



*Via Electronic Delivery*

Attn: Desk Officer for the Bureau of Consumer Financial Protection  
Office of Management and Budget  
New Executive Office Building  
Room 10235  
Washington, DC 20503

**RE: Comments in Response to Agency Information Collection  
Activities Submission for OMB Review, Docket No. CFPB–2016–0049.**

To Whom It May Concern:

On behalf of the Consumer Data Industry Association (“CDIA”), we submit the following comments regarding the Consumer Financial Protection Bureau (“CFPB” or the “Bureau”) Agency Information Collection Submission to the Office of Management and Budget (“OMB”) and Request for Comment on the “Consumer Response Company Response Survey” (“Consumer Survey”). CDIA appreciates the opportunity to once again provide comments on the Bureau’s efforts to create a Consumer Survey and improve the Consumer Complaint Database Portal (“the Portal”). In addition to our comments below, CDIA would like to incorporate our [September 29, 2016 Comment Letter](#) to the Bureau in response to Docket Number: CFPB–2016–0041, in its entirety to this submission.

**I. Introduction**

CDIA is an international trade association, representing more than 130 corporate members that provide businesses with the data and analytical tools necessary to manage risk. CDIA members help ensure fair and safe transactions for consumers, facilitate competition, and expand consumers’ access to a market which is innovative and focused on their needs. CDIA member products are used in more than nine billion transactions each year.

CDIA members have been complying with federal law and regulations specific to the consumer credit reporting industry for decades. The Fair Credit Reporting Act (“FCRA”)<sup>1</sup>, which the Bureau enforces, governs the collection, assembly, and use of consumer report information and provides the framework for the national credit reporting system. The FCRA outlines many consumer rights with respect to the use and accuracy of the information contained in their credit reports.<sup>2</sup> In particular, a consumer has the right to dispute the accuracy of any information included in his or her consumer file with a consumer reporting agency (“CRA”).<sup>3</sup> The FCRA provides a framework for allowing consumers who suspect a potential problem with data in their credit report to submit a dispute to the CRA, which obligates the CRA to investigate the dispute and report the results of its investigation to the consumer. Following this statutory mandate, CRAs have invested millions of dollars so that consumers have a streamlined process to correct inaccurate information. Unfortunately, the Portal has made the CRA dispute resolution process more difficult by encouraging consumers to submit accuracy disputes through the CFPB instead of through the process Congress required in the FCRA. CDIA continues to be concerned that the soliciting Consumer Surveys will only exacerbate the problem of treating accuracy disputes as “consumer complaints,” which is harmful to consumers and CRAs alike. CDIA once again urges the CFPB to revise the Portal intake form to facilitate consumers to submit accuracy disputes directly to CRAs or their lenders to ensure that their rights under the FCRA are protected.

## II. Addressing Public Comments under the APA Rulemaking Process

As a threshold matter, CDIA believes that the Bureau has failed to adequately consider the public comments on the Consumer Survey as required under the Administrative Procedures Act (the “APA”).<sup>4</sup> The Bureau states that the information collection reflects comments received in response to the March 24, 2015 ([80 FR 15583 \[CFPB-2015-0013\]](#)) Notice and Request for Information (RFI) and the August 1, 2016, ([81 FR 50484, Docket Number: CFPB-2016-0041](#)) RFI on the Consumer Response Company Response Survey. The Bureau notes that “[w]hile all of the [prior] comments addressed this information collection in some way, most commenters also reiterated comments submitted previously about the underlying complaint process and the publication of complaints. Comments about the underlying complaint process and publication of complaint data are not responsive for the purposes of this information collection.” The Bureau indicates that it does not believe that the Consumer Complaint Process and

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<sup>1</sup> 15 U.S.C. § 1681 *et seq.*

<sup>2</sup> 16 CFR Part 698, App. F.

<sup>3</sup> 15 U.S.C. § 1681i(a)(1)(A).

<sup>4</sup> 5 U.S.C. § 551 *et seq.*

Policy Statements are subject to the APA. Accordingly, the Bureau simply adopts the public comments as an Appendix and does not directly address the various issues raised that it deems “unresponsive.”

Although the APA does not require an agency to respond to every comment, the agency has an obligation to respond in a reasoned manner to the comments received, to explain how the agency resolved any significant problems raised by the comments, and to show how that resolution led the agency to the ultimate rule.<sup>5</sup> The Bureau’s generalization of the public comments does not meet an agency’s obligations to give interested parties an opportunity to submit written data, views, or arguments, and then only after the agency’s consideration of these issues presented, to allow the agency to adopt a final rule.<sup>6</sup> In particular, the Bureau has failed to address CDIA’s repeated requests to adopt or consider methods to verify that a consumer complaint is in fact a complaint about a CRA’s handling of a dispute of information, and not simply a routine dispute about the accuracy of information contained in his or her credit report. Consumer Survey responses may be misattributed to CRAs that are not the source of the consumer’s complaint, but have merely served as a conduit for the furnished data through a credit report. The Bureau does not address the issue of distinguishing between complaints about a furnisher and complaints about the CRA in order to alleviate this problem in the Consumer Survey.

