ethnicity, gender or age of consumer complaints the CFPB is missing an opportunity to look for patterns and practices of fair lending violations. It also would help

inform who is not filing complaints and what outreach may be needed to include the diversity of our society.

(II)(b) Based on an analysis by the Greenlining Institute, complaints from zip codes with majority minority households are under-represented in filing complaints. The CFPB should conduct broad outreach campaigns to the public regarding the consumer complaint database and, in particular, for those neighborhoods and populations that are under-represented.

(III)(a) In cases where a company is non-responsive, or the initial complaint is escalated, such changes in the complaint's status should be communicated to the consumer in order to build confidence in the CFPB process

Consumers file complaints with the expectation that the CFPB will provide a fair response to resolve the problem. While the CFPB does require a timely response from companies, which often provides relief, consumers may be disappointed in the limits of the CFPB intervention. Consumers need to receive better communication about the outcome of the complaint to build confidence in the CFPB process.

According to our analysis of the CFPB complaint database for mortgages in North Carolina, 88 percent of complaints were resolved with relief and 97.5 percent complaints were responded to in a timely fashion. This is a significant outcome in having industry respond favorably and timely to consumer complaints. However, it should be noted that 12 percent of complaints were resolved without relief and 2.5 percent were not responded to in a timely fashion. These numbers and percentages are much higher in other financial products such as credit cards and student loans.

The complaint process allows for a consumer or their advocate to dispute a company's response. However, while a consumer may anticipate a resolution of the complaint in the escalation, the CFPB is clear that is not its obligation.

Reinvestment Partners escalated a complaint in which the company did not provide a response. In response to the escalation, the CFPB provided blunt information to inform our expectations on next steps, shown below.

Will I hear from the CFPB again about my complaint?

Probably not. We occasionally have to reach out for more information to complete an investigation. As a result of investigation, you may receive a more favorable response, though not usually. If you do not hear from us within 60 days, you can assume we have investigated and closed your complaint.

If the company broke the law, will you tell me?

No. We do not comment on possible violations of the law unless they're made public.

Is that it?

Complaints help us identify trends and problems in the market place and understand the challenges people are facing so we can do a better job looking for these problems when we supervise companies, enforce federal consumer financial laws, and write rules and regulations.

We appreciate the bluntness of the answers. We trust the CFPB will do its job to investigate. We are also left without an effective answer to our complaints. The burden of obtaining a resolution moves back to either the consumer or non-profit who by definition lack resources and the authority of the CFPB to obtain a resolution. In two decades of advocacy, we have had state and federal agencies allow companies to respond to complaints without investigation, enforcement or complaint resolution. Whatever the company said was sufficient as a response. This could be a future problem under different CFPB leadership. The CFPB should establish a precedent to help consumers resolve their complaints and communicate end results to build confidence in the complaint and resolution process.

(III)(b)The CFPB can improve the online process of filing complaints.

Reinvestment Partners has entered multiple complaints and provided training to others on how to file CFPB complaints. The attached Top Ten Tips are to make it easier for counselors and lawyers to file complaints. We have provided this to CFPB staff in prior conversations.

(IV) Reinvestment Partners supports the publishing of complaint narratives and company responses, provided that consumers' privacy is protected. The opt-in process and removal of personally identifiable information will provide consumer privacy.

Part I Section B: Policy Considerations of Disclosing Narratives

There is great value in enhancing the voice of the consumer through the inclusion of personal narrative. In our view, it is more transparent. In this approach, the financial institution is not an intermediary that filters the content and opinion of the consumer.

We understand how this could impact the level of privacy. The Bureau asks to weigh the incremental benefit of a personal narrative against the potential intrusion upon privacy. In our opinion, this is easily mitigated by giving the consumer the choice to make his or her comments public.

We understand that consumer criticisms based on false legal standing presents a real problem, as such language could unfairly impugn the financial institution. This probably deserves some intervention. On one hand the Bureau, could publicly the discrepancy between law and opinion. As well, the complaint narrative could be excluded after review. But in our opinion, the Bureau's proposal to append the company's response solves all of these problems. The financial institution

will certainly point out the error in understanding. In doing so, the misinformation is corrected without administrative intervention.

Part II Section B: Consumer Consent to Disclose Narratives

As we expressed in our response to Part I Section B, receiving consent from a consumer as a condition for publishing a narrative is a fitting method to balance privacy concerns with the incremental benefit of a narrative. We also commend the Bureau for proposing to allow consumers to opt-out of the publication of their narrative comments at a time after their initial release.

Part III: Scope of the Proposed Policy Statement

C. Personal Information Scrubbing Standard and Methodology:

In our opinion, adopting an approach which is similar to the HIPAA Safe Harbor Method is too stringent. The key issue is geography. By eliminating public dissemination of geographic data at levels below the level of the state, the CFPB would miss out on opportunity to support outside groups to evaluate the impact of a bank's policies on communities. A widespread concern for community groups and regulators is that financial institutions may have different procedures in lower-income and minority communities. Scrubbing below the level of the state would render analyses of community impact meaningless.

The degree to which granular geographic data is published is one of the most important questions, and one with which the greatest benefits could be achieved or lost, in this entire comment.

We have no objection to the other 17 elements contemplated by using HIPAA rules as a model for the narrative element of the Consumer Complaint Database.

Zip code is a difference-maker because it is easily appended to publicly-available Census Data. Competent researchers will be able to append demographic data of the relevant zip code to an exported excel file of the complaints.

The Bureau has asked if there is a useful population cut-off for redacting zip code data. The Census Bureau says that there are more than 7,000 individuals in the average-sized zip code. Thus, to redact below 10,000 (as mentioned in the Request) would probably mean redacting a great percentage of the comment filings. In fact, a decision to never redact is probably workable. We believe that a 5-digit zip code identifier leaves a great deal of room to protect individual privacy. Moreover, when this is folded into a narrative policy that has generous opt-out conditions, it is likely that consumer harm will be minimal to non-existent.

Other observations: One problem with zip codes is the use of zip codes that are specific to a P.O. Box and not to an address. The Census Bureau has a special designation for military zip codes. In our opinion it would be very valuable to note this in the database.

We believe that the Expert Determination Method would be most useful in picking the correct cut-off. For some financial products, going to a level as low as a census tract could make it very simple to identify the customer in question. This might be the case with mortgage lending, as a skilled user of HMDA data and tax records could probably narrow down possible identities with only a little work. However, it would be less likely to be the case in instances where record-keeping is not as institutionalized. This would certainly be the case with short-term higher-cost loan products, with prepaid cards, with loan modifications, as well as others.

Conclusion

We hope that these comments specific to fair lending and our responses to the questions posed by the Bureau will serve to illuminate the discussion surrounding the revision of the database.

In addition, we would like to make these general points:

- The data should indicate when a consumer is a member of a protected class.
- The data should indicate if the consumer is a service member or a family member of a service member.
- The Bureau should release the data in as timely a manner as possible.

In meetings with CFPB staff regarding our complaints and concerns, the staff has been universally professional and responsive. Thank you for the opportunity to comment on these questions.

Sincerely,

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