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September 22, 2014

Re: Disclosure of Consumer Complaint Narrative Data (CFPB-2014-0016), Comments of 9 Media and Transparency Organizations

Dear Members of the Consumer Financial Protection Bureau (the “Bureau” or “CFPB”),

The Reporters Committee for Freedom of the Press appreciates this opportunity to comment on the Bureau’s proposed policy to include certain consumer complaint narratives in its Consumer Complaint Database (“Database”). We submit these comments on behalf of the coalition of media organizations and transparency groups set out below.

The coalition specifically wishes to address the proposal to utilize an opt-in process for determining which of the consumer complaint narratives received by the Bureau will be made available to the public through the Database. First, while we welcome the CFPB’s decision to utilize its Database to make some consumer complaint narratives more readily available to the public, we urge the Bureau to adopt a policy that would make *all* such narratives available electronically through the Database. Not only are the narratives important resources for consumers, journalists, and the public at large, they are also government records and, accordingly, should be open to public inspection to the greatest extent possible. The relationship between consumers and financial institutions remains a topic of utmost public concern in the United States and around the world. The experiences reflected in the narrative portion of consumer complaints submitted to the CFBP will contribute to the public’s understanding of that relationship, and inform the ongoing democratic debate regarding financial regulations.

The Database is “the nation’s largest public collection of consumer financial complaints.”¹ This makes it an invaluable resource for journalists,

¹ *CFBP Proposal Would Give Consumers the Opportunity to Publicly Voice Complaints About Financial Companies*, CONSUMER FINANCIAL PROTECTION BUREAU (Jul. 16, 2014), <http://www.consumerfinance.gov/newsroom/cfpb-proposal-would-give-consumers-the-opportunity-to-publicly-voice-complaints-about-financial-companies/>.

researchers, and members of the public who seek data that speaks to the interaction between consumers and financial institutions. Indeed, among other things, data that has been made publically available through the Database has already been used by researchers to study and report on credit reporting errors.² This, in turn, has led to news stories that have provided important information to citizens across the nation about those errors.³ Similar reports have resulted from data obtained through use of the Database concerning private student loans⁴ and payday loans.⁵ Including *all* consumer complaint narratives in the Database would assist journalists who seek to supplement the numbers already made available through the Database with the powerful firsthand experiences of individual consumers, as the Proposed Policy Statement itself recognizes.⁶ As CFPB Director Richard Cordray has noted, “[t]he consumer experience shared in the narrative is the heart and soul of the complaint”⁷ The narratives add both context and an important human element to existing data that, while valuable, cannot fully capture the experiences of consumers. Journalists, researchers, and members of the public should thus be given access to this information to the greatest extent possible. While the coalition recognizes that there may be legitimate privacy concerns that accompany the disclosure of consumer complaint narratives in certain circumstances, there are available measures to address such concerns.⁸ Thus, given the immense value of these narratives to both public discourse and the public’s understanding of the workings of financial institutions and the CFPB, the public interest weighs heavily in favor of a policy requiring that all narratives be published in the Database.

² *Big Credit Bureaus, Big Mistakes*, U.S. PRIG EDUCATION FUND (Nov. 19, 2013), <http://www.uspirgedfund.org/reports/usf/big-credit-bureaus-big-mistakes>.

³ Herb Weisbaum, *An error in your credit report? Complain to the feds*, TODAY/NBC NEWS (Jan. 2, 2014), <http://www.today.com/money/error-your-credit-report-complain-feds-2D11703506>.

⁴ Tyler Kingkade, *CFPB Helped Hundreds of Private Student Loan Borrowers Resolve Problems With Lenders: Report*, THE HUFFINGTON POST (Oct. 25, 2013), http://www.huffingtonpost.com/2013/10/25/cfpb-private-student-loans_n_4159045.html.

⁵ Alan Zibel, *Financial Watchdog’s Key Tool: Consumer Complaints*, THE WALL STREET JOURNAL (Nov. 7, 2013), <http://online.wsj.com/news/articles/SB10001424052702303309504579184120078017720>.

⁶ Disclosure of Consumer Complaint Narrative Data, 79 Fed. Reg. 42765 (Proposed Jul. 23, 2014) (“the utility of the overall Consumer Complaint Database would greatly increase with the inclusion of narratives. This could lead to increased use by advocates, academics, the press, and entrepreneurs. . . .”)

⁷ *CFPB Proposal Would Give Consumers the Opportunity to Publically Voice Complaints About Financial Companies*, *supra* note 1.

⁸ The coalition does not endorse the appropriateness of the “scrubbing” standard laid out in the Proposed Policy Statement, or the breadth of its proposed application to consumer complaint narratives. The standard appears to exceed that which is necessary to address privacy or personal information that is exempt from disclosure under the Freedom of Information Act.

