

February 2, 2015

Consumer Financial Protection Bureau
Attention: PRA Office
1700 G Street NW
Washington, DC 20552

**Re: CFPB's Consumer Complaint Intake System Company Portal Boarding Form
Information Collection System (Docket No. CFPB-2014-0032)**

To Whom It May Concern:

The American Financial Services Association ("AFSA")¹ welcomes the opportunity to comment on the Consumer Financial Protection Bureau's ("CFPB" or "Bureau") proposed Company Portal Boarding Form ("Form"). The CFPB states that it has developed the Form to support the appropriate routing of complaints to the companies that are their subjects, and to allow companies to proactively participate in the CFPB's Company Portal, which is a web-based interface between the CFPB's Office of Consumer Response and companies.

AFSA has some concerns and questions about the Form. To begin with, will covered persons that the CFPB has already accepted as Portal registrants and that receive and respond to complaints originated through the Portal be required to re-register by submitting the new Form? The Federal Register Notice² states that the Form will streamline information collection from companies that have sought to register with the Company Portal before consumer complaints have been submitted to the CFPB about their companies, but it does not specifically state that companies already registered with the Company Portal will not have to complete and submit the Form. Will the CFPB cut off access to the Company Portal for a company that has access now, but fails to return the completed Form?

On a similar note, what will happen if a company refuses to complete either all or part of the Form? If the CFPB gets a complaint from a consumer, the Bureau must to send it to the company to allow the company to respond, as required by Section 1034 of the Consumer Financial Protection Act of 2010. If a company does not complete the Form, how will the CFPB get the complaints to the company and receive responses from the company? Would the CFPB board a covered person with the Company Portal without a complete Form?

We ask these questions because we believe the Form asks for much more information than is necessary for the CFPB to board a covered person with the Company Portal. The CFPB has boarded many companies with the Company Portal since 2011 that have not provided this information. The authority, and perhaps the requirement, for the CFPB to create, operate and

¹ AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its more than 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks and industry suppliers.

² 79 FR 71984

maintain the Company Portal is Section 1034 of the Consumer Financial Protection Act of 2010. It provides in Subsection (a):

“(a) **TIMELY REGULATOR RESPONSE TO CONSUMER COMPLAINTS AND INQUIRIES.** The Bureau shall establish, in consultation with the appropriate Federal regulatory agencies, reasonable procedures to provide a timely response to consumers, in writing where appropriate, to complaints against, or inquiries concerning, a covered person, including—

- (1) steps that have been taken by the regulator in response to the complaint or inquiry of the consumer;
- (2) any responses received by the regulator from the covered person; and
- (3) any follow-up actions or planned follow-up actions by the regulator in response to the complaint or inquiry of the consumer.”

The statutory authority in Subsection (a) is for the Bureau to establish procedures for covered persons to provide timely written responses. The Bureau has promulgated no regulation since July 21, 2011 establishing those procedures, so no regulation provides the Bureau with the authority to gather what amounts to a covered person’s family tree. Instead, the language in Subsection (a) makes it clear that it is the Bureau’s obligation to respond to consumers’ complaints rather than gather information on a covered person’s distant relatives. The language in Subsection (a) cannot be expanded to include gathering the information that the Bureau seeks on the Form.

Section 1034(b) imposes obligations on covered person when responding to consumer complaints, and subsection (c) describes categories of information that a covered person does not have to provide in response to consumer complaints. Section 1034(d) provides the Bureau with no support either; it is limited to memoranda of understandings with other regulatory agencies having jurisdiction over a covered person.

AFSA member companies have strong reservations about providing all the information the Form demands. The Bureau has published no statement indicating that it needs this extraneous information to perform the duties imposed on it by Section 1034. Additionally, the Bureau has not indicated in any of its Supervisory Highlights that it needs the broad information the Form seeks for any purpose, and the Bureau’s reports on consumer complaints make no mention of a need for that information.

It is unclear why the Form requires so much information, especially in the absence of any statement that the previous registration process was flawed. It seems more likely that the additional information to be collected is for a purpose other than the simple registration of a company with the Company Portal. We respectfully request that the CFPB modify the Form and only require a covered person to submit information that is truly necessary to carry out its duties under Section 1034. There are privacy concerns with some of the information the Form seeks since it can be widely shared, and most importantly, we believe the CFPB does not have statutory or regulatory authority to collect this information in this manner.

