basis if such asset, or group of assets, was sold or otherwise disposed of in an orderly transaction.

(2) The term “most recent financial statement available” means a covered financial company’s:

(i) Most recent financial statement filed with the Securities and Exchange Commission or any other regulatory body;

(ii) Most recent financial statement audited by an independent CPA firm; or

(iii) Other available financial statements. The FDIC and the Treasury will jointly determine the most pertinent of the above financial statements, taking into consideration the timeliness and reliability of the statements being considered.

(3) The term “obligation” means, with respect to any covered financial company:

(i) Any guarantee issued by the FDIC on behalf of the covered financial company;

(ii) Any amount borrowed pursuant to section 210(n)(5)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and

(iii) Any other obligation with respect to the covered financial company for which the FDIC has a direct or contingent liability to pay any amount.

(4) The term “total consolidated assets of each covered financial company that are available for repayment” means the difference between:

(i) The total assets of the covered financial company on a consolidated basis that are available for liquidation during the operation of the receivership; and

(ii) To the extent included in (b)(4)(i) of this section, all assets that are separated from, or made unavailable to, the covered financial company by a statutory or regulatory barrier that prevents the covered financial company from possessing or selling assets and using the proceeds from the sale of such assets.

Department of the Treasury

Authority and Issuance

For the reasons set forth in the preamble, Treasury amends Title 31, Chapter I of the Code of Federal Regulations by adding part 149 to read as follows:

PART 149—CALCULATION OF MAXIMUM OBLIGATION LIMITATION

Sec.

149.1 Authority and purpose.

149.2 Definitions.

149.3 Maximum obligation limitation.


§ 149.1 Authority and purpose.

(a) Authority. This part is issued by the Federal Deposit Insurance Corporation (FDIC) and the Secretary of the Department of the Treasury (Treasury) under section 210(n)(7) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Act).

(b) Purpose. The purpose of this part is to issue implementing regulations as required by the Act. The part governs the calculation of the maximum obligation limitation which limits the aggregate amount of outstanding obligations the FDIC may issue or incur in connection with the orderly liquidation of a covered financial company.

§ 149.2 Definitions.

As used in this part:

Fair value. The term “fair value” means the expected total aggregate value of each asset, or group of assets that are managed within a portfolio of a covered financial company on a consolidated basis if such asset, or group of assets, was sold or otherwise disposed of in an orderly transaction.

Most recent financial statement available. (1) The term “most recent financial statement available” means a covered financial company’s—

(i) Most recent financial statement filed with the Securities and Exchange Commission or any other regulatory body;

(ii) Most recent financial statement audited by an independent CPA firm; or

(iii) Other available financial statements.

(2) The FDIC and the Treasury will jointly determine the most pertinent of the above financial statements, taking into consideration the timeliness and reliability of the statements being considered.

Obligation. The term “obligation” means, with respect to any covered financial company—

(1) Any guarantee issued by the FDIC on behalf of the covered financial company;

(2) Any amount borrowed pursuant to section 210(n)(5)(A) of the Act; and

(3) Any other obligation with respect to the covered financial company for which the FDIC has a direct or contingent liability to pay any amount.

Total consolidated assets of each covered financial company that are available for repayment. The term “total consolidated assets of each covered financial company that are available for repayment” means the difference between:

(1) The total assets of the covered financial company on a consolidated basis that are available for liquidation during the operation of the receivership; and

(2) To the extent included in paragraph (1) of this definition, all assets that are separated from, or made unavailable to, the covered financial company by a statutory or regulatory barrier that prevents the covered financial company from possessing or selling assets and using the proceeds from the sale of such assets.

§ 149.3 Maximum obligation limitation.

The FDIC shall not, in connection with the orderly liquidation of a covered financial company, issue or incur any obligation, if, after issuing or incurring the obligation, the aggregate amount of such obligations outstanding for each covered financial company would exceed—

(a) An amount that is equal to 10 percent of the total consolidated assets of the covered financial company, based on the most recent financial statement available, during the 30-day period immediately following the date of appointment of the FDIC as receiver (or a shorter time period if the FDIC has calculated the amount described under paragraph (b) of this section); and

(b) The amount that is equal to 90 percent of the fair value of the total consolidated assets of each covered financial company that are available for repayment, after the time period described in paragraph (a) of this section.

Dated at Washington, DC, this 23rd day of April 2012.

By order of the Board of Directors.

Robert E. Feldman,
Executive Secretary.


By the Department of the Treasury.

Rebecca H. Ewing,
Executive Secretary.


[F R Doc. 2012–15310 Filed 6–21–12; 8:45 am]

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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

[Docket No. CPB–2011–0040]

Disclosure of Certain Credit Card Complaint Data

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of final policy statement.

SUMMARY: The Bureau of Consumer Financial Protection (the “Bureau”) is
I. Overview

A. Final Policy Statement

Under the final Policy Statement, the Bureau plans to disclose data associated with credit card complaints in two ways. These disclosures are intended to help provide consumers with “timely and understandable information to make responsible decisions about financial transactions” and to enhance the credit card market’s ability to “operate transparently and efficiently.” First, the Bureau plans to provide public access to an electronic database containing certain fields for each unique complaint. As discussed further below, the Bureau has adjusted its plans to include certain fields in the public database in response to comments on the proposed Policy Statement published by the Bureau on December 8, 2011. The public database will initially include data from credit card complaints submitted on or after June 1, 2012.

B. Concurrent Notice

Concurrent with the publication of this Policy Statement, the Bureau is publishing a notice in the Federal Register seeking comment on a proposed extension of the disclosure system described in the Policy Statement to complaints about consumer financial products other than credit cards (the “Concurrent Notice”). In addition to credit cards, the Bureau’s complaint-handling system (the “Complaint System”) now encompasses mortgages, bank products such as checking and savings accounts, and certain other consumer loans. The Bureau anticipates that the Complaint System will accept complaints about all consumer financial products and services within the Bureau’s jurisdiction by the end of 2012. Comments in response to the Concurrent Notice are due by July 19, 2012.

