



June 4, 2018

VIA ELECTRONIC DELIVERY TO REGULATIONS.GOV

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

Re: *Comments of ACA International on Request for Information Regarding Bureau Public Reporting Practices of Consumer Complaint Information, Docket Number CFPB-2018-0005*

Dear Ms. Jackson:

ACA International (“ACA”), the Association of Credit and Collection Professionals, submits these comments in response to the Bureau of Consumer Financial Protection’s (“Bureau”) “Request for Information Regarding Bureau Public Reporting Practices of Consumer Complaint Information,” 83 Fed. Reg. 9499 (March 6, 2018). ACA appreciates the opportunity to provide input on the Bureau’s Request for Information.

I. BACKGROUND ON ACA INTERNATIONAL

ACA International is the leading trade association for credit and collection professionals. Founded in 1939, and with offices in Washington, D.C. and Minneapolis, Minnesota, ACA represents approximately 3,000 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs more than 230,000 employees worldwide. Given its longstanding history and broad membership, ACA is uniquely positioned to assist the Bureau with information gathering related to debt collection, as well as to collaborate with the Bureau on how its proposed policies and regulations will impact the credit and collection industry.

ACA members include the smallest of businesses that operate within a limited geographic range of a single state, and the largest of publicly held, multinational corporations that operate in every state. The majority of ACA-member debt collection companies, however, are small businesses. According to a recent survey, 44 percent of ACA member organizations

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(831 companies) have fewer than nine employees. Additionally, 85 percent of members (1,624 companies) have 49 or fewer employees and 93 percent of members (1,784) have 99 or fewer employees.

As part of the process of attempting to recover outstanding payments, ACA members are an extension of every community's businesses. ACA members work with these businesses, large and small, to obtain payment for the goods and services already received by consumers. In years past, the combined effort of ACA members has resulted in the annual recovery of billions of dollars – dollars that are returned to and reinvested by businesses and dollars that would otherwise constitute losses on the financial statements of those businesses. Without an effective collection process, the economic viability of these businesses and, by extension, the American economy in general, is threatened. Recovering rightfully-owed consumer debt enables organizations to survive, helps prevent job losses, keeps credit, goods, and services available, and reduces the need for tax increases to cover governmental budget shortfalls.

Importantly, ACA members are committed to fair, reasonable, and respectful practices and take their obligations in collecting debt very seriously. As legitimate credit and collection professionals, ACA members play a key role in helping consumers fulfill their financial goals and responsibilities while facilitating broad access to the credit market.

II. COMMENTS OF ACA INTERNATIONAL

In its Request for Information (“RFI”), the Bureau seeks comments and information in order to assess potential changes to the Bureau’s public reporting practices of consumer complaint information including the publication process and the reporting methodology. ACA’s comments address both overarching points for the Bureau to consider as well as ACA member concerns regarding the complaint reporting process and recommendations for future activities.

Overarching Points

The Bureau has repeatedly reported that debt collection receives the highest number of complaints. However in 2017, the Bureau received 84,500 complaints about debt collection as compared to 100,000 complaints regarding consumer reporting and credit repair and 37,300 complaints regarding mortgages.¹ The amount of debt collection complaints reported to the Bureau actually decreased as compared from 2016, yet the Bureau has continued to assert incorrectly that this category of complaint exceeds all others. Beyond this mischaracterization, the Bureau fails to contextualize the number of complaints as compared to the number of contacts the debt collection industry makes to consumers over a given year, which the Philadelphia Federal Reserve estimates to be well over one billion.² Providing better understanding of and perspective on the debt collection marketplace would better serve the Bureau – and consumers – in the Bureau’s analysis of the debt collection industry. The Bureau should focus its resources on actual harm rather than raw numbers of complaints provided

¹ Source: CFPB Consumer Response Annual Report, January 1 – December 31, 2017.

² Robert M. Hunt, PhD, Vice President and Director, Payment Cards Center Federal Reserve Bank of Philadelphia. Understanding the Model: The Life Cycle of a Debt. Presented at “Life of a Debt: Data Integrity in Debt Collection,” FTC-CFPB Roundtable (June 6, 2013) available at <https://www.ftc.gov/news-events/events-calendar/2013/06/life-debt-data-integrity-debt-collection>.

without context. In doing so, the Bureau would realize that debt collection complaints account for only 0.005% of all consumer contacts made in a given year by debt collectors.

Ironically, the Bureau also reports that the debt collection industry has a response rate of 94.4% in 2017, one of the highest rates of any industry that receives Bureau complaints.³ What the Bureau fails to publicize is that 84% of debt collection complaints are closed “with explanation,” meaning the consumer’s issue was specifically addressed and/or resolved.⁴ This too is an extraordinarily high percentage.

