

Formerly the National Council of Higher Education Loan Programs, Inc.

August 11, 2014

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

RE: Docket No. CFPB-2014-0016

Dear Ms. Jackson:

The National Council of Higher Education Resources (NCHER) represents a nationwide network of guaranty agencies, secondary markets, lenders, loan servicers, private collection agencies, schools, and other organizations that administer loan programs that make assistance available to students, borrowers, and families to pay for the costs of postsecondary education, including the Federal Family Education Loan (FFEL) Program and private education loans. Some of our members service Federal Direct Loans under contracts with the U.S. Department of Education. Many of our members, including state agencies and state-designated authorities, also provide higher education access, outreach, and financial literacy programs.

We are responding to the Bureau's July 23, 2014 Notice of Proposed Policy Statement regarding the Consumer Complaint Database. Specifically, the Bureau is proposing a plan to expand the information published on the Database to include "unstructured consumer complaint narrative data." The Bureau is seeking comments on its proposals to: obtain consumer consent to disclose narratives; allow company responses to be published side-by-side with the complaint; and protect personal consumer identification. Our comments are attached.

We appreciate the opportunity to provide these comments to the Bureau. If you have questions or need additional information, please contact me at (202) 822-2016.

Sincerely,



James P. Bergeron
President

NCHER Response to Docket No. CFPB–2014-0016 Regarding Disclosure of Consumer Complaint Narrative Data

Overview

National Council of Higher Education Resources (NCHER) members that originate, hold, service, and collect educational loans place a priority on providing high-quality customer service and making good-faith efforts to resolve legitimate borrower complaints. Student and parent borrowers who experience poor customer service, receive inaccurate documentation, or have trouble getting answers to questions about their accounts have every right to demand better service and receive all rights entitled to them under the law. NCHER respects the Bureau's role in protecting consumers, including but not limited to consumers who submit complaints to the Bureau.

The Notice of Proposed Policy Statement (Notice) describes a proposal to supplement the Bureau's existing Policy Statements establishing and expanding the Consumer Complaint Database. Specifically, the Bureau proposes to offer consumers the opportunity to share their individual stories with other consumers and the marketplace by including consumer complaint narratives in the Consumer Complaint Database where consent for publication is first obtained from the consumer. As is true today, the complainer will not be identified, and no attempt will be made by the Bureau to verify either the complaint or the validity of the narrative. The Bureau proposes to allow the company's response to be published side-by-side and scrubbed of any personal consumer information.

NCHER strongly objected to the Bureau's past decision to publish unverified consumer complaints while naming the companies identified in those complaints -- a position the organization continues to hold -- and is equally opposed to publishing unverified complaint narratives. Such narratives, whether intentional or by accident, add further subjectivity to a process already wrought with concerns of bias and misinformation. While we appreciate the move to add "balance" to the complaint process by allowing companies to have their responses published side-by-side with the consumer complaint, this does not mitigate the potential harm and reputational risk borne by the companies when unsubstantiated complaints are given the same weight as those that have been verified.

Bureau Should Verify Consumer Complaints

In the Notice, the Bureau details its plans to scrub the narrative data to protect the identity of the complainer, and goes to great lengths to describe the significant scrubbing standard and methodology it will perform to protect the consumers' identity. However, no similar effort is being made by the Bureau to validate the veracity of the complaints, which could cause irreparable harm to the affected companies. In today's environment of "instant communication", publishing unverified, unsubstantiated consumer complaints may be an acceptable practice for a social media platform or non-governmental entity. But, as a powerful Federal regulator, the Bureau must be held to a higher standard of responsibility and ensure its actions are based on factual information that is fair to the consumer, taxpayer, and regulated entity alike.

The Notice states that, when examining the benefits and risks of disclosing narratives, the Bureau considered the potential benefits to consumers and the Bureau, and the advancement of open government principles. Not listed is consideration of the potential impact of inaccurate or false information on the companies named in the complaints. It seems short-sighted and irresponsible for a Federal regulator NOT to consider the impact of proposed policies on the very companies for which that regulator has supervisory responsibilities.

The Bureau lists "re-identification" of complainers as a principal risk of the proposed policy and a second major risk that "narratives may contain factually incorrect information" that could result in "intangible

reputational damage as a result of the dissemination of complaint narratives.” In order to address the principal risk, the Bureau intends to protect the identity of the complainers. However, it makes no effort to address the second major risk – ignoring the impact on companies – concluding that “while there is always a risk that market participants will draw erroneous conclusions from available data, the marketplace of ideas would be able to determine what the data shows.” While the Bureau proposes to mitigate this risk by sharing the company’s response to the complaint, we believe publishing the unverified complaint, and any accompanying narrative, already inflicts unnecessary and unfair damage and reputational risk to the companies identified in the complaints.

The Notice further states that the Bureau believes one benefit of publishing complaint narratives is to expand the number of complaints submitted to the Bureau, thereby enhancing the value of the Consumer Complaint Database. We believe the value of the Database is enhanced by the number of valid complaints, not just the raw number of complaints. The Notice also references the Office of Management and Budget’s (OMB) “Open Government Directive,” which, in part, urges Federal agencies to disseminate “useful information” by making it available online. It is unclear if OMB would consider unverified and unsubstantiated complaints as “useful information,” nor does it seem that unverified, unsubstantiated complaints constitute “a valuable national resource and a strategic asset to the Federal Government, its partners, and the public.”

Based on experience in the student loan industry, our members know that borrowers complain about such things as the amount of their debt, the interest rate on their loans, the amount of late fees or other charges, and the manner in which their loans are serviced and collected. We know that that many complaints, even though submitted in good faith, are unsubstantiated, and that some are frivolous. We also know that there are two sides to most complaints. While borrowers always deserve accurate responses and respectful treatment, the publication of unverified, unsubstantiated complaints, and their accompanying narratives, can be misleading to the public, undermine trust in the nation’s financial services industry, and are unfair to the lender, servicer, and/or collector that are the target of the complaint. Public disclosure of unverified and unsubstantiated claims of poor service or unlawful activities levied against organizations can damage the reputation of those entities. If a private party were to publish such untrue information, it could be subject to charges of defamation.

For all these reasons, NCHER recommends that, before publishing borrower complaints and their related narratives, the Bureau independently validate and substantiate the pertinent facts of each complaint. If the Bureau fails to take such action, we request that it redact identifying information on the companies in the same manner it does with the non-public information (NPI) of the individuals submitting the complaints.

Bureau Should Provide Context of Consumer Complaints

Our organization also continues to believe that it is important to put into context the relationship between the number of complaints received by a particular company and the overall number of transactions that company completes in a given time period (monthly, quarterly, or annually). For example, an organization that processes 10 million transactions in a year and receives 1,000 complaints during that same time period should be shown in a different context than a much smaller organization that receives a comparable number of complaints. NCHER recommends that the Bureau include a data field that aggregates the number of complaints against an organization and shows it as a percentage of the total transactions that entity processes in a given time period.

Conclusion

In summary, NCHER acknowledges and respects the Bureau's statutory responsibility to compile and analyze data on borrower complaints, make appropriate recommendations to Congress and various

Federal agencies, and submit an annual report of its findings, and NCHER and its members stand ready to assist in this regard. However, we remain very concerned about the publication of unverified, unsubstantiated raw borrower complaints, and the proposed policy to expand those complaints by publishing complaint narrative data.