

July 16, 2018

By electronic delivery to: www.regulations.gov

Brian Johnson
Acting Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20052

**Re: Request for Information Regarding the Bureau's Consumer Complaint Processes
[Docket Number CFPB-2018-0014]**

**Comments of the Consumer Advocacy & Protection Society (CAPS) at
University of California, Berkeley, School of Law**

Dear Acting Director Johnson:

My name is Brady Williams and I am a third-year law student at the University of California, Berkeley, School of Law. I am submitting this comment today on behalf of the [Consumer Advocacy and Protection Society](#) ("CAPS"), which is a student-run organization dedicated to the promotion of consumer law and consumer protection at Berkeley Law. Throughout our time in law school, many of us have worked as clinical students or volunteers in the East Bay Community Law Center's [Consumer Rights Workshop](#) and/or [Consumer Justice Clinic](#), which is a legal clinic of Berkeley Law School. Drawing on our experiences in these roles, we submit this comment in response to the Consumer Financial Protection Bureau's

Request for Information regarding the Bureau's consumer complaint database ([83 FR 16839](#)). We believe our experience working directly with consumers can provide valuable insight into how the Bureau's consumer complaint database system interacts with consumers on the ground in a concrete way. As the Bureau considers public feedback on this topic, we hope it will pay particular attention to the concerns of direct legal services providers such as the East Bay Community Law Center and consumer advocacy organizations such as CAPS.

This comment addresses three primary topics with respect to the consumer complaint database system. First, we urge the Bureau to continue its current practice of providing *public* access to the consumer complaint database. Our experience submitting complaints with numerous consumers indicates that the current model substantially increases the likelihood and promptness of an adequate resolution from companies. Second, rather than taking the database offline, the Bureau should respond to industry critiques of the current complaint system by allowing companies to submit and attach their own comment to each consumer complaint. Third, the Bureau should continue to allow qualified third-parties to submit consumer complaints on behalf of their clients, as this process is absolutely critical to the success of the direct legal services model and consumers' access to speedy dispute resolution.

I. The Bureau's Consumer Complaint Database Should Remain Publicly Accessible.

It is critical to the Bureau's mission of fostering an informed marketplace that its consumer complaint database continues to be freely available and wholly accessible to the public. As volunteers and clinical students at Berkeley Law's [Consumer Rights Workshop](#) and the East Bay Community Law Center's [Consumer Justice Clinic](#), we have seen first-hand the impact of the Bureau's public consumer complaint database. Many of our clients recount spending weeks and months trying to resolve a dispute with a business on their own, but their

concerns often fall on deaf ears. Even in the most obvious cases of corporate error or misconduct, consumers often endure long periods of inaction or insufficient resolution from the business. After exhausting every available option available, clients come to our clinics for help. Many times, we help clients draft a complaint to submit to the Bureau. This routinely leads to companies swiftly addressing the problem. Additionally, we often use the database to assess whether a client's experience fits a larger pattern and practice of a company.¹ As 14 State Attorneys General pointed out in their [multi-state comment on this topic](#), "the visibility of the database also incentivizes companies to treat their customers fairly."² Removing the public's access to this database will reduce the incentive to bring about a speedy resolution and runs contrary to the Bureau's express mission to prioritize the protection of consumers.

By promoting increased competition and transparency, the publicly accessible database benefits not only consumers, but the economy as a whole. As Professors Amy Schmitz and Pamela Foohey wrote in [an article published in Law 360](#):

Companies also benefit from the public database. The database provides important feedback to companies about concerns people have with their products and services. It also helps prevent unscrupulous competitors from undercutting legitimate companies, because all companies know that consumers might call them out for using underhanded tactics. Additionally, policymakers and others leverage the complaint data to analyze trends and identify problems in the marketplace. In short, the public database fosters transparency and improves the marketplace for consumer financial products and services.

¹ See Laura Nader, *Disputing without the Force of Law*, 88 YALE L.J. 998, 1007 (1979) ("Besides resolving individual grievances quickly and fairly, an ideal complaint-handling system would disclose aggregate patterns of abuse or injustice and would support systemic reform.").

² See also Editorial, *Let Consumer Complaints See the Light of Day*, Bloomberg, Apr. 29, 2018, available at <https://www.bloomberg.com/view/articles/2018-04-29/save-the-cfpb-s-consumer-complaintdatabase> (arguing that the transparency of the database "pushes companies to be more responsive," and noting that "some 97 percent of complaints get a timely response").