II. Background

A. Complaint System

In the proposed Policy Statement, the Bureau generally described how the Office of Consumer Response (“Consumer Response”) accepts and processes credit card complaints. The Bureau has since revised the Complaint System in a number of respects, in part as a result of the comments received on the proposed Policy Statement. For example, the Bureau has adjusted the permissible entries for the “issuer response category” field, as summarized in part III.D.5.

B. Overview of Public Comments

The Bureau received seventeen sets of comments in response to the proposed Policy Statement. In some cases, several organizations submitted a single comment letter. Eleven industry groups submitted a total of nine comment letters. One credit union also commented. One financial reform organization, Americans for Financial Reform (“AFR”), submitted a single set of comments on behalf of twenty-one consumer, civil rights, privacy, and open government groups. Two privacy groups that joined that set of comments also submitted their own comments, as pursuant to a request made under the Freedom of Information Act, 5 U.S.C. 552.

Almost all comments concerned the public database component of the proposed Policy Statement. Industry commenters generally opposed the public database. Although they endorsed the intended goals of the public database, many industry commenters asserted that the database would confuse consumers and unfairly damage the reputation of credit card issuers. The disclosure of issuer names in the public database was a particular focus of these comments. Some industry commenters further asserted that the Bureau lacks legal authority to disclose individual-level complaint data.

Consumer groups and consumers also endorsed the goals underlying the public database proposal. The AFR submission supported the public database, and urged the Bureau to include all narrative fields, subject to certain privacy protections. The two privacy groups that joined the AFR submission also offered their own written comments advising the Bureau to be mindful of the privacy risks associated with broader disclosure.

Many submissions included comments directed to the Bureau’s process for handling credit card complaints. To the extent that these comments also relate to the Policy Statement, the Bureau addresses them below. To the extent that they relate only to the Complaint System and not to any associated impact on disclosure, the Bureau does not address them in this final Policy Statement. In response to such feedback, however, Consumer Response has and will continue to refine and improve its Complaint System over time.

III. Summary of Comments Received, Bureau Response, and Resulting Policy Statement Changes

This section provides a summary of the comments received by subject matter. It also summarizes the Bureau’s assessment of the comments by subject matter and, where applicable, describes
the resulting changes that the Bureau is making in the final Policy Statement. All such changes concern the public database. There are no changes to the proposed policy for the Bureau to issue its own complaint data reports.

A. The Policy Statement Process

One trade association commented that the Bureau should engage in a public rulemaking under the Administrative Procedures Act to provide the public with an opportunity to comment on all aspects of the initiative. One issue that the rulemaking should address, according to this commenter, is the link between the availability of complaint information and informed consumer decision-making.

The Bureau is committed to transparency and to robust engagement with the public regarding its actions. Although not required by law, the Bureau solicited and received public comment on the proposed Policy Statement. The Bureau received substantive feedback expressing a range of viewpoints, and it has carefully considered the comments received, as described in detail below. As stated in the final Policy Statement, the Bureau plans to study the effectiveness of its policy on an ongoing basis, and plans to continue to engage with the public, including regulated entities, as it assesses the efficacy of its complaint disclosure policy.

B. Legal Authority for Public Database

Several trade associations commented that the Dodd-Frank Act does not authorize the Bureau to create the proposed public consumer complaint. The associations make two arguments.

First, they contend that the Dodd-Frank Act expressly delineates the circumstances and manner in which the Bureau may collect, resolve, and share consumer complaints with others. The public database is not included. By negative inference, therefore, they argue that the Dodd-Frank Act does not authorize the database.

Second, the trade associations argue that the Dodd-Frank Act’s restrictions on publishing confidential information block the implementation of the proposed public database. The comment that Section 1022(c) of the Dodd-Frank Act requires the Bureau to establish “reasonable procedures to provide a timely response to consumers” to complaints against, or inquiries concerning, a covered person, does not authorize the creation or publication of a public consumer complaint database that, instead of aiding complainants, enables data mining and market research.

The associations also contend that, by directing the Bureau in Section 1034(d) to enter into agreements with other affected federal agencies to facilitate the joint resolution of complaints, Congress intended for the Bureau to handle consumer complaints in accordance with the procedures of these other agencies, which publish only aggregated complaint data. Second, the associations argue that the Dodd-Frank Act’s restrictions on publishing confidential information block the implementation of the proposed public database. They contend that Section 1022(c), which authorizes the Bureau to “monitor for risks to consumers in the offering or provision of consumer financial products or services,” does not authorize the Bureau to share confidential consumer information that is validated, reliable, and objective—standards that the associations argue are not met by the complaint data, including, in particular, complaint narratives.

The Bureau disagrees with these arguments. First, the Dodd-Frank Act expressly authorizes the disclosure addressed in the Policy Statement, 13 to make public such information * * * as is in the public interest,” only permits the Bureau to make the resulting information public through aggregate reporting “designed to protect confidential information.” 14 By using non-aggregated formats, the associations contend, the proposed database risks compromising the confidentiality of individual complaint information.

One commenter also argues that Section 1022(c)(4) prohibits the Bureau from gathering or analyzing the personally identifiable financial information of consumers. The commenter asserts that zip codes and card issuer names constitute personally identifiable information that the Bureau may not collect or share. The same commenter cites Section 1022(c)(8), which requires the Bureau, in “collecting information from any person, publicly releasing information held by the Bureau, or requiring covered persons to publicly report information,” to “take steps to ensure that proprietary, personal, or confidential consumer information protected that is protected from public disclosure under Section 552(b) or 552a of title 5, United States Code, or any other provision of law, is not made public under this title.” 15 The commenter argues that this provision requires the Bureau to keep consumer complaint information confidential to the extent that any law, including but not limited to the Freedom of Information Act (“FOIA”) or the Privacy Act, requires such confidentiality. The commenter argues that credit card issuer narratives and complaint rates by zip codes constitute trade secrets of credit card issuers that the Trade Secrets Act, 18 U.S.C. 1905, prohibits the Bureau from disclosing.

