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Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Comment Letter on the Disclosure of Consumer Complaint Narrative Data
Docket No.: CFPB-2014-0016

Dear Ms. Jackson

On behalf of Wells Fargo Bank, N.A. and its subsidiaries and affiliates (collectively “Wells Fargo” or “we”), we appreciate the opportunity to provide our comments to the Consumer Financial Protection Bureau’s (“Bureau”) Notice of Proposed Policy Statement (“Statement”) setting out the Bureau’s proposal to publish complaint narrative data.

We support the Bureau’s laudable goal of assisting consumers in making wise choices related to financial service products. However, we disagree that disclosing consumer complaint and company response narratives will further the Bureau’s stated goal. In fact, the harm consumers will experience from publication of the complaint and response narratives will vastly exceed any benefit.

- Consumers’ well-established privacy rights could be breached by the publication of complaint and response narratives.
- Publishing complaint and response narratives will likely confuse consumers shopping for financial products.
- Published complaint narratives will harm the reputations of financial service companies regulated by the Bureau.
- The mere publication of complaint and response narratives will alter the communication between a consumer and financial service company and will interfere with the primary goal of complaints, which is to resolve disputes between consumers and financial service companies.

Furthermore, Wells Fargo has also responded to specific questions posted by the Bureau in its Statement.

We believe that publishing the complaint narratives in a publicly accessible database will, on balance, harm consumers, including both those who submit complaints and those who use the narratives to make personal financial decisions.

Publication of complaint and response narratives risks violating consumer financial and medical privacy protections.

The federal government has recognized the importance of protecting the confidentiality of consumers' financial information: "[i]t is the policy of Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and protect the security and confidentiality of those customers' nonpublic personal information."¹ As a result, financial service companies cannot disclose a consumer's nonpublic personal information to any person unless permitted through a statutory exception. In addition to Gramm-Leach-Bliley Act ("GLBA"), Congress has also passed restrictions on the use and communication of information under the Fair Credit Reporting Act² and the Health Care Insurance Portability and Accountability Act³.

A financial services company that provides a consumer's nonpublic personal information to any third party risks violating GLBA. Financial services companies focus on this imperative to protect private consumer information. The publication of companies' response narratives by the Bureau will place companies in the untenable position of choosing whether to provide a meaningful response narrative or severely restricting the narrative information due to consumer privacy concerns. Even if the consumer opts into public disclosure of narratives in its interactions with the Bureau, the financial services companies continue to face potential liability for disclosing nonpublic personal information in a response narrative. As a result, financial services companies will be hesitant to respond thoroughly to complaints.

Financial services companies' face inherent legal risks based upon privacy limitations when responding to the complaints, but the consumers faces the greater risk of having their private information disclosed. Individuals have the right to control their financial and medical information. Potentially embarrassing information about a consumer's financial and medical life can be revealed in the complaint and response narratives. The narratives usually contain information regarding accounts, contacts with the financial service company, details about how the financial product was obtained, payment history, deposit account balances, medical issues, names of merchants, and other information that Congress has deemed to be deserving of privacy protection. As the Bureau is aware, some financial hardships arise due to medical conditions experienced by a consumer and the Bureau should be cognizant of protecting consumers' medical information when mentioned in a complaint narrative.

¹ Gramm-Leach-Bliley Act ("GLBA"), 15 USC § 6801 *et seq.*

² 15 USC § 1681 *et. seq.*

³ Pub. L. 104-191, Aug. 21, 1996, 110 Stat. 1936.

Much of the detail provided in company responses to consumers is nonpublic personal information protected under GLBA. The complaint response is intended to be private information for the consumer and it should continue to be treated in this manner. If the response narrative will be published, then consumer information that the government sought to shield from public view may become public.

The risk of re-identification only escalates this potential harm to a consumer. The Bureau's Statement describes its aim for a system that "...results in a low risk of re-identification" and "as applied, maintains a low risk of operational error." The reality reflected in the Bureau's Statement is that the re-identification risk can be mitigated but not eliminated.

We urge the Bureau to ensure that consumers' privacy rights are protected if the Bureau decides to publish narratives.

Publication of complaint and response narratives will mislead some consumers with respect to particular financial products and financial service companies, thereby causing harm to these consumers.

In its Statement, the Bureau recognizes that complaint and response narratives can impact consumer purchasing decisions: "narratives would provide consumers with more useful information on which to base financial decisions." In considering this reason for publication, it is important to recognize that a single complaint possesses the power to mislead. Complaints are negative, subjective and often tinged with emotion. These features limit complaints' usefulness and make them susceptible to misinterpretation. These inherent weaknesses are exacerbated when the complaints serve as the only input in the "marketplace of ideas" and these weaknesses cannot be counterbalanced by a complaint response.

