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Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street N.W.
Washington, DC 20006

Re. Request for Information Regarding the Consumer Complaint Database: Data Normalization, Docket No. CFPB-2015-0030.

Dear Ms. Jackson:

These comments are submitted on behalf of the U.S. Chamber of Commerce Center for Capital Markets Competitiveness ("CCMC"). The U.S. Chamber of Commerce (the "Chamber") is the world's largest business federation, representing the interests of more than three million companies of every size, sector, and region. The Chamber created the CCMC to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy.

CCMC appreciates the opportunity to comment on the request for information ("RFI") issued by the Consumer Financial Protection Bureau (the "Bureau" or the "CFPB") regarding normalization of the data in the Bureau's complaint database.[1] While we have not argued that the Bureau should cease collecting and resolving consumer complaints, we repeatedly have expressed our concerns about the various ways in which the public-facing complaint database misleads consumers, including by the publication of data that has not been normalized. To date, the Bureau has not attempted to address these concerns; rather, it has supported a "dialogue" on data normalization.[2] This "dialogue" has been an inadequate substitute for fixing the

[1] Request for Information Regarding the Consumer Complaint Database: Data Normalization, 80 Fed. Reg. 37237 (June 30, 2015).
[2] *See id.*

database's flaws. Indeed, the Bureau now even appears to blame its inaction on this "dialogue," suggesting that it did not act because the clamor for data normalization did not "coalesce around a single appropriate normalization metric."[3]

The acknowledgement that the database's raw data can be misleading has not slowed down the Bureau's publication of misleading information that unfairly injures companies' reputations and thereby distorts the marketplace. The Bureau instead has pressed on with its efforts to expand the database in the face of substantial criticism. It has justified its publication of information that it admits is misleading by citing a "marketplace of ideas" that the Bureau has never attempted to measure or even explain.[4] And throughout, the Bureau has treated consumer confusion as an unimportant collateral consequence of its drive to publish complaint data.

The Bureau thus chose to publish first and figure out how to normalize the data later. In taking this path, the Bureau has confused the marketplace and thereby dampened competition. Consumers and businesses deserve better. Normalization of the database—what the Bureau describes as "transform[ing] 'raw' data so that they may be compared in meaningful ways"[5]—was essential from the beginning. As a self-proclaimed data driven agency, the Bureau has a responsibility to select normalization techniques appropriate for the data it publishes. Perfect—or even adequate—normalization may prove impossible to attain, but the Bureau must adopt the best possible normalization approaches if it persists in publishing market shaping complaint data and reports. That said, even optimal processes to normalize the complaint data are just one step towards a less misleading complaint database. The Bureau also should address data manipulation and other infirmities that render the complaint database even more misleading to consumers.

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[3] *Id.* at 37238.

[4] *See, e.g.*, Notice of Final Policy Statement, Disclosure of Certain Credit Card Complaint Data, No. CFPB-2011-0040 ("2012 Policy Statement"), 77 Fed. Reg. 37558, 37562 (June 22, 2012) (relying on purported "marketplace of ideas" to compensate for flaws in database) ("The Bureau acknowledges the possibility that some consumers may draw (or be led to) erroneous conclusions from the data."); *id.* at 37561-37562 (asserting that purported "marketplace of ideas" will compensate for flaws in database); Disclosure of Consumer Complaint Narrative Data, No. CFPB-2014-0016 ("2014 Proposal"), 79 Fed. Reg. 42765, 42767 (July 23, 2014) (asserting importance that consumer complaint narratives be published and consumers' voices be heard even though the Bureau already reviews all complaints); *id.* (suggesting that companies will compete on customer service even though, as the Bureau itself repeatedly has pointed out, consumers in some instances do not choose the financial service company with whom they interact (e.g., in the debt collection context)).

[5] RFI, 80 Fed. Reg. at 37237.

We accordingly write to emphasize four points:

- The failure to normalize complaint data already has caused unjustified reputational harm to financial services companies that work hard to address customers' questions and concerns.

- The Bureau should not publish further summaries of the complaint data before instituting appropriate processes for normalizing that data.

