

July 20, 2011

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Thank you for the opportunity for the American Bankers Association to provide comments on suggestions to the Bureau of Consumer Financial Protection's ("Bureau") credit card complaint process, anticipated to launch July 22, 2011. The industry shares the Bureau's goal of a successful launch to establish a properly functioning consumer complaint process and appreciates the opportunity to provide further suggestions. We note that we have provided comments previously and sought more dialogue with the Bureau on many of these issues, dating from the joint trade association letters sent in February and May of this year. However, there was no response until the Bureau's demonstration to trade associations made by telephone on July 12, 2011, only two weeks before official launch.

Nevertheless, we offer the following comments based on some limited discussions with issuers and our staff's reaction to the demonstration to help create an efficient, fair, and effective complaint processing system. We will continue to provide comments, noting that the Bureau has indicated that it will continue to accept suggestions and make adjustments based on experience once the credit card complaint process is established.

Generally.

As we noted in May 9, 2011 joint letter, it is in everyone's interest – consumers', issuers', and the Bureau's – to establish a system that ensures complaints are handled promptly, efficiently, and satisfactorily. If consumers have unrealistic expectations or are disappointed in the process or result, they lose confidence in the complaint process. For example, it is important to test the system before formal adoption to determine whether consumers understand what information they need to provide and what results they may expect as well as to ensure that the process works for issuers.

Labels need reconsideration and adjustment. The labels of some response choices seem less than neutral. If information is made public or even used in reports that summarize complaints or measure card issuer industry behavior, it will suggest an inaccurate picture skewed against the industry.

- **What was your loss?** We understand the need to put some sort of value on the amount involved in the dispute, but it is not clear how consumers would interpret "loss" in the context of credit cards, especially if they owe money and haven't technically "lost" anything. Is "loss" interest paid? Interest accrued? Is it the entire balance outstanding? How does it capture an interest rate increase? Does it include extraneous losses? If the purpose is to capture the amount involved, using the term "loss" gives an unnecessary and inappropriate emotional element that might encourage natural inflating. Asking for "amount involved" might be more informative and clear.
- **Do you believe the issue involves discrimination?** As drafted, this is very suggestive and leading. It is difficult to imagine that many dissatisfied customers will not automatically indicate that they feel they were a victim of some sort of discrimination, whether legal discrimination (e.g. bad credit history) or illegal discrimination (based on protected class). There are other ways to determine whether illegal discrimination is an issue without leading the customer. At the very least, there should be an explanation of what illegal discrimination is **before** the customer responds. Otherwise, data may be inflated to suggest a higher number of complaints alleging illegal discrimination. In addition, the form should ask for details about the reason for the customer's belief.

Moreover, it is our understanding that the institution will not be made aware that there is such an allegation. This means they won't have the opportunity to resolve the issue and will be unable to refute an assertion from an examiner who has the information. It is not clear why institutions would not be advised of such complaints.

- ***Was there “no resolution offered, partial resolution offered, or full resolution offered.”*** If the labels in the issuer response report are used to report results or publicized, the term “resolution offered” will seem accusatory in this context. A result of “no resolution offered” makes the issuers seem unreasonable or intractable – as though they didn't even try to help the customer -- even if the customer's demand was unrealistic or unreasonable. An institution with good customer resolution practices might end up with a high number of “no resolution offered” answers because the reasonable requests were weeded out in their own process so are not part of the Bureau complaint process.

Protection of sensitive consumer personal and financial information. As emphasized in our earlier letters, the complaint forms ask for sensitive personal and financial information that may be used for fraud, to the customers', issuers', and other financial institutions detriment. Such a large database of comprehensive sensitive personal and personal information will make the database an attractive target for criminals. It is critical that the information be protected.

We realize that there is a balance between providing sufficient information to address the complaint efficiently and fairly and the risk that criminals will find the database an attractive target for fraud purposes. We suggest the Bureau proceed cautiously. We do not have information on how the data will be protected, but if the data protection system is not yet sufficiently robust, at least initially, the Bureau should be more conservative in the information requested, recognizing that doing so may slow the process.

At this time, we suggest that, for credit cards, the Bureau only ask for the last four digits of the account number (in addition to the BIN), as well as the billing address and billing phone number, assuming they are encrypted and protected. Some consumers are not comfortable providing the full account number out of fear that it will be used fraudulently, but will provide the last four digits. These four numbers, combined with the billing address and phone number, will still allow issuers to identify the customer with reasonable certainty.