The Bureau's Statement recognizes that complaints, alone, cannot create a well-informed marketplace of ideas: "[r]esearch has shown that consumer word of mouth (*which includes* consumer reviews and *complaints*) is a reliable signal of product quality that consumers consult and act upon when making purchasing decisions." (*Emphasis added*). This remark by the Bureau, interestingly, includes the missing element in the Bureau's own proposal – *other information*, such as consumer reviews that can be positive. Complaints can be a *component part* of the marketplace of ideas but the inputs into a true marketplace must be broader than mere complaint and response narratives. At its core, complaints are too narrow to foster a marketplace of ideas. The fatal flaw in attempting to construct a "marketplace of ideas" exclusively from complaint and response narratives is the lack of purely positive feedback that, if included, could be used by a consumer as a counterpoint in evaluating a financial service company or product.

Financial service companies are forbidden from marketing or describing a product with partial information because such information is likely to mislead consumers and can alter consumer decisions in a harmful way. Likewise, complaint narratives, which may contain partial and incorrect information, are likely to mislead consumers. The misleading content in a narrative may result from a number of sources including consumer mistakes, advocacy, outright misrepresentation or a company's concerns about privacy issues. Regardless of the source, the harm to the consumer is the present.

Financial service companies will likely refrain from identifying a consumer's errors in the complaint narrative unless doing so will assist the consumer's understanding of the dispute. Companies are typically unwilling to engage in public arguments with consumers over facts included in a complaint unless the misstatement of fact impacts the consumer's situation. The financial services company will either not address the error or provide a generic response to the incorrect accusation unless it is a central issue to the complaint. This approach best serves the on-going relationship between the complaining consumer and the financial services company; however, it is not informative to the general public.

A risk also exists that the complaints portal may include negative statements about a financial service company with the intent to harm the company, rather than to resolve a personal financial problem. If provided with a public forum (particularly one with the implicit backing of a respected federal governmental agency), consumers without individual complaints can abuse that public forum. If an untrue narrative (whether submitted as an innocent misunderstanding or through ill intent) is made public, then innocent consumers can be harmed by relying on this information in making their own financial decisions.

If the narratives are made public, a consumer using the narratives as a resource might avoid a financial product or company despite that product or company being the consumer's best option. This is a real harm. This negative impact will be impossible to undo or track, but it should not be ignored. A financial services company's response to the complaint cannot correct for this flaw.

Complaints and response narratives fail to inform consumers in a way that allows consumers to make better choices. A consumer using complaints narratives to inform his/her own personal financial decisions regarding products and companies will be exposed to incomplete and misleading information. A consumer who relies on the narratives to inform personal financial decisions is likely to be harmed by avoiding products and companies that may serve in the consumer's best interests.

Publication of narrative information can unfairly harm financial service companies' reputations and the reputation of individual employees who are identified in a complaint.

The Bureau does not have the resources to verify all of the facts contained in every complaint submitted through its complaint portal and unverified complaints can negatively impact a financial service company's reputation. Our concern is that if the narratives are published as part of a public database of Bureau information, then these complaints will be treated as truthful by other consumers, the media and other users of the data.

Consumers who rely on the complaint and response narratives in making personal financial decisions may avoid companies who have received complaints through the Bureau's complaints portal. This harm to financial service companies cannot be rectified once a consumer is convinced to avoid a particular institution. Larger financial service companies who receive more complaints due to their larger customer base face an even greater risk of this harm. A single complaint narrative can damage a financial service company's reputation and more complaints due to volume of consumer relationships increases the chances of a consumer being dissuaded from using a particular institution.

The Bureau's public database is distinguishable from internet sites and news publications that allow unverified accusations against companies. While social media and news website comment sections permit unverified instantaneous narratives from consumers, many readers rightfully view narratives on these platforms with a high degree of skepticism. Negative narratives may be disregarded or held in lower esteem due to the fact that readers know the veracity of these narratives is questionable.

Quite differently, the Bureau is held in high regard and a narrative visible on the Bureau's published database automatically carries an air of credibility and respect due to that fact that the narrative is published by the United States government. As a result, third parties who reference narratives from the Bureau's database will also obtain this sense of authority as the narrative implies government agreement and substantiated veracity.

The Bureau's stated goal is protecting consumers. However, any narrative publication that inadvertently harms the reputation of trustworthy companies will ultimately inflict harm on consumers. Complaint and response narratives may encourage consumers to use resources not regulated by the Bureau to meet their financial needs. This does not necessarily serve the best interests of the consumers or the Bureau.

Publishing complaint and response narratives will interfere with the communication between a consumer and financial institution.

