

August 31, 2015

***By electronic delivery to:***  
[www.regulations.gov](http://www.regulations.gov)

Monica Jackson  
Office of the Executive Secretary  
Bureau of Consumer Financial Protection  
1275 First Street, N.E.  
Washington, DC 20002

Re: Request for Information Regarding Consumer Complaint Database; 80 Fed. Reg. 37237  
(June 30, 2015) [Docket No.: CFPB-2015-0030]

Dear Ms. Jackson:

The American Bankers Association (ABA)<sup>1</sup> appreciates the opportunity to submit its comments in response to the Bureau of Consumer Financial Protection's (Bureau) request for information (RFI) regarding "best practices" for normalizing data in the Consumer Complaint Database (Database).<sup>2</sup> According to the RFI, the Bureau solicits "feedback on ways to make raw complaint data more meaningful by supplementing that data with a context more useful for consumers and other market participants."<sup>3</sup> The RFI requests responses to general questions, including: (1) is data normalization a worthwhile exercise; (2) what metrics should be used to normalize the data; (3) can these metrics be reliably obtained; and (4) should the Bureau seek to verify independently any normalizing metric that it might use?<sup>4</sup>

As the Bureau is aware, from the Bureau's initial proposal to establish a public consumer complaint database ABA has raised objections that this effort exceeds the unambiguous statutory mandate of Congress and, in the method of its proposal, contravenes the Administrative Procedure Act's (APA) notice and comment procedures.<sup>5</sup> Rather than authorize the publication of unauthenticated individual consumer complaints, the Dodd-Frank Wall Street Reform and Consumer Protection Act sought to strengthen regulatory oversight of existing complaint management processes to ensure individual customers' concerns were promptly, appropriately, and confidentially addressed.

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<sup>1</sup> The American Bankers Association is the voice of the nation's \$16 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$12 trillion in deposits and extend more than \$8 trillion in loans.

<sup>2</sup> Request for Information Regarding the Consumer Complaint Database: Data Normalization, 80 Fed. Reg. 37237, 37237 (June 30, 2015).

<sup>3</sup> *Id.* at 37238.

<sup>4</sup> *Id.*

<sup>5</sup> See Letter from Frank Keating, President and CEO, American Bankers Association, to Richard Cordray, Director, Bureau of Consumer Financial Protection, 15-16 (Sept. 22, 2014), available at <http://www.aba.com/Advocacy/commentletters/Documents/clComplaintNarrative2014Sept.pdf>.

As we discussed at length in prior comment letters, we believe the Bureau’s decision to publish on its website complaint data and select consumer narratives erodes customer privacy, impairs the confidential nature of the exchange between customer and banker, compromises the supervisory process, and introduces unreliable and misleading information into the market.<sup>6</sup> Instead of fostering informed and responsible consumer choice, the Bureau has become a purveyor of at best unverified, and potentially false, information.

We reiterate these objections and note our disappointment that instead of working to improve the accuracy, integrity, and usefulness of the information reported on the Database, the Bureau has focused its energies on encouraging unverified consumer complaints and attracting public foot traffic to the Database. This effort has come through postings on the social media sites Facebook and Twitter<sup>7</sup> and through publication of a “Monthly Complaint Report” that, paradoxically, publicizes data that have *not* been normalized.<sup>8</sup> Recent comments attributed to Director Cordray indicate that the Bureau has established the Database *primarily* to foster public “goodwill” toward the Bureau.<sup>9</sup>

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<sup>6</sup> *See id.*; Letter from Frank Keating, President and CEO, American Bankers Association, to Richard Cordray, Director, Bureau of Consumer Financial Protection (Apr. 8, 2015) (ABA April 8, 2015, Letter), *available at* <http://www.aba.com/Advocacy/commentletters/Documents/cl-KeatingLetter-ConsumerNarratives2015.pdf>.