- The Bureau should normalize the data in a way that reflects consumers' use of complaint data and produces a fair picture of customer concerns.

- The Bureau should address further flaws in the complaint database that cause it to mislead consumers and distort the marketplace.

We continue to believe that the Bureau should not publish consumer complaint data that misleads consumers and disrupts existing customer service channels. While we recognize that the Bureau may be unlikely to change its views on those points, we urge the Bureau at least to take all reasonable steps to minimize the misleading effect of the database that it has chosen to publish.

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(1) The Failure To Normalize Complaint Data Already Has Caused Unjustified Reputational Damage To Financial Services Companies That Work Hard To Address Customer Questions And Concerns.

The Bureau's attention to data normalization comes far too late. The Bureau's refusal to normalize complaint data ensured that the complaint database would be misleading from its first publication. Compounding this error, the Bureau never has adopted any meaningful process for verifying the contents of the complaint, but rather has chosen merely to confirm that some commercial relationship exists

between the financial services company and the complainant.[6] The submitted complaints thus are likely to reflect any mistakes or misunderstandings by consumers,[7] and, more worryingly, are subject to manipulation. Even the Bureau has acknowledged that "some consumers may be drawn (or led to) erroneous conclusions" from the database.[8] And the Bureau's reports on the database consistently have confirmed that as many as two thirds of the submissions are not really complaints at all, but are matters that could be closed with no more than an explanation from the company.[9]

The Bureau repeatedly has ignored these obvious problems. As noted above, it has acknowledged the value of data normalization, but doing nothing about it. And with respect to errors and fraud in the database, the Bureau has promised that a "marketplace of ideas" would compensate for these problems without ever presenting evidence that such a marketplace exists or, even if it does, that it somehow can make up for the fundamental unreliability of such data.[10]

Rather than grapple with the obvious infirmities of the database, the Bureau has pressed on in its quest to make the database a central feature of the financial services landscape. This outsized role for the database demands particular care that misleading information does not distort the market. But with each step, the Bureau has increased the undue reputational harm suffered by financial services companies. Having published company names and expanded the range of covered financial products and services, the Bureau then chose to include consumer complaint narratives in the database. The Bureau thus used what Director Cordray has described as a government "megaphone"[11] to amplify unverified and erroneous

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[6] *See, e.g.*, 2012 Policy Statement, 77 Fed. Reg. at 37567.
[7] For example, the Bureau has acknowledged that complaints may be based on "factually incorrect information as a result of, for example, a complainant's misunderstanding or misrecollection of what happened." 2014 Proposal, 79 Fed. Reg. at 42767.
[8] 2012 Policy Statement, 77 Fed. Reg. at 37562.
[9] *See, e.g.*, Consumer Response Annual Report: January 1-December 31, 2013, at 33 (Mar. 2014) (indicating that 68% of complaints are closed with explanation), *available at* http://files.consumerfinance.gov/f/201403_cfpb_consumer-response-annual-report-complaints.pdf.
[10] *See, e.g.*, 2012 Policy Statement at 37561-37562. As we have stressed previously, the Bureau's insistence on injecting itself into even routine customer inquiries has disrupted the relationships between financial services companies and the customers they serve.
[11] *See* Prepared Remarks of CFPB Director Richard Cordray at the Consumer Response Field Hearing (July 16, 2014), *available at* http://www.consumerfinance.gov/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-consumer-response-field-hearing/.

complaints despite the huge reputational harm they threaten (and even though the Bureau could review them regardless whether they had been published).[12] Still not satisfied, the Bureau then sought suggestions on how it might best summarize—and thus further validate—the misleading contents of the database.[13] Disregarding pleas that these summaries not compound the misleading nature of the database and inflict further unfair reputational harm, the Bureau decided to publish a misleading "top-ten" list of the companies identified in the most complaints submitted to the Bureau.[14]

The Bureau's "top-ten" list makes for easy headlines. But the number of press clippings generated by a report is not the measure of responsible agency action. The Bureau did not make the market safer by issuing that misleading report, nor did it make consumers more informed. Instead, it confused consumers by releasing a document that—properly understood—merely confirms what any reasonable observer of the market would expect: that the financial services companies with the most interactions with consumers are named in the most complaints submitted to the Bureau. The Bureau's failure to normalize the data in the complaint database before publishing this misleading list deprived it of value as a guide for consumers.

