

Comments of Financial Regulation and Consumer Protection Scholars, and former Regulators on  
Docket No. CFPB-2018-0006

June 4, 2018

Monica Jackson  
Office of the Executive Secretary  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

Dear Ms. Jackson:

Please see the submission below in response to the Consumer Financial Protection Bureau's Request for Information ("RFI") Regarding Bureau Public Reporting Practices of Consumer Complaint Information (Docket No. CFPB-2018-0006).

We are scholars, who research and teach about consumer protection law, financial regulation, administrative law, and related topics. Some of the below signatories also have experience in public enforcement of consumer protection laws.

Many of the below signatories have used the consumer complaint function for our research. Affiliations of signatories are for identification only and do not represent the views of the various institutions.

We appreciate the opportunity to submit these comments for your consideration.

Sincerely,

Kathleen Engel (on behalf of Pamela Foohey, Angela Littwin and Amy J. Schmitz)

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### SUMMARY

- Publicly releasing information about consumer complaints received by the Consumer Financial Protection Bureau (“Bureau”) is essential to its primary purpose of ensuring that “markets for financial products and services are fair, transparent, and competitive.”<sup>1</sup>
- Making public a database with data from consumers’ complaints (the “Database”) advances the Bureau’s statutory duty to release marketplace data “as is in the public interest.”<sup>2</sup>
- When consumers can make better choices, market efficiency improves. If the Bureau makes the Database non-public, consumers will lose a key source of high-quality information and an important means of holding companies accountable. Ultimately, the marketplace will suffer.
- An easily-searchable Database provides consumers with a resource they can trust for researching financial services and products. This Database is essential because it provides far superior and more reliable information than “gripe sites” such as Yelp. Consumers lost in a sea of unreliable information on the Internet need the Database to make informed decisions.
- The public Database helps legitimate financial service companies provide valuable services to consumers without being undercut by unscrupulous competitors. By casting out companies that cut corners and injure consumers from the marketplace, the Database ensures that law-abiding companies can continue to compete fairly.
- Each data field in the Database serves an important purpose in fulfilling the Bureau’s mission. But one of the most important is the name of the company subject to the complaint. Including the company name provides consumers “with timely and understandable information to make

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<sup>1</sup> 12 U.S.C.A. § 5511

<sup>2</sup> *Id.* at § 5512(c)(3)(B).

responsible decisions about financial transactions,”<sup>3</sup> which is the Bureau’s first statutory objective.

- Publishing company names incentivizes companies to monitor their reputations by responding to consumer complaints in a timely manner and providing meaningful relief. Companies also may improve practices based on this valuable feedback.
- To increase transparency and enhance the marketplace benefits provided by the Database, the Bureau should make additional data fields public, particularly data about companies’ specific responses to complaints. This information is vital to evaluating the complaint mechanism’s role in resolving disputes between consumers and companies.
- The Bureau’s reports educate consumers, highlight industry trends, and fill key information gaps about issues that may balloon into larger problems. The Bureau should continue publishing monthly and occasional reports about specific products, services, and trends, as well as enhance these reports with more analysis.
- Allowing financial product and service providers to comment on reports prior to publication will compromise the reports’ integrity.
- User friendliness is a key reason for the success of the Bureau’s complaint mechanism and Database but there is significant room for improvement. The Bureau should devote resources to improving accessibility. Providing the public with easily-accessed data will increase transparency, empower consumers, and allow for dissemination of robust information, all of which further market efficiency and fairness and thus are central to the Bureau’s mission.

### **ACCESSIBLE CONSUMER COMPLAINT INFORMATION IS VITAL TO TRANSPARENCY, EFFICIENCY, AND FAIRNESS**

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”) authorizes the Consumer Financial Protection Bureau (“Bureau”) to make information public about the consumer financial product and service market.<sup>4</sup> One of the most prominent ways the Bureau does so is through its statutorily-mandated consumer complaint function.<sup>5</sup> This allows consumers to lodge grievances against financial products and service providers through the Bureau, usually through its website.<sup>6</sup>

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<sup>3</sup> *Id.* at § 5511(b) (emphasis added).

<sup>4</sup> *Id.* at § 5511(b).

<sup>5</sup> *Id.* at § 5493(b)(3) (requiring the Bureau to collect, monitor, and respond to consumer complaints regarding consumer financial products and services).

<sup>6</sup> Submit a Complaint, CFPB, <http://www.consumerfinance.gov/complaint/> (last visited Apr. 19, 2018); *see also* Pamela Foohey, *Calling on the CFPB for Help: Telling Stories and Consumer Protection*, 80 LAW & CONTEMP. PROBS. 177, 178 (2017); Angela Littwin, *Why Process Complaints? Then and Now*, 87 TEMP. L. REV. 895, 911 (2015) (finding that consumers preferred to submit complaints online, with submission percentages of 85% online versus 15% by telephone).

The Bureau adds value to its complaint function by publishing reports and making public a complaint database (“Database”).<sup>7</sup> The Database includes certain information about individual complaints and, with consumers’ permission, consumers’ narratives accompanying their complaints.<sup>8</sup> The information in the Database and the Bureau’s reports support and enhance a fair, transparent, and efficient marketplace for consumer financial products and services.

First and foremost, the Bureau must continue to make the Database publicly-accessible. Acting Director Mick Mulvaney noted recently during the American Bankers Association Annual Conference that the Bureau is “supposed to ensure that consumers are provided with timely understandable information” and that the Bureau is “going to make sure that markets for consumer financial products and services operate transparently and efficiently.”<sup>9</sup> For the reasons detailed below, making consumer complaints public via the Database is integral to the Bureau’s pursuit of these two goals.

Nevertheless, Acting Director Mulvaney went on to state, “I don’t see anything . . . that says that I have to make all of those [consumer complaints] public. I am thinking that . . . having a database that is publicly facing but is not completely vetted is probably not consistent with our overall mission.”<sup>10</sup> This statement is at odds with the Bureau’s statutorily-enumerated goals and severely mischaracterizes the Bureau’s thoughtful consideration about when and how to populate the public Database.<sup>11</sup> It fails to acknowledge the Database’s crucial role in providing consumers with high-quality information that is not available elsewhere and ensuring that markets operate efficiently and transparently.

