

CLIENT ALERT

CFPB Final Policy on Public Disclosure of Consumer Complaint Narratives

MAY 6, 2015

On March 12, 2015, the Consumer Financial Protection Bureau (“CFPB”) issued a Final Policy Statement on how it plans to publicly disclose consumer complaint narratives.

In the original policy proposed by the CFPB, companies that are the subjects of consumer complaints would have had an opportunity to review the complaint in advance of publication and to provide a response that, together with the original consumer complaint, would have been made public. However, the Final Policy Statement changed the ability of companies to provide their own comments; instead companies are required to select from a so-called “set list of structured company response options.” The final policy provides for the CFPB to obtain consumer consent in the form of an opt-in and to publish the complaint only after a robust scrubbing of personal information.

In adopting the Final Policy Statement, the CFPB said that it believes adding narratives and structured company responses promotes the purposes of its Consumer Complaint Database, *i.e.* providing consumers with timely and understandable information about consumer financial products and services and improving the functioning, transparency, and efficiency of markets for such services. However, the Statement did not address issues that derive from publishing unverified, and potentially inaccurate narratives without correction including customer confusion and misinformation. Financial service providers may be justifiably concerned that confused consumers may file inaccurate complaints. One key example provided includes the repeated experience of credit cardholders incorrectly identifying disputes with merchants as a complaint against the bank that issued the credit card.

It might be instructive to compare how another federal government agency promotes accuracy, transparency, and efficiency of other markets. The Securities and Exchange Commission (“SEC”) promotes continuous accuracy of information used by investors and capital markets by prohibiting publicly traded companies and other registrants from publishing or failing to correct potentially materially inaccurate information. One client of ours has noted, in this context, that, while the CFPB will publish unverified consumer complaint narratives, the SEC does not publish unverified whistleblower tips that it receives.

Unverified Nature of Complaints

The CFPB received 137 unique comments on its proposal, and many commenters asserted, as described by the CFPB in its notice of adoption of the Final Policy Statement, that “the publication of ‘unverified’ consumer narratives would unfairly damage the reputations of companies.” For some reason, the CFPB placed the adjective “unverified” in quotes in describing these comments as if there was some question as to whether such narratives were, in fact, unverified. The CFPB also, in describing the industry’s concern that consumers would be misled, explained that was “because the data is, *in the commenters’ words*, unverified and unrepresentative” (emphasis added), again implying that somehow the published consumer complaint narratives actually might be verified.

On this point, some commenters suggested that the CFPB should only disclose narratives after a completed substantive investigation. On April 8, 2015, after the CFPB issued its Final Policy Statement, the American Bankers Association (the “ABA”) wrote to CFPB Director Cordray and explained that the Consumer Product Safety Commission (“CPSC”) reports product safety information on its public database, but it employs safeguards to promote the accuracy of that information. The CPSC permits a consumer or manufacturer to assert that a consumer report of harm or a manufacturer’s response contains materially inaccurate information and to submit substantiation, as to which the CPSC makes a determination and may require correction. The CFPB rejected these suggestions, expressing the belief that “with the information currently made public, supplemented by the contextual richness of the de-identified narratives, the public and the marketplace will have the capacity to assess all the data with the appropriate level of confidence.” It further expressed the belief that “the Database should include data that provides an unbiased perspective on company behavior toward consumers,” apparently not being concerned that a consumer taking the trouble to draft and file a complaint with the CFPB about a financial service provider might be biased.

The ABA suggested in its April 8, 2015, letter to CFPB Director Cordray that the CFPB should establish a process enabling a financial services provider to notify the CFPB when it believes that a complaint is not in good faith. The ABA has also suggested that the CFPB adopt guidelines to define inappropriate language, establish content standards, and discourage emotional rants about matters unrelated to the consumer financial service experience.

Several commenters suggested that by including unverified comments on a government website, readers may assume the narratives are validated by the CFPB. The CFPB acknowledged this possibility, but dismissed the concern on the basis of its belief that such a possibility is true for any market data. It explained that, in recognition of that risk, the CFPB provides a disclaimer on its Consumer Complaint Database to the effect that it does not verify facts. The ABA has now suggested that the disclaimer add a statement to the effect that the complaint may be inaccurate or incomplete and that the CFPB does not endorse the opinions expressed in the complaint.

Some commenters recommended including disclaimers in materials provided to consumers enabling them to opt-in to disclosure; the CFPB explained that such disclaimers would “notify consumers of *what the commenters perceived to be* a risk of defamatory speech” (emphasis added). Again, apparently the CFPB did not share the concern expressed by the commenters.

Inadequate Opportunity to Respond

The CFPB will only publish responses to the consumer complaint narratives if the responses are in the form of one of a set of structured company response options it provides. However, separately, in Section 1034(b) of the Dodd-Frank Act, large banks are required to provide a timely response to the CFPB concerning a consumer complaint, and that response must explain steps taken to respond, responses received from consumers, and follow-up actions to respond. However, under the Consumer Complaint Final Policy Statement, those legally-mandated responses will not be publicly available.

The ABA complained to the CFPB in the April 8, 2015, letter to CFPB Director Cordray that providing a boilerplate response to a possibly emotional consumer complaint creates a false appearance on the part of the company that it is indifferent to consumer concerns. In fairness to the CFPB, many industry comments on its original proposal were to the effect that permitting companies to craft their own responses was illusory because privacy concerns would prevent companies from doing so. The CFPB recognized that concern and came up with the solution of “structured company response options.” However, a standardized response cannot correct factual inaccuracies and customer

misunderstandings. We suspect that many financial service providers will decline the option to provide standardized responses. However, the alternative, *i.e.* not providing any response, is not attractive as that may well create the false impression that the provider is unresponsive.

Start Date

The CFPB may begin publishing consumer complaint narratives as soon as June 22, 2015.

Takeaways

Financial service providers should monitor those published narratives and alert their public relations departments and customer service managers to be prepared for inquiries about such published complaints.

It also would be wise for clients now to think through and decide whether and, if so, when, to provide structured responses. Having a well thought through policy, even a flexible one, in place by June 22 would likely be preferable to an *ad hoc* approach.

5 Min Read

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