<sup>7</sup> A count of Twitter and Facebook postings made by the Bureau revealed that the Bureau has posted 58 times on Twitter and 42 times on Facebook regarding the Consumer Complaint Database or the submission of complaints by consumers. *See, e.g.*, Bureau of Consumer Financial Protection, FACEBOOK (June 19, 2012, 11:42 AM), <https://www.facebook.com/CFPB/posts/252886588148655> (“Introducing the Consumer Complaint Database. . . . [W]e’re opening a data-rich window into consumer financial issues to everyone: developers, policymakers, journalists, academics, industry, and you.”); Bureau of Consumer Financial Protection, FACEBOOK (June 25, 2015, 1:25 PM), <https://www.facebook.com/CFPB/photos/a.313840478660349.85715.141576752553390/958480224196368/?type=1> (“Today, for the first time, we are sharing the story of your complaints with the wider public. Read the story of what’s happening to other individuals across the country in their own words.”); Bureau of Consumer Financial Protection (@CFPB), TWITTER (June 25, 2015, 12:28 PM), <https://twitter.com/CFPB/status/614153117630861314> (“Use our consumer complaint database to search through narratives by keyword, state, or zipcode . . . .”); Bureau of Consumer Financial Protection, FACEBOOK (July 16, 2015, 12:40 PM), <https://www.facebook.com/CFPB/photos/a.313840478660349.85715.141576752553390/967799816597742/?type=1> (“Learn more about what we do with your complaints, and hear stories of others here: . . . .”); Bureau of Consumer Financial Protection, FACEBOOK (July 17, 2015, 11:18 AM), <https://www.facebook.com/CFPB/photos/a.313840478660349.85715.141576752553390/968203986557325/?type=1> (“We take complaints on all the topics listed below. If you are having an issue with any of these financial services, you can submit a complaint here . . . .”); Bureau of Consumer Financial Protection (@CFPB), TWITTER (July 17, 2015, 1:45 PM), <https://twitter.com/CFPB/status/622145037032423424> (“Check out our complaint database for data on companies, products, and even consumer’s [sic] stories: . . . .”).

<sup>8</sup> *See* Bureau of Consumer Financial Protection, MONTHLY COMPLAINT REPORT, Vol. 1 (July 2015), *available at* <http://www.consumerfinance.gov/reports/monthly-complaint-report-vol-1/>. Despite issuing a request for information on how it may provide meaningful context for consumer complaints, the Bureau has issued a “Monthly Complaint Report,” the sole purpose of which appears to be to draw attention to data that have *not* been normalized and call out individual companies. The publication of such a monthly report is inconsistent with the Bureau’s stated desire to present consumer complaints in context by normalizing them.

<sup>9</sup> Massimo Calabresi, *The Agency That’s Got Your Back: A Little-Known Government Watchdog is Striking Fear into the Lending Industry*, TIME, Aug. 24, 2015, at 47 (“Cordray knows the bureau’s future will depend partly on public support. He says the agency has created a ‘virtuous circle’ with its complaint service, and he sees it as a way to both maintain goodwill and sharpen the agency’s mission.”).

As the Bureau is aware, following the Bureau’s publication of the Final Policy Statement on Disclosure of Consumer Complaint Narrative Data,<sup>10</sup> ABA wrote to offer recommendations for changes to the Portal and Database that we believe are necessary minimums for improving the accuracy and utility of the information published and for mitigating unfair reputational damage to the banking industry.<sup>11</sup> We are not aware of Bureau efforts to implement any of these recommendations.

Although ABA is generally supportive of the concept and objective of providing context for the data, we do not believe that *any* normalization strategy should proceed unless and until the Bureau adopts measures to insure, to the greatest extent possible, the accuracy, integrity, and utility of the complaint data being reported. Normalization can only be applied to “data”—measurable, verifiable facts about a consumer complaint—and a company’s response to its customer. Unless the Bureau takes action to address the underlying flaws in the data, normalization will provide undeserved legitimacy to the information reported on the Database, which will mislead, not inform, consumers.

Finally, *if* the Bureau proceeds with efforts to normalize complaint data—and only after measurable, verifiable data elements have been identified and agreed upon—decisions about whether and how to normalize the data should not be made without robust public engagement. We note with concern the Bureau’s statement in the RFI that it does not intend to publish a final policy statement on normalization,<sup>12</sup> and we hope that the statement does not signal the Bureau’s intent for the responses to the RFI to be the only opportunity for public input. ABA believes that the Bureau must engage with the public, including with financial institutions that might become objects of public comment, to ensure that the Bureau identifies and applies suitable and verifiable metrics that will permit reasonable and appropriately nuanced comparisons of the complaint data. Anything less risks providing consumers with misleading information and exposing banks to unwarranted reputational damage.