If the Bureau makes part or all of the Database non-public, an important check on companies will disappear and, ultimately, the marketplace will suffer. Companies that engage in misconduct will be free to evade accountability and sweep their misdeeds under the rug. The Database itself provides evidence that companies and Acting Director Mulvaney will benefit by the removal of the Database from the public view, possibly to consumers’ and the marketplace’s detriment. In the past, companies and trade associations have lobbied Congress and the Bureau to remove the Database from public view. They also supported a bill put forth by Acting Director Mulvaney in 2016 that would have fundamentally altered how the Bureau responds to consumer complaints and that would have effectively gutted the Database.<sup>12</sup> One of the lobbying trade associations has received contributions from fourteen of the thirty companies most complained about, as evident by the

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<sup>7</sup> Consumer Complaint Database, CFPB, <https://www.consumerfinance.gov/data-research/consumer-complaints/> (last visited Apr. 19, 2018).

<sup>8</sup> See Foohey, *supra* note 6, at 183 (discussing the Database).

<sup>9</sup> *Remarks by Mick Mulvaney, Acting Director, Consumer Financial Protection Bureau*, American Bankers Association Annual Conference, Washington, D.C., 3-4 (April 24, 2018), <https://www.documentcloud.org/documents/4446622-Transcript-Mulvaney-ABA-Conference-4-24-2018.html>.

<sup>10</sup> *Id.* at 5.

<sup>11</sup> See *infra* note 29 and accompanying text.

<sup>12</sup> *Companies with the Most Complaints in the CFPB Database Were Mulvaney Donors*, PUBLIC CITIZEN (May 8, 2018), <https://www.citizen.org/media/press-releases/companies-most-complaints-cfpb-database-were-mulvaney-donors>.

Database.<sup>13</sup> Acting Director Mulvaney himself has received contributions from half a dozen of the most complained about companies, also as evident by the Database.<sup>14</sup>

A public Database allows for this information to be discovered and discussed—that is, a public Database promotes transparency in the marketplace for financial goods and services. Hiding the Database from public view will harm consumers, who rely on the data to inform them about which companies play by the rules and which companies engage in unlawful practices. It will also harm law-abiding companies because, without transparency, they will not be able to compete effectively against their unscrupulous counterparts. Thus, the public Database is essential to an efficient and competitive marketplace for consumer financial products and services.

Particularly in light of the Bureau’s recent marked slowdown in enforcement actions,<sup>15</sup> the Database has become an integral tool to identify company practices that are potentially harmful to consumers, by the Bureau and by advocates and other policymakers. If the Bureau eliminates public access to the Database as well, the potential harm to consumer is staggering.

Additionally, the Bureau does not post unfiltered complaints and narratives to the Database, as Acting Director Mulvaney seemed to suggest. As stated by the Bureau itself, “[a] complaint is listed in the database when the company responds to the complaint and confirms a commercial relationship with the consumer or after the company has had the complaint for 15 days, whichever comes first. Complaints are not published if they do not meet all of the publication criteria.”<sup>16</sup> Thereby, financial service providers have the opportunity to validate information in the Database.

Consumers, advocates, companies, academics, and policymakers—most notably the Bureau—benefit from the Database because it fosters transparency and data analysis. Consumers use the Database to learn about the companies and industries they do business with, while advocates, academics, and policymakers analyze trends and identify problems in the marketplace.<sup>17</sup> The primary policymaker that the Database informs is the Bureau itself. The Bureau gathers invaluable information through the complaints process and Database that informs all of the Bureau’s functions, from supervision and enforcement to rulemaking to consumer education. The Database thus provides data critical to the Bureau’s market monitoring required by the Dodd-Frank Act.

The Database also provides important feedback to companies about concerns consumers encounter with their products and services. For example, industry consulting firms now advise companies to “turn what they hear from the [Bureau]’s consumer complaint database into a business advantage.”<sup>18</sup> The Bureau has reported that some companies have begun to tie executive compensation to how

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> See Emily Stewart, *The Government’s Top Consumer Watchdog Hasn’t Taken a Single Enforcement Action Since Trump’s Pick Took Over*, VOX (Apr. 10, 2018), <https://www.vox.com/policy-and-politics/2018/4/10/17218774/mick-mulvaney-cfpb-consumer-wells-fargo-equifax>.

<sup>16</sup> See *Semi-Annual Report of the Consumer Financial Protection Bureau*, CFPB, 19 (Spring 2017), [https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201706\\_cfpb\\_Semi-Annual-Report.pdf](https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201706_cfpb_Semi-Annual-Report.pdf).

<sup>17</sup> See *infra* Part II.

<sup>18</sup> *CFPB’s Consumer Complaint Database*, DELOITTE (2018), <https://www2.deloitte.com/us/en/pages/financial-services/articles/consumer-financial-protection-bureau-cfpb-consumer-complaint-database.html>.

well the company has responded to complaints, while other companies have addressed noted and potential concerns, such as improving customer service response.<sup>19</sup>

In short, the public Database is far from a “Yelp for financial services.”<sup>20</sup> The public Database is essential because it provides far superior and more reliable information than such “gripe sites.” It compels accountability to consumers from providers of financial goods and services, and provides invaluable information to consumers, advocates, and policymakers. Consumers, companies, the Bureau, and third parties use this information to inform their practices.

Given the compelling benefits of the Database to consumers, advocates, policymakers, companies, and the marketplace, we urge the new leadership at the Bureau to continue to publish reports and maintain the public Database. We also urge the Bureau’s leadership to evaluate the benefits of adding more data to the Database, of publishing more tailored reports based on the complaint data, and of evaluating the design of the online interfaces through which consumers lodge complaints and access the Database. These improvements will further enhance the operation of a transparent and efficient marketplace.