Information about complaint. It wasn't clear from the demonstration whether there are character or other limitations on the customers' complaint description space. Drop-down boxes will not provide sufficient information to ensure the issuer understands the nature of the complaint and receives sufficient information to investigate and resolve the complaint. Without sufficient space to describe the complaint, issuers will have to repeatedly request additional information from the customer, delaying resolutions and frustrating the customer.

Time for issuers to investigate. It is our understanding that issuers have ten calendar days to investigate complaints, which issuers do not believe will be adequate in many instances. Currently, it is our understanding that the OCC guidance suggests 10 business days, the FDIC 20 calendar days. For both, issuers alert the OCC if additional time is necessary. (Approval is not necessary.) While in the vast majority of cases, issuers meet these agency deadlines, there are instances where additional research and information are necessary – and beneficial to the customer. In addition, we note that the proposed period is not consistent with other laws related to investigation and resolution of credit complaints.¹

As discussed in our joint trade association letter of February 8, 2011, the Bureau's authority to establish complaint processing requirements is based on Section 1034 of the Dodd Frank Act. Based on the Inspectors General Joint Response analysis, the Bureau may not exercise the powers set forth in Subtitle C without a Director. Section 1034 is

¹ The Fair Credit Billing Act requires error notices be in writing and contain certain information. Creditors must acknowledge receipt within 30 days of receipt (unless resolved earlier) and must resolve the issue within 2 complete billing cycles (but not later than 90 days).

among those Subtitle C powers. We encourage you to work with the other agencies and with issuers to accommodate existing processing regulations and guidelines until such time that the Bureau may with proper authority and public comment fulfill its obligations under Section 1034.

Certainly, the proposed ten calendar days, and arguably the current OCC and FDIC standards for resolving complaints may not be sufficient at least initially when it is not clear how the process will work. Additional time is especially critical in the early stages of establishing this new complaint process system given that it has not been tested, and it is not clear the obstacles, glitches, and other challenges issuers, customers, and the Bureau may encounter with the process. It is in the interest of all parties (customers, Bureau, and issuers) to ensure the investigation is thorough and smooth. If an issuer is consistently or frequently advising the Bureau of extensions, the Bureau may take appropriate action. The Bureau could always shorten the period once the system is up and running.

In addition, any time period should be extended if issuers must obtain additional information from the customer. Issuers should be allowed to advise the Bureau when an additional extension is necessary.

Explanation on limits on types of complaints. To avoid confusion, frustration, and unrealistic expectations on the part of the consumer, the form should describe the types of complaints that will be processed – and those that will not -- for example, complaints about interest rate levels, customer service shortcomings, marketing offers, and other matters which are not subject to the Act and which the issuer will not be able to resolve. Otherwise, issuers and consumers will be spending time on matters that cannot be resolved satisfactorily, and consumers will be disappointed and lose confidence in the Bureau's ability to assist them. Dissatisfaction about matters outside the scope of the complaint process can be directed elsewhere in the Bureau.

In addition, since the Bureau is not filtering for complaints that are not *bona fide*, it may help to discourage inappropriate complaints that clutter the complaint channel, at the expense of other customers, and that will skew data. We suggest that the Bureau consider the OCC's definition of complaint. Issuers would like the opportunity to comment.

Efforts of customer to resolve issue. The form should ask whether the customer has tried to resolve the complaint with the issuer and a description of such efforts. Issuers should be advised about a problem and have an opportunity to resolve it before being part of a statistic or regulator inquiry, especially if it was due to a customer misunderstanding or error.

Complaints unrelated to credit cards. Some issuers understand that complaints filed with the Bureau's credit card complaint center that are unrelated to credit cards will be referred to the prudential regulators. However, issuers report that their prudential regulators apparently are not aware that they will handle such complaints. From the consumer standpoint, it may be very frustrating to be tossed about between regulators. The Bureau and other agencies should clarify and explain the process to both issuers and consumers.

Operational issues. Issuers report that while they informally have names and phone numbers of individuals at the Bureau to contact, there is no formal or central point of contact for staff with specific training to obtain engagement guidelines and operational information. For example, issuers are unsure whom to contact for password expiration or denial of portal access. We suggest that the Bureau set up a specific point of contact to obtain guidance for such matters.

ABA appreciates the opportunity to provide our comments. As noted in our previous joint trade association letters, we would like to have further dialogue with the Bureau to improve the complaint process. Please contact us for any clarifications or further information.

Regards

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