I. Information Required by the Form May Be Unnecessary

Some of the information requested on the Form may be unnecessary. Responses to these questions should be optional. For example, Question 2a asks for the full name of the parent company. Some covered persons have different operating entities in different states. These entities may have different names. If a company wishes all the complaints to be gathered and sent to the parent company, this question is useful. However, the Form should only request information on the parent company *if* complaints regarding the parent company should be bundled with those of the entity completing the Form. This is not always the case. For example, the parent company of a “captive” auto lender – the auto manufacturer – does not fall under the CFPB’s jurisdiction. Therefore, there is no need for the CFPB to have information on that parent company. Since companies vary widely in size and organizational structures, the answer to this question should be voluntary.

This is the same reason that Question 2b should be removed, or at least be optional. Question 2b asks for a point of contact at the parent company. If the parent company does not fall under the CFPB’s jurisdiction, no point of contact should be given, and if it is a covered person the Bureau has that information.

It is also unclear why the CFPB asks for the company’s tax ID (Question 4), whether the tax ID is also a Social Security Number (Question 5), and for the company’s Financial Institution Number (Question 6). Consumers do not enter that information when they make a complaint, so it is not needed to identify the company named in the complaint.

In addition to being unnecessary, some of the information requested on the Form may be difficult to provide. For example, Question 11 asks the company to list any state business licenses the company has and to indicate the state for which the license is valid. Many AFSA members are licensed in all 50 states, sometimes with multiple licenses. State regulators generally require a separate license for each business location. For instance, one AFSA member has at least 900 state license numbers. It is unclear how that information would be necessary for the CFPB. Providing the license numbers for hundreds of licenses for no apparent reason is not feasible. The numbers on the licenses are sometimes fairly long, so it is likely that someone filling out the Form may transpose a digit or two. Also, would companies have to update the information as it changes (i.e. when an office is added or closed)? To do so would be unnecessarily time-consuming and will have no impact on the Bureau. It would be impossible for any except the smallest companies to complete this section in the 15 minutes estimated by the CFPB for the completion of the Form in the Paperwork Reduction Act Statement at the bottom of the Form. Even if the CFPB allowed covered persons to upload a spreadsheet, it would still take several days to pull all the information together.

Questions 12 – 18 ask for the contact information for an authorized company officer, or their designee, who will be the main point of contact for the CFPB and will be the only authorized personnel to add or remove users from the company portal maintained by the CFPB. The officer or designee listed on the Form should be the main point of contact with respect to the company’s use of the Company Portal. The best point of contact for the Company Portal may not be the best

point of contact for all interactions with the CFPB. Conversely, the best point of contact for other CFPB actions would probably be someone who does not want to (and should not be) the person responsible for adding or removing employees as Company Portal users. Additionally, it would be useful for the Form to allow for several alternative contacts, especially considering the size and complexity of some covered persons. What if the main point of contact is seriously ill, on extended leave, or even just on vacation? If the CFPB is going to require an immediate response, more flexibility would be helpful.

Question 20 asks if the company has any affiliates or subsidiaries. Like the question about the parent company, complaints about affiliates may be best addressed to the affiliate or subsidiary directly. Again, in the example of a captive auto lender, complaints about an affiliate – another brand – should be addressed directly to that brand. Question 20 also asks for a list of state business licenses for affiliates or subsidiaries. Again, this information seems superfluous in this instance. It would also be cumbersome to provide the information and update it as it changes, and it is completely outside the Bureau’s duties under Section 1034 which are to establish, reasonable procedures to provide a timely response to consumers’ complaints.

Question 21 asks about the company’s primary product. “Indirect automobile finance” is not currently, but should be, a response choice.

On a more general note, the way that the Form addresses a group of affiliated companies is awkward, making it difficult to complete the Form accurately. For example, in Section A, the Form asks for the full name of the company. Section D of the Form asks for the names of affiliates or subsidiaries. What should a company do if an affiliate has a different primary product (Section E), a different logo (Section F), and its own set of operating subsidiaries? It seems logical that the affiliate would complete its own separate Company Portal Boarding Form, but it seems that the CFPB only wants one Form for affiliated companies.

AFSA objects to requiring companies to submit so much additional and unnecessary information, especially because it is outside the scope of Section 1034(a) and the Form states that the information provided (other than personally identifiable information) may be shared with basically anyone. One of the concerns that we have with providing information in this manner that may be so readily shared is the increase in fraud. AFSA, and some of our members, have gotten calls from consumers reporting scammers using AFSA’s and other’s names to try to get money from consumers. The more information these scammers can gather, the easier it will be for them to convince consumers that they are legitimate businesses.