## **I. STATUTORY AND REGULATORY REQUIREMENTS TO GUIDE THE BUREAU’S COMPLAINT INFORMATION REPORTING PRACTICES**

Title X of the Dodd-Frank Act contains minimum statutory and regulatory requirements that constrain and should guide the Bureau in evaluating its current complaint information reporting practices. The Dodd-Frank Act specifies the purpose, objectives, and functions of the Bureau. As relevant here, one purpose is to ensure that “markets for financial products and services are fair, *transparent*, and *competitive*.”<sup>21</sup> Transparency is a basic requirement of competitive markets, and publicly sharing information is key to transparency. To this end, the first objective listed in Title X relates to sharing information with consumers: “The Bureau is authorized to exercise its authorities under Federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services— (1) *consumers are provided with timely and understandable information to make responsible decisions about financial transactions*.”<sup>22</sup> Similarly, the Dodd-Frank Act lists one of the “primary functions of the Bureau” as “collecting, researching, monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets.”<sup>23</sup>

The Dodd-Frank Act requires that the Bureau provide information about the complaints it receives in three reports. First, the Bureau must present an annual report to Congress “on the complaints received by the Bureau in the prior year regarding consumer financial products and services.”<sup>24</sup> That report must at minimum “include information and analysis about complaint numbers, complaint types, and, where applicable, information about resolution of complaints.”<sup>25</sup> Second, the Bureau must provide as part of its semi-annual reports to Congress “an analysis of complaints about

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<sup>19</sup> Nathan Cortez, *Regulation by Database*, 89 U. COLO. LAW R. 1 at 50 (2017).

<sup>20</sup> *Remarks by Mick Mulvaney*, *supra* note 9, at 5.

<sup>21</sup> 12 U.S.C.A. § 5511 (emphasis added).

<sup>22</sup> *Id.* at § 5511(b) (emphasis added).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at § 5493(c).

<sup>25</sup> *Id.*

consumer financial products or services that the Bureau has received and collected in its central database on complaints during the preceding year.”<sup>26</sup> Notably, this provision *requires* the Bureau to create a “central database of complaints.”<sup>27</sup> Finally, the Bureau is required to “monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services.” The Bureau must publish at least one report each year detailing “significant findings of its monitoring” including, *inter alia*, information gathered from consumer complaints.<sup>28</sup>

In addition to these statutorily-prescribed reporting requirements, the Bureau has issued policy statements detailing its reasoning behind making the Database public and including each of the categories of information about individual complaints in the Database.<sup>29</sup> These policy statements explain why the information the Bureau makes public through the Database comports with the principles set forth in the Dodd-Frank Act, including how the Database enhances transparency and benefits the functioning of the marketplace for consumer financial products and services.<sup>30</sup>

## II. MAINTAINING AND AUGMENTING THE DATA INCLUDED IN THE DATABASE

It is essential that the Bureau continues to maintain current data in, as well as add data points to the Database to enhance its value and further the Bureau’s policy statements about the Database.

### A. Currently Available Data Comport with the Bureau’s Statutory Authority to Make Complaint Information Available “As Is In the Public Interest”

When consumers file complaints with the Bureau, they identify the name of the company, select the type of product or activity to which their complaint pertains, choose the issue or sub-issue most closely associated with their complaint, specify whether they tried to resolve the issue with the company, write a narrative of their complaint, and state their desired resolution of the complaint.<sup>31</sup> After ensuring that complaints meet all of the Bureau’s publication requirements,<sup>32</sup> the Bureau populates the Database with some of the data from consumers’ complaints. It does not raise privacy concerns because it does not include personally identifying fields.<sup>33</sup>

Accordingly, the Database contains the following fields: date received, product, sub-product, issue, sub-issue, consumer complaint narrative and whether the consumer consented to publishing of the

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<sup>26</sup> *Id.* at § 5496(c)(4).

<sup>27</sup> *Id.* (emphasis added).

<sup>28</sup> *Id.* at § 5512(c)(3)(A), (c)(4)(B)(i).

<sup>29</sup> Disclosure of Consumer Complaint Narrative, 80 FR 15572 (March 24, 2015), <https://www.gpo.gov/fdsys/pkg/FR-2015-03-24/pdf/2015-06722.pdf>; Disclosure of Certain Credit Card Complaint Data, 77 FR 37558 (June 22, 2012), <https://www.gpo.gov/fdsys/pkg/FR-2012-06-22/pdf/2012-15163.pdf>.

<sup>30</sup> See generally Disclosure of Consumer Complaint Narrative, *supra* note 29; Disclosure of Certain Credit Card Complaint Data, *supra* note 29.

<sup>31</sup> For a discussion of the complaint mechanism, see Foohey, *supra* note 6, at 181-82; Littwin, *supra* note 6, at 897-99; Katherine Porter, *The Complaint Conundrum: Thoughts on the CFPB’s Complaint Mechanism*, 7 BROOK J. CORP. FIN. & COM. L. 57, 65 (2012).

<sup>32</sup> See *supra* note 16 and accompanying text.

<sup>33</sup> See Disclosure of Consumer Complaint Narrative, *supra* note 29, at 15575; Disclosure of Certain Credit Card Complaint Data, *supra* note 29, at 37568.

narrative, company public response, company, state, zip code, tags such as “Older American” that align with populations that the Bureau is statutorily-tasked with monitoring, how the consumer submitted the complaint, date the complaint was sent to the company, general company response, whether the company response was timely, whether the consumer disputed the company response, and a unique complaint ID.<sup>34</sup> Members of the public can search the Database using a variety of subject fields, including product, issues, and company.

Each of these fields serves an important purpose in advancing the Bureau’s goal of fulfilling its statutory authority to disseminate marketplace data “as is in the public interest.”<sup>35</sup> Policy statements issued by the Bureau demonstrate the usefulness of each of these fields.<sup>36</sup> Policymakers, advocates, and academics have used or referenced all these fields in their work based on the Database.<sup>37</sup> For example, since 2013, the U.S. Public Interest Research Group has published nine data reports examining specific subject matters ranging from debt collection and credit reporting abuses to the common financial service problems faced by older Americans and by service members.<sup>38</sup> Many of these works further call for the inclusion of more data or expansion of certain fields to allow for more detailed and complete analysis.<sup>39</sup> The Database has become an essential source for analyzing the consumer financial marketplace.

The Database is also an essential tool for consumer empowerment. Consumers need high-quality, clear, and accessible data to make informed choices when shopping for financial products and services.<sup>40</sup> Consumers have become skeptical of the information they see on Facebook and Twitter, and feel lost in a sea of questionable information on Yelp and other similar “gripe sites.”<sup>41</sup> Information such as the Database on the Bureau’s website has therefore become necessary. Consumers respect and rely on information coming from a trusted source, such as the Bureau.

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<sup>34</sup> See Consumer Complaint Database, *supra* note 7.

<sup>35</sup> See 12 U.S.C. 5512(c)(3)(B); Disclosure of Consumer Complaint Narrative, *supra* note 29, at 15575.