#### **I. Normalization Will Not Remedy the Significant Flaws Inherent in the Publication of Consumer Complaints and Should Not Be Undertaken Until Changes to the Portal and Database Are Made**

Despite the Bureau’s repeated assurances that it is “committed to the continued growth and refinement of the Consumer Complaint Database in a manner that helps inform consumers and the marketplace,”<sup>13</sup> the Bureau has steadfastly refused to verify the allegations made in the complaints, and it has failed to implement any measures to promote the reliability or utility of the information it has published.

For example, the Bureau prohibits institutions from taking the basic step of correcting inaccurate categorizations of complaints. Complaints can be inaccurately categorized in four different ways, based on information the consumer is asked to enter when submitting a complaint: the consumer could mis-identify the product and/or the sub-product, and the consumer could mis-identify the

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<sup>10</sup> Final Policy Statement, Disclosure of Consumer Complaint Narrative Data, 80 Fed. Reg. 15572 (Mar. 24, 2015).

<sup>11</sup> See ABA April 8, 2015, Letter, *supra* note 6, at 3-6.

<sup>12</sup> See Request for Information Regarding the Consumer Complaint Database: Data Normalization, 80 Fed. Reg. at 37238-39 (“The Bureau does not anticipate publishing a proposed policy statement on the subject of this request [for information].”)

<sup>13</sup> Final Policy Statement, Disclosure of Consumer Complaint Narrative Data, 80 Fed. Reg. at 15582.

issue and/or sub-issue of the complaint. When consumers do not select the correct choice for each category when submitting a complaint, the complaints are categorized incorrectly, and any subsequent effort to normalize data generated from these complaints will be flawed.

Furthermore, the Bureau has not undertaken any effort to remove consumer complaints that—

- (a) do not complain about a specific product purchased by the consumer, but instead are inquiries about a product;
- (b) are based on a misunderstanding of a product;
- (c) complain about a non-financial company's action;<sup>14</sup> or
- (d) constitute a general “rant” about a company or industry practice that is not founded on a specific interaction between a consumer and the company.

These flaws make it unwise to normalize the complaint data, as flawed inputs will taint the “normalized” output. Normalization cannot remedy the unreliability of the underlying data but may instead suggest an undeserved legitimacy to the data and mislead consumers into relying on inaccurate and unfair comparisons between financial service providers and the products and services they offer.

## **II. The Bureau Should not Normalize any Data other than the Three Categories in the Database that Contain Elements that Are Measurable, Verifiable Facts**

Only measurable, verifiable “data” should be normalized. Care must be exercised to identify those elements of a complaint that constitute data, or measurable, verifiable facts that may be normalized and readily compared. Currently, we believe that the Database includes only three such categories, i.e. data that reflect upon a financial institution's response to a customer complaint, including—

- (1) the status of the financial institution's response to the consumer;
- (2) whether the institution responded in a timely manner; and
- (3) whether the consumer disputed the institution's response.

Moreover, we note that the banking industry's record on each of these data elements is strong. Based on our analysis of information in the Database, companies that provide banking products—i.e., a bank account or service, consumer loan, mortgage, or credit card—have closed 98% of complaints sent to them. Companies provided a timely response in 99% of the complaints sent to them. This level of responsiveness to customer concerns reflects the high priority ABA members place on customer service.

In contrast, because of the Bureau's continuing refusal to verify the facts in complaints that are published, or to take any other steps to improve the integrity or utility of the information

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<sup>14</sup> Although a financial institution is allowed to re-direct a misidentified complaint to another financial institution, a financial institution is not allowed to have removed from the Database a complaint that complains about the actions of a *non*-financial institution. In an example provided by a banker, a customer considered, but did not decide to purchase, a vacation from a travel service. When the travel service placed a tentative charge on the customer's account, the customer submitted a complaint against his financial institution—not against the travel service. The Bureau's rules do not provide for the financial institution to request the Bureau to eliminate the complaint from the Database.

published, there are no other data that can be trusted to be normalized without misleading the public.

