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September 22, 2014

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street N.W.
Washington, DC 20552

**Re: Proposal to Disclose Consumer Complaint Narrative Data, Docket
Number CFPB–2014–0016**

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 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 submit this letter in connection with the proposal of the Consumer Financial Protection Bureau (the “Bureau”) to disclose consumer complaint narrative data.¹ We share the Bureau’s goal of ensuring that consumers are satisfied with the financial products and services they use. American financial institutions and providers dedicate enormous resources to their customer service processes and carefully listen to customer concerns. We accordingly would welcome any effort by the Bureau to strengthen financial services companies’ relationships with their customers and to support effective customer service processes.

¹ See Consumer Financial Protection Bureau (“CFPB”), Disclosure of Consumer Complaint Narrative Data, No. CFPB-2014-0016 (“2014 Proposal”), 79 Fed. Reg. 42765, 42767 (July 23, 2014).

Unfortunately, we are concerned that the Bureau's existing consumer complaint database does neither of these things. Instead, by publishing misleading information about financial institutions, the complaint database creates confusion in the marketplace while disrupting existing customer service relationships. A financial institution that published "factually inaccurate" information knowing that "some consumers may draw (or be led to) erroneous conclusions" would be subject to a Bureau enforcement action for deceptive conduct. The Bureau should address the publication of misleading information—and the unseemly implicit double standard—before further expanding the database.

We accordingly write to make the following points:

- The Bureau's existing complaint database is likely to mislead consumers.
- That problem will only be compounded by publishing consumer complaint narratives, and will not be cured by allowing the publication of rebuttal comments.
- The clear costs of publishing misleading complaint narratives outweigh any the benefits.
- The Bureau accordingly should not proceed with its proposal to publish consumer complaint narratives, or at least should delay action until the Bureau's assumptions are confirmed by appropriate research.
- At a minimum, the Bureau should amend its proposal to provide companies the opportunity to respond to the complaint and to limit the misleading effect of the database.

1. The Bureau's Existing Complaint Database is Likely to Mislead Consumers

As we have explained previously,² we believe there are at least four basic reasons that the existing consumer complaint database will mislead consumers:

² See, e.g., Letter from David T. Hirschmann to Claire Stapleton re. "Privacy Act of 1974, as Amended—Notice of a Revised Privacy Act System of Records, 79 Fed. Reg. 21440 (Apr. 16, 2014)," (May 16, 2014), *available at* <http://www.centerforcapitalmarkets.com/wp-content/uploads/2014/05/2014-5-16-CFPB-Consumer-Complaint->

- First, the complaint database is subject to manipulation, such as by a potential litigant seeking to inflate apparent complaints against a prospective defendant. The Bureau has acknowledged this risk.³ The Bureau only makes limited efforts to confirm a commercial relationship between the complainant and the subject company, however. This is no solution. Even if this process works for its intended purpose, it cannot prevent publication of complaints based on intentional misrepresentations or omissions.
- Second, as the Bureau puts it, complaints may be based on “factually incorrect information as a result of, for example, a complainant’s misunderstanding or misrecollection of what happened.”⁴ A company’s decision to offer relief does not change this. A financial institution may decide to provide relief for different reasons than those stated in the complaint narrative, including that it wishes to prevent unwarranted exposure to regulatory action.
- Third, most of the “complaints” in the database are not really complaints at all. Two-thirds of submissions to the database are closed with an explanation, not relief, from the company.⁵ The bulk of these “complaints,” in other words, involve no wrongdoing by the financial institution (or even other circumstances that prompt a financial institution to offer monetary relief). This should surprise no one. Consumers in difficult financial circumstances may be frustrated with their financial institutions even absent wrongdoing or they may

Database-Letter1.pdf; Letter from David T. Hirschmann to Monica Jackson re. “Disclosure of Consumer Complaint Data,” Docket No. CFPB-2012-0023 (July 19, 2012), *available at* <http://www.centerforcapitalmarkets.com/wp-content/uploads/2010/04/2012-7-19-CFPB-Complaint-Disclosure-Comments-changes-FINAL.pdf>; Letter from David Hirschmann and Lisa A. Rickard to Claire Stapleton re. “Notice of Proposed Privacy Act System of Records, Treasury DO.315—CFPB Implementation Team Consumer Inquiry and Complaint Database, 76 Fed. Reg. 1507 (Jun. 10, 2011),” (Feb. 9, 2011), *available at* <http://www.centerforcapitalmarkets.com/wp-content/uploads/2010/04/CFPB-letter-Privacy-Act.pdf>.