(2) The Bureau Should Not Publish Further Summaries Of The Complaint Data Before Instituting Appropriate Processes For Normalizing That Data.

Concerns about reputational harm are particularly pronounced with respect to "top-ten" lists or other company level summaries drawn from the complaint database. When drawn from un-normalized data, such summaries mislead consumers about the quality of the experience they would have if they signed up for those companies' services. In short, those summaries will lead consumers to believe that they will have the worst experiences at the companies that they are most likely to patronize. Such summaries reduce consumer confidence, injure hard-earned reputations for customer service, and dampen competition by confusing the marketplace.

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[12] *See* Final Policy Statement, 80 Fed. Reg. 15572 (Mar. 24, 2015).
[13] *See* Request for Information Regarding the Consumer Complaint Database, 80 Fed. Reg. 15583 (Mar. 24, 2015).
[14] *See* 1 CFPB, Monthly Complaint Report (July 2015), *available at* http://files.consumerfinance.gov/f/201507_cfpb_monthly-complaint-report-vol-1.pdf.

The Bureau should stop publishing misleading "top-ten" lists or other summaries that can shift consumer preferences and thus move markets. We would urge the Bureau to make this change on a permanent basis. At a minimum, the Bureau should cease publishing such lists until it has adequately normalized the data and can produce lists that allow the data for different financial services companies to be "compared in meaningful ways."[15] Unless the Bureau does so, these lists will continue to be pointless and unfair.[16] They will punish companies for their success in winning customers and they will leave companies with little recourse given the near impossibility of actually competing on complaint volume with companies that have substantially smaller customer bases. In short, they will distort the marketplace for consumer financial services, creating inefficiencies that ultimately will hurt consumers by raising prices or making it harder to access preferred products.

(3) The Bureau Should Normalize The Data In A Way That Reflects Consumers' Use Of The Database And Produces A Fair Picture Of The Marketplace.

The Bureau should not wait for a consensus to "coalesce" around any particular normalization method before acting. Rather, it should consider the input provided in this comment period and its own understanding of both the financial services market and its own complaint database to identify appropriate normalization approaches. The approach it selects should reflect two basic principles. First, the data should be normalized in a way that responds to the manner in which consumers use the database and Bureau materials derived from it. Second, normalization should present a balanced picture of customer concerns that permits meaningful comparison between financial services companies. As noted above, while such normalization may remain imperfect, that is no excuse for preserving the misleading status quo.

The Bureau should adopt normalization techniques that respond to the different ways in which consumers engage with the complaint database. Some mistakes by third parties, such as newspaper articles or research papers that draw incorrect conclusions from the full data set, may not be curable by data normalization

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[15] *See* RFI, 80 Fed. Reg. at 37237.

[16] This is particularly true of companies that do not have customer relationships with consumers. It is unclear, for example, what purpose is served by ranking credit reporting agencies. Consumers do not choose which credit reporting agency reports on their data and the agencies already are extremely focused on addressing customer complaints (not to mention disputes that are resolved according to the procedures mandated by the Fair Credit Reporting Act).

alone. The Bureau can ensure, however, that a consumer scrolling through the database sees a representative sample of the data. And, of course, the Bureau can ensure that any reports or summaries that it issues use normalized data that do not create misleading impressions of the financial services marketplace. Should normalization not address all the misleading aspects of a particular data set, the Bureau can and should use clear disclosures that duly alert consumers to the flaws in the data.

The Bureau also should adopt a normalization method that addresses the various factors that determine a financial services company's complaint volume. Company size is the most obvious factor that the Bureau should incorporate into its chosen process for normalizing the data it publishes. The Bureau should calibrate any assessment of company size to the market sector in which the company operates, for example, by considering whether customer receipts, the number of customers, the number of accounts, or some other metric is the best measure within that product category. The Bureau, likewise, should recognize that seemingly comparable financial services companies may have complaint rates that vary significantly across product categories, making aggregate comparison across companies difficult or even meaningless. Moreover, the Bureau should adopt a normalization process that recognizes differences in the rates of actual complaints, as opposed to questions or concerns that are resolved by explanations provided to the consumer.