Complaints allow consumers to communicate with their financial service company to resolve an issue or obtain an explanation. This objective is consumer-centric – to further communications with individual consumers and resolve or explain issues to consumers, individually.

A consumer who is attempting to resolve a problem is best served by providing detailed information to the financial service company in a complaint narrative. As the Bureau likely understands, consumers often share highly confidential and personal financial information, such as details about account openings, balances, overdrafts, merchant purchases, and payments, among other sensitive information. If the complaint and response narratives are made public, the forthright exchange of information necessary to resolve a complaint will be hindered. A consumer may withhold details from a complaint narrative because of the public nature of the narrative, potentially interfering with the financial service company's ability to identify and resolve the consumer's issue.

Additionally, the mere act of making the communication between two parties (consumer and financial service company) public alters the nature of that communication. The focus of the consumer's problem may be obscured when the complaint narrative is drafted to make the story appear a certain way in a public setting. Any such change in the complaint narrative will interfere with the company's ability to understand the consumer's experience and resolve the consumer's concerns. This will harm the consumer's interaction with the company and likely reduce the usefulness of the communication between the consumer and company.

Likewise, a financial service company's candid response will be hampered as a result of the response narrative being made public. A financial service company cannot provide a meaningful response

narrative that eliminates private information about the consumer. Without these details, a response often becomes meaningless. The consent from a consumer to allow publication of the complaint narrative must be sufficiently broad to cover the response narrative and provide authorization to the company to respond with a detailed response narrative containing confidential information. The two narratives would need to be published concurrently.

Maintaining the confidentiality of the narrative responses is vital to this communication between consumers and their financial institutions. We strive to resolve complaints with consumers through the response narrative and our ability to do so should not be compromised by the unintended consequence of publication of the response narrative.

Consumer consent to permit the disclosure of narratives should be prominently displayed, fully describe the risks of publication in a meaningful way, occur after the response narrative is provided and require affirmative action by the complaining consumer.

The Bureau specifically requested comments on the topic of consumer consent to narrative disclosure and the process by which this consent should be obtained. Informed consumer consent is the foremost component of narrative publication. Every effort should be made to ensure that the complaining consumer fully understands the impact of consenting to narrative disclosure and the potential risks of such consent. The consent should be affirmatively provided by the consumer and the consumer should have the option to withdraw consent and have the narratives related to their complaint (both complaint narrative and response narrative) removed at a later date. A later withdrawal of consent would not affect the time period during which consent was applicable.

Consumer consent should be a thoughtful, informed, affirmative action and not a reactionary or accidental result of a simple action, such as clicking a button. It would be preferable for the consent to include an electronic signature complying with the E-Sign Act.⁴ The consumer should have a clear option to choose not to consent, as well. A situation should not arise wherein a consumer misinterprets the disclosure to require consent in order to submit a complaint to the Bureau.

Before agreeing to publication of the narratives, consumers should read an explanation of exactly what their consent will permit. We recommend that the explanation be presented in a manner that is easy to read and understand. Substantively, the Bureau should attempt to design its disclosure and consent acknowledgment to ensure that the consumer understands all material risks, costs and conditions of consenting to narrative publication and ensure that none of the representations are likely to mislead the consumer. Also, the disclosure should explicitly inform complaining consumers that once their complaint and response narratives appear in the Bureau's public database, the narratives may be copied or cited, in whole or in part, by other entities and in other contexts, including by members of the media and other government agencies.

Consumers should be made aware that if they consent to publication initially but later withdraw their consent, the Bureau will only be able to remove their complaint narrative and response narrative from

⁴ 15 U.S.C. § 7001, *et seq*

the Bureau's public database. Any third party that copied and published the narrative information would remain able to publish the information. Basically, once the narratives become public, then the Bureau loses control over them and the narratives can be used forever by a third party. There should be clear communication that if the media or any individual or entity outside of the Bureau uses the narrative information, nothing can be done to retract those details about the complaint from the public sphere.

The Bureau should also expressly state, as it has in its Statement, that it cannot entirely eliminate the possibility of re-identification of the complaining consumer after personally identified information is removed from narratives. Any consumer who consents to the publication of the narratives should know this risk as re-identification is likely to occur for some consumers. An automatic redaction process will not be fully effective at removing protected information and a manual process by the Bureau is not operationally feasible. Furthermore, the Bureau should explain in very basic terms to consumers what re-identification means and how this could impact the complaining consumers.

Consent should be provided by a fully informed consumer at the time that the consumer has the most information – *after* the consumer has received the response from the financial service company. A consumer's evaluation of the risk of publication of narratives cannot be fully informed until both the complaint and response narrative are submitted and the consumer has had the opportunity to consider the full context of both narratives. At that point in time, the consumer can best evaluate the risks that would result from publication of the narratives and determine whether consenting to publication is in the consumer's best interest.

