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Response Regarding the Bureau's Consumer Complaint and Consumer Inquiry Handling Processes (Docket No. CFPB-2018-0014)

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Financial Regulation and Consumer Protection Scholars and Former Regulators

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**Comment of Financial Regulation and Consumer Protection Scholars
on Docket No. CFPB-2018-0014**

July 16, 2018

Comment Intake
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Dear Sir or Madam:

Please see the submission below in response to the Consumer Financial Protection Bureau's Request for Information (RFI) Regarding the Bureau's Consumer Complaint and Consumer Inquiry Handling Processes (Docket No. CFPB-2018-0014). We are concerned scholars and former regulators, including scholars specializing in financial regulation, consumer financial law, and administrative law.*

This comment builds on our prior comments on the Bureau's RFI Regarding Bureau Public Reporting Practice of Consumer Complaint Information (Docket No. CFPB-2018-0006). The two should be read together.

Thank you for the opportunity to submit this comment for your consideration.

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* Affiliations of signatories are for identification only and do not represent the views of the various institutions.

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**Comment of Financial Regulation and Consumer Protection Scholars
on Docket No. CFPB-2018-0014**

1. The Bureau has Repeatedly Employed a Process that Impedes the Crafting of Meaningful Comments to its Requests for Information

As we have discussed in previous responses to the CFPB Requests for Information (RFI)¹ the Bureau purports to seek “public input regarding potential changes” in Bureau rules and processes, yet it has repeatedly failed to identify the substance of potential changes. As a result, these Comments are based on public information available at the time of the submission in an effort to provide a meaningful response to the Bureau’s RFI. If the Bureau’s sincere intention is to obtain public input on changes it is considering, it would behoove the Bureau to be clear and specific about the policies and procedures it is contemplating. Without this information, responses to the RFIs cannot be legitimate rationales for any CFPB actions.

2. The Consumer Complaint and Consumer Inquiry Handling Processes RFI Fails to Describe Internal CFPB Procedures in Sufficient Detail for People and Organizations to Provide Fully Informed Responses

Neither the RFI nor the CFPB website describes many of the processes for handling consumer communications with the Bureau. For example, there is no information on how the Bureau responds to consumer complaints that come in by email, fax, or mail. Without a clear description of the processes for responding to consumers, it is impossible to assess their adequacy or to recommend improvements.

3. Distinguishing Complaints and Inquiries

As a threshold matter, it is imperative that the CFPB explain the difference between a complaint and an inquiry on all the relevant web pages where consumers go for information on contacting the CFPB. The definitions should be in plain, easy-to-understand English and the definitions should sit next to one another so consumers can understand the difference between complaints and inquiries when they contact the CFPB.

¹ See, e.g., Comment of Financial Regulation and Consumer Protection Scholars and Former Regulators on the Consumer Financial Protection Bureau’s Request for Information Regarding Inherited Regulations and Inherited Rulemaking Authorities, Docket No. CFPB-2018-0012 (June 25, 2018).

For complaints, the language in the “Having a Problem with a Financial Product or Service” webpage² is helpful, describing them as problems with financial services or products. The definition should be conspicuous and include examples, such as mortgages, student loans, payday loans, debt collection, credit reports, and other financial products and services. The starting point for defining inquiries might be the definition used in the RFI: “consumer requests for information. . . about consumer financial products or services, the status of a complaint, [or] an action taken by the Bureau.”³ We suggest adding another category to the definition: “or other questions that are not complaints.” With clear definitions of what constitutes an inquiry and a complaint, it is more likely that consumers will classify their submissions with a higher degree of accuracy.

4. Complaints

A. Complaint Channels

Collecting, investigating, and responding to consumer complaints is a key statutory function of the Bureau.⁴ The Bureau should not alter its procedures in ways that reduce its collection of complaints or frustrate its ability to engage in one of its primary responsibilities. We recommend that the Bureau continue to accept complaints from the following six channels: website, referral from Federal and State entities/agencies, telephone, mail, fax, and email.⁵

We are, however, reluctant to endorse webchat as a means of receiving consumer complaints because of uncertainty regarding the ability to maintain accurate records of complaints received in this way. Accurate and complete records of consumer complaints should be a priority because maintaining written records of complaints received through existing channels facilitates the Bureau’s responsibility to provide timely responses to consumer complaints under 12 U.S.C. § 5534.