We are also concerned about the privacy of contact information required by the Form for company officers or their designees, both at the company level and for a parent company. Because the information provided could be shared with consumers, the officer or designee could receive emails and calls from consumers outside of the Company Portal. Officers’ and directors’ names are in the public domain in websites of Secretaries of State and the like to which the public has access. Given well-known cybersecurity concerns and the skills of hackers with illegal goals, having this unnecessary information in the CFPB’s electronic records will expose officers and directors to risks unintended by Congress when it drafted Section 1034, and it will likely impact official responses submitted through the Company Portal.

It is true that the Form states, “You are not required to submit or provide any identifying information; however, if you do not include the requested information you may not be granted access to the company portal.” This is ambiguous, especially considering that all of the sections on the Form, except for Sections F and G state at the top, “This section is required.” Refusing to grant access to the Company Portal may also be in direct conflict with the requirements of Public Law III-203, Title X, Section 1034(a) and (b) – cited as one of the authorities for this collection of information.

Instead of including this disclaimer, the CFPB should remove, modify, or make optional the questions identified above that ask the company to provide unnecessary information. If the disclaimer remains, the CFPB should, at least, define “identifying information.” Specifically, would a company’s tax ID number be considered identifying information? If a company did not provide the tax ID number, could the company still be boarded?

II. CFPB Authority

It is unclear that the CFPB has the authority for requesting this large amount of information for the simple purpose of boarding a company with the Company Portal. To begin with, the Form cites the Notice of Collection under the Privacy Act of 1974, USC § 552a. However, that section only applies to records that are maintained on individuals, a term that is much narrower than “person” and is generally limited to natural persons. We do not believe that it applies to sharing the information of corporate or similarly organized covered persons. The CFPB indicates that information collected will be shared with a party in litigation, which seems to go well beyond the limits of Section 552a(b).

We also find the authorities cited for the collection of this information³ to have weaknesses. For example:

- Section 1011 has nothing to do with collecting information. It is limited to the fundamentals of establishing the CFPB, the positions at the CFPB (how they are appointed, their compensation and terms in office) and location of the CFPB’s offices.
- Section 1012 is limited to general descriptions of the CFPB’s executive and administrative powers, as well as its autonomy. There is nothing in this section about collecting information from covered persons.
- Section 1013(b)(3) requires the establishment of a unit whose function is to centralize collecting consumer complaints, route them, monitor responses, report to Congress, and share consumer complaint information with federal and state prudential regulators. This section says nothing about and it provides no statutory authority for collecting information on parent companies and affiliates of covered persons who provide financial services or products to consumers. Therefore, Section 1013(b)(3) is no authority for gathering that information.
- Section 1021 outlines the purpose, objectives and functions of the CFPB. The CFPB’s purpose is to enforce Federal consumer financial laws consistently to ensure that

³ Public Law III-203, Title X, Sections 1011, 1012, 1013 (b)(3), 1021, 1034, codified at 12 U.S.C. 5491, 5492, 5493(b)(3), 5511, 5534.

consumers have access to markets for financial products and services, and that those markets are fair, transparent and competitive. At no time in any report to Congress or enforcement order has the CFPB intimated that it has been inhibited in carrying out its statutory purpose because it lacks the information in the Form. The five elements of the CFPB's objectives in Section 1021(b) have nothing to do with information sought in the Form, and the same is true for its functions in Section 1021(c).

- Section 1034 requires that the CFPB establish reasonable procedures for providing timely responses to consumers to complaints concerned a covered person. Subsection (b) requires timely responses and the elements of their content. Subsection (c) requires covered persons provide consumers with information upon request. Subsection (d) authorizes Memoranda of Understanding between the CFPB and other federal regulatory agencies. Nothing in this provision of the CFPB authorizes the collection of information in the detail required by the Form.

III. Conclusion

We respectfully ask the CFPB to simplify this Form and require only the information that is necessary to board a company with the Company Portal. We look forward to working with the CFPB on this Form. Please contact me by phone, 202-466-8616, or e-mail, bhimpler@afsamail.org, with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Himpler", written over a light blue horizontal line.

Bill Himpler
Executive Vice President
American Financial Services Association