The Bureau disagrees with these arguments. First, the Dodd-Frank Act expressly authorizes the disclosure addressed in the Policy Statement, 13 to make public such information * * * as is in the public interest,” only permits the Bureau to make the resulting information public through aggregate reporting “designed to protect confidential information.” 14 By using non-aggregated formats, the associations contend, the proposed database risks compromising the confidentiality of individual complaint information.

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The Bureau disagrees with these arguments. First, the Dodd-Frank Act expressly authorizes the disclosure addressed in the Policy Statement,
which cannot, therefore, be barred by negative inference. Second, there are no applicable confidentiality restrictions that apply to the data that will be disclosed in the public database.

Section 1022 of the Dodd-Frank Act permits the Bureau, in support of its rulemaking “and other functions,” to monitor and assess risks to consumers in the offering or provision of consumer financial products or services. In monitoring and assessing such risks, this provision authorizes the Bureau to gather information regarding the “business conduct” of covered persons and service providers. The provision expressly states that “consumer complaints” are among the types of information that the Bureau may gather for this purpose.

Not only does section 1022 permit the Bureau to gather or compile consumer complaint information, it also contemplates that the Bureau may disclose such information to the public under certain circumstances. Section 1022(c)(3)(B) states that the Bureau “may make public such information obtained by the Bureau under this section as is in the public interest, through aggregated reports or other appropriate formats designed to protect confidential information.” Although commenters focus on the fact that this subparagraph permits the Bureau to disclose consumer complaint information in aggregated reports, they ignore the fact that the subparagraph also permits the Bureau to disclose such information in a non-aggregated format as long as it protects the confidentiality of certain information in accordance with the other provisions of Section 1022(c).

Nothing in Section 1013(b)(3) suggests that Congress, in describing one database containing consumer complaint information and the manner in which its contents are to be reported to Congress or shared with other Federal or State agencies, sought to limit the Bureau’s authority to disclose information to the public. Likewise, there is no reason to interpret Section 1034, which requires the Bureau to establish procedures to provide a timely “response” to consumers to their complaints, to mean that the Bureau may only disclose consumer complaint information publicly to complainants, and even then, only to the extent necessary to “respond” to their complaints.

The Bureau also disagrees that subpart D of the Bureau’s Interim Final Rules on the Disclosure of Records and Information, which the Bureau promulgated pursuant to section 1022(c)(6), precludes the Bureau from disclosing publicly any information contained within a consumer complaint database. Commenters are correct to point out that subpart D generally restricts the authority of the Bureau to publicly disclose “confidential information,” including “confidential consumer complaint information.” However, such disclosure restrictions only apply to the extent that consumer complaint information is confidential in nature. The Bureau’s regulations define “confidential consumer complaint information” to mean “information received or generated by the [Bureau], pursuant to [sections 1013 and 1034 of the Dodd-Frank Act], that comprises or documents consumer complaints or inquiries concerning financial institutions or consumer financial products and services and responses thereto, to the extent that such information is exempt from disclosure pursuant to 5 U.S.C. 552(b) [the FOIA].” Because the information to be disclosed in the public database is not exempt from disclosure under the FOIA, as discussed in more detail in part III.D.1.a below, such information does not constitute “confidential consumer complaint information.” As a result, there is no applicable rule that precludes the Bureau from making such information available to the public.

C. The Impact of the Public Database on Consumers

Consumer groups, privacy groups, and consumers commented that the public database would help consumers make more informed decisions and avoid “bad actors.” They also noted that consumers can draw their own conclusions from the public database. Several noted that data do not need to be fully verified or random to be of some use to outside parties. For example, the data might alert outside researchers and consumers to potentially harmful trends.

Industry commenters, by contrast, asserted that the public database would mislead consumers because its contents would be unverified, unrepresentative, lacking in context, and open to manipulation. Each of these general assertions is addressed below. Section D addresses industry comments that disclosure of particular data fields—issuer name, zip code, credit card complaint type, and discrimination fields—would be especially inappropriate or misleading.

1. Verification

Several trade associations commented that the Bureau should not disclose unverified data. Some argued that the Bureau should exclude complaints lacking factual foundation or legal merit. Others stated that consumer complaints were primarily statements of opinion, and not subject to objective verification. Several also argued that complaints resolved without any showing of company fault should be excluded as lacking foundation. One trade association stated that releasing unverified complaint data deprives issuers of due process. Privacy and consumer groups commented that the lack of verification presented only minimal risks to issuers because there are controls to ensure that complaints must come from actual cardholders, and issuers are given adequate time to dispute their identification.

The Bureau agrees with industry commenters that its complaint process does not provide for across the board verification of claims made in complaints. However, as it has previously indicated, the Bureau plans to specifically disclaim the accuracy of complaints when the data are made available to consumers. Outside of its own affirmative data reporting, the Bureau will allow the marketplace of ideas to determine what the data show.

While the Bureau does not validate the factual allegations of complaints, it does maintain significant controls to authenticate complaints. Issuer names are verified using card numbers and by other procedures. Each complaint is checked to ensure that it is submitted by the identified consumer or from his or her specifically authorized representative. Each submission is reviewed to determine if it is a complaint, an inquiry, or feedback about the Bureau. Submissions in the latter two categories are not forwarded to the identified company for handling as complaints. Further, each complaint is checked to prevent duplicate submissions by a consumer who has already filed with the Bureau a complaint on the same issue.

Complaints are only forwarded to companies when they contain all the required fields, including the complaint narrative, the consumer’s narrative statement of his or her fair resolution, the consumer’s contact information, and
the name of a card issuer within the scope of Section 1025 of the Dodd-Frank Act.

2. Representativeness

Several trade associations commented that it is inappropriate for the Bureau to publish data that is not randomly sourced. Non-random complaints, they contend, cannot provide consumers with useful information. One trade association commented that academics and researchers would not use such unreliable data.

