

June 8, 2015

Office of Management and Budget
New Executive Office Building
Room 10235
Washington, DC 20503

**Re: Consumer Complaint Intake System Company Portal Boarding Form
 Information Collection System (Docket No. CFPB-2015-0019)**

To Whom It May Concern:

The American Financial Services Association (“AFSA”)¹ requests that the Office of Management and Budget (“OMB”) deny the Consumer Financial Protection Bureau’s (“CFPB” or “Bureau”) request for approval of the Company Portal Boarding Form (“Boarding Form”). The CFPB alleges that it is developing the Boarding Form to allow companies to proactively participate in the CFPB’s Company Portal,² a secure, web-based interface between the CFPB’s Office of Consumer Response and companies. The CFPB believes that the Boarding Form is necessary because companies have sought to register (or “board,” as the CFPB refers to the registration process) with the Company Portal before consumer complaints have been submitted to the CFPB about their companies. The CFPB states that the Boarding Form is intended to streamline information collection from these companies and result in an enhanced and efficient experience from both the consumers’ and companies’ perspectives.

While these sound like laudable goals, AFSA does not believe that the CFPB should be granted approval for this information collection because: (1) the information required by the Boarding Form is unnecessary to board companies with the Company Portal; and (2) the CFPB does not have the authority to request this large amount of information for the simple purpose of boarding a company with the Company Portal.

The CFPB has boarded a few thousand companies with the Company Portal that have not provided this information. The authority, and perhaps the requirement, for the CFPB to create, operate and 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

¹ Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans. AFSA is based in Washington, DC.

² The Company Portal allows companies to view and respond to complaints submitted through the CFPB’s complaint handling system.

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.”

This language commands the CFPB to establish procedures for covered persons to provide timely written responses. The CFPB has promulgated no regulation since July 21, 2011 establishing those procedures, so no regulation provides the CFPB 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 CFPB’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 CFPB seeks on the Boarding Form.

Section 1034(b) imposes obligations on covered persons 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 CFPB with no support either; it is limited to memoranda of understandings with other regulatory agencies having jurisdiction over a covered person. Nothing in section 1034 grants the CFPB broad authority to collect extensive data points regarding covered persons, particularly when the data has no reasonable relationship to the purported purpose of resolving consumer complaints.

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

I. The information required by the Boarding Form is unnecessary to register companies with the Company Portal.

Some of the information requested on the Boarding Form is unnecessary to board companies with the Company Portal. All the justification that OMB needs to deny the CFPB’s request for approval of the Boarding Form is this – without using the Boarding Form, the CFPB has boarded 3,000 companies³ with the Company Portal and handled approximately 558,800 consumer complaints between July 2011 and February 2015.⁴ If the Boarding Form was necessary to board companies, the CFPB could have never boarded 3,000 companies and handled over half a million complaints from consumers.

³ CFPB Information Collection Request – Supporting Statement. OMB Control Number: 3170-00XX. p. 7

⁴ CFPB’s 2014 Consumer Response Annual Report. March 30, 2015.

http://www.consumerfinance.gov/f/201503_cfpb_consumer-response-annual-report-2014.pdf.

In the CFPB's Supporting Statement that accompanies the request for approval, the CFPB notes that several commenters stated that the Boarding Form should be revised to only require basic questions that are essential to routing complaints to companies. The Bureau's weak response found in its Supporting Statement asserts:

These commenters suggested that the information that goes beyond these basic questions, including providing a point of contact at the parent company; the tax ID and state license information for the company's subsidiaries and affiliates; and the name of the individual for which the license is registered; should be categorized as optional. * * * The information that is cited by these commenters is essential to routing consumer complaints to companies. The Bureau uses this information to authenticate and validate companies to ensure that they receive complaints that are actually meant for them.⁵

That assertion is completely rebutted by the fact that the CFPB has routed more than half a million consumer disputes in the past three years to several thousand companies without having what amounts to a covered person's family tree and all tax ID and state licensing information. The Bureau's statement is further rebutted by the fact that it continues to route hundreds of thousands of consumers' complaints to providers of financial services and products without having that information.

The CFPB fails to explain how this information is "essential" to routing complaints. How does knowing the tax ID numbers and state license information for the company and its subsidiaries and affiliates help route complaints? Consumers do not have that information, so they will not be able to enter it. Additionally, the Bureau has not provided even one anecdotal bit of evidence that having a company's state licensing information will accelerate the processing of a consumer's complaint by even one day.

Even if the CFPB believes it needs the information on the Boarding Form to route complaints to the appropriate company, the current number of misdirected complaints is small enough that there is no need for the proposed changes. In 2014, the percentage of consumer complaints sent by the CFPB to the wrong company comprised, at the most, only 2% of overall complaints received for that year – with a 1% decrease from 2013.⁶

If the information were easy to provide, that would be one thing. That is not the case, though, especially for large companies. Many AFSA members are licensed in all 50 states, sometimes

⁵ CFPB Information Collection Request – Supporting Statement. OMB Control Number: 3170-00XX. p. 5.