Perfect data normalization may not be possible. Choosing a data normalization method—or methods—most likely will be an ongoing process for the Bureau as it develops and refines its approaches. Further opportunities for public comment should be part of that process. The Bureau should amend its apparent plan not to solicit comments on the normalization methods it selects.[17] The opportunity to comment now is valuable, but the present RFI is unlikely to produce significantly different suggestions than those made in earlier comment periods. In contrast, comments in response to a specific proposed approach are likely to be particularly valuable to the Bureau, whether because they confirm the Bureau's decision or push it to address hard questions.

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[17] *See id.* at 37238-37239.

(4) The Bureau Should Address Further Flaws In The Complaint Database That Cause It To Mislead Consumers And Distort The Marketplace.

Normalization of the complaint data is only one step towards stopping the database from misleading consumers. We repeatedly have detailed other steps that the Bureau must take to place the database on a solid footing and thereby prevent it from distorting the market for consumer financial services. In short, the Bureau must take at least three other basic steps.

- It must adopt meaningful mechanisms to prevent manipulation of the database, such as by a potential litigant who seeks to inflate the number of complaints filed against a particular company. Mere verification of any commercial relationship between the financial services company and the consumer is insufficient to prevent such abuse.

- It must stop publishing complaints that are closed with nothing more than an explanation from the company. These are not complaints at all —they reflect either customer confusion about the underlying financial product or service or a miscomprehension of the purpose of the "complaint" process. Inclusion of such submissions unduly inflates complaint volume and results in the publication of unduly negative accounts of customer experiences.

- It must stop publishing erroneous complaints, such as those in which consumers, for whatever reason, misstate the actions or responses of financial services companies, or in which consumers incorrectly identify the party from whom they seek relief (e.g., filing a complaint against a credit reporting agency based on the acts of a furnisher). Again, the mere verification of a commercial relationship is insufficient to prevent such errors.

- It must explicitly encourage all consumers to work directly with the relevant financial services company before submitting complaints to the CFPB. Doing so will help limit erroneous complaints, ensure that

> consumers retain all their rights under law[18], and help ensure that the CFPB supplements, rather than displaces, companies' existing customer service functions.[19]

We continue to believe that the Bureau should stop both publishing complaint narratives and naming the company that is subject to a complaint. Doing so would not affect the Bureau's performance of the duties actually mandated by Congress; namely, receiving and addressing consumer complaints.[20] Nor would it prevent consumers from having their voices heard because the Bureau and the responding company still would address any submissions. But even assuming that the Bureau continues to insist on publishing complaint information, it should take all reasonable steps to protect consumers from being misled. Confusing consumers does not protect them and the Bureau cannot meet its responsibility to support a competitive consumer financial services market if it systematically imposes reputational harm on market participants.

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The Bureau's RFI comes too late, but late is better than never. The Bureau should not miss this opportunity to normalize its complaint data in a way that makes the database and the reports derived from it less misleading. Effectively normalizing the data will be an important first step towards reducing consumer confusion and rewarding companies for successful customer service programs. But the Bureau should not stop there—it should build from this initial step and finally put its complaint database on a sound footing. Only then will the complaint database begin to serve its stated purpose of informing—not misleading—consumers.

We thank you for your consideration of these comments and would be happy to discuss these issues further with appropriate staff.

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[18] Laws such as the Fair Credit Billing Act and the Fair Credit Reporting Act provide consumers with specific rights relative to disputes they may have.

[19] Some Chamber members confirm that first-look complaints comprise an average of 30% of the total complaints about an individual company.

[20] *See* Pub. L. No. 111-203, §§ 1013(b)(3), 1034, 124 Stat. 1376, 1969, 2008 (2010).

Sincerely,

Jess Sharp