³ CFPB, *Disclosure of Certain Credit Card Data*, No. CFPB-2011-0040 (“2012 Policy Statement”), 77 Fed. Reg. 37558, 37562 (June 22, 2012).

⁴ 2014 Proposal, 79 Fed. Reg. at 42767.

⁵ CFPB, *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.

not understand the terms of a financial product.⁶ Such consumers may reach out to the Bureau for help and likely will find themselves prompted to make a “complaint.” But the Bureau does not need to “stand up” to financial institutions in such instances. Nor should it use a “megaphone” to mischaracterize and malign (even unintentionally) what is reasonable and necessary company behavior.⁷ The Bureau should help those consumers through its education function instead.

- Fourth, the complaint data is not representative and has not been normalized. As a result, a consumer reviewing the contents of the database will be left with the misleading impression that companies with the largest customer bases are the subject of a disproportionate number of complaints.

The Bureau discloses that its database will include misleading and inaccurate complaints. And it knows that its own Inspector General is currently looking at “the effectiveness of the CFPB’s controls over the accuracy and completeness of the public complaint database” in an ongoing audit.⁸ Unfortunately, the CFPB has not addressed concerns about the obvious and inevitable harm that misleading and inaccurate complaints will cause and how it is failing to maximize “the quality, objectivity, utility, and integrity of information” it disseminates, as required by the Data Quality Act.⁹ We believe this is a mistake. The publication of misleading information hurts financial institutions and impairs fair competition. It deprives consumers of both a “transparent marketplace” and what the Bureau has called “the financial capability to navigate that marketplace effectively to serve their own life

⁶ For example, the Bureau has reported that various consumers have not realized that they generally must dispute a charge on a credit card statement within 60 days or that a credit card issuer may not override a merchant’s “no-return policy.” See CFPB, *Consumer Response: A Snapshot of Complaints Received 20* (July 2014) (“July 2014 Snapshot”), available at http://files.consumerfinance.gov/f/201407_cfpb_report_consumer-complaint-snapshot.pdf.

⁷ See Prepared Remarks of CFPB Director Richard Cordray at the Consumer Response Field Hearing (July 16, 2014) (“Cordray Remarks”) (“We have many tools at hand to ensure fairness and dignity for consumers, but we also can offer people a megaphone to empower them to tell their own stories in their own words.”), available at <http://www.consumerfinance.gov/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-consumer-response-field-hearing/>.

⁸ See Office of the Inspector General, Work Plan (current as of Sept. 5, 2014) (“Our audit objective is to assess the effectiveness of the CFPB’s controls over the accuracy and completeness of the public complaint database.”), available at <http://oig.federalreserve.gov/reports/work-plan-full.htm#CFPBOngoing> (last visited Sept. 18, 2014).

⁹ See Pub. L. No. 106-554, § 515, 114 Stat. 2763 (Dec. 21, 2010).

goals.”¹⁰ A disclaimer on the complaint database website, warning that the Bureau cannot vouch for the accuracy of the information it provides consumers,¹¹ does not cure this problem of the Bureau’s own making.

The Bureau has justified its publication of misleading information with the claim that a “marketplace of ideas” will determine what the complaint data shows.¹² But no “marketplace of ideas,” no matter how robust or sophisticated, can discern the truth from misleading data. Indeed, the Bureau surely would not accept such a justification from a company that knowingly disseminated false information to consumers. The Bureau should not hold itself to a lower standard. Instead, the Bureau should explain how the “marketplace of ideas” is compensating for the lack of reliability in the complaint information that currently is published.

The Bureau is required to listen and respond to consumers. Collecting consumer complaints and narratives fits comfortably within that mandate. The publication of complaint data, however, implicates different issues. Consumers struggling with difficult financial circumstances may not always distinguish between frustrating (but fair) circumstances and corporate wrongdoing. Consumers who review complaints online likewise cannot correct for such errors. Accordingly, while the Bureau may not intend to use this occasion to undo its previous decisions, we urge the Bureau to study and address these issues in a meaningful and candid way before expanding the database further. The Bureau should pause before building an ever-larger edifice on this flawed foundation. If the Bureau wants to proceed carefully,¹³ now is the time to address the costs, burdens, and inequities already imposed in the name of the Bureau’s “strategic vision.”¹⁴

¹⁰ See CFPB, Financial Literacy Annual Report 2 (July 2014), *available at*

http://files.consumerfinance.gov/f/201407_cfpb_report_financial-literacy-annual-report.pdf.