<sup>36</sup> See generally Disclosure of Certain Credit Card Complaint Data, *supra* note 29; Disclosure of Consumer Complaint Narrative, *supra* note 29.

<sup>37</sup> See, e.g., Ian Ayres et al., *Skeletons in the Database: An Early Analysis of the CFPB’s Consumer Complaints*, 19 FORDHAM J. CORP. & FIN. L. 343 (2014) (relying on company name, ZIP code, product, sub-product, issue, sub-issue, and consumer disputed, among other fields); Foohey, *supra* note 6 (relying on data received, product, sub-product, issue, sub-issue, and narrative fields); Littwin, *supra* note 6 (relying on state and ZIP code, among other fields, and noting the limited value of the company response and consumer response fields); Christopher K. Odet, *Consumer Bitcredit and Fintech Lending*, 69 ALA. L. REV. 100 (2018) (relying primarily on date received, product, narrative, and company name fields); Porter, *supra* note 31 (noting time between when the complaint was received and when it was sent to the company, which relies on the “date sent” field, and noting the percentage of complaints received via the web, which relies on the “submitted” field); Gideon Weissman & Ed Mierzwinski, *Older Consumers in the Financial Marketplace*, U.S. PIRG (Oct. 2017), [https://washpirgfoundation.org/sites/pirg/files/reports/WAP%20CFPB%20Older%20Report\\_0.pdf](https://washpirgfoundation.org/sites/pirg/files/reports/WAP%20CFPB%20Older%20Report_0.pdf) (relying on the “tags” field to identify older Americans).

<sup>38</sup> See *Reports: The CFPB Gets Results for Consumers*, U.S. PIRG, <https://uspirg.org/page/usp/reports-cfpb-gets-results-consumers> (last visited Apr. 20, 2018).

<sup>39</sup> See generally Littwin, *supra* note 6; Porter, *supra* note 31.

<sup>40</sup> Todd Zywicki, *Complex Loans Didn’t Cause the Crisis*, WALL ST. J. (Feb. 18, 2010), <https://www.wsj.com/articles/SB10001424052748704804204575069102749893246> (discussing the value of common proposals that clearly disclose key mortgage costs).

<sup>41</sup> Amy J. Schmitz, *Remedy Realities in Business to Consumer Contracting*, 58 ARIZ. L. REV. 213, 215-236 (2016) [hereinafter Schmitz, *Remedy Realities*].

In short, to fulfill its statutory duty to release data about the consumer financial marketplace “as is in the public interest,” the Bureau should maintain and increase rather than decrease the data fields included in the public Database.<sup>42</sup>

### **B. Continuing to Publish Company Names Will Maintain Transparency and Enhance the Marketplace**

One of the most important fields included in the Database is the company which is the subject of a consumer’s complaint. If this portion of the Database becomes more generalized, such as by providing only the company’s industry group, then much of the Database’s utility will be lost.

The Bureau already has determined that the public disclosure of company names is in the interest of consumer protection and furthers the Bureau’s charge to collect, monitor, and respond to consumer complaints. In its 2012 policy statement regarding disclosures related to credit card complaints, the Bureau carefully considered various arguments that raised either the undesirability or illegality of making company names public.<sup>43</sup> The Bureau made a reasoned determination that these arguments did not legally prevent or persuasively caution against the publication of company names. It made clear that the Dodd-Frank Act directly authorizes the Bureau to disclose complaint information when it is “in the public interest” to do so.<sup>44</sup> It further determined that sufficient safeguards were already in place to authenticate complaints after submission, thus reasonably guarding against a flood of sham complaints.<sup>45</sup>

In its policy statement, the Bureau also noted the importance of giving context for the complaints—a laudable goal that revealing the company names helps achieve.<sup>46</sup> For consumers in particular, they make better choices when they have access to information about other consumers’ experiences. Consumers do not do business with generalized sectors of the financial products and services industry. They do business with specific banks, specific credit card companies, and specific mortgage lenders, among others. Knowing the identity of the company is the best way for consumers to have the necessary information to make meaningful decisions when choosing among multiple companies.

Similarly, the Database helps legitimate financial service companies provide valuable services to consumers without being undercut by unscrupulous competitors. By casting out companies that cut corners and injure consumers from the marketplace, the Database ensures that law-abiding companies continue to compete fairly.<sup>47</sup> In this respect, the financial marketplace has recognized the Database’s importance in evaluating financial products and services. For example, in 2015, US News and World Report created a ranking for the best credit cards based, in part, on filed and resolved complaints with the Bureau.<sup>48</sup>

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<sup>42</sup> See Disclosure of Consumer Complaint Narrative, *supra* note 29, at 15575.

<sup>43</sup> Disclosure of Certain Credit Card Complaint Data, *supra* note 19, at 37560.

<sup>44</sup> *Id.* at 37560-65.

<sup>45</sup> *Id.* at 37564-65.

<sup>46</sup> *Id.* at 37561-62.

<sup>47</sup> See *Semi-Annual Report of the Consumer Financial Protection Bureau*, *supra* note 16, at 15

<sup>48</sup> U.S. News Staff, *Best Credit Cards for Bad Credit of 2018*, U.S. NEWS AND WORLD REPORT (Apr. 18, 2018), <https://creditcards.usnews.com/bad-credit>.

Further, publishing companies' names promotes self-regulation among industry participants. Companies build their reputations by improving practices based on feedback from consumer complaints. A company that appears less frequently in the database may draw more business as compared to a competitor that is the subject of numerous complaints. The Bureau has stated that "disclosure has the potential to sharpen competition over product quality and customer service."<sup>49</sup> Thus, the Bureau's "naming-names" approach to complaints encourages firms to avoid abusive or questionable behavior when engaging with consumers.

Finally, the Database reveals to the public which companies are responsive to complaints. The "company response field" shows whether a company provided a timely response. When combined with company name, this field serves a useful reputational function for consumer finance firms because it allows them to tell their side of the story. For instance, entries in this field can include "company believes the dispute was the result of a misunderstanding" or "company disputes the facts presented in the complaint." Similarly, the "company response to consumer" field allows companies to address complaints, further providing consumers with information about whether a company actively engaged with the consumer through the complaint mechanism. Companies within the same line of business can use these fields to distinguish themselves from competitors.