The number and variety of channels available to consumers increase the likelihood that consumers can have access to at least one of them. To the extent that the number and variety of channels provide a more robust collection of complaints, the data collected from the complaints

² <https://www.consumerfinance.gov/complaint/> (viewed July 1, 2018).

³ Consumer Financial Protection Bureau’s Request for Information (RFI) Regarding the Bureau’s Consumer Complaint and Consumer Inquiry Handling Process (Docket No. CFPB-2018-0014).

⁴ 12 U.S.C. § 5511(c)(2).

⁵ We also recommend the Bureau expand the number and types of channels open for consumer inquiries to include all of those currently available for the submission of complaints.

provide an important resource for the Bureau in fulfilling its obligations to identify risks to consumers and ensure the proper functioning of the marketplace.⁶

B. Third-Party Submission of Consumer Complaints

The Bureau should not restrict or limit the ability of “agents, trustees, or representatives acting on behalf of an individual” to submit complaints. The Dodd-Frank Act defines a consumer as “an individual or an agent, trustee, or representative acting on behalf of an individual.”⁷ It uses the defined term throughout the statute, including in 12 U.S.C. § 5511(c), which identifies “collecting, investigating and responding to consumer complaints” as one of six functions of the Bureau. The assistance of a third party in submitting consumer complaints is consistent with the plain language of the statute that includes such entities within the definition of “consumer.” Restricting submissions to only those made by individuals on their own behalf would change the meaning of the term “consumer complaint” in a way Congress did not intend.

Requiring individual consumers to submit complaints on their own behalf also ignores the practical realities faced by consumers who believe they have been victims of deceptive or abusive practices. One study reports that nearly two-thirds of Americans are unable to pass a financial literacy test.⁸ Just as lack of financial literacy,⁹ age or level of education can make some consumers more vulnerable to deceptive financial practices, these demographic factors can also impede their ability to clearly and effectively communicate the precise nature of their complaints.¹⁰ When coupled with the prospect of losing a home or financial independence, a consumer’s emotional state can also lead to confusion which can impair the consumer’s ability to effectively describe a problem. Indeed, it is often only when a consumer seeks assistance from a third party, such as a friend, family member or attorney, that the complete nature of the problem is revealed.

⁶ 12 U.S.C. § 5511(c)(3).

⁷ 12 U.S.C. § 5841(4).

⁸ Madeline Farber, *Nearly Two-Thirds of Americans Can't Pass a Basic Test of Financial Literacy*, FORTUNE (July 12, 2016), available at <http://fortune.com/2016/07/12/financial-literacy/>.

⁹ Dani Pascarella, *4 Stats that Reveal How Badly America is Failing at Financial Literacy*, FORTUNE (Apr. 13, 2018), available at <https://www.forbes.com/sites/danipascarella/2018/04/03/4-stats-that-reveal-how-badly-america-is-failing-at-financial-literacy/#162723db2bb7>.

¹⁰ See United States Attorney’s Office, Western District of Washington, *Financial Fraud Crime Victims* (Feb. 10, 2015), available at <https://www.justice.gov/usao-wdwa/victim-witness/victim-info/financial-fraud> (describing types of financial fraud and impact on victims).

For some consumers, there are practical impediments to submitting complaints. Low-income consumers might not have access to computers they can use to file complaints and upload documents. Still others have limited phone service, such as prepaid cards, that, because of financial necessity, they must use sparingly. For this group of consumers, it is imperative that they have agents who can submit complaints on their behalf.

A third person acting on behalf of a consumer as a representative is likely to be more effective because of her or his ability to clearly state the problem or question in a way that the consumer cannot. This is especially true when the representative is a credit counselor, housing counselor or other professional with subject area expertise, who may have important insights that can help in identifying and describing problem areas. In addition, people acting on behalf of consumers typically have engaged in some investigation of the factual basis for the complaints before filing and, thus, are likely more reliable. The CFPB and Bureau benefit from carefully crafted complaints that make the response process more efficient by giving the company and the Bureau the information needed for an effective response.