¹¹ See CFPB, Consumer Complaint Database (“We don’t verify all the facts alleged in these complaints but we take steps to confirm a commercial relationship between the consumer and company. Complaints are listed here after the company responds or after they have had the complaint for 15 calendar days, whichever comes first. We remove complaints if they don’t meet all of the publication criteria.”), *available at* <http://www.consumerfinance.gov/complaintdatabase/> (last visited Sept. 18, 2014).

¹² See 2012 Policy Statement, 77 Fed. Reg. at 37561.

¹³ See Cordray Remarks (“One conscious choice we made – perhaps wisely, as it now seems in retrospect – was to build this tool very carefully, adding different products and markets at distinct stages.”).

¹⁴ See 2014 Proposal, 79 Fed. Reg. at 42767-68 (“Consistent with its strategic vision, the Bureau is committed to the continued expansion of the Consumer Complaint Database in both the number of complaints and fields of data made publicly available, while still protecting privacy and incorporating the appropriate security controls.”).

2. Publishing Consumer Complaint Narratives Would Make the Complaint Database Even More Misleading and this Problem Would Not Be Cured by the Inclusion of Rebuttal Comments

a. The Publication of Complaint Narratives Would Compound the Problems with the Existing Database

Despite the conceded flaws in the consumer complaint database, the Bureau now proposes to disseminate consumer complaint narratives..” Such an expanded database is likely to be even more misleading for four reasons.

First, complaint narratives will be subject to manipulation. Even assuming that the Bureau can confirm a commercial relationship between a complainant and the relevant financial institution, it will not prevent the use of complaint narratives to manipulate the course of litigation or otherwise to gain leverage over a financial institution. Such behavior is unfair and unreasonable. It will harm financial institutions through unnecessary costs and unmerited reputational harm. Ultimately, the majority of consumers will suffer because of the fabricated or exaggerated narratives of an unscrupulous few.

Second, complaint narratives may be “factually inaccurate” or otherwise misleading through no fault of the consumer. Consider the example of a consumer who does not notice that a foreign merchant erroneously double-charged his credit card while he was on vacation. A year later, the consumer asks the credit card company to reverse the charge and any interest that may have accrued. The error is as plain as day to the consumer, but the credit card company explains that any such dispute should have been brought within 60 days. The angry consumer then files a complaint with the Bureau, calling the credit card company unfair, unresponsive, and unreasonable, criticizing its customer care, and exhorting other consumers to take their business elsewhere lest they be similarly mistreated. The Bureau, it appears, would appreciate the consumer’s frustration, but (hopefully) would understand that the credit card company was operating reasonably and fairly, and that, in fact, consumers ultimately benefit when financial institutions have clear rules that apply to each customer. Here, as elsewhere, there is nothing that the credit card issuer or the Bureau should do to remedy an unfortunate situation. So what is the value of publishing the complaint narrative? What is the justification for giving a government

“megaphone” to information that, even if factually accurate and representative of the consumer’s experience, gives the misleading and unfair impression that the named financial institution engaged in misconduct?

Third, even if consumers properly understand the transaction at issue and any governing contractual terms, a complaint narrative is inherently one-sided. It will suffer from any flaws in a consumer’s recollection and be colored by the personal perspective that the consumer brings to the experience. The Bureau has celebrated this fact, arguing that it is a good thing that complaints convey “the kind of frustration and distress that people truly feel as they struggle with difficult financial issues” and that the narratives represent the “heart and soul of the complaint” that allows the complainant to give “all the details, the nuances, and the rest of the story that really explain the problem just as they understand it.”¹⁵ But how is a consumer’s financial back story relevant to whether a company actually engaged in misconduct in a particular transaction?¹⁶ Publication of such information is unnecessary and will ensure that the complaint database functions as a shaming mechanism and gives a distorted impression to individuals who happen to review the complaint.