To use its own statements regarding openness and transparency, the Bureau is committed to allowing "the marketplace of ideas to determine what the [complaint] data show."<sup>50</sup> Publicly disclosing company names, so the Bureau has stated, allows "researchers to inform consumers about potentially significant trends and patterns in the data . . . has the potential to sharpen competition over product quality and customer service" and "help[s] ensure that the Bureau remains accountable for tackling the complaints that it receives."<sup>51</sup>

We thus urge the Bureau to continue publishing company names in the public Database so that the Bureau can properly and effectively execute its authority to make complaint information accessible "as is in the public interest."<sup>52</sup>

### **C. Publishing Additional Data Will Enhance Transparency, Help the Marketplace, and Allow for Better Assessment of the Complaint Mechanism**

In establishing the Database and later adding consumer narratives to the Database, the Bureau articulated that a key goal of publishing data in the public-facing Database is to fulfill its statutory authority to make complaint information accessible "as is in the public interest," which includes disseminating sufficient data to "empower consumers to better understand the context of the data currently provided in the [Database]."<sup>53</sup> More data and context provided by the Bureau will enhance the dissemination of robust information that consumers and third-parties can use to empower market participants, promote transparency, and enhance fairness and efficiency.

#### **1. More Data Is Needed to Fully Assess the Complaint Mechanism**

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<sup>49</sup> Disclosure of Certain Credit Card Complaint Data, *supra* note 29, at 37564.

<sup>50</sup> *Id.* at 37561.

<sup>51</sup> *Id.* at 37564.

<sup>52</sup> See Disclosure of Consumer Complaint Narrative, *supra* note 29, at 15575.

<sup>53</sup> *Id.* at 15575-76.

Although the Database presently contains information key to assessing the markets for financial products and services, it does not include enough data to allow for the assessment of the Bureau's complaint mechanism as a dispute-resolution function.<sup>54</sup> Arbitration clauses have become ubiquitous in consumer contracts as means for preventing class actions.<sup>55</sup> At the same time, legal aid is limited, and it generally makes little economic sense to incur legal costs to pursue small claims in court or arbitration on an individual basis.<sup>56</sup> This means that most consumers have little legal recourse when they believe they have been wronged by a company.<sup>57</sup>

Consumers therefore turn to company "complaint systems" and social media in attempts to obtain redress. This often results in frustration when companies provide no response to complaints on social media, ignore e-mails, or send rote replies that provide little assistance.<sup>58</sup> These internal customer assistance processes may favor the "squeaky wheels" who are proactive in pursuing their problems.<sup>59</sup> Meanwhile, those consumers considered less lucrative for the companies, often due to lower incomes and buying resources, may receive little redress through these private systems.<sup>60</sup>

The Bureau's complaint mechanism affords consumers a trusted avenue for attempting to resolve their problems and vindicate their rights. When a consumer submits a complaint, the Bureau screens the complaint to ensure that it falls within the Bureau's statutory authority and that it is complete, whereupon the Bureau forwards the complaint to the subject company.<sup>61</sup> The company is required to communicate with the consumer, if needed, determine what action to take, and report back to the consumer and Bureau through a secure portal. Consumers then may provide feedback to the Bureau about the company's response.<sup>62</sup> As described by the Bureau, this process "seeks to ensure that consumers receive timely responses to their complaints and that the Bureau, other regulators,

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<sup>54</sup> Schmitz, *Remedy Realities*, *supra* note 41, at 220-26.

<sup>55</sup> *Id.*

<sup>56</sup> According to the U.S. Census Bureau's 2011 statistics on poverty, 60 million Americans—one in five—qualified for free civil legal assistance. Unfortunately, more than 50 percent of those seeking help are turned away because of the limited resources available. These statistics describe only those below the poverty line and do not reflect the tens of millions of moderate income Americans who also cannot afford legal help. *Civil Legal Aid 101*, U.S. DEPT. OF JUSTICE (Oct. 21, 2014), <https://www.justice.gov/atj/civil-legal-aid-101>.

<sup>57</sup> Amy J. Schmitz, *Access to Consumer Remedies in the Squeaky Wheel System*, 39 PEPPERDINE L. REV. 279, 290-366 (2012) [hereinafter Schmitz, *Squeaky Wheel Systems*].

<sup>58</sup> Judy Strauss & Donna J. Hill, *Consumer Complaints by E-mail: An Exploratory Investigation of Corporate Responses and Customer Reactions*, 15 J. INTERACTIVE MARKETING 63, 63-64 (2001). One study of the Facebook and Twitter accounts of thirty-four large U.S. companies found that the companies ignored nearly half of the complaints consumers submitted, and when companies did respond, they left consumers dissatisfied in about 60% of the cases. Sabine A. Einwiller & Sarah Steilen, *Handling Complaints on Social Network Sites – An Analysis of Complaints and Complaint Responses on Facebook and Twitter Pages of Large US Companies*, 41 PUB. REL. REV. 195, 197-202 (2015) (highlighting results of the study).

<sup>59</sup> See Schmitz, *Squeaky Wheel Systems*, *supra* note 57, at 280; Peter A. Alces & Jason M. Hopkins, *Carrying A Good Joke Too Far*, 83 CHI.-KENT L. REV. 879, 895-96 (2008) (discussing how businesses may discriminate in favor of sophisticated consumers).

<sup>60</sup> See Amy J. Schmitz, *Secret Consumer Scores and Segmentations: Separating Consumer "Haves" from "Have-Nots"*, 2014 MICH. ST. L. REV. 1411, 1411-74 (2014) [hereinafter Schmitz, *Secret Consumer Scores*] (exploring businesses determine what contracts and benefits to provide to consumers).

<sup>61</sup> See *Semi-Annual Report of the Consumer Financial Protection Bureau*, *supra* note 16, at 20.

<sup>62</sup> See *id.*

consumers, and the marketplace have the complaint information needed to improve the functioning of the consumer financial markets for such products and services.”<sup>63</sup>

A recent survey of consumer attorneys found that in lieu of full-representation, 48% of these attorneys had helped consumers submit complaints against financial institutions and 23% of all respondents said they had submitted complaints that were resolved in the consumers’ favor.<sup>64</sup> A significantly higher proportion of responding legal services attorneys (74%) reported that they had submitted complaints to the CFPB for consumers, and 42% of legal services attorneys said that a complaint submitted to the database was resolved in the consumers’ favor.<sup>65</sup> Further, it now is accepted legal aid practice to advise consumers whom legal aids offices are unable to represent to submit complaints themselves to the Bureau.<sup>66</sup>

The Bureau’s complaint process thus may provide consumers with an effective avenue to pursue issues that others might bring directly to companies, thereby serving as a “litigation substitute.”<sup>67</sup> But the Database does not contain sufficient data to fully assess the complaint mechanism as a dispute resolution function. Without data about companies’ responses to complaints beyond the basic information currently provided, there is no way for policymakers, advocates, scholars, and consumers themselves to know the effectiveness of the complaint process. We urge the Bureau to take this opportunity to increase the variety of data available in the Database and, when appropriate, in reports and other publications.