By allowing consumers to comparison-shop and make more informed purchases, the Bureau's complaint database serves as an effective supplement to the shortcomings of existing private complaint mechanisms.³ As one [opinion piece in the Washington Post](#) put it, "[c]onsumer-supplied information can reduce reliance on regulation and enforcement to protect consumers by encouraging market forces that reward better business practices."⁴ In a market economy such as ours, it is critical that consumers be given access to this complaint database, or else the disparate gap of asymmetrical access to information will widen and market failures will abound.

II. Rather Than Removing Public Access to the Database, the Bureau Should Allow Companies to Attach a Response to Each Complaint.

The Bureau's consumer complaint process may not be perfect, but taking the consumer complaint database offline would be akin to cutting off its nose to spite its face. In responding to industry concerns, the Bureau must not overreact in a way that would harm consumers. Removing the public's access to the consumer complaint database, however, would be a vast overreaction and would significantly harm consumer welfare. The Bureau should instead allow companies to attach a short, tailored statement to each consumer complaint to provide the business's perspective on the dispute. The solution is *more* access to information, not less. We think this is a reasonable compromise that addresses industry concerns, while preserving and effectuating the Bureau's core consumer protection mission. Making the consumer complaint database private, however, would do the exact opposite.

³ See e.g., Troy Fleming, "Pay for Play" Scandal at the Better Business Bureau Leads to Consumer Mistrust of the Business Rating Organization, [23 Loy. Consum. L. Rev. 445](#) (2011); Best & Andreasen, *Consumer Response to Unsatisfactory Purchases: A Survey of Perceiving Defects, Voicing Complaints, and Obtaining Redress*, 11 Law & Soc'y Rev. 701, 713–14 (1977) (finding that only 3.7 percent of voiced consumer complaints reached any third party, and only 16% of those brought to third parties were ever brought to lawyer or court).

⁴ Blair Levin and Larry Downes, *We need more, not fewer, government Yelps*, Washington Post, May 2, 2018, available at https://www.washingtonpost.com/news/innovations/wp/2018/05/02/we-need-more-not-fewer-government-yelps/?noredirect=on&utm_term=.baf7ee91a74f.

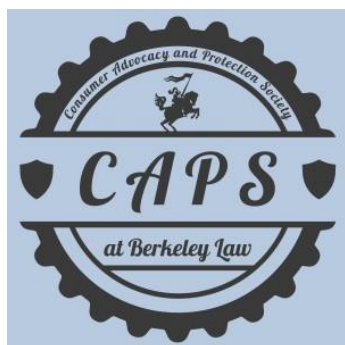
III. The Bureau Should Continue to Allow Qualified Third-Parties to Submit Complaints on Behalf of Clients.

As we mentioned above, many consumers depend on direct legal services providers like the East Bay Community Law Center to assist them through the Bureau's consumer complaint submission process. It is critically important that the Bureau continue to allow third parties to submit complaints on behalf of clients. This practice is essential to the success of the direct legal services model. But more importantly, it is essential to many consumers' success in seeking redress and information. Many clients' language proficiencies and educational backgrounds lead them to need more help to successfully submit a complaint. The process also seems daunting to many who have never submitted a complaint to a government agency before.

Additionally, many of our clients do not have access to the internet, and therefore lack the capacity to submit a complaint on their own. Many that do have access have it through limited means, such as through a cell phone. Although the Bureau accepts complaints through the mail, this process costs additional time, energy, and resources to consumers and imposes an unnecessary roadblock in consumers' path to redress. In our experience, each barrier between a consumer and a source of redress noticeably decreases the number of people who are able to access that service. With the help of qualified third-parties, such as attorneys and volunteers, consumers gain better access to the Bureau's resources and dispute resolution process. Prohibiting qualified third parties from submitting these complaints would stunt this dispute resolution process and runs afoul of the Bureau's mission. Removing our ability to submit complaints for our clients would unnecessarily tie our hands and hinder our advocacy. There is no countervailing interest that would justify the Bureau's departure from the current practice of allowing third-party complaints.

Conclusion

Proposals to take the consumer complaint database offline are imprudent and counter to the Bureau's consumer protection mission. Direct legal services providers are well acquainted with the efficiency of the Bureau's complaint database in resolving disputes. Because direct legal services providers often find themselves on the frontlines of consumer protection efforts, we strongly urge the Bureau to heavily weigh the comments of other legal services providers nationwide as it considers revising its policies. Taking the system offline will reduce the incentives present in the current system and will undoubtedly lead to fewer and less favorable consumer dispute resolutions. Industry critiques that the present complaint system does not accommodate businesses' perspectives can be best resolved by allowing businesses to attach their own statements to complaints. This solution both addresses industry concerns and produces a more informed consumer marketplace. Lastly, prohibiting third-party submissions would impair the direct legal services model and decrease the public's access to the Bureau's assistance.



Sincerely,

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