Fourth, consumers who spend time reviewing consumer complaints are likely to get an unrepresentative view of the relevant financial services companies. Consumers seem most likely to review a handful of narratives and to walk away with an impression that is determined by the happenstance of which companies had the misfortune of appearing in the unrepresentative sample of complaints reviewed. Moreover, because the data in the complaint database has not been normalized, even a consumer who read every consumer complaint would be misled by the inevitable appearance of more complaints against companies with large customer bases. And of course, as a general matter, any impression will be skewed by the fact that the complaint database does not reflect the experiences of the countless satisfied customers of American financial institutions.

b. Rebuttal Comments Will Not Cure the Misleading Effect of Complaint Narratives

¹⁵ See Cordray Remarks.

¹⁶ As discussed below, the Bureau has not explained why this information need be published. It already is submitted to the Bureau, which has a statutory responsibility to review, forward, and respond to such complaints. Complaint narratives thus already allow consumers to be heard.

The opportunity to provide a rebuttal comment will not cure the problems caused by publication of complaint narratives. Even if companies do respond, the one-sided nature of the consumer complaint database will persist, in no small measure because the Bureau repeatedly has announced that it intends to “stand on the side of consumers” rather than serve as a neutral facilitator. Moreover, financial institutions are highly unlikely to try to rebut the consumer’s complaint in a meaningful way for two reasons:

- First, companies remain unsure of the application of privacy restrictions in the Gramm-Leach-Bliley Act to any published response to a consumer complaint. While legal opinions vary, one thing is clear: possible exposure under that law is sure to dampen companies’ enthusiasm for publicly responding to consumer complaints.
- Second, companies will shy away from turning a complaint into a public relations problem by arguing publicly with the customer and appearing unreasonable, unrepentant, and unsympathetic. It will be far more likely for the company to express general sympathy, to offer to follow up with the customer, and to reiterate its continued commitment to whichever principle or law the complaint might have invoked.

3. The Clear Costs of Publishing Complaint Narratives Outweigh its the Benefits

a. Publication of Complaint Narratives Will Cause Substantial Harm

Publishing complaint narratives will exacerbate the harm caused by the complaint database in at least five ways:

1. Misleading consumers: As discussed in detail above, the misleading effect of the public consumer complaint database only will worsen upon inclusion of consumer complaint narratives. As a result, the consumer complaint database will distort the very consumer financial services marketplace that the Bureau is charged with protecting. Consumers will make *less* informed decisions and will suffer financial harm as a result.

2. Disrupting existing customer care relationships: The publication of consumer complaint narratives will further disrupt and distort existing customer service relationships by: (a) encouraging consumers to tell their stories first to the Bureau rather than to their financial services provider; (b) prompting companies to settle even unreasonable claims that are the subject of a complaint, thus disadvantaging customers who do not submit their complaint to the Bureau; and (c) generating suspicion of and hostility towards financial services providers. Once again, the Bureau appears to prefer an outsized role for itself to the constructive and collaborative resolution of concerns through existing customer care channels.
3. Reputational harm: Some complaint narratives will be inflammatory—and undeservedly so. Complaint narratives also may cover topics beyond both the scope of the complaint database and the Bureau’s jurisdiction. To date, for example, the Bureau has declined to publish information relating to allegations of discrimination.¹⁷ The Bureau correctly has been careful not to allow such anonymous and unverified complaints to destroy a business’ hard earned reputation. (This does not reflect any failure to prioritize efforts to eliminate discrimination in the provision of financial services. Rather, the Bureau presumably recognizes that it would be reckless to casually sanction such allegations.) But this will be the exact effect of the Bureau’s decision to publish complaint narratives and give each the benefit of the Bureau’s apparent approval.
4. Invasions of privacy: The Bureau has not completed its study into whether its scrubbing methodology will work.¹⁸ Instead, the Bureau acknowledges in its proposal that its scrubbing methodology will not

¹⁷ 2012 Policy Statement, 77 Fed. Reg. at 37565 (“[T]he Bureau does not plan to disclose discrimination field data in the public database at this time.”).