The Bureau will inform consumers and any other public database users that the data reflect only the credit card complaints that consumers submit to the Bureau. Even though similar limitations apply to other public complaint databases, however, experience shows that outside parties have, in fact, made reasonable use of non-random complaint databases disclosed by other agencies. The trade associations did not offer any examples of misuse of currently available non-random data sets or challenge the utility of the examples cited by the Bureau. In addition to those examples, the Bureau notes that two outside companies have recently repackaged for consumer use drug and medical device data mined from the AERS and MAUDE public complaint databases maintained by the Food and Drug Administration.24

The trade associations also fail to acknowledge that consumers currently make credit card choices with little or no knowledge of consumer complaints. It is true that more robust data sets might, in theory, be assembled. Consumers would be better informed if the public database included complaint data from issuers’ internal processes or even surveys of complainants and non-complainants. But that does not mean that less complete data sets worsen the status quo. So long as consumers are aware of the limitations of the data, there is little or no reason to believe that complaint data should make the market less informed and transparent.

Industry comments on representativeness also recognized that the Bureau is expressly authorized to use complaint data to set priorities in its supervision process. Some industry comments also recognized that the data could play a role with respect to other statutory obligations, such as fair lending enforcement or market monitoring. If complaint data can provide the Bureau with meaningful information, then logically they may also prove useful to consumers and other reviewers. If the data lacked such potential, Congress would not have pointed to public complaints as a basis to set important Bureau priorities.25 Furthermore, credit card issuers have told Consumer Response on numerous occasions that they learn valuable information from consumer complaints. If the data inform issuers, they have the potential to inform consumers as well.

3. Context

Several trade associations commented that Bureau disclaimers about the lack of verification or representativeness will not effectively warn consumers about the limitations of the public database. The associations expressed concern that consumers and the media will inevitably see or portray the information as being endorsed by the Bureau, notwithstanding the Bureau’s disclaimers. In addition, one trade group commented that the marketplace of ideas cannot prevent consumers from being misled by the public database. Another commented that the database fails to distinguish complaints of major and minor significance and that without that context, the data are open to misinterpretation.

The Bureau acknowledges the possibility that some consumers may draw (or be led to erroneous conclusions from the data. That is true, however, for any market data. In addition, the Bureau’s two-part disclosure policy—first, its own affirmative reports of data findings that it believes may inform consumers, and second, a public database that researchers and others can mine for possible data trends—is intended to minimize any consumer confusion about the scope of the Bureau’s own conclusions with respect to the complaint data. The Bureau is open, however, to further suggestions from trade associations, issuers, and other concerned stakeholders on how best to provide additional context for the public database.

4. Manipulation

Several trade associations commented that third parties like debt negotiation companies could use complaint filing as a strategic tool to aid their clients. One trade association commented that outside parties may artificially inflate complaint counts for litigation purposes. Several trade associations claimed that one outside party has filed numerous fraud complaints about a single merchant, allegedly for improper purposes.

The Complaint System has a number of protections against manipulation. For one, the burden of submitting a complaint is not negligible. Consumers must affirm that the information is true to the best of their knowledge and belief. The consumer is asked for a verifiable account number. If none is provided and the consumer is unable to produce verifiable documentation of the account (such as a statement), the complaint is not pursued further. As described further at part III.D.1.b below, when an issuer offers a reasonable basis to challenge its identification, the Bureau does not plan to post the relevant complaint to the public database unless and until the correct issuer is identified. Furthermore, duplicate complaints from the same consumer are consolidated into a single complaint.

The Bureau maintains additional controls after complaints are submitted and issuers are able to alert the Bureau to any suspected manipulation. If issuers find this combined package of controls insufficient in practice, the Bureau will consider suggestions for addressing any problems identified, including enabling an issuer to flag in the public database any complaint entry that the issuer reasonably believes is not submitted in good faith by or on behalf of an individual consumer.

D. The Impact of Specific Public Database Fields on Consumers and Credit Card Issuers

1. Issuer Names
   a. Legal Authority

Several trade associations commented that the Bureau lacks authority to include issuer names in the public database or its own data reporting. The associations argue that the disclosure of this information is prohibited by Section 1022(c)(8), which requires the Bureau to take steps to protect public disclosure confidential propriety information that is exempt from disclosure under the FOIA. Specifically, they argue that the names of issuers are properly subject to Exemption 4 of the FOIA, which permits agencies to withhold trade secrets or confidential commercial information that businesses provide to it, and that the Bureau must, therefore, withhold from publication the names of credit card issuers cited in complaints. Courts generally hold that Exemption 4 applies when the submission of confidential commercial information is required of a business and the disclosure of such information would result in competitive harm to the business or would impair the ability of
an agency to obtain similar information in the future. The associations argue that both of these prongs—competitive harm and impairment—are satisfied with respect to the disclosure of credit card issuer names. They argue that the disclosure of issuer names would make issuers reluctant to respond to consumer complaints and would cause competitive harm if the disclosed complaints unfairly or misleadingly identify them as bad actors.

The Bureau does not agree that issuer names are subject to Exemption 4. As a threshold matter, Exemption 4 does not protect the names of credit card issuers because such information does not constitute “confidential” commercial information. The identities of the credit card issuers who do business with consumers are not typically secrets kept by the credit card issuers. By and large, consumers know this information and report it to the Bureau in their complaints. Even to the extent that the true names of credit card issuers are not known to consumers when they file their complaints, this information typically becomes known to consumers as part of the complaint investigation and resolution process. Information which is in the public domain is not “confidential” and is therefore not subject to Exemption 4.26

Further, even if one assumed that the names of credit card issuers constitute “confidential” commercial information, this information still does not qualify for protection under Exemption 4. To qualify for such protection, information must be likely either: “(1) To impair the Government’s ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.”27 The Bureau concludes that the information at issue does not satisfy either prong of this test.