In addition to the public interest in consumer complaint narratives, these narratives are agency “records”⁹ to which the public has a right of access under the Freedom of Information Act (“FOIA”). Material that is created by an external entity, acquired by a federal agency, and held within that agency’s control is generally subject to disclosure under FOIA.¹⁰ For example, consumer complaints that are submitted to the Federal Trade Commission (“FTC”) are subject to FOIA, and many such complaints are posted online after they have been requested.¹¹ These complaints are full of consumer narratives analogous to those received by the CFBP.¹² Similarly, complaints submitted to the Federal Communications Commission (“FCC”) are subject to disclosure under FOIA, and the narratives contained within such complaints have become the basis for media stories on topics of public interest.¹³ While there are exemptions under FOIA for private information, procedures can be utilized by the CFPB to protect against a clearly unwarranted invasion of personal privacy.¹⁴ Therefore, as the consumer complaints at issue are already open to the public under FOIA, there is no reason not to publish *all* narratives that accompany consumer complaints.

For these reasons alone, the coalition urges the CFPB to make all consumer complaint narratives available to the public electronically, through its Database. As the Bureau’s request for comments recognizes, “the ‘presumption of openness’ is quickly becoming a governmental best practice.”¹⁵ Indeed, in his FOIA Memorandum of 2009, President Obama indicates that agencies “should not wait for specific requests from the public”, but rather “[a]ll agencies should use modern technology to inform citizens about what is known and done by their Government.”¹⁶ The Proposed Policy Statement has commendably recognized the value of proactive disclosures,¹⁷ but the CFPB should follow this philosophy through to its logical conclusion and publish all narratives. Doing so would be taking a large step towards its stated goal of becoming “a leader in the realm of open government and open data.”¹⁸

⁹ 5 U.S.C. § 552(a)(3)(A).

¹⁰ See *U.S. Dep’t of Justice v. Tax Analysts*, 492 U.S. 136, 144-45 (1989).

¹¹ See *Frequently Requested Records*, FEDERAL TRADE COMMISSION, <http://www.ftc.gov/about-ftc/foia/foia-reading-rooms/frequently-requested-records>.

¹² See, e.g., *Complaints against Vemma through 9/6/13*, FEDERAL TRADE COMMISSION, <http://www.ftc.gov/system/files/attachments/frequently-requested-records/vemmacmpts.pdf>.

¹³ See, e.g., Barry Petcheskey, *Every FCC Viewer Complaint About Michael Sam Kissing His Boyfriend*, DEADSPIN (Jun. 18, 2014), <http://deadspin.com/every-fcc-viewer-complaint-about-michael-sam-kissing-hi-1592843543/+laceydonohue>.

¹⁴ 5 U.S.C § 552(b)(6).

¹⁵ See Disclosure of Consumer Complaint Narrative Data, *supra* note 6.

¹⁶ Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 26, 2009), *available at* <https://www.federalregister.gov/articles/2009/01/26/E9-1773/freedom-of-information-act>.

¹⁷ See Disclosure of Consumer Complaint Narrative Data, *supra* note 6.

¹⁸ *Id.*

Moreover, adopting an opt-in procedure as described in the Proposed Policy Statement may be misleading to individuals who submit complaints to the CFPB. If someone submitting a complaint is presented with the option of selecting whether or not his or her narrative will be published in the Database, that individual may be led to believe that if he or she does not opt in, his or her narrative will be confidential. However, because the content of all consumer complaint narratives—with the exception of any information that would be subject to an applicable exemption—is subject to FOIA, narratives are always subject to public disclosure. Thus, adopting an opt-in process may create an illusion of privacy regarding consumer complaint narratives that does not exist. A better policy would be for all consumers submitting complaints to be informed that their correspondence with the CFPB is a public record.

If the CFPB decides not to adopt a policy requiring that all the narratives it receives be published in the Database, at the very least it should switch the default publication decision from an opt-in model to an opt-out model. This would ensure that most complaint narratives are made available to the public. However, we again stress that it is misleading for the CFPB to give consumers the impression that the narrative portions of complaints submitted to the CFBP are not subject to disclosure under FOIA, and an opt-out model poses the same risk as an opt-in model of creating that false impression. Accordingly, if the CFPB adopts an opt-out model rather than an opt-in model, it should still inform all consumers that their correspondence with the CFPB is subject to public disclosure under FOIA regardless of whether they opt-out of publication in the Database. We believe that a clear policy of openness and proactive disclosure by the Bureau is best for consumers, journalists, and the general public.

We appreciate the CFPB's commitment to openness and its desire to facilitate public access to more data within the Consumer Complaint Database. We believe that incorporating the specific comments set forth herein into the Bureau's final policy statement will assist it in honoring that commitment.

Sincerely,

The Reporters Committee for
Freedom of the Press
Dow Jones & Company, Inc.
National Press Photographers Association
National Public Radio, Inc.
News Corp.

Newspaper Association of America
Radio Television Digital News Association
The Associated Press
Tully Center for Free Speech