¹⁸ See 2014 Proposal, 79 Fed. Reg. at 42767 (“The Bureau is currently conducting a study to further verify that the proposed scrubbing standard and methodology will sufficiently address concerns related to the FOIA, the Privacy Act, the Dodd-Frank Act, and the Bureau’s confidentiality regulations where (1) consent for publication is obtained from the consumer; (2) narratives are scrubbed of consumer personal information consistent with a robust standard and methodology: (a) that substantially meets government best practices for re-identification risk; (b) as written, results in a low risk of reidentification; (c) as applied, maintains a low rate of operational error; and (3) an independent, third party privacy expert conducts a review and operational test of the standard and methodology in support of the above conditions.”).

eliminate the risk of reidentification of consumers who submit complaints to the complaint database.¹⁹ The harm caused by this reidentification will be even greater if complaint narratives are published, as consumers then will face the additional risk of intimate details of their financial experiences being reassociated with their name and address.

5. Direct costs: Companies already face significant costs as they process and address complaints submitted to the Bureau's complaint database. These costs will be raised for companies if they must respond to published consumer narratives. Small businesses that lack highly scaled compliance operations will feel a particular burden, and even companies outside the Bureau's authority (for example, because of the application of the merchant exclusion) are likely to face undue economic burdens.

b. Publication of Complaint Narratives Will Not Have Significant Benefits

This is not a proposal to allow consumers to complain about specific financial institutions. Nor is it a proposal to allow consumers to submit complaint narratives. The Bureau did those things almost three years ago.²⁰ Indeed, the Bureau currently receives and reviews consumer narratives as part of the full complaints, before forwarding them to the financial institution at issue or to another regulator. In turn, financial institutions have worked hard—and within the very short deadline created by the Bureau—and responded to 97% of complaints in a timely manner.²¹ And the Bureau has published various “snapshots” and reports detailing the trends it has drawn from the complaint data.²²

It is against this backdrop that the Bureau has proposed to publish complaint narratives. The Bureau has not demonstrated that this incremental change will have

¹⁹ See *id.* at 42768 (“[T]he Bureau will take reasonable steps to remove personal information from the complaint to minimize (but not eliminate) the risk of re-identification.”).

²⁰ The Bureau's field hearing on this proposal seemed particularly focused on the importance of giving consumers the opportunity to voice complaints about financial institutions. For example, Director Cordray described the “agony” of “bearing an untold story inside you.” See Cordray Remarks (internal quotation marks omitted). This emphasis was surprising given the current ability of consumers to tell their stories to the Bureau through the existing complaint database and to their financial services companies through customer service channels.

²¹ July 2014 Snapshot at 30.

²² See, e.g., *id.*

any significant benefits. Instead, the Bureau offers a series of vague notions, aspirations, and unsupported conjectures to justify its proposal.

First, the Bureau suggests that publishing complaint narratives will benefit consumers for whom “a primary reason for submitting a complaint may be to share their experience with other consumers.”²³ As its phrasing reveals, the Bureau does not know whether this perceived benefit *will* (as opposed to *may*) be realized. The Bureau does not state whether, to date, would-be complainants decided not to submit complaints because of the lack of publication or whether actual complainants would have felt more satisfied if their complaint narratives were published. Simple consumer testing could answer those questions, but the Bureau instead speculates that “publishing complaint narratives *may* expand the number of complaints submitted to the Bureau.”²⁴ *But it also may not.* The Bureau should not proceed on the strength of a guess. Moreover, we do not agree with the Bureau’s assumption that a larger complaint database is a good thing. Our goal is customer satisfaction: the more customer complaints that companies can resolve without consumers having to resort to the Bureau, the better, in our view.²⁵

Second, the Bureau contends that publication of consumer complaint narratives will have the indirect benefit of providing “consumer word of mouth” which, according to unidentified “[r]esearch” is “a reliable signal of product quality that consumers consult and act upon when making purchasing decisions.”²⁶ But the Bureau has not revealed any “research” indicating that the publication of complaint narratives will inform shoppers more than it misleads them. Is there research, for example, indicating that publication of consumer complaint narratives through databases operated by the Consumer Products Safety Commission (CPSC) and National Highway Transportation Safety Administration (NHTSA) has helped consumers in such a way, or that the Bureau’s publication of consumer complaints would be sufficiently similar to have an equivalent positive effect? And what about research into companies’—and particularly small businesses’—experience with the

²³ 2014 Proposal, 79 Fed. Reg. at 42766.

²⁴ *Id.* (emphasis added).

²⁵ Financial institutions fall within the Bureau’s supervisory and investigatory authority, so the Bureau can readily determine whether a company’s customer care functions are working.