Any suggestion that a complaint drafted by someone other than the individual consumer is not reliable because it constitutes “hearsay” should be rejected on its face. First, the hearsay rule does not apply outside of a courtroom. It is a rule of evidence that prevents out of court statements by any person to be offered to prove the truth of the matter asserted. Rules of evidence simply don’t apply to reports made to enforcement or regulatory agencies. Just as they don’t apply when citizens complain to a government agency about possible building code violations or suspected criminal conduct, so too they do not apply to CFPB complaints.

Furthermore, the hearsay rule applies only to statements and therefore does not apply to a broad range of communications related to consumer complaints, such as telephone messages. Even if the hearsay rule did apply, it is subject to a number of exceptions that consumers could employ; declarations against interest, business records, and motive are just a few.

To the extent that reliability is an issue with complaints, we maintain, as stated above, that complaints submitted by consumer representatives on behalf of consumers may actually be more reliable than those submitted by the consumers themselves. Moreover, to the extent the Bureau is concerned about reliability, it apparently already has a system in place for determining when complaints are made without the authorization of the consumer.¹¹

In sum, applying the hearsay rule to CFPB complaints would completely frustrate the ability of the Bureau to carry out its duties, including the duty to investigate complaints.

¹¹ See, Consumer Financial Protection Bureau, Consumer Response Annual Report 2017 at 7 (March 2018), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2017.pdf (viewed July 10, 2018). However, the method it uses for making that determination is not clearly identified.

C. Continued Publication of Consumer Complaint Data

The publication of the Consumer Complaint Database provides an important and valuable tool that contributes to market transparency by providing consumers with valuable information they can use to make informed choices. Publication also creates incentives for companies to promote fair products and services and abandon unfair ones, and provides incentives to companies to respond to consumer complaints in a timely manner.

Data from the consumer complaints also “helps [the Bureau] understand the financial marketplace and protect consumers.”¹² For that reason, we believe that the Bureau should share the data widely among the various divisions within the Bureau. For example, in addition to sharing the data with state and federal agencies and in reports to the Congress,¹³ the Bureau should provide complaint data to its divisions of Supervision, Enforcement and Fair Lending, Research, Markets and Regulation, and Consumer Education and Engagement.

The organization of the consumer complaint database by product and company helps to ensure transparency of the market, but the Bureau should consider additional ways of presenting the information. For example, the Bureau should take steps to present complaint data in a way that makes clear the company’s product market share so large companies are not disadvantaged by large numbers of complaints. Doing so would contribute to even greater transparency and more informed consumer decision-making.

The substance of consumer complaints maintained in the database, together with information regarding company responses, is likely more reliable than consumer comments or reviews on company websites. As discussed above, we believe that by providing consumers clear definitions and examples of consumer inquiries and complaints and the differences between them, the Bureau can further improve the reliability of the complaint data.

Consumers and reputable companies both benefit from the public reporting of consumer complaint data. Publication makes the market more fair, transparent, and competitive, and helps consumers make informed financial choices. The only losers are exploitative companies who prefer to operate in the shadows.

¹² See <https://www.consumerfinance.gov/complaint/data-use/>.

¹³ *Id.*

5. Inquiries

A. Inquiries Informing Consumers About Where They Can Obtain Answers to Their Questions

The CFPB website makes clear that consumers can contact the CFPB with questions, which the Bureau refers to as inquiries in the RFI. There are several ways in which the Bureau could improve the information it provides consumers on how to make inquiries.¹⁴

First, on the CFPB homepage,¹⁵ there are links for submitting complaints, understanding financial matters, and reaching financial goals. There is no link for general inquiries, many of which may fall outside these three categories. Examples of such inquiries might include: How do I find out who is servicing my home mortgage? Can I get money from the Wells Fargo settlement? Without an obvious place to go for answers to questions like these, consumers might find themselves frustrated or they may burden the complaint system by submitting a complaint in an attempt to obtain an answer to a question unrelated to a complaint. We recommend a link for inquiries on the landing page with a brief description of what constitutes an inquiry using the definition of consumer inquiry discussed above. Likewise, the “Have Questions, Start Here”¹⁶ webpage does not define an inquiry. A description of an inquiry on that webpage could also assist consumers in understanding the range of topics about which they might receive information.