First, the proposed disclosure of credit card issuer names is unlikely to impair the Bureau’s ability to obtain similar information in the future. As noted above, it is usually consumers who provide the Bureau with the names of credit card issuers to which their complaints pertain. The decision by

34 See CNA Fin. Corp. v. Donovan, 830 F.2d 1132, 1154 (D.C. Cir. 1987) (“To the extent that any data requested in the public domain, the submitter is unable to make any claim to confidentiality—a sine qua non of Exemption 4”)(italics in original); Northwest Coal. for Alt. to Pesticides v. Browner, 941 F. Supp. 197, 202 (D.D.C. 1996) (“If the information at issue is publicly available through other sources, no showing of competitive harm can be made.”).


rationale to protect the identities of banks named in consumer complaints:

Irrespective of the fact that consumers provided the information to defendant and that disclosure of the identities of the banks against which complaints were made probably would not undermine public confidence, the portion of the computer printout to which plaintiff seeks access falls under exemption 8 because this information is directly derived from and contained in * * * examination reports * * * prepared by, * * * or for the use of defendant. The uncontroverted evidence shows that the bank charter numbers in the computer printout are contained in examination reports that fall within the meaning of Exemption 8 because the bank charter numbers are matters contained in larger reports, reflecting all consumer complaints against banks, which defendant forwards to its District offices. These larger reports are ‘examination reports’ within the meaning of Exemption 8 because they analyze and summarize information concerning consumer complaints.37

Unlike the complaint information at issue in Consumers Union, however, the information at issue here is not part of an examination report. Also, it is not presented within the context of a Bureau investigation of issuer conduct. Rather, the complaints exist in raw form as part of a database intended for public use and study. Accordingly, the Bureau does not believe that Consumers Union is analogous.

b. Other Comments on Issuer Name Disclosure

Consumer groups commented that the disclosure of issuer names represents a significant aspect of the Bureau’s policy. They noted that other complaint databases that disclose the identity of specific companies—like NHTSA—have created pressure on companies to improve whatever metrics are measured by the public database. As a result, these groups expect the Bureau’s public database to cause issuers to compete more effectively on customer service and product quality. Together with privacy and open government groups, consumer groups commented that outside groups can use the issuer data to help consumers make more informed decisions about credit card use, a factor which no credit card number is available to the consumer, such as declined application complaints. For many complaints, credit card account numbers provide a reliable method to verify that a complaint is from a cardholder and that the issuer is properly identified. No issuer will be associated with a complaint if it offers a reasonable basis to dispute a commercial relationship with the consumer. Currently, the Complaint System provides issuers 15 days to contest issuer identity, which experience has shown to be sufficient. As noted earlier, there are also system controls to avoid double-counting duplicate complaints from the same consumer.

For many complaints, credit card account numbers provide a reliable method to verify the identity of the issuer. The Bureau agrees that some complaints may identify the issuer as the merchant or other partner associated with a co-brand or private label card. In such cases, the account number provided will not match to the name provided. As a result, the Bureau confirms the account number with the consumer, then substitutes the name of the correct issuer. The merchant or other partner is not named. The Bureau also recognizes that there are cases in which no credit card number is available to the consumer, such as declined application complaints. In these cases, the Bureau works directly with the consumer to identify the correct issuer from issuer correspondence. If the correct issuer cannot be identified in this manner, the case will be closed and no data added to the public database.

The Bureau acknowledges, as it did in connection with the proposed Policy Statement, that there are significantly varying views among stakeholders about whether this kind of data is useful to consumers. However, the Bureau continues to believe that this disclosure may allow researchers to inform consumers about potentially significant trends and patterns in the data. In addition, given that companies have made competitive use of other public databases, the Bureau anticipates that disclosure has the potential to sharpen competition over product quality and customer service.

Furthermore, as several trade associations conceded and as previously noted above, Congress itself recognized that the Bureau may properly use consumer complaint data to set supervision, enforcement, and market monitoring priorities.38 If the Bureau is able to use complaint data in this way, there is good reason to allow consumers and outside researchers to weigh the importance of complaint data in their own research, analysis, and decision-making. Outside review of this kind will also help ensure that the Bureau remains accountable for tackling the complaints that it receives.

Finally, the Bureau notes the general acceptance by consumer and industry groups that normalization can improve data utility. Thus, although trade associations uniformly opposed the release of issuer names in the public database, many recognized the importance of normalizing the data that the Bureau decides to release. Only a minority of trade groups suggested that normalization was not workable and urged that issuer names not be disclosed for this reason as well. One association suggested that normalization cover open accounts, closed accounts with a balance, accounts without a balance that closed within the last year, and prospective accounts declined within the last year. Consumer groups also recognized the importance of normalizing data, but none offered any indication of the appropriate metrics for market share. The Bureau agrees with industry commenters that, if possible, normalization should make some account for closed accounts with a balance and declined applications because these may generate complaints. The Bureau intends to work further with commenters on specific normalization.

37 Id. at 2–3.

proposals, and welcomes further operational suggestions on the point.

2. Zip Codes

Consumer groups commented that the Bureau should add additional location fields, such as city and census tract. Several trade associations, however, commented that zip code disclosure created risks to privacy because zip codes can be combined with other data to identify consumers, particularly in sparsely-populated rural zip codes. Trade associations also commented that zip code data may be misunderstood to imply discriminatory conduct, leading to unfounded allegations of discrimination.

The Bureau is mindful of the privacy implications of zip code disclosure. As a result, it will limit zip code disclosures to 5 digits, even if a consumer provides the full 9-digit zip code. Furthermore, as it analyzes narrative disclosure, the Bureau will account for zip code disclosures in assessing privacy risks. The Bureau will also analyze whether there are ways to disclose more granular location fields without creating privacy risks, as suggested by some commenters.

The Bureau may, as one trade group noted, investigate zip code data for indications of “improper trends.” The Bureau believes that consumers and outside researchers should have the same opportunity.