We believe that the best approach is to refrain from publishing narratives. However, if the Bureau decides to proceed with the plans to publish, the consumer's consent should cover: (1) consent to the Bureau's publication of both the complaint and response narratives; (2) an authorization and release to the financial service company to allow a responsive narrative that includes nonpublic personal information and other financial and medical information, subject to privacy limitations, to be published; and (3) recognition of the risks of publication, including re-identification. The Bureau should provide a copy of the consent and authorization/release to the financial service company. It should be noted that the authorization/release may not resolve all of the privacy issues.

If the consumer consents to publication, the consent should apply to both the consumer narrative and the responsive narrative and the two narratives should be published concurrently. The goal espoused by the Bureau is to encourage a marketplace of ideas. One-sided discussions never further such a marketplace. If the privacy limitations cannot be solved, neither narrative should be published. A complaint without a response is of no use to the general public and will cause harm to innocent users of the information.

Company Response Narrative

The Bureau has specifically requested comment on whether a financial service company's public response narrative should be distinct from the response sent to the complaining consumer. The only response narrative that is useful to anyone -- complaining consumer or the public -- is a complete and thorough response. Therefore, we prefer one narrative be provided in response to a complaint. A

response narrative stripped of all consumer details and protected information will likely be meaningless and of no use to anyone. We do not recommend drafting a second “public” response devoid of detailed information. However, without an authorization and release provided by the consumer to the Bureau and Wells Fargo, neither the complaint nor response narratives should be published due to privacy restrictions, including GLBA.

Only detailed response narratives are effective in communicating to the consumer. This is also true if the response narrative is viewed by a third party using the publicly available database. Any edited response will be missing key information and context that is necessary for answering the issues raised in the complaint. A partial response also would be easily subject to misinterpretation. The publication of narratives should not sow additional confusion in the marketplace but there is no doubt that edited responsive narratives would cause confusion. A complaint narrative should only be published in tandem with an unedited response narrative in order to attempt to provide sufficient informative details about the disputed situation.

The question posed by the Bureau implies that the Bureau expects that the responding financial service company will edit all responsive narratives to de-identify the consumer and meet any privacy law requirements. The core problem is that if the private details are removed from the responsive narratives, the remaining shell of the narrative will be worthless. Stripped of all details regarding the consumer’s account, interaction with the company, payment dates and similar information, the responsive narrative will provide no meaningful information.

In order to publish fully responsive and complete responsive narratives, the Bureau must address the privacy requirements and be prepared to use a consistent de-identification process on both the complaint narrative and the company response narrative. We respectfully request the Bureau to publicly articulate the information that will be removed for purposes of de-identification or for any other reason. One example might be any information that identifies by name a person who is employed at a financial institution. Another example might be the names of any companies involved in a different aspect of the financial product, such as the loan originator on a servicing complaint. The process of de-identification also needs to involve a Bureau employee as a computer program will fail to capture all of the identifying details contained in a complaint narrative. An automated redaction process based on keywords, names and the like will not be fully effective and will lead to privacy issues and potential lawsuits. Additionally, the de-identification process for response narratives should be handed by the Bureau to ensure consistency with the approach used on complaint narratives.

The current proposal is not sufficient to protect consumers. A more thorough de-identification process should be developed by the Bureau to be applied consistently to all narratives (complaint and response). An enhanced de-identification process should ensure that complaint and response narrative information cannot be combined with other publicly available information (such as property records) to identify a consumer.

Conclusion

Overall, Wells Fargo believes that publication of consumer complaint narratives and company response narratives will cause more harm to consumers, both those submitting complaints and those considering financial products and institutions, than benefits. As such, it is our position that complaint and response narratives should remain confidential and not be published.

If the Bureau proceeds with publication of complaint and response narratives, Wells Fargo recommends that the Bureau provide detailed information to consumers regarding the choice and implications of opting in to publication of narratives and that any consent be provided after the complaining consumer has had the opportunity to review the response narrative and consider the risks of publication. Any consumer consent should be provided in a formalized manner that involves conscious activity by the consumer rather than a mere checkbox that could be clicked accidentally. The consent should also include authorization/release directed to the financial services company in order to address privacy concerns.

Wells Fargo thanks the Bureau for providing the opportunity to comment on the Notice of Proposed Policy Statement.

Sincerely,

A handwritten signature in dark ink, appearing to read 'David Moskowitz', with a long horizontal flourish extending to the right.

David Moskowitz
Executive Vice-President and Deputy General Counsel
Wells Fargo & Co