Complaints are Defined Too Broadly and Not Otherwise Verified.

The most troubling aspect of the complaint database for ACA members is w the Bureau’s treatment of complaints including: (1) the Bureau’s broad definition of a complaint as “submissions that express dissatisfaction with, or communicate suspicion of wrongful conduct by, an identifiable entity related to a consumer’s personal experience with a financial product or service,”⁵ and (2) the Bureau’s failure to verify the accuracy of the complaints it receives. The Bureau’s approach to consumer complaints in this fashion results in complaints being counted against debt collectors for conduct, which even if true, is not otherwise unlawful, but more importantly is often factually inaccurate. For example, a consumer may submit a complaint that his or her insurance company should have paid a medical bill. In this instance, the debt collector did not engage in any unlawful conduct, yet the complaint is counted against it even though the debt collector had the right to contact the consumer. In the same scenario, if the consumer makes the same complaint against the owner of the debt, the medical provider, the complaint is also counted against the debt collector, and thus two complaints are recorded for the one debt. The Bureau simply accumulates all complaints submitted by consumers without considering the nature of the complaint and without regard to its accuracy or legitimate characterization as a complaint against a debt collector. The result is an artificially inflated amount of complaints against the debt collection industry which the Bureau continues to represent as the most complained about market.⁶

The Lack of Statutory Authority to Publish Consumer Complaint Data

Although two provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) require the Bureau to report annually to Congress about the number of consumer complaints in general,⁷ and to report semi-annually to the President and

³ CFPB, Consumer Complaint Database, as of December 2017 available at <https://www.consumerfinance.gov/data-research/consumer-complaints/>.

⁴ Josh Adams, PhD, Director of Research, ACA International, *A Review of Debt Collection Complaints Submitted to the Consumer Financial Protection Bureau’s Complaint Database in 2017*, ACA International White Paper (January 2018), available at <https://www.acainternational.org/assets/research-statistics/aca-wp-complaints-review-2017.pdf>.

⁵ CFPB, *Consumer Response: A Snapshot of Complaints Received* (July 2014), available at https://files.consumerfinance.gov/f/201407_cfpb_report_consumer-complaint-snapshot.pdf.

⁶ Josh Adams, PhD, Director of Research, ACA International, *A Review of Debt Collection Complaints Submitted to the Consumer Financial Protection Bureau’s Complaint Database in 2017*, ACA International White Paper (January 2018), available at <https://www.acainternational.org/assets/research-statistics/aca-wp-complaints-review-2017.pdf>.

⁷ 12 U.S.C. 5493(b)(3)(C).

designated congressional committees, certain analyses of the complaints the Bureau has received and collected in its databases from the prior year.⁸ However, nothing in either section of the statute authorizes the Bureau to make the consumer complaint database public. The publishing of inaccurate and unverified information about any debt collector results in reputational harm that cannot otherwise be reversed. It also misleads consumers, which could lead to unfounded concerns about engaging with the collections industry, despite that this engagement is often essential to preserve credit options and avoid other problems that result from unpaid debt. One academic called the complaint database a “government sponsored Yelp.”⁹ Analyzing complaint data on a broad scale and highlighting trends appears to fulfill the Bureau’s statutory mandate; public shaming does not.

ACA Member Feedback

60% of the ACA members surveyed suggest that the Bureau endeavor to normalize complaint statistics across financial services industries in order to provide greater context for understanding consumer complaints. Rather than just reporting on the sheer number of complaints, the Bureau would be better served in reporting that the collections industry has proven responsive to complaints and has an excellent record of resolving consumers concerns. Finally, the Bureau’s complaint portal serves as a reminder that the free flow of information and open communication are the only way to resolve a consumer’s concerns about a debt.

Specific Points on Which the Bureau Seeks Feedback

1. *Specific, statutorily-permissible suggestions regarding the frequency of the Bureau’s reporting on consumer complaints.*

ACA and its members have been extremely vocal in their concerns about the Bureau’s reporting of the consumer complaint database. An overwhelming majority of surveyed ACA members report being “very dissatisfied” or “dissatisfied” with the overall frequency of the Bureau’s reporting of consumer complaints. The Bureau’s weekly tweets highlighting the number of consumer complaints it receives, especially in regard to debt collection complaints, paints a false light, while at the same time instilling fear about the entire financial services industry as a whole. While the Bureau is required to report to Congress and the President about aggregate amounts of complaint data, the frequency with which the Bureau reports that data to the public along with a slanted public relations spin, does nothing to help consumers, but is viewed as instead bolstering the Bureau’s political agenda.¹⁰ The Bureau should discontinue its

⁸ 12 U.S.C. 5496(c)(4).