Second, the “Have Questions, Start Here”¹⁷ webpage could provide clearer information to consumers. The webpage gives consumers three options: (1) they can go to the “Ask CFPB” webpage¹⁸ where there are questions and answers grouped by product type; (2) they can call the CFPB to be connected to the Consumer Response call center where employees have scripts they use to respond to consumers questions; and (3) they can write the CFPB.

¹⁴ In the RFI description of the process for handling consumer inquiries, the Bureau highlights its toll free telephone number and only briefly mentions that consumers have the option of mailing in inquiries. *Supra* note 3.

¹⁵ Consumer Financial Protection Bureau, We’re the CFPB, <https://www.consumerfinance.gov/> (viewed July 1, 2018).

¹⁶ Consumer Financial Protection Bureau, Have Questions, Start Here, <https://www.consumerfinance.gov/about-us/contact-us/> (viewed July 1, 2018).

¹⁷ *Id.*

¹⁸ Consumer Financial Protection Bureau, Ask CFPB, <https://www.consumerfinance.gov/ask-cfpb/> (viewed July 1, 2018). In a later section, we propose enhancements to the “Ask CFPB” page.

The option for writing the CFPB gives one address for complaints and another for “other correspondence,” which would presumably include consumer inquiries. These options could be improved. The current categories-- complaints and other correspondence-- say nothing about inquiries. As a result, consumers may not know whether they can and how to submit a mail inquiry. We recommend adding a category “Mail an Inquiry” under “Find a Mailing Address.”

An alternative, and perhaps better option, would be to have the “Have Questions, Start Here” page contain headings for “Complaints,” “Inquiries,” and “Other Correspondence,” with lists under the headings of the various ways in which people can contact the CFPB.

B. Office of Consumer Response Call Center Challenges

We recognize that it is difficult to design an efficient method for responding to consumer inquiries given the wide array of questions that consumers might have. Our understanding is that consumers are often frustrated with the answers they receive when they contact the Consumer Response call center. The workers at the call centers are not trained lawyers or credit counselors. They work off scripts that are based on the material on the “Ask CFPB” webpage.¹⁹ If a consumer’s question doesn’t immediately relate to one of the scripted answers, the call center workers may give an inappropriate or unhelpful answer, or not provide any answer at all. That is not the fault of the call center workers. Quite simply, there are too many potential questions from thousands of consumers for the call center employees to be able to answer all the questions. It is especially challenging for the call centers if consumers do not formulate their questions in ways that guide the call center workers to the correct answer, or if the workers do not have the skills to identify the right answers to consumers’ questions.

Call center workers can also direct consumers to the educational tools and materials on the CFPB website. Again, depending on how well consumers are able to describe the answers they are seeking, the call centers may send them down the wrong path, leaving the consumers frustrated and dissatisfied.

The call centers can also tell consumers about the option of filing a complaint. While we understand that it would be inappropriate for call center workers to give legal advice or for them to give opinions as to whether consumers’ inquiries are actually complaints, call center employees should tell consumers: “if you think that a company wronged you in some way, you can file a complaint with me, or by mail, fax or email.”

¹⁹ *Id.* It would have been helpful if the Bureau had provided access to the call center workers’ scripts so people could more fully respond to this RFI.

Given the challenges with the call center, it is extremely important that the information on the CFPB website be informative and cover as many topics as possible. The current grouping by product type on “Ask CFPB” clearly identifies different categories of inquiries. The categories, however, are under-inclusive. For example, there is not a category for CFPB settlements and judgements that would enable consumers to obtain information about their eligibility for relief. More importantly, the questions under each topic are not organized in a way that makes it easy for consumers to get their questions answered. For example, the mortgages link contains 278 questions and answers on over 14 pages.