²⁶ 2014 Proposal, 79 Fed. Reg. at 42766.

unfairness and destructive power of anonymous online complaints?²⁷ And does the Bureau have any basis for claiming that “[c]ompanies, responsive to the effect word of mouth can have on sales, adjust prices to match product quality and improve customer service to remain competitive.”²⁸

Contrary to the Bureau’s assertions, the publication of consumer complaint narratives will further disrupt existing customer service mechanisms. Any promise that the publication of the complaint narratives will “sharpen competition over product quality and customer service”²⁹ is illusory. Companies’ experience with the database so far indicates that it will do the opposite. By simultaneously misleading consumers and reducing the chance that they will speak to their financial services providers, the publication of inaccurate or misleading complaint narratives will prompt more damage control than rational competition.

Third, the Bureau contends that publishing the narratives would be valuable because of the “impactful” way in which publishing narratives would make the complaint data personal, local, and empowering.³⁰ But an increased impact will not be a good thing if the information is misleading.

Fourth, the Bureau states its belief that “the utility of the overall Consumer Complaint Database would greatly increase with the inclusion of narratives. This could lead to increased use by advocates, academics, the press, and entrepreneurs, which itself would lead to increased consumer contacts with the Bureau.”³¹ The speculative nature of this hypothesis is striking. So too is the fact that this guess contradicts the Bureau’s prior concession that complaint narratives will not contribute to statistical analyses of the contents of the database.³²

Fifth, the Bureau posits that publication of complaint narratives will lead to an increase in consumer complaints that will push the database past a “critical mass of

²⁷ The experience of businesses has been mixed at best. Small businesses such as restaurants or local markets, for example, have found that even a very small number of unfair and unsupported online complaints can have devastating effects on their businesses. The Bureau presumably does not want to expose community banks and other small financial institutions to such risks. The Bureau, however, does not appear either to have considered those particular risks or taken any steps to prevent them from being realized.

²⁸ 2014 Proposal, 79 Fed. Reg. at 42766.

²⁹ 2012 Policy Statement, 77 Fed. Reg. at 37564.

³⁰ 2014 Proposal, 79 Fed. Reg. at 42766.

³¹ *Id.*

³² CFPB, *Disclosure of Certain Credit Card Complaint Data*, 76 Fed. Reg. 76628, 76632 (Dec. 8, 2011) (“2011 Proposal”).

complaint data” and thereby improve the “representativeness of Bureau complaint data.”³³ But the Bureau has not identified what constitutes a “critical mass” in its eyes or explained when the Bureau otherwise would be likely to achieve it. Instead, it has offered nothing more than vague speculation.³⁴

4. The Bureau Should Not Proceed with its Proposal to Publish Consumer Complaint Narratives

For the reasons stated above, the Bureau should not proceed with its proposal to publish consumer complaint narratives. The Bureau has not given a candid and credible assessment of the benefits and the harms associated with the publication of consumer complaint data. Nor has the Bureau engaged seriously with the NHTSA and CPSC experiences, such as by analyzing the costs and benefits of those databases, and whether the Bureau’s complaint database is similarly situated or if the approach of the Federal Trade Commission, which does not publish complaints, provides a better model given the diverse product sets and companies within the Bureau’s jurisdiction. Nor has the Bureau completed its study of its scrubbing techniques or given its Inspector General time to finish its review of the complaint database. Until it takes such steps and builds a record that supports publication of consumer complaint narratives, the Bureau should not proceed with its current proposal. The Bureau instead should work to strengthen, rather than undermine, consumers’ relationships with their financial institutions and to provide them with accurate information with which to make informed financial decisions. We would welcome any opportunity to work with the Bureau on such efforts.

5. At a Minimum, the Bureau Should Amend its Proposal to Provide Companies a Fair Opportunity to Respond to the Complaint and to Limit the Misleading Effect of the Database

³³ 2014 Proposal, 79 Fed. Reg. at 42766.