⁹ *Assessing the Effects of Consumer Financial Information, Before the S. Comm. On Banking, Housing, and Urban Affairs*, (April 5, 2016) (Statement of Todd Zywicki, George Mason University Foundation Professor of Law Antonin Scalia School of Law at George Mason University, Executive Director, Law and Economics Center), available at, <https://www.banking.senate.gov/imo/media/doc/Zywicki%20Testimony%204-5-16.pdf>.

¹⁰ CFPB, *Complaint Snapshot: Debt Collection* (May 31, 2018), available at, https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp_complaint-snapshot_debt-collection_052018.pdf, which the Bureau states “provides a high-level overview of trends in consumer complaints and supplements the Consumer Response Annual Report with more recent information about monthly changes in complaint volume.” For the first time, the Bureau noted that “debt collection complaints submitted by consumers can be more meaningful when considered in context with other data, such as the number of consumers who have an

current practice of weekly tweets and its inaccurate portrayal of debt collection complaints and undertake a full review of how best to use the information it collects in useful and effective ways to serve consumers' needs. Several other financial regulators accept consumer complaints but do not report them publicly or promote them on social media – this has not stopped consumers from having the ability to register complaints or the ability of an agency to address any concerning trends or harm it sees in the information it collects.

2. *Specific, statutorily-permissible suggestions on the content of the Bureau's reporting on consumer complaints, including:*
 - a. *Whether the Bureau should include more, less, or the same amount of reporting on State and local complaint trends;*

Generally, ACA members did not indicate the need for any more or less information about state or local complaints trends. However, given that the Bureau recently reported that 40% of all complaints received by the Bureau are forwarded to other regulators,¹¹ including state regulators and Attorneys General, ACA has concerns that state and local trends based upon unverified complaint data will result in unwarranted referrals to state agencies. The fact that the Bureau is receiving so many complaints that would be better directed to other local regulators, raises questions about whether the marketing and continual self-generated press about the Bureau's database is confusing consumers about where and who they should be directing complaints to.

- b. *Whether it is net beneficial or net harmful to the transparent and efficient operation of markets for consumer financial products and services for the Bureau to publish the names of the most-complained-about companies;*

61.1% of ACA members surveyed report that publishing the names of the “most-complained about” companies is net harmful for a business's reputation and problematic, especially given the fact that none of the complaints are verified as accurate. Furthermore, the Bureau does not publish the resolution rate of these same complaints against these same companies. Unless and until the Bureau can verify the accuracy and validity of these complaints, including whether the complaints are just inquiries or questions, none of this type of data should be published. ACA reiterates its position that the Dodd-Frank Act does not authorize the Bureau to publish complaint information including the publication of company names. This information can also be misleading because the largest companies often receive the most complaints, which logically makes sense because they often have a presence in multiple states and areas and are engaged in more consumer related transactions. However, if these large companies continue to be highlighted in complaint reports it could unfairly paint them as bad actors when in fact they just have a much larger volume of contact with consumers.

account in collection.” The Bureau did not provide any specific data points but as noted above reports estimate more than a billion contacts per year are made to consumers regarding debts. This is the first time the Bureau has put the number of debt collection complaints into perspective and ACA encourages the Bureau to provide more context when publishing data on the amount of debt collection complaints.

¹¹ *Id.*

- c. *Whether the Bureau should provide more, less, or the same data fields in the Consumer Complaint Database;*

ACA members that expressed a view were evenly split in their opinion on whether there should be more or fewer data fields, stating that for the most part the data fields currently provided were sufficient. Some members recommended that the Bureau include field(s) that would better qualify the complaint as an inquiry, question or true complaint.

- d. *Whether the Bureau should provide more, less, or the same amount of context for complaint information, particularly with regard to product or service market size and company share;*

ACA members overwhelmingly support efforts to provide better context regarding complaint information including the product complained of and the company's share of the market. For instance, healthcare debt has a larger share of the market than utilities or municipal debt. The Bureau needs to inform consumers and the public of the true nature of the debt collection marketplace in order for the consumer complaint data to have useful meaning.

- e. *Whether the Bureau should supplement observations from consumer complaints with observations of company responses to complaints;*

ACA members support the publication of company responses to consumer complaints as a way to normalize the complaint process and provide consumers with a better perspective on the issues that resulted in the complaint, as well how the complaint was resolved. The complaint portal has significant utility in its potential to help consumers. But rather than punish a company for being on the receiving end of an unverified complaint, it would be better to publicize those companies that do a good job in addressing consumer issues in a prompt and efficient manner.