⁶ The CFPB's 2014 Consumer Response Report states that the percentage of complaints that were addressed with an "administrative response" by a company for that year was 2% (3% for 2013). An "administrative response" is used by a company when they receive a complaint by the CFPB and they cannot take action for certain reasons. The "administrative response" category has for sub-categories: 1) "Alerted CFPB," 2) **"Incorrect company,"** 3) "Duplicate CFPB case reported," 4) "Redirected to related company," and 5) "Sent to regulator." Since the "administrative response" category has sub-categories, the actual percentage of complaints sent to the incorrect company, in all likelihood, is even less than the 2% highlighted above. See CFPB Consumer Response Annual Report 2014. http://files.consumerfinance.gov/f/201503_cfpb_consumer-response-annual-report-2014.pdf; CFPB Consumer Response Annual Report 2013. http://files.consumerfinance.gov/f/201403_cfpb_consumer-response-annual-report-complaints.pdf; CFPB Company Portal Manual version 2.13. March 2015.

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. These licenses are for a variety of business purposes and regulate activity that may be irrelevant to consumer credit or the consumer's complaint. Furthermore, at least one state changes license numbers each year. Providing the license numbers for nearly a thousand licenses for no apparent reason is not feasible. The numbers on the licenses are sometimes fairly long, so it is probable that someone filling out the Boarding Form may mistakenly transpose a digit or two. Moreover, the cost to complete the Boarding Form is substantial. It could take one employee days to gather all the required information, not the 15 minutes estimated by the CFPB. As an alternative, AFSA asks the CFPB to consider obtaining license numbers from state agencies with the authority granted by a Memorandum of Understanding.

The Supporting Statement asserts that, "The Bureau plans to periodically update the information for all companies over time. This will involve re-sending the Boarding Form to ensure that complaints are routed to the appropriate company."⁷ The Supporting Statement adds, "We anticipate sending a revision form to each of these companies on an annual basis."⁸ Updating the information on an annual basis will be unnecessarily time-consuming and could not possibly help route complaints. Moreover, collecting this information is completely outside the CFPB's duties under Section 1034 which are to establish, reasonable procedures to provide a timely response to consumers' complaints. This annual filing process is a de facto license/registration process that is an impermissible data grab. What happens if a company does not submit the updated form? Is there a penalty? An investigation?

Furthermore, 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 Boarding Form in the Paperwork Reduction Act Statement at the bottom of the Boarding Form. Even if the CFPB allowed companies to upload a spreadsheet, it would still take several days to pull all the information together.

In addition to the unnecessary burden imposed by the proposed Boarding Form, AFSA has privacy concerns with the information required by the Boarding Form. 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 Boarding Form states that the information provided (other than personally identifiable information) may be shared with basically anyone. One of the concerns that AFSA has with providing information in this manner that may be so readily shared is the increase in fraud. AFSA and some of our members have received calls from consumers reporting scammers using AFSA's and other's names to try to get money from consumers. The more information that is publicly available for scammers, the easier it will be for them to convince consumers that they are legitimate businesses.

AFSA is also concerned about the privacy of contact information required by the Boarding Form for company officers or their designees, both at the company level and for a parent company. Because the CFPB intends to share this information with the public, company officers or their designees will undoubtedly receive communications directly from consumers rather than through

⁷ *Ibid.* p. 6

⁸ *Ibid.* p. 7

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.

AFSA's previous letter⁹ on the Company Portal Boarding Form, submitted on February 2, 2015, described several other concerns with the questions on the Boarding Form. In the Supporting Statement, the CFPB agrees that the list of company products in Section E, Question 21 is too restrictive and so states that it has added an "other" category and allows companies to choose as many products as applicable to their business. AFSA supports the change.

AFSA's February letter also raised issues with the Boarding Form such as: how to fill out the Boarding Form when a company uses different parent entity names in different states, what to do when the parent company does not fall under the CFPB's jurisdiction (*i.e.* an auto manufacturer who is the parent to a captive auto finance lender), what if the contact information for an authorized company officer who is the main point of contact for the CFPB should not be the main point of contact for the Company Portal, how can a company authorize multiple portal users, 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, and what if complaints about affiliates should be addressed separately. (AFSA is confused at the need for multiple points of contact. At one point, the CFPB allowed for multiple points of contact, but then the policy was changed and companies were told that they could only have one point of contact. Companies were told that they could just forward emails. But now, the CFPB is asking for multiple points of contact. Why the change?) The Supporting Statement does not address these issues. Also, the CFPB did not release an updated version of the Boarding Form, so AFSA cannot see if other changes have been made.