³⁴ The Bureau discusses at some length how the “Bureau . . . would benefit by further establishing itself as a leader in the realm of open government and open data.” *Id.* The Bureau’s focus on this topic is puzzling. First, it is not immediately clear why being a “leader” in this “realm” should be a standalone goal for the Bureau. Impressing other federal agencies seems a secondary concern, at best. Second, the Bureau’s extended exposition on the Office of Management and Budget’s 2009 Open Government Directive is surprising. The Bureau has yet to do anything more than promise the Open Government Plan that is one of agencies’ core responsibilities under that memorandum, *see* CFPB, Open Government, *available at* <http://www.consumerfinance.gov/open/>, and the general principles announced in that memorandum apply to the publication of “useful information,” not information that is likely to mislead consumers.

The road to the current proposal began in December 2011 when the Bureau decided to publish consumer data without clear authority to do so.³⁵ With the benefit of hindsight, one can see the proposal the Bureau now offers laid out quite clearly in the first notice of the proposed policy statement.³⁶

We accordingly are not optimistic that the Bureau will heed our recommendation that it not proceed with its proposal until it has demonstrated that it is properly supported by appropriate research and study. While we hope to be proven wrong on that point, we ask that, if it does proceed, the Bureau at least take the following five steps to improve the current proposal.³⁷ Given that the success of each step will be in the details of its design and execution, we recommend that the Bureau make these changes through a rulemaking that gives notice of the Bureau's specific proposals and a meaningful opportunity for comment.

1. Clarify the risk of inaccuracies in the complaint narratives: In order to reduce the misleading effect of consumer complaints, we strongly urge the Bureau to take at least the following two steps:
 - a. *Removal of materially misleading complaints*: The Bureau should adopt a process for removing materially misleading consumer complaints (or at least the narrative portions thereof) from the published portion of the database. The protections for the integrity of the Bureau's database should be at least as strong as those applicable to the CPSC's database, so the Bureau should look to the CPSC's governing regulations for a starting point.³⁸
 - b. *Adopting an accurate disclaimer*: The Bureau currently provides a disclaimer regarding the unverified nature of the contents of the complaint database. We believe that this general disclaimer is inadequate for the current database, and particularly believe that

³⁵ See generally 2011 Proposal, 76 Fed. Reg. at 76628; Pub. L. No. 111-203 § 1013(b)(3) (requiring creation of a unit to collect, monitor, and respond to (but not publish) consumer complaints); *id.* § 1034 (detailing consumer response function without reference to publication of complaints).

³⁶ See 2011 Proposal, 76 Fed. Reg. at 76632.

³⁷ We limit ourselves here to ways to improve the publication of consumer complaint data. We of course also would welcome any serious consideration of previous recommendations we have offered regarding the database more broadly.

³⁸ See 16 C.F.R. § 1102.26.

it needs to be amended in light of the proposed inclusion of consumer narratives. Specifically, the Bureau should provide a straightforward and clearly visible disclaimer on each page of the database that includes a consumer complaint narrative. This disclaimer should state clearly that the contents of the complaint narrative are unverified and may contain errors, and that an allegation of misconduct does not prove wrongdoing. Moreover, the disclaimer also should state clearly that the Bureau does not endorse the contents of complaint narratives and is a neutral administrator of the complaint system.

2. Address risks of undue reputational harm: The Bureau should take at least the following two steps to address the risk of undue reputational harm:
 - a. *Employee scrubbing*: The Bureau should employ its scrubbing mechanisms to ensure that the identities of company employees are not revealed in complaint narratives.
 - b. *Narrative guidelines*: The Bureau should provide guidelines to complainants regarding the appropriate tone and substantive focus of the complaint narratives. For examples, these guidelines could clarify that no defamatory statements will be included in the database. These guidelines should explain that higher quality complaint narratives are most useful to other consumers and best allow companies to provide informed responses. The Bureau should develop a mechanism for allowing consumers whose complaint narratives do not meet those standards to amend their complaint narrative if they wish it to be published.
3. Strengthen the response function: The Bureau's proposal provides only limited details about how a company that is the subject of a complaint can respond to the contents of a complaint narrative. The Bureau should clarify how this system will function in practice. Specifically, we recommend that the Bureau include the following elements in that system:

- a. *Reasonable timeframes*: Company responses should be subject to clear and reasonable timeframes that allow companies to give considered responses to customer complaints. We particularly recommend that the Bureau state a default time frame for a response, but allow companies to extend that time upon a showing of continuing investigation into the complaint. Such a system will improve the quality of the database as companies are able to provide richer responses. In contrast, unreasonable time pressures will ensure that companies deliver only generic responses to complaints, reducing the informational value of the database.
 - b. *Simultaneous posting*: The applicable timeframes should allow for companies to review a complaint narrative and then submit a response for simultaneous publication in the complaint database. Companies also should have an option to submit their responses at a later time or to amend a response already submitted if further relevant information is gathered. The Bureau should not publish consumer complaint narratives before a company has a chance to respond.
 - c. *Confidential response*: The response function also should support the submission of a confidential response to the customer that will not be published in the complaint database. This will permit companies to address the concerns of their customers in greater detail without risking disclosure of personal information.
 - d. *Consumer agreement*: Fairness dictates that companies be allowed to publish responses to consumer complaint narratives. It also requires that consumers understand that a company response may be forthcoming. The Bureau accordingly should ensure that a consumer affirmatively consents to the publication of a company response as a condition of publication of a consumer narrative.
4. Inform consumers of privacy risks: Complainants should be provided clear notice of the privacy risks associated with publication of their

complaints and particularly should be warned that the publication of a complaint narrative may increase the likelihood of reidentification. The Bureau should look to the model disclosure form under Regulation P for an example here. The Bureau particularly should be guided by that form's clear statement of applicable privacy concerns and its provision of this information on a separate page that is clearly comprehensible by the consumer. Here, as elsewhere, we urge the Bureau not to hold itself to a lower standard than applies to the companies it regulates.

We also renew our urging that the Bureau take seriously the privacy and security risks associated with its expansive collection of personally identifiable information. We urge the Bureau to: (a) avoid collecting any more personally identifiable information through its complaint database than absolutely necessary; and (b) maintain the highest level of security for the unpublished portions of the complaint database.³⁹ The Government Accountability Office recent review of this topic should inform the Bureau's activities as well.

5. Prevent consumers from being misled by unrepresentative data: The Bureau should take all reasonable measures to normalize the data in the consumer database so as to prevent consumers drawing incorrect conclusions from the higher number of complaints relating to companies with large customer bases. For example, the Bureau should consider ensuring that its data display tool presents a normalized sample to consumers who browse through complaint narratives.

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The Bureau has conceded that “some consumers may draw (or be led to) erroneous conclusions” from the information currently released through the

³⁹ See also Office of the Inspector General, Work Plan (current as of Sept. 5, 2014) (“The Federal Information Security Management Act of 2002 requires that each agency Inspector General evaluate a representative subset of the agency's information systems. As part of meeting this requirement, we are conducting a security control review of the CFPB's DT Complaints Database. The DT Complaints Database supports the CFPB's Public Consumer Complaint Database. Our specific audit objective is to evaluate the adequacy of certain control techniques designed to protect data in the system from unauthorized access, modification, destruction, or disclosure.”), *available at* <http://oig.federalreserve.gov/reports/work-plan-full.htm#CFPBOngoing> (last visited Sept. 18, 2014).

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complaint database.⁴⁰ Likewise, the Bureau acknowledges that “purchasing decisions...based on misinformation” may result from the publication of “narratives [that] may contain factually incorrect information as a result of, for example, a complainant’s misunderstanding or misrecollection of what happened.”⁴¹ The Bureau would bring a prompt enforcement action against any company that so misled consumers. The same standard should apply to the Bureau: it should not use a government “megaphone”⁴² to broadcast information that will mislead consumers. The proposal to publish consumer complaint narratives should be abandoned. If not, the Bureau at least should adopt appropriate protections to limit the misleading effects of the database and thereby to improve the information that it provides to consumers and the marketplace.

Again, we share the Bureau’s goal of ensuring that consumers are protected, and satisfied with the financial products and services they use. American financial institutions and providers dedicate enormous resources to their customer service processes and take seriously their customer satisfaction. We will continue to welcome any effort by the Bureau to strengthen financial services companies’ relationships with their customers and to support effective customer service processes, and stand ready to be of assistance as the Bureau undertakes this important measure. We would be pleased to meet with appropriate members of the Bureau staff at any time to discuss these issues further.

Sincerely,

A handwritten signature in black ink that reads "David Hirschmann". The signature is written in a cursive, slightly slanted style.

David Hirschmann

⁴⁰ 2012 Policy Statement, 77 Fed. Reg. at 37562.

⁴¹ 2014 Proposal, 79 Fed. Reg. at 42767.

⁴² See Cordray Remarks.