## **2. More Data Will Increase Consumer Knowledge About Companies and Enhance the Marketplace**

The results of inclusion of consumers’ narratives demonstrate the benefits of including as much data as feasible. Inclusion of narratives has allowed policymakers, advocates, and academics to analyze the additional data, in combination with other data, for trends. Based on these analyses, they have proposed ways for the Bureau to enhance the complaint process, for the Bureau to monitor distinct market segments, and for consumers to better utilize the complaint process.<sup>68</sup>

Consumers likewise can read the narratives to assess their own problems, which may enhance how they frame their complaints and deal with companies in a way that leads to more productive resolutions and more consistent resolutions across consumers. As noted above, consumers also can use the narratives to decide which companies with which to do business.

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<sup>63</sup> *Id.* at 21.

<sup>64</sup> *Advocates Reflect on the Consumer Bureau’s Role in Achieving Justice for Consumers: An Online Survey*, NATIONAL ASSOCIATION OF CONSUMER ADVOCATES 6 (Feb. 2018), [https://www.consumeradvocates.org/sites/default/files/NACA\\_survey\\_CFPB\\_in\\_our\\_communities022018\\_1.pdf](https://www.consumeradvocates.org/sites/default/files/NACA_survey_CFPB_in_our_communities022018_1.pdf).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> See Porter, *supra* note 31, at 77-78.

<sup>68</sup> See, e.g., Foohey, *supra* note 6, at 177-79 (discussing how consumers use the complaint function and suggesting ways in which the Bureau can enhance its responses to consumers); Odinet, *supra* note 37, at 105 (relying on consumer narratives to analyze fintech lenders); David Ascienzo, *Cryptocurrency CFPB Complaints Rise as Prices Fall*, VALUEPENGUIN, <https://www.valuepenguin.com/cfpb-complaints-about-cryptocurrencies> (discussing complaints about cryptocurrency); Weissman & Mierzwinski, *supra* note 37 (analyzing complaints submitted by older Americans).

The company response fields provide for useful examples of how the Bureau can augment the data it publishes. At present, the Database includes only superficial data about company response and complaint resolution. It details the company's public response, the company's response to the consumer, and whether the response was timely. The company's public response field is blank for the majority of complaints. The company's response field is limited to seven options (closed, closed with explanation, closed with monetary relief, closed with non-monetary relief, closed with relief, closed without relief, and in process).<sup>69</sup> And the timely received field is a binary yes, no (and N/A).

The information about timely responses and seven response options alone can help consumers decide if they want to do business with particular companies. But additional information about the relief a company did or did not provide would help consumers make better decisions. Without additional data, questions remain about whether and which companies respond to complaints with resolutions that address consumers' complaints. If these questions go unanswered, speculations about companies' practice, both positive and negative, may proliferate. Supplementing data in the Database with observations of companies' responses to complaints will enhance the transparency of the complaint process and provide researchers with data necessary to more fully assess the complaint mechanism, which will benefit all stakeholders—companies, advocates, researchers, and consumers.

The Bureau also should make public additional data it collects through the complaint process. When consumers submit complaints, they may state what they think will be a fair resolution of the issue, but this information is not publically available. Consumers also indicate whether they tried to resolve their issues with the company before turning to the Bureau's complaint mechanism. Including these data will help policymakers, advocates, researchers, and other interested citizens learn how consumers conceptualize and deal with their financial issues.

Further, to provide more context for the company names and resolution information in the Database, the Bureau should consider adding fields that detail the market size for the subject product or service and the share of the market held by the subject company. These data points will allow consumers, researchers, and others to place consumers' complaints in the context of the broader marketplace, which will increase transparency about the prevalence of complaints about particular companies.

Importantly, the Bureau can add these fields to the Database without jeopardizing consumers' privacy or risking re-identification. Overall, in adding these fields, the Bureau will enhance transparency and allow for more detailed analysis by third parties, which will inure to the benefit of all stakeholders.

### **III. REPORTS PUBLISHED BY THE BUREAU PROMOTE MARKET TRANSPARENCY AND EFFICIENCY**

The Bureau's reports based on complaint data are helpful tools that educate consumers and highlight industry trends that otherwise might not be easily recognizable. Reports provide consumers with information about financial products and services in one place via a website that is

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<sup>69</sup> See Foohey, *supra* note 6, at 182 (noting these options).

relatively easy to access. This is a vast improvement over the piecemeal information available to consumers prior to the Bureau's publication of reports.

Similarly, the reports fill key information gaps about issues that have the potential to balloon into larger problems. Policymakers tend to rely on economic studies that examine larger data sets, information that by its nature lags in time. The Bureau's reports augment these studies with real-time information. Researchers and advocates also can draw from these reports to pinpoint particular products and services for future detailed inquiry and to identify areas where consumers may need more information to understand their options.

The reports also provide guidance to companies to insure the integrity of the marketplace. This is particularly important when consumers have little ability to choose which companies to interact with, such as in the context of mortgage servicers, which are contracted with by mortgage lenders. In these instances, companies may find their reputations tarnished by their contracting parties. The Bureau's reports can provide valuable information for companies about which other companies to contract with and whether or not to intervene with their contractual partners to require different practices. Likewise, reports' summaries of data may assist advocates, states' attorneys general, and other stakeholders in advocating for changes to industry standards, such as credit reporting practices.

Overall, the reports provide key information that, when used by advocates, policymakers, researchers, and consumers themselves, help consumers avoid financial mistakes and make better financial decisions, which in turn promotes marketplace efficiency. We urge the Bureau to continue publishing monthly reports and occasional reports about specific products, services, and trends, as well as to enhance these reports with additional analysis and a schedule.