3. Discrimination

Several trade associations warned against disclosure of any data that consumers submit in the discrimination field of the complaint form. These groups commented that in light of the seriousness of such allegations, the Bureau should not disclose this field unless and until it has investigated the allegations and determined that they have factual support. In support of their position, these commenters note that some consumers who check the discrimination field on the intake form fail to include any allegations of discrimination in the narrative field.

The Bureau is continuing to refine its methods for identifying discrimination allegations from consumers that submit complaints. Accordingly, the Bureau does not plan to disclose discrimination field data in the public database at this time. In the interim, the Bureau will continue to study the conditions, if any, necessary for the appropriate disclosure of such information at the individual complaint level. The Bureau may also report discrimination data at aggregated levels in its own periodic complaint data reports.

4. Type of Credit Card Issue

Trade and consumer groups agreed that the Bureau could improve this data field in several respects. First, a consumer should be able to select several issues for a given complaint. Second, the issue categories should be better explained and differentiated. One trade association also commented that the Bureau should not rely on consumers for this data point.

The Bureau agrees that a consumer should be able to “tag” a complaint as implicating more than one issue. It is working to develop the required functionality. In addition, the Bureau is weighing possible improvements to the issue categories and is considering the extent to which Bureau staff should “tag” complaints as raising certain issues. The Bureau welcomes further input from stakeholders on how to improve the issue categories.

5. Issuer Disposition

Consumer groups commented on the need to include data about the issuer’s response, the consumer’s assessment of that response, and the timing of each of those steps, so that a user of the public database would know how fast complaints are handled and how often an issuer response is disputed. Consumer groups also urged the addition of more resolution-related data categories, such as categories that would explain why a complaint remains unresolved.

Several trade associations commented that the “Closed without relief” issuer response category was not meaningful and should be revised. These groups claimed that the category suggests an inappropriate response even though certain complaints are appropriately closed without any form of relief, such as meritless complaints or complaints that have already been appropriately handled by means of the issuer’s internal complaints process. In addition, there will be complaints appropriately closed with non-monetary relief, which, under the Bureau’s current system, do not meet the monetary criteria for “Closed with relief.” As a result, trade groups expressed concern that resolution rates would be undercounted. On that basis, some trade groups asked the Bureau to restore its prior resolution-related categories: full, partial, and no resolution. Others urged that the Bureau subdivide the “Closed with relief” category into monetary and non-monetary relief subcategories.

In light of these comments, the Bureau has made several changes to the Complaint Systems’ issuer response categories. First, where an issuer provides relief to the consumer, the issuer may categorize the complaint as either “Closed with monetary relief” or “Closed with non-monetary relief.” To qualify for the “Closed with monetary relief” category, the company’s response must provide objective and verifiable monetary relief that is measurable in dollars. To qualify for “Closed with non-monetary relief,” the response must provide the consumer with objective and verifiable relief that does not meet the definition of monetary relief. These categories reduce any risk that reviewers fail to accord appropriate significance to cases that issuers close with non-monetary relief. Second, the Bureau has added a “Closed with explanation” response category, which may be used when the issuer believes that the complaint does not merit substantive relief, and instead provides a full explanation to that effect to the consumer. This category recognizes that in some instances, a thorough explanation will serve to resolve the consumer’s complaint. At the same time, it allows reviewers and consumers to see in more detail how issuers, collectively and separately, resolve the complaints filed against them.

6. Date Fields

Finally, the Bureau agrees with the commenters who urged the inclusion of relevant dates in the public database. Initially, the Bureau will be able to include the date that a complaint is sent to the Bureau and the date that the Bureau forwards it to the relevant company. The Bureau is currently developing the technical ability to publish other date fields including the date that a company responds. When this is feasible, the Bureau plans to include additional date fields in the public database.

Consumer Response has provided detailed guidance to institutions participating in the Complaint System regarding these changes. Institutions should not rely on the summary description provided herein.

If the company provides no substantive or explanatory response, it must designate the complaint as “Closed.” In conjunction with the “Closed with explanation” category, this residual category differentiates issuers that—having opted against substantive relief—choose not to explain their conduct to consumers.

There may be a lag between the two dates in part because, as noted above, consumers do not always submit complaints with sufficient information. In addition, some complaints are received via channels that trigger additional processing steps at the Bureau. For example, a Web-based complaint will move to the relevant company faster than a hard-copy complaint received from another agency that must be input into the Bureau’s Web-based system.
E. Potential Impacts of Undisclosed Fields

The Bureau received a number of comments about data fields that the proposed Policy Statement did not list for disclosure in the public database. The Bureau is not shifting any of these fields into the disclosed category in the final Policy Statement, though several fields remain under assessment for potential inclusion at a later date.

1. Consumer Narratives

The issue of disclosing consumer narratives generated the most comments. Each consumer comment letter submitted by OMB Watch requested access to narratives “to help me make better financial decisions and avoid bad actors.” Consumer, civil rights, open government, and privacy groups uniformly supported disclosure on an opt-in basis, though several fields remain under assessment for potential inclusion at a later date.

Trade groups and industry commenters uniformly opposed disclosure of consumer narratives. Several suggested that if the Bureau resolved to disclose narratives, it might inadvertently disclose personally identifiable information, with potentially significant consequences to the affected individuals. These commenters also argued that narrative disclosure might undermine the Bureau’s mission to the extent that consumers, fearing potential disclosure of their personal financial information, became reluctant to file complaints. Some industry commenters argued against narrative opt-ins or opt-outs, claiming that consumers would not take time to read them or to understand the consequences of their choices. One privacy group also cautioned against the use of opt-in or opt-out approaches on the grounds that consumers do not generally understand them and will usually select the default option, undermining the notion that a consumer has thereby “consented” to publication. As a result, the privacy group urged that the Bureau explore the use of data agreements, whereby users could have access to select narratives subject to a contractual agreement not to attempt re-identification.

