



December 23, 2011

Ms. Cathleen Skinner
Consumer Response
Consumer Financial Protection Bureau
1500 Pennsylvania Ave. NW.
(Attn: 1801 L Street)
Washington, DC 20220

**Re: Generic Clearance for Consumer Complaint and Information
Collection Systems (Docket No. CFPB-2011-0033)**

Dear Ms. Skinner:

The American Financial Services Association (“AFSA”) welcomes the opportunity to comment on the Consumer Financial Protection Bureau’s (“CFPB”) proposed Generic Clearance for Consumer Complaint and Information Collection Systems¹ (“Generic Clearance”). The Generic Clearance is intended to help the CFPB facilitate the collection and monitoring of and response to consumer complaints about certain financial products and services. AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks and industry suppliers.

Generic Clearance

AFSA recommends that the Office of Management and Budget (“OMB”) deny the CFPB generic clearance for consumer complaint and information collection systems (“Complaint Systems”). AFSA understands that OMB has granted other federal banking agencies generic clearance for intake forms, response forms, and feedback collections, but we believe that generic clearance for the CFPB is not appropriate at this time.

AFSA has several concerns about the CFPB’s Complaint Systems for credit cards and mortgages that should be addressed before the CFPB expands the Complaint Systems to other products. Until these concerns are addressed, and while the CFPB is still in its formative stage, we believe the OMB should not grant the CFPB generic clearance. In this phase of the CFPB’s

¹ 76 Fed. Reg. 67128

existence, and in light of the importance of Complaint Systems to the CFPB's mission, we believe that future iterations of Complaint Systems would benefit from thorough review by the OMB.

Complaint Process

AFSA recommends that the CFPB make changes to the Complaint Systems or provide more transparency about how they operate before it expands the system to products other than credit cards and mortgages.

We ask that the CFPB address identity theft and privacy concerns. It is not clear how the data that consumers or companies provide is being safeguarded. We ask that the CFPB specify what steps it is taking to safeguard consumer and company data.

AFSA commends the CFPB for trying to remove duplicate complaints, as well as complaints that do not have enough information or describe an actionable problem, from the Complaint Systems.² However, we ask that the CFPB remove all non-substantive and meritless complaints from the Complaint Systems. This would include complaints that are really grievances about hardships or difficult circumstances, customers' requests for information, complaints filed by self-styled credit repair organizations without proper documentation, or complaints that dispute debts with no basis given for why the debt is disputed.

Baseless or frivolous complaints unfairly harm companies' reputations, and complaints that are in fact requests for information or non-specific expressions of general dissatisfaction with the financial services industry distort the reports that emerge from the Complaint Systems. We are concerned that the Complaint Systems run the risk of being inundated with "complaints" from credit repair organizations, debt settlement companies, advocacy groups, competitors, and even blog sites dedicated to airing gripes about specific companies, similar to the rash of frivolous "disputes" filed with consumer reporting agencies by unscrupulous credit repair organizations and debt settlement companies.

AFSA appreciates that the CFPB has extended the time within which financial companies are expected to respond to and resolve complaints. We understand that companies will be

² We have noticed that it is not possible to move forward on the mortgage complaint form without filling out the fields marked with an asterisk. However, this is not the case with the credit card form. We believe that prohibiting consumers from moving forward on the form until all the marked fields are filled-out will help the CFPB collect complete forms, so we ask that the credit card complaint form be modified to match the mortgage complaint form.

expected to respond to the consumer, but not necessarily resolve the complaint, within 15 calendar days. The company will then have up to 60 days to complete the resolution. In certain circumstances, the resolution process can be extended beyond 60 days through consultation between the company and the CFPB's stakeholder management team. AFSA asks that the countdown to the number of days the company has to resolve the complaint start after the company has confirmed receipt of the complaint. We also request that the CFPB automatically grant an additional 30 days if requested before going through consultation. Often there are delays in resolving complaints because the company has requested additional information from the consumer and the consumer has not provided that information in a timely manner. Furthermore, we hope that the CFPB would clarify that response timeframes reflect industry standards in a particular lending industry to ensure that the Complaint Systems account for distinctions in financial products and the types of complaints that relate to those differing products.

We urge the CFPB to refer complaints that consumers incorrectly submit to the CFPB on to the appropriate regulator in a timely manner. If these complaints are not referred quickly, consumers will have to wait even longer to hear back from a company about their complaint.

Complaint Forms

AFSA appreciates the effort that the CFPB has made to make changes to the Complaint Systems based on feedback from financial companies. We also appreciate the CFPB's effort to provide the consumer with a simple, easy-to-use complaint form. Nonetheless, AFSA has concerns about the complaint forms and the company response forms, and we urge the CFPB to address these concerns, especially before it expands the coverage of the system to begin collecting complaints about other financial products.

Companies are required to choose from six options in the company response form to summarize their response to the complaint: "Closed with relief;" "Closed without relief;" "In progress;" "Incorrect company;" "Misdirected;" and "Alerted CFPB." The CFPB's Company Portal Manual states, "For the purposes of categorizing your response, 'relief' is defined by the CFPB as objective, measurable, and verifiable monetary value to the consumer as a direct result of the steps you have taken or will take in response to the complaint." This definition is too narrow. It fails to recognize that the relief sought may be in the nature of conduct rather than monetary relief. For example, if the consumer's complaint states that the consumer gets too many calls from the company and the company stops calling the consumer, the complaint has been resolved. However, because this resolution has no monetary value, the company must choose the "Closed without relief" option. This is unfair and misleading, since the complaint has actually been resolved as the consumer requested.