### **A. Enhancing the Usefulness of the Bureau's Reports**

The Bureau should capitalize on the opportunity to leverage the data it collects as part of its complaint mechanism to publish reports that add to the public's knowledge about the financial products and services marketplace. In general, additional analysis and tailored reporting increases the information available to consumers and other parties interested in cultivating marketplace efficiency.

#### **1. Frequency**

The Bureau's current reports, both monthly snapshot reports and special reports about specific industries and issues, provide valuable information for consumers, researchers, advocates, companies, and policymakers. Special reports that the Bureau issues along with educational materials and reports focusing on vulnerable populations, such as service members, lower income consumers, and the elderly, are particularly useful to advocates and researchers who focus on these populations and their particular issues. As such, we urge the Bureau to continue publishing monthly reports and special reports that deal with particular products, services, or vulnerable populations.

#### **2. Content**

Particular to the monthly reports, the inclusion of month-to-month trends is especially beneficial to research and advocates in pinpointing products, services, or issues that merit in-depth focus. In addition to continuing to include month-to-month trends in its monthly and other reports, the Bureau should consider adding more in-depth analysis of monthly trends. For example, more in-

depth analysis may focus on a particular sub-product or sub-issues, as indicated by consumers through the complaint mechanism. Adding this tailored analysis will enhance consumers' ability to make financial decisions, and similarly will allow others to decide which particular issues, products, or services merit extra focus. For all parties, the Bureau's reports likely are one of the most easily accessed and most up-to-date sources about these issues, products, or services.

Likewise, the Bureau's reporting on State and local complaint trends provides key and otherwise often unavailable information to consumers and others about regional trends. The same is true for reports that focus on particular products and services, and reports that pinpoint seasonal fluctuations. In addition to including these trends, products, and services in monthly and other reports, we urge the Bureau to publish tailored special reports that provide more in-depth analysis of trends, seasonal fluctuations, products, and services.

Particular to seasonal fluctuations, some ideas that the Bureau should consider include fluctuations that occur: during summer, when students and younger individuals take on extra work; during the winter holidays; during the beginning of semesters when companies may target college students to sign up for credit cards; and during peaks in housing market searches and sales, such as in the spring.<sup>70</sup>

Similarly, reports that focus on products and services will be even more useful to consumers, policymakers, advocates, and others if they include more information about specific categories and questions asked of consumers. For example, instead of stating the percentage of consumers who complained about issues with debt collection, the Bureau's reports will be more effective if they detail the percentage of consumers who complained about particular issues with debt collection, such as receiving calls after 9 p.m. or the collectors' use of illegal threats.

The Bureau can further enhance the effectiveness of its reports by adding more context for complaint information, particularly with regards to companies. We suggest above adding information about market size and company market share to the Database. Including this information in published reports will promote transparency and aid consumers and others in assessing complained about companies' place within the market for financial products and services. This transparency, in turn, will provide companies with an opportunity to distinguish themselves from other companies.

Overall, the information the Bureau collects through the complaint mechanism places it in a unique position to publish tailored reports about trends, regional and seasonal fluctuations, vulnerable populations, and particular products and services. In many instances, the Bureau may be in the best position to disseminate this information. We thus urge the Bureau to continue releasing monthly reports, along with special reports that provide more in-depth analysis.

## **B. Publishing a Schedule of Reports Will Promote Transparency**

The Bureau also should provide a publication schedule of its reports and other materials relying on complaint data. As noted, the Bureau is statutorily obligated to provide an annual report to Congress

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<sup>70</sup> See Jed Kolko, *The Best Time to Look for a House, By State*, CITYLAB (Jan 30, 2013), <https://www.citylab.com/equity/2013/01/best-months-buy-house-city/4540/>.

on its complaint operations every March 31. It also must provide semi-annual reports that cover a range of topics, including consumer complaints.<sup>71</sup> The Bureau further publishes additional reports and summaries of data. These reports and the Database collectively allow policymakers, industry, advocates, and consumers to assess the CFPB's complaint mechanism, and to leverage information in reports and data in the Database to likewise assess markets for financial products and services. Publication of a schedule will promote transparency and allow users of the reports and other publications to plan for how they will use to-be-published data.

### **C. Notifying Companies of Their Inclusion in Reports**

If the Bureau notifies companies of their inclusion in Bureau reports, the Bureau should release information about how and when it notified companies of their inclusion in its reports along with the publication schedule. This likewise will promote transparency of the process by which the Bureau analyzes and distributes data based on consumer complaints.

We further urge that if the Bureau decides to notify companies of their inclusion in Bureau reports, it do so without including the companies' responses in the reports. If companies decide to provide comments about their inclusion, they may do so on their own websites or by response to the Bureau, which the Bureau can later publish, for instance, as part of its blog. This procedure will ensure that the reports continue to be based solely on information as submitted by consumers via the complaint mechanism. We urge the Bureau to avoid allowing companies to provide input into the reports before publication. This would run the risk that companies could suppress negative information about them in the reports and at the very least would create the appearance of such improprieties.

## **IV. THE BUREAU SHOULD DEVOTE RESOURCES TO CONTINUING TO IMPROVE THE ACCESSIBILITY OF THE COMPLAINT PORTAL AND DATABASE**

A key reason for the complaint mechanism and Database's successes has been the accessibility, design, and user-friendliness of the mechanism and the Database. Since the Database's inception, the Bureau has affirmed the benefits of providing a publicly-accessible and searchable database of complaints. In its final policy statement issued when it first established the Database, the Bureau detailed the benefits of providing a publicly-accessible and searchable database of complaints.<sup>72</sup> These benefits include, among others, facilitating "data visualizations, which can then be embedded on other Web sites and shared via social media," allowing for users "to disseminate information from the database, reducing transaction costs in the marketplace of ideas," and providing machine-readable data such that third-parties can "build their own tools for leveraging the data, further reducing transaction costs and improving dissemination."<sup>73</sup>

It is of utmost importance to the effectiveness of the complaint mechanism that the Bureau's website and the Database be easily accessible and understandable by third-parties, including the general public. Consumers must be able to easily submit complaints and use the Database to research potential creditors and financial products. This policy was at the heart of the Bureau's

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<sup>71</sup> See *supra* Part I.

<sup>72</sup> Disclosure of Certain Credit Card Complaint Data, *supra* note 29, at 37567-68.