The Federal Trade Commission’s Consumer Information page on Homes & Mortgages²⁰ is an excellent model for helping consumers navigate various products. Under Home Loans, the site lists four topics: (1) shopping for a mortgage; (2) paying your mortgage; (3) foreclosure; and (4) reverse mortgages. There are between 1 and 7 subtopics under these four categories and each subtopic contains detailed information and links to related topics. The example below is taken from the category “Shopping for a Mortgage” with the subtopic “Home Equity Loans and Credit Lines:”²¹

If you’re thinking about making some home improvements or looking at ways to pay for your child’s college education, you may be thinking about tapping into your home's equity — the difference between what your home could sell for and what you owe on the mortgage — as a way to cover the costs.

Home equity financing can be set up as a loan or a line of credit. With a home equity loan, the lender advances you the total loan amount upfront, while a home equity credit line provides a source of funds that you can draw on as needed.

When considering a home equity loan or credit line, shop around and compare loan plans offered by banks, savings and loans, credit unions, and mortgage companies. Shopping can help you get a better deal.

²⁰ Federal Trade Commission, Consumer Information: Home Loans, <https://www.consumer.ftc.gov/topics/home-loans> (viewed July 1, 2018).

²¹ Federal Trade Commission, Consumer Information: Home Equity Loans and Credit Lines, <https://www.consumer.ftc.gov/articles/0227-home-equity-loans-and-credit-lines> (viewed July 1, 2018).

Remember that your home secures the amount that you borrow through a home equity loan or line of credit. If you don't pay your debt, the lender may be able to force you to sell your home to satisfy the debt.

After this text, the page contains links to: (1) home equity loans; (2) home equity lines of credit; (3) the three-day cancellation rule; (4) and harmful home equity practices. There are questions and answers for each of these subtopics.

The FTC information is easy to navigate and is streamlined in ways that enable consumers to quickly find answers to their questions. We urge the CFPB to revise “Ask CFPB” to parallel the approach on the FTC site. This would not only help consumers, but would also likely reduce the number of inquiries to the CFPB.

C. Forwarding Inquiries to Companies

We support having procedures in place for companies to respond to consumer inquiries in a timely and meaningful manner. The more consumers understand products and services and their own credit arrangements, the better choices they can make, which leads to a fairer and more transparent, efficient and competitive marketplace. For these reasons, the CFPB should forward company-specific consumer inquiries to the proper companies and require that the companies respond within 30 days of receipt.

Companies that care about their reputations and about providing information that can help consumers make the best decisions given their situations will provide timely responses. The burden on companies of having to meet the 30-day response time does not outweigh the CFPB’s objective of providing timely financial information to consumers. We recognize that there may be times when inquiries are forwarded to the wrong companies or are impossible for a company to answer. In those cases, we suggest a process like the one we describe below in Section F: Handling Complaints that are Actually Inquiries.

D. Gathering Data from the Office of Consumer Response Call Centers

When consumers call into the call centers, the people who answer the phones transcribe their questions, which are assembled in excel spreadsheets. CFPB divisions that work on issues pertinent to specific groups, *e.g.*, service members and older Americans, receive spreadsheets containing data on inquiries from consumers within their particular group. The Consumer Response team receives all the spreadsheet entries.

The data on the spreadsheets are invaluable because they can alert the CFPB to areas in which it needs to make additional information available to the public. There may be new products that consumers want to understand or a settlement or judgment that consumers believe could result in a recovery to themselves. The CFPB could add new topics or subtopics to the “Ask CFPB” webpage, and also make the information available to call center employees.

In addition, there should be a point person in Consumer Response, who reviews the inquiries to determine whether any could actually be complaints, in which case the CFPB should contact the consumers and inform them of the ways they can file complaints. Lastly, someone in Consumer Response should have responsibility for determining whether any of the information assembled from inquiries should be forwarded to Supervision, Enforcement and Fair Lending, Research, Markets and Regulations, or Consumer Education and Engagement for follow-on action.