### **III. The Bureau Should Work Closely with Industry in the Consideration of Appropriate Metrics by Which Complaint Information Could Be Normalized**

As the Bureau considers and evaluates whether to normalize complaint information, based upon hard and genuinely applicable data, it is imperative that the Bureau give high priority to the selection of the proper metrics by which to normalize this information.

Normalization is not a “one size fits all” process. There are many “lenses” through which data can be normalized. For example, complaint data could be normalized by the number of customer accounts at the financial institution that is subject to the complaint, the number of transactions conducted by the institution, the number of customer interactions involving the institution, asset size of the institution, and composition of the institution’s customer base. Certain metrics will be appropriate for the normalization of complaints about certain financial products, while other metrics will be needed to normalize complaints about other types of products, based on differing markets (including demographics of customers), differing product designs among competitors offering the same (or similar) product, and customer uses of the product, among other factors.<sup>15</sup> In many—if not most—instances, *multiple* metrics will need to be applied simultaneously to provide a reliable basis for comparison.

A central challenge inherent in normalizing information concerning consumer complaints is that it is difficult to identify an objectively “correct” set of metrics to use. Certain metrics lend themselves better to analyzing complaints about a particular financial product than others. Depending on which metric or metrics are selected to normalize complaint information about a particular financial product, certain institutions will measure better or worse. For example, if a financial institution’s portfolio of customer accounts for a certain product is highly transactional but low in balance, normalizing based on asset value or total outstanding credits in the portfolio will result in a less favorable measure than normalizing those same complaints against the number of accounts or customer interactions. As a result, a decision to normalize complaint information based on one metric or set of metrics—when another set of metrics arguably would have produced more meaningful results—risks misinforming consumers and interfering with competition.<sup>16</sup>

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<sup>15</sup> The challenges of normalizing complaint information is compounded by the fact that the Database reports complaints about bank and non-bank financial service providers. Although in some instances the products and services non-banks offer may be similar to those offered by banks, they often have very different business models, target demographics, and other characteristics that would need to be accounted for when normalizing data. A review of the Database on August 27-28, 2015 revealed that more than 3,000 companies have received at least one complaint that is reported on the Database, and the range of products and services complained about is broad, including mortgages, bank accounts and services, private student loans, vehicle and other consumer loans, credit reporting, money transfers and virtual currency, debt collection, payday loans, prepaid cards, and “other financial services.” With this many companies, and the wide range of product offerings, making meaningful comparisons among and between companies will be exceedingly complex.

<sup>16</sup> In presenting any normalized complaint information, the Bureau should disclose the limitations inherent in the normalization process and in the particular metrics applied. Such disclosure would provide consumers with the proper context on which to assess the value of the normalized information.

In selecting and implementing the standards by which data will be normalized, we urge the Bureau to consult extensively with financial institutions, on an on-going basis, to ensure that the most informative metrics are selected for each category of complaints and to ensure that the substantive and technical aspects of normalization are done properly. This will require adequate time and effort by both the Bureau and financial institutions. In addition to consulting with financial institutions, the Bureau should independently verify any metric(s) that it selects to normalize data, in order to ensure its appropriateness for the relevant dataset.

The importance of selecting the proper metrics against which to normalize each type of complaint cannot be overstated. If the proper metrics are not selected and applied to the data, normalization will not provide context for the information that will make it truly meaningful for financial customers. In fact, improperly normalized data will deceive consumers into relying on data that they believe are presented in a meaningful context when, in fact, the normalization has omitted key context that would have led the consumer to a more useful conclusion in light of consumer needs and preferences.

Further, ABA recommends that the Bureau begin by normalizing complaint information regarding a single product or service, instead of attempting to normalize simultaneously complaint information regarding the full range of products and services currently reported on the Database. An incremental approach would allow the Bureau to focus its energies on identifying and applying appropriate metrics for one product. Moreover, this approach would allow the Bureau to consider the utility to consumers of the resulting contextual information.