<sup>73</sup> *Id.* at 37567.

addition of complaint narratives to the Database. In issuing its final policy statement, the Bureau affirmed that easily-accessible, downloadable, and searchable data about consumers' complaints empowers consumers, promotes transparency, and enhances market efficiency and fairness.<sup>74</sup> Conversely, if consumers face barriers in understanding or using the complaints process or Database, then the complaint portal has less value, and the transparency, efficiency, and fairness benefits of the Database are diminished.

As noted above, consumers look to the complaints process as a trusted means for gathering information and seeking to obtain redress. Since 2011, the Bureau has handled more than a million complaints from consumers nationwide, the vast majority of which were submitted through the Bureau's complaint portal.<sup>75</sup> The Bureau provides a safe and tested complaint process that responds to all consumers, as compared to companies' privatized and generally uneven customer services.<sup>76</sup>

Accordingly, the Bureau's provision of a user-friendly complaint portal and Database can help narrow the divide between consumers' access to remedies, while providing more robust data that consumers and third parties use to promote transparency, efficiency and fairness.<sup>77</sup> To that end, there are three key improvements and related tools the Bureau can use to expand accessibility and usability of the complaint portal and Database.

#### **A. The Complaint Portal Should Be Simple and Easy to Understand**

The usefulness of the Database decreases substantially if it is not simple and understandable for average Americans. The language on the Bureau's website and complaint portal detailing how to submit complaints must be readable and encouraging to people to speak out about problems, beginning with the Bureau's homepage. The average American reads at an eighth-grade level. Text for the general public should aim for a reading level of around grade 6, at most grade 8.<sup>78</sup>

For example, the Bureau's webpage that directs consumers about starting the complaint process is written at grade level 16, meaning that they are appropriate for someone who has graduated from college or has pursued an advanced degree.<sup>79</sup> At present, the page contains two key paragraphs:

We've handled over 1 million complaints, helping consumers connect with financial companies to get direct responses about problems with mortgages, student loans,

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<sup>74</sup> Disclosure of Consumer Complaint Narrative, *supra* note 29, at 15573 (March 24, 2015).

<sup>75</sup> See *supra* note 6.

<sup>76</sup> See *supra* note 59 and accompanying text.

<sup>77</sup> See Porter, *supra* note 31, at 79 (discussing the general "knowledge value" of complaint data).

<sup>78</sup> The American Medical Association and the National Institutes of Health recommend readability of patient education materials to not exceed a sixth-grade reading level. The average reading skill of U.S. adults is at the eighth-grade level. See Adam E. M. Eltorai, et al., *Readability of Patient Education Materials on the American Association for Surgery of Trauma Website*, 3 ARCH. TRAUMA RES. 1 (2014); see also Barry D. Weiss, *Health Literacy and Patient Safety: Help Patients Understand*, AMA Foundation (2007), [https://med.fsu.edu/userFiles/file/ahec\\_health\\_clinicians\\_manual.pdf](https://med.fsu.edu/userFiles/file/ahec_health_clinicians_manual.pdf).

<sup>79</sup> Reading level was assessed using Microsoft Word's readability statistics, which includes the Flesch-Kincaid grade level. See Test Your Document's Readability, OFFICE SUPPORT, [https://support.office.com/en-us/article/Test-your-document-s-readability-85b4969e-e80a-4777-8dd3-f7fc3c8b3fd2#\\_\\_toc342546558](https://support.office.com/en-us/article/Test-your-document-s-readability-85b4969e-e80a-4777-8dd3-f7fc3c8b3fd2#__toc342546558) (last visited May 12, 2018).

payday loans, debt collection, credit reports, and other financial products and services.

Every complaint we receive gives us insights into problems that people are experiencing in the marketplace and helps us to identify and prioritize problems for potential action. The result: better outcomes for consumers, and a better financial marketplace for everyone.<sup>80</sup>

These paragraphs should be easy to understand for all, and not geared for college graduates. Decreasing the reading level of this language is particularly key for improving accessibility. In particular, decreasing the reading level of these paragraphs may increase consumer's propensity to submit complaints, which will provide more data.

At the same time, the Bureau can enhance accessibility by deleting some filters and introductory paragraphs. Indeed, in prior months, this webpage did not contain any introductory paragraphs. Rather, the page prompted consumers to begin the complaint process by "choos[ing] a product or service to get started," and provided several options, each with a basic picture that represented the type of product or service.<sup>81</sup> Not only is this previous language better because it is at a much lower reading level, the fewer times people must click through a webpage will increase their ability to successfully lodge complaints, which again will provide more data.

Now consumers must click through the initial page that contains the above two paragraphs about submitting a complaint. And they also must read another page of text that details the five steps to submitting a complaint and contains language warning consumers about all the information they will need to submit a complaint and that they generally will not be allowed to submit a second complaint about the same problem.<sup>82</sup> The warning itself is at a reading level of grade 10.5.<sup>83</sup> More concerning is that such a warning will deter people from submitting a complaint in the first instance. Although it is important to counsel consumers about what information is needed, easier to read language combined with more visual cues will better help people submit complaints.<sup>84</sup> Similarly, the complaint process steps previously included more visual cues, such as a basic drawings of an automobile. Adding back these visual cues will aid people in understanding their options for submitting complaints.

## **B. The Database Should Be Easily Downloadable and Analyzable**

For the Database to be effective, it should provide information in a way that is easy to analyze for consumers and other stakeholders. Currently, the Bureau's website provides three options for consumers and other parties to access the data: read narratives, view complaint data, and download data in CSV and JSON file formats.<sup>85</sup> Consumers and other third-parties use each of these options

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<sup>80</sup> Submit a Complaint, *supra* note 6.

<sup>81</sup> See Submit a Complaint, CFPB (Jan. 15, 2016), via Wayback Machine, <https://web.archive.org/web/20160115040559/http://www.consumerfinance.gov/complaint/>.

<sup>82</sup> Submit a Complaint, *supra* note 6.

<sup>83</sup> See *supra* note 79.

<sup>84</sup> See J. David Greiner, Dalie Jimenez, & Lois Lupica, *Self-Help, Reimagined*, 92 IND. L.J. 1119, 1154-56 (2017) (discussing organizing and structuring content to make content understandable by laypeople).

<sup>85</sup> Consumer Complaint Database, *supra* note 7.

differently, suggesting that the Bureau should tailor tools to enable users to analyze the data based on how they access the data.

For the “read narratives” option, the Bureau should continue to provide the easy sorting of complaints by date, product, sub-product, issue, and