E. Making Inquiries Public

The financial services industry and consumers would benefit from the CFPB making public the topics and number of inquiries. The data should include the frequency with which and the timing in which firms respond to consumer inquiries. Like with consumer complaint data, the inquiries should be grouped according to product and reported in absolute numbers and by market share.

With knowledge of the nature and frequency of different inquiries, companies can revise their own communications with consumers to address the oft-repeated questions, which would improve their customer relations and potentially reduce the number of inquiries they receive from consumers, either directly or through the CFPB.

Transparency leads to informed consumer decision-making and, thus, more efficient markets. Data on inquiries will help consumers select companies that are responsive. In this way, reporting data on inquiries and the responses to them creates incentives for companies to provide timely information to consumers.

The current practice of having call center workers transcribe questions is time-intensive and can make sorting difficult. A better approach would be for the Bureau to use categories akin to those in the complaint form that would enable automated sorting. Ideally, each entry would be linked to an audio recording of the conversation that would be available if the people reviewing the data had any questions.

F. Handling Complaints that are Actually Inquiries

Even if the Bureau adopts our suggestion to clearly define complaints and inquiries, there still will be situations in which a consumer incorrectly designates a submission as a complaint when it should have been classified as an inquiry. To the extent that incorrect designations may distort data analysis or unjustifiably injure a company's reputation, we recommend that the Bureau develop a process for reclassifying inquiries. Any such process must ensure that consumers' communications with the Bureau regarding dissatisfaction with a specific product or specific company be treated as complaints and handled as other complaints and sent on to the relevant companies.

Members of industry have expressed concerns about situations in which consumers file complaints against them that are actually inquiries. When this happens, the number of complaints against a company is inflated. For several of reasons, this is not a significant issue. First, when consumers with inquiries begin entering information on the complaint form, they sometimes see that it is not the right vehicle for them and never file a complaint. Second, to the extent that some complaints are really inquiries, any miscategorizations should be evenly distributed across all companies so the relative percent of complaints against each company will be unchanged. Third, in its last Consumer Response Annual Report, the Bureau reported that companies received only 78% of the complaints the Bureau received, which suggests there is some type of complaint screening process at the CFPB.²² Lastly, if the CFPB landing page contains the definitions of complaints and inquiries that we propose, most consumers should be able to determine which path to follow. If there are remaining concerns, the Bureau could have a link through which consumers could speak to "an expert" who could help them make the correct selection--inquiry or complaint.

The RFI asks whether companies should be permitted to reclassify consumer complaints as inquiries. Accuracy is a legitimate goal, but the CFPB, not companies, should make any classification changes. We recommend that the CFPB develop a process through which companies can ask the CFPB to reclassify a complaint. A company would have to submit evidence of its communications with the consumer for review by a designated person at the CFPB. If the CFPB reviewer concluded that the complaint was actually an inquiry, she or he would have to contact the consumer and explain the situation and request permission from the consumer to recharacterize the complaint. If the consumer consents, the CFPB would then provide both the company and the consumer with the disposition of the company's reclassification request.

²² *Supra*, note 11 at 42. 16% were forwarded to other regulators, 5% were incomplete, and 1% were in progress.

We also recommend providing companies with boilerplate language they can use if they believe a complaint is actually an inquiry. Sample language might state: “Sometimes consumers have questions for the CFPB that aren’t actually complaints against a company. This appears to be the case with your communication. Please contact the CFPB at (855) 411-2372 to get an answer to your question.” Of course, if the consumer’s “inquiry” is about a company product or service, the company would still have an obligation to respond to the consumer even if it was seeking a reclassification by the CFPB.

6. Conclusion

The CFPB complaint database has benefited both companies and consumers. We appreciate the effort and dedication of the Bureau staff in developing the database. With the changes we proposed, it can become an even better resource.

Consumer inquiries need increased Bureau attention. We understand that the CFPB’s initial focus had to be on developing the complaint database. Now is a good time to fine tune the process for consumer inquiries so that consumers can get their questions answered, and companies can adapt their information channels to answer questions that come through the CFPB.