The Bureau has also failed to address CDIA’s assertion that using this Consumer Survey, particularly to inform the Bureau’s enforcement and rulemaking, is an overreach of the statutory authority granted under 12 U.S.C. § 5534. Section 5534 only provides the Bureau the authority to create procedures to communicate with consumers about (1) steps that have been taken by the regulator in response to the complaint or inquiry of the consumer; (2) any responses received by the regulator from the covered person; and (3) any follow-up actions or planned follow-up actions by the regulator in response to the complaint or inquiry of the consumer.<sup>7</sup> The Consumer Survey does not fall under the statutory authority of the Bureau’s Complaint Portal.

Prior to the OMB approval of this Information Collection Request, CDIA urges the Bureau to provide a more thorough written analysis of its consideration of the public comments raised to the Bureau in accordance with the requirements of the APA, in particular those concerns raised by the credit reporting industry.

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<sup>5</sup> *Action on Smoking & Health v. CAB*, 699 F.2d 1209, 1216 (D.C.Cir.1983).

<sup>6</sup> 5 U.S.C. § 553(c).

<sup>7</sup> 12 U.S.C. § 5534(a).

### III. Changes to the Consumer Survey Instrument

CDIA appreciates that the Bureau responded to our request to release a draft of the proposed Consumer Survey in order for the public to adequately provide comment. However, after reviewing the Consumer Survey questions, CDIA continues to be concerned that collecting, and ultimately publishing, Consumer Survey information will only increase the harm caused by the current structure of the Portal. The CFPB acknowledged in its OMB submission that several commenters suggested that “the information collection would be overweighted with negative feedback because consumers would focus strictly on the outcome rather than the company’s handling of their complaint.” In response, the CFPB states that the Consumer Survey structure, with questions specific to the company’s response and not the result of the dispute, mitigates this concern. Yet, the Bureau does not provide any evidence to support this finding from their consumer testing to dismiss these comments. Additionally, the CFPB does not address issues specific to the credit reporting industry where the Portal complaints may be attributed to CRAs by the Bureau, but actually concern information supplied to CRAs by data furnishers. An accuracy dispute is not an actual complaint about the CRA’s conduct but rather an inquiry into whether a data furnisher appropriately reported the status of an account. Without major changes to the Portal, Consumer Survey information will yield misleading information about a CRA’s record in responding to complaints.

The CFPB notes, in its submission to OMB, that it plans to ask consumers to respond to the following three statements with one of the following options - “Strongly disagree,” “Disagree,” “Neither agree nor disagree,” “Agree,” “Strongly agree,” and “Not applicable.”

Statement 1: “The company addressed all of my issues.”

Statement 2: “I understood the company’s response to my complaint.”

Statement 3: “The company did what it said it would do with my complaint.”

The CFPB notes that the consumer will then be asked to rate the company’s overall response from 1 to 5 stars and then be given the opportunity to provide additional feedback about the company’s response in narrative form of up to 1,000 characters.

CDIA believes that as written, the first statement is overly broad and does not address a company’s handling of the specific complaint at issue. If the CFPB is going to include this statement as part of its Consumer Survey on the complaint portal, CDIA requests that the Bureau revise the first statement to say, “The company addressed all of the issues raised in my complaint.” This first statement should be revised to read consistently with the other two statements in order address the Bureau’s focus on the company’s handling of a consumer complaint. Further, because consumers may raise

multiple issues within a single complaint, the Bureau should give consumers the opportunity to note when the company has addressed some if not all of their issues.

In addition, should the Bureau move forward with its effort to publish the results of the Consumer Surveys, the results must be contextualized given the unique structure of the credit reporting industry. Given that the stated purpose of the Bureau's Consumer Survey is to measure the handling of "complaints" and not whether a CRA complied with its dispute handling obligations under the FCRA, the CFPB should not incorporate into its reports any Consumer Survey information about a CRA's handling of accuracy disputes. Furthermore, to ensure that the information is not misleading, the Bureau should include an explanatory note stating that satisfaction results relating to the credit bureaus may reflect issues with data furnishers and not with the CRAs' handling of accuracy disputes.

#### **IV. Conclusion**

Thank you for the opportunity to comment. CDIA and our members look forward to continuing to work with the CFPB to improve the effectiveness and accuracy of the consumer complaint portal, particularly as it relates to the credit reporting industry. Please contact CDIA if you have any questions or need additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "E. Ellman", with a long horizontal flourish extending to the right.

Eric J. Ellman  
Interim President and Chief Executive Officer  
Senior Vice President, Public Policy & Legal Affairs