Not only does the Supporting Statement not answer many of the concerns that AFSA raised in its February letter, but it completely mischaracterizes all the responses. The Supporting Statement says, "The commenters were generally supportive of this type of information collection. Several commenters stated that the Boarding Form would make the consumer complaint handling process more streamlined and efficient. Commenters also indicated that this information would ensure that complaints are routed to the appropriate companies."¹⁰ This is simply not true. The CFPB received five comments, only four of which were responsive.

AFSA's comment was not at all supportive. The ACA International's comment stated that while ACA is very supportive of the CFPB's *efforts* to make the consumer complaint handling process more streamlined and efficient, "ACA is concerned over the broad information the Bureau proposes to be 'required' from companies in order for them to be able to proactively participate

⁹ AFSA Response to CFPB's Consumer Complaint Intake System Company Portal Boarding Form Information Collection System. February 2, 2015. http://www.afsaonline.org/library/files/legal/comment_letters/AFSA-PortalBoardingFee-DocketNoCFPB-2014-0032.pdf

¹⁰ Supporting Statement, p. 4

in the ‘voluntary’ portal.”¹¹ ACA writes, “Not only does some of this information seem to go well beyond what would be necessary to identify and contact a company named in a consumer complaint, but by making the provision of such information mandatory, ACA believes the Bureau may unintentionally dissuade some companies from proactively participating in the portal.”¹² CashAmerica Internationals’ comment¹³ is focused on what the CFPB could do to address fraud. And lastly, the American Land Title Association’s (“ALTA”) comment states that while the Company Portal has the *potential* to be a useful tool for consumers and companies, ALTA urges the CFPB to modify its proposal to reduce the amount of information requested.¹⁴ Instead of being generally supportive, all of the commenters urged the CFPB to make changes to the Boarding Form.

It is unclear why the Boarding 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 Office of Management and Budget require the CFPB modify the Boarding Form and require that it only gather the information that is truly necessary to carry out its duties under Section 1034. Most importantly, we believe the CFPB does not have statutory or regulatory authority to collect this information in this manner.

II. The CFPB does not have the authority to request this large amount of information for the simple purpose of boarding a company with the Company Portal.

As AFSA stated in its February letter, it is not apparent 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 Boarding Form cites the Notice of Collection under the Privacy Act of 1974, 5 U.S.C. § 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. AFSA does not believe that provision 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).

AFSA also finds the other authorities cited by the Bureau for the collection of this information¹⁵ to have more glaring weaknesses. For example:

¹¹ ACA International’s Response to CFPB’s Consumer Complaint Intake System Company Portal Boarding Form Information Collection System. February 2, 2015. p. 1.

¹² *Ibid.* p. 1

¹³ CashAmerica International’s Response to CFPB’s Consumer Complaint Intake System Company Portal Boarding Form Information Collection System. February 2, 2015.

¹⁴ ALTA’s Response to CFPB’s Consumer Complaint Intake System Company Portal Boarding Form Information Collection System. February 2, 2015.

¹⁵ 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.

- 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 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 Boarding Form. The five elements of the CFPB's objectives in Section 1021(b) have nothing to do with information sought in the Boarding 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 CFPA authorizes the collection of information in the detail required by the Boarding Form.

AFSA believes that the CFPB does not have the authority to either remove a company from the Company Portal or refuse to board a company because a company refuses to fill out unnecessary information on the Boarding Form. The Supporting Statement says, "The submission of company information by companies and their representatives using the Boarding Form will be voluntary."¹⁶ However, also in the Supporting Statement, the CFPB writes, "Companies that fail to provide all the required information on the Boarding Form will not be boarded onto the company portal, and will not receive complaints that are filed against them."¹⁷ That is contrary to the Congressional directive in Section 1034 of the Consumer Financial Protection Act of 2010.¹⁸

Section 1034 is directive. It states, "The Bureau shall establish . . . reasonable procedures to provide a timely response to consumers . . . to complaints against, or inquiries concerning, a covered person, . . ." Congress could have added language to Section 1034 conditioning the

¹⁶ Supporting Statement. p. 4

¹⁷ Supporting Statement. p. 6

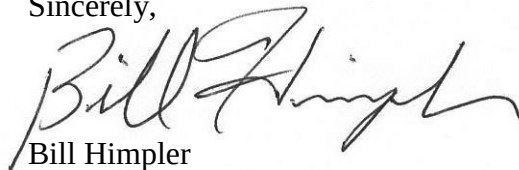
¹⁸ Supporting Statement. p. 6

utilization of those procedures after the Bureau gathers licensing, subsidiary, officer and director information on a provider of consumer financial services or products, but it did not and OMB should not approve as form that, in effect, permits the Bureau to rewrite that statute. Section 1034 mandates that the CFPB forward any responses received, and the CFPB has no authority to simply refuse to forward responses because, for example, the company did not include a list of 900 business license numbers.

I. Conclusion

AFSA urges OMB to require the CFPB to simplify the Boarding Form and require only the information that is necessary to board a company with the Company Portal. 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", with a stylized, flowing script.

Bill Himpler
Executive Vice President
American Financial Services Association