ACA reiterates its position that the Dodd-Frank Act does not authorize the Bureau to publish consumer complaint data like consumer narratives. However, ACA would reconsider its position if the Bureau leveled the playing field in the complaint process and permitted company narratives to be published as well.

- f. *Whether the Bureau should share more, less, or the same amount of information on month-to-month trends; and*

ACA members generally feel that the amount of information provided on month-to-month trends should stay the same. ACA members provided no other additional feedback. In general however, we remain concerned with reporting raw number data without providing additional context and analysis about the numbers.

- g. *Whether the Bureau should share more, less, or the same amount of information on particular products and services;*

ACA members recommend that more information about the product or service being complained about would provide more context to the complaint. If the goal of the complaint process is to achieve a resolution of the problem for the consumer, having the consumer better understand the marketplace would be more productive in informing the consumer about ways to

resolve a particular issue. Market information would also add value to the reports the Bureau generates and submits to Congress and the public by offering perspective on the complaint data.

3. *Specific suggestions on the reporting methodology, including:*

- a. *Should the Bureau continue to analyze data for seasonal fluctuations? If so, how; and*

ACA members are evenly split on whether the Bureau should continue to analyze data for seasonal fluctuations. Half the members surveyed felt that this data was helpful while others saw it as meaningless. Should the Bureau continue to analyze data for seasonal fluctuations, the product type and service should also be included in order to provide context.

- b. *Should the Bureau provide more, less, or the same amount of context for complaint information, particularly with regard to product and service market size and company share, including what data set(s) or data source(s) the Bureau should use;*

As these ACA comments consistently show, members encourage the Bureau to add more context to its complaint reporting. Some recommended suggestions for data points are:

- The number of consumers reached in a given time period to show the breadth of a company's output;
- The number of accounts the company is currently working;
- The number of contact attempts a company makes in a given time period;
- The number of responses the company makes to complaints;
- The kinds of services/types of collection accounts the company works; and
- The nature of the communication by the consumer (*i.e.* inquiry, questions, complaint).

4. *Specific, statutorily-permissible suggestions for the publication process of consumer complaint information, including:*

- a. *Whether the Bureau should provide the public with a publication schedule;*

ACA members favor a publication schedule. Some comments suggest that having a set publication schedule will discourage the Bureau from publishing information that aligns with its current agenda or PR campaign. For example, if the Bureau is currently focusing on credit reporting, publishing an ad hoc report paints an inaccurate picture of problems in that market where there may be none.

- b. *Whether the Bureau should notify the most-complained-about companies of their inclusion in a Bureau report prior to publication and invite company comment;*

100% of the ACA members surveyed agreed that the Bureau should notify the most-complained about companies of their inclusion in Bureau reports in advance and invite them to respond. The stigma of being the “most-complained-about” is harmful and can be highly inaccurate for no other reason than not all “complaints” are true complaints. Furthermore, the larger the company the more likely it will receive a higher number of complaints, but this number could merely reflect inquiries and not complaints at all. The Bureau should reconsider labeling a company as “most-complained-about” until it has established a process of verifying complaints.

In the interim, some commenters suggest that to permit and disclose a company response would allow the consumer to make a better informed decision about future contact with a company as well as provide consumers with more information that would provide context to the complaint. At one time the Bureau considered publishing positive comments about companies, which would be invaluable information for consumers in choosing companies with which to do business. The Bureau should revisit that initiative.

- c. *Whether the Bureau should devote resources to building tools to enable users to analyze complaint information; and*

Several ACA members were confused by this question but overall there was support for better tools available to consumers in order to analyze complaint information. As noted in prior responses, ACA supports the idea of offering more information to consumers so that they can make better and informed decisions. If the database allows consumers to get a better understanding of the company they are dealing with, it could result in the consumer’s having a better understanding about his or her complaint and how to resolve it.

- d. *Whether the Bureau should expand, limit, or maintain the same level of access to complaint information available to external stakeholders such as financial institutions and the public.*

ACA reiterates its position that the Dodd-Frank Act does not authorize the Bureau to publish consumer complaint data. Therefore a majority of its members do not support expansion of complaint information to financial institutions and certainly not to the public. Until the Bureau can verify the complaints it receives, outside third parties who are not a party to the issue between the consumer and the company should not be given access to what is a private dispute.

ACA appreciates the opportunity to provide comments to the Bureau in response to its RFI Public Reporting Practices of Consumer Complaint Information



Mark Neeb
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