While acknowledging the general lack of consensus in this area, the Bureau notes that almost all commenters agreed that the privacy risks of narrative disclosure must be carefully addressed if narrative disclosure is to take place. Accordingly, the Bureau will not publish narrative data until such time as the privacy risks of doing so have been carefully and fully addressed. In addition to assessing the feasibility of redacting personally identifiable information (“PII”) and other re-identifying narrative information, by algorithmic and/or manual methods, the Bureau will carefully consider whether there are ways to give submitting consumers a meaningful choice of narrative disclosure options.

2. Responsive Issuer Narratives

Consumer groups argued that issuers should have the same ability as consumers to offer their responsive narratives for either public disclosure or private communication to the consumer. According to these commenters, this mechanism would protect consumer privacy, allow for effective communication between consumers and issuers, and permit issuers to respond publicly to public complaint narratives. Trade associations disagreed, arguing that the Leach-Billey Act prohibits them from publicly disclosing any PII about their customers. In light of the Bureau’s current disclosure position on consumer narratives, however, the Bureau is not resolving this issue at this point.

F. Addition of New Data Fields

Several consumer groups requested the Bureau to add new data fields for collection and disclosure via the public database. One group suggested that the database identify the specific card product, not the issuer alone. As noted, several groups urged that location data be provided at the city or census tract level to help identify discriminatory practices. To that same end, several groups urged the collection of demographic data on a voluntary basis.

The Bureau is open to the inclusion of additional data fields and will continue to work with external stakeholders to address the value of adding such fields. The Bureau notes, however, that additional data categories will logically fall into one of two groups, each of which implicates different policy concerns and trade-offs. First, the Bureau can disclose new data fields by adding them to the intake form for consumers to complete. These fields impose additional burden on the consumer and may make the submission of a complaint that much less likely. Second, the Bureau can derive additional data fields from a complaint submitted on the existing intake form. Thus, the Bureau could tag complaints by issue or by other criteria. New fields of this type would not impose a burden on consumers, but they would impose an additional burden on the Complaint System and the Bureau’s resources.

G. When Complaint Data Will Be Added to the Public Database

One consumer group commented that data should be uploaded 10 days after the submission of a complaint. This group also urged that the issuer be required to respond substantively to the complaint within that same 10-day window. Several trade associations, however, noted that the complaint process may allow up to 60 days for a substantive response and, on that basis, argued that data for a given complaint should not be uploaded until the 60-day period has run. Finally, one privacy group endorsed the proposed 30-day lag between a consumer submitting a complaint and the Bureau adding the applicable data to the public database. The Bureau’s rationale for the 30-day lag was to ensure that issuers have
sufficient time to determine whether they are the identified issuer before any data about the complaint is disclosed. Experience shows, however, that issuers do not need more than 15 days from their receipt of the complaint to make this determination. As a result, the Bureau proposes to revise the posting schedule. Under the revised approach, the Bureau will add field data subject to disclosure to the public database once the issuer has made a timely response within the 15-day window ("Closed with monetary relief," "Closed with non-monetary relief," "Closed with explanation," "Closed" or "In progress") or has failed to make any response within 15 days. This means that almost all complaints will be subject to posting at or before the 15-day mark, improving the timeliness of data in the public database. However, if the company can make a reasonable showing within the 15 days that the complaint is untimely, the Bureau will not be published unless and until the correct issuer is identified.43

Once data for a given complaint has been posted to the public database, any new data fields for that complaint will be added to the public database as they become available. Thus, if a company makes a late response, its response will be included in the public database, but that response would also show as untimely. The Bureau currently proposes to update the public database once each day, subject to the initial lag period that applies to a given complaint.

H. Posting Data for Complaints Submitted to Other Regulators

One consumer group commented that the public database should include data on complaints that the Bureau forwards to other agencies. This group also commented that the Bureau should encourage other agencies to submit complaints to the same public database.44

The Bureau agrees that the utility of the public database would be improved by the inclusion of as many complaint records as possible. As a result, it is open to other regulators providing parallel complaint data for inclusion in the public database. Until that can be achieved, however, the Bureau does not believe it would be that useful to include referred complaints in the public database. The Bureau would not be able to describe how and when referred complaint was responded to, or whether the consumer accepted or disputed the outcome. In addition, the Bureau would not have verified the existence of a commercial relationship between the company and the consumer.

I. Public Database Tools

Consumer groups recommended a number of particular tools for accessing the public database. One group urged that the tools directly generate ranking data. Another argued that the access system should be able to generate percentage shares for one variable in terms of another.

The Bureau will use a data platform to make the complaints publicly available. This platform has a number of important features. First, users can search and filter the data across any of the data fields.45 Second, users can build their own data visualizations, which can then be embedded on other Web sites and shared via social media. These visualizations can stay up-to-date with the Bureau’s public database as it receives new data. This makes it easy for reviewers to disseminate information from the database, reducing transaction costs in the marketplace of ideas. Third, the platform allows users to submit public comments for potential refinements and improvements to the public database. Fourth, the data will be provided in a machine-readable format via an Application Programming Interface. This will allow third parties to build their own tools for leveraging the data, further reducing transaction costs and improving dissemination.

J. Extension of Policy Statement to Complaint Data for Other Consumer Products and Services

The Concurrent Notice published in the Federal Register describes the Bureau’s proposal to extend the Policy Statement to all consumer products and services within the Bureau’s jurisdiction. Responsive comments are due on or before July 19.

IV. Final Policy Statement

The text of the final Policy Statement is as follows:

The purpose of this disclosure is to provide consumers with timely and understandable information about credit cards and to improve the functioning of the credit card market. By enabling more informed decisions about credit card use, the Bureau intends for its complaint data disclosures to improve the transparency and efficiency of the credit card market.