Additionally, AFSA believes that instead of using the terms "Closed with relief" and "Closed without relief," the CFPB should use the terms, "Closed with resolution," or "Closed with no resolution required." And, the CFPB should define these categories in the following or a similar manner. A complaint should be deemed to be "Closed with resolution," if the company

determines that an error has occurred as asserted and subsequently provides an appropriate response to correct said error. An appropriate response depends on the nature of the error asserted, and includes, but is not limited to: (i) providing a credit to the consumer's account of any disputed amount; (ii) ceasing an activity that was undertaken in error; (iii) providing corrected disclosures or notices; or (iv) adjusting an account to cure the error asserted. Whether a response is appropriate relies on a fact-based analysis, and depends on the nature of the error asserted. "Closed with resolution" should also apply if the company determines that an error occurred, but said error was not asserted by the consumer. In such situations, the company should provide an appropriate response to the error that actually occurred (as described above), but should also include a narrative description of the reasons why the asserted error did not occur (but a different error did).

"Closed with no resolution required" should capture situations in which a company determines that an error as asserted has not occurred. Under these circumstances, the company must: (i) explain to the consumer the reasons for the creditor's belief that the error as alleged is incorrect in whole or in part; (ii) provide documentary evidence to support the company's explanation, if needed; and (iii) notify the consumer of the date on which any amount in dispute is due to the company. Again, determining whether the error has occurred relies on fact-based analysis. However, this category would be for complaints about actions taken by companies that are in compliance with laws and regulations. For example, if a company legally raises a consumer's interest rate and the consumer makes a complaint, it should be noted that the company acted in a manner consistent with applicable laws and regulations, but no steps need to be taken to resolve the complaint.

We commend the CFPB for including the "Alerted CFPB" category in the company response form. It is important for the company to be able to communicate privately with the CFPB, especially when complaints deal with issues that are in litigation or when fraud may be occurring, without the consumer who filed the inquiry being able to see the response.

The question on the complaint form, "Do you believe the issue involves discrimination?" should be eliminated. There is no reason to call out discrimination for special emphasis. Discrimination made on a prohibited basis is serious, and there is no reason to believe that anyone victimized by such behavior needs to be prompted to complain about it, or would fail to describe it in the box provided for supplying detailed information. In recognition of industry concerns regarding the inclusion of this question in the credit card complaint system, the CFPB adjusted the consumer complaint form to include a drop down menu to enable consumers to describe the nature of the discrimination. Because industry and the CFPB have acknowledged that this question is problematic – and given the seriousness of a claim of discrimination and the resources that a company would need to devote to disprove such a claim – the CFPB should utilize their cognitive testing on this particular question to isolate issues related to its deployment before continuing its inclusion in other Complaint Systems. The CFPB should provide evidence

from its testing that this type of question does not elicit an unreasonable number of “false positives.”

Furthermore, discrimination allegations that are based on a misunderstanding of the facts, or of the legal basis for a finding of “discrimination,” or that are unsubstantiated, can have particularly significant negative consequences for financial companies, particularly if the CFPB decides to make such allegations public. For example, a consumer who receives a required notice under the Truth in Lending Act (“TILA”) that he or she received credit on terms that were less favorable than the terms offered to others, might perceive that unlawful discrimination occurred – and check “yes” to the question on the CFPB’s complaint form – when in fact the decision was not made on a prohibited basis, but was based on legitimate criteria such as a high credit utilization level shown on a consumer report. Prompting every complainant to decide whether they “believe” that discrimination occurred, then scoring the allegation as a discrimination complaint without ascertaining its legitimacy, is not a fair or legitimate way for the Bureau to exercise its authority to prevent discriminatory practices.

In addition, the categories listed on the credit card complaint form are confusing and duplicative (e.g., there are two categories for debt collection complaints, and no explanation of what comprises a “marketing” complaint). Consumers and financial companies alike, as well as the CFPB employees or agents who analyze complaints, need clear and consistent definitions to perform complaint resolution and data analysis. Because these categories are used in the CFPB’s reports to Congress and are disseminated to the public, a high error rate is unacceptable. We propose that the CFPB allow financial companies, rather than consumer complainants, to select the correct categories.

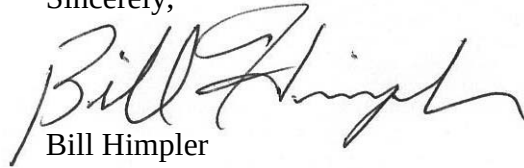
Different Systems for Different Products

The CFPB is asking for generic clearance for intake forms, response forms, and feedback collections because they believe that the Complaint Systems will use similar methods for information collection or otherwise share common elements. However, AFSA believes that Complaint Systems should not use similar methods. Financial products can be very different, and a consumer complaint form that is appropriate for, say, a credit card, which is an open-end credit product, will not be appropriate for another product, such as a closed-end product. These distinctions in financial products necessitate that the issues and complaints that arise in response to them differ as well. Accordingly, it is imperative that the Complaint Systems reflect the differences between financial products.

Conclusion

AFSA appreciates the fact that the CFPB is trying to streamline its procedures, but we ask that OMB deny the CFPB's request for generic clearance. We look forward to working with the CFPB to resolve the concerns expressed in our letter. Please contact me at 202-466-8616 or bhimpler@afsamail.org, with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Himpler", written over a light gray circular background.

Bill Himpler
Executive Vice President
American Financial Services Association