#### **IV. Normalization May Require New, Confidential, and Proprietary Information from Financial Institutions, the Production of Which Should Not Be Mandated Unless and Until the Bureau Demonstrates the Utility of the Normalized Data**

To normalize consumer complaints properly, the Bureau may need new, confidential, and (in many instances) proprietary information from financial institutions. Before the Bureau collects this information, it must show that these data will usefully inform consumer decisions. To date, the Bureau has not made this showing. In fact, since the Database was published the Bureau has failed to provide *any* meaningful evidence that the complaints contained therein provide any utility to consumers. To our knowledge, the Bureau has not conducted surveys or focus groups or otherwise sought evidence that the publication of consumer complaints assists consumers with making financial decisions.<sup>17</sup>

A determination of whether the publication of complaints provides utility to consumers is important, because the normalization of these complaints may require the compilation of confidential and proprietary information that could impose significant risks to privacy and competition. To normalize complaint data properly, the Bureau may need to obtain such data as the number of customer accounts, customer interactions, and customer demographics from each financial institution for each product for which a consumer has filed a complaint. The introduction of this granular, institution-specific data may, for example, when coupled with the

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<sup>17</sup> Given the significant flaws in the publication of the complaints—including the Bureau’s failure to verify the veracity of complaints or allow financial institutions to correct the mis-categorization of complaints—ABA believes that in fact the publication of complaints provides minimal, if any, value to consumers and may instead be misleading consumers.

raw complaint information, allow a person to reverse engineer the normalized data to reveal institution-specific consumer data. Moreover, if the Bureau normalizes certain complaints through multiple lenses simultaneously—for example, by product (and sub-product), issue (and sub-issue), and geography—each category could contain information about very few complaints. With the small sample size, the identities of the complainants may be discernible.

The collection of additional confidential and proprietary information from financial institutions may also harm competition among institutions. The categories of data that the Bureau would need in order to normalize consumer complaints—e.g., number of customer accounts, customer interactions, and customer demographics—are confidential and proprietary to the institution to which the information belongs. If that information becomes known to an institution’s competitors, a competitor could change aspects of its business in ways that would be anti-competitive. Finally, information the Bureau collects from financial institutions could be at risk of exposure through a data breach. Only one month ago, the Inspector General for the Federal Reserve “identified several control deficiencies” and made seven recommendations for strengthening the information security controls for the Database.<sup>18</sup> These findings provide an additional reason why the Bureau should not undertake the collection of additional confidential and proprietary information belonging to financial institutions.<sup>19</sup>

## V. Conclusion

ABA believes that the normalization of unverified complaints submitted by a self-selecting group of customers will provide minimal, if any, value to consumers. Instead, normalization of this flawed information can mislead consumers into relying on information that lacks integrity and utility. The Bureau should not normalize information derived from consumer complaints unless and until it has adopted measures to promote the accuracy and integrity of the complaint information posted on its website.

Until these measures are in place, the Bureau should refrain from efforts to normalize these data. We strongly urge the Bureau to work in consultation with financial institutions to identify the most appropriate and useful metric or metrics by which to normalize complaint information for each financial product at issue, and to normalize only those elements of complaint information that contain verifiable facts. Moreover, because application of the appropriate metrics to normalize information from complaints will require new, confidential, and potentially proprietary information from financial institutions, the Bureau should first demonstrate the utility of the normalized information before subjecting institutions to a new mandate.

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<sup>18</sup> Office of Inspector General, Bureau of Consumer Financial Protection, Board of Governors of the Federal Reserve System, *Executive Summary: Security Control Review of the CFPB’s Data Team Complaint Database* (July 23, 2015), available at <http://oig.federalreserve.gov/reports/cfpb-dt-complaint-database-summary-jul2015.htm>.

<sup>19</sup> Moreover, ABA urges the Bureau to consider using only data currently being reported by financial institutions, such as through call reporting obligations, or data that are publicly available and verifiable, rather than imposing a new reporting requirement on institutions.

If you have questions about ABA's comments or would like to discuss them, please contact the undersigned at [jthessin@aba.com](mailto:jthessin@aba.com) or 202-663-5016.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Thessin". The signature is written in a cursive style with a large, looped initial "J".

Jonathan Thessin  
Senior Counsel, Center for Regulatory Compliance