2. Public Access to Data Fields

Data from complaints that consumers submit will be uploaded to a publicly accessible database, as described below.

a. Complaints Included in the Public Database

To be included in the public database, complaints must: (a) Not be duplicative of another complaint at the Bureau from the same consumer; (b) not be a whistleblower complaint; (c) within the scope of the Bureau’s authority under section 1025 of the Consumer Financial Protection Act; and (d) be submitted by a consumer (or his or her authorized representative) with an authenticated commercial relationship with the identified issuer. The public database will initially include data from credit card complaints submitted on or after June 1, 2012.

b. Fields Included in the Public Database

For included complaints, the Bureau will upload to the public database certain non-narrative fields that do not call for PII. The Bureau plans to include these fields:

(i) Bureau-assigned unique ID number;
(ii) Channel of submission to Bureau;
(iii) Date of submission to Bureau;
(iv) Consumer’s 5-digit zip code;
(v) Subject matter;
(vi) Date of submission to company;
(vii) Company name;
(viii) Company response category;
(ix) Whether the company response was timely; and
(x) Whether the consumer disputed the response.46

The consumer generates data for fields (iv), (v), (vii), and (x). The Bureau will authenticate the consumer’s identification of the relevant company

45 For example, the system will enable a user to know the 5-digit zip code distribution of all billing dispute claims, or the complaint-type distribution of all complaints associated with one issuer or one time period.

46 Additional fields remain under consideration for potential inclusion.
3. Regular Bureau Reporting on Complaints

At periodic intervals, the Bureau intends to publish reports about complaint data, which may contain its own analysis of patterns or trends that it identifies in the complaint data. So far, the Bureau has published three reports containing aggregate complaint data.\textsuperscript{50} The Bureau intends for its reporting to provide information that will be valuable to consumers and other market participants. Before determining what reports to issue beyond those relating to its own handling of complaints, the Bureau will study the volume and content of complaints that it has received in a given reporting period for patterns or trends that it is able to discern from the data. If the data will support it, the Bureau intends for its reports to include some standardized metrics that would provide comparisons across reporting periods. The reports will also describe the Bureau’s use of complaint data across the range of its statutory authorities during a reporting period. Because monetary relief data will not be included in the individual-level public database, the Bureau anticipates such data will be included at non-individual levels in its own periodic reporting.

4. Matters for Further Study

Going forward, the Bureau intends to study the effectiveness of its credit card complaint disclosure policy in realizing its stated purposes. In addition, the Bureau will analyze the narrative fields submitted by consumers and issuers. The analysis will assess whether there are practical ways to disclose narrative data in a manner that will improve consumer understanding without undermining privacy interests or the effectiveness of the credit card complaint process and without creating unwarranted reputational injury to issuers.

5. Effect of Policy Statement

This Policy Statement is intended to provide guidance regarding the Bureau’s exercise of discretion to publicly disclose certain data derived from consumer complaints. The Policy Statement does not create or confer any substantive or procedural rights on third parties that could be enforceable in any administrative or civil proceeding.

\textsuperscript{50} See note 2.
One positive response was received from the Town of East Hampton. The other positive commenter, the East Hampton Aviation Association, observed that establishment of Class D airspace would provide greater safety to IFR operations during bad weather conditions. The FAA agrees with this observation.

The negative response comment was received from the Eastern Region Helicopter Council, Inc. (ERHC). ERHC made several observations in its comment letter. The FAA does not agree with this commenter’s observations or conclusion. Each of the commenter’s observations are outlined and addressed below.

The ERHC observed that the purpose of Class D airspace is to protect IFR operations; that the East Hampton tower will not have radar capabilities; that the tower will not have the authority to require helicopters to fly specific arrival/departure flight paths; and that most helicopter operations already comply with the voluntary noise abatement procedures; therefore, the commenter concludes that the airspace changes are not needed.

The FAA does not agree. The protection provided by Class D airspace to IFR operations is not based on the tower’s ability to use radar to provide separation. Rather, the airspace establishes higher weather minima for VFR flights, thus restricting access of VFR flights to the airspace while IFR operations are in progress. The ERHC commented that an unintended consequence of establishing Class D airspace would be increased noise impact from helicopters that are forced to wait outside the Class D airspace during adverse weather conditions.

While the FAA agrees that one-at-a-time Special VFR operations may have the potential for creating adverse effects, separation rules for Special VFR operations in Class D airspace allow for multiple helicopters to operate in Class D airspace at the same time, as long as they operate at a safe distance from IFR operations. Use of these rules requires the helicopter operators to enter into a Letter of Agreement (LOA) with the FAA. Use of these rules will allow the helicopter operators to minimize any delays they may experience due to the airspace, as well as provide a higher level of safety to all operations in adverse weather conditions.

The ERHC observed that one purpose of establishing a tower at East Hampton Airport is for helicopter noise mitigation purposes. The FAA does not agree. The purpose of control towers and Class D airspace is the safe and efficient use of airspace. Class D airspace provides controlled airspace to contain IFR arrival and departure operations. Further, Class D enhances safety by setting VFR weather minima specified in 14 CFR § 91.155 and the communications and other operating requirements in 14 CFR 91.129.

The Proposed Rule included a Class E surface area to be in effect when the control tower is closed. One prerequisite for the establishment of controlled airspace at the surface of an airport is the availability of hourly and special weather observations. Currently this prerequisite is only met during the dates and times when the tower will be operating. Therefore, the Class E surface area has been removed from this rule action.

The current Class E5 Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth (E5) includes two extensions for the support of IFR approach procedures. These approaches published for East Hampton Airport have been modified since this airspace was established and these extensions are no longer required for safe IFR operations. Therefore, they are being removed as part of the rule.

Class D and E airspace designations are published in Paragraphs 5000 and 6005, respectively, of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class D airspace extending upward from the surface to and including 2,500 feet MSL within a 4.8-mile radius of East Hampton Airport, East Hampton, NY. Controlled airspace supports the new airport traffic control tower for continued safety and management of IFR operations at East Hampton Airport. This action also amends Class E airspace extending upward from 700 feet above the surface within a 7.3-mile radius of the airport. The geographic coordinates of the airport are adjusted to be in concert with the FAA’s current aeronautical database.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep the regulations operationally current. Therefore, this regulation: (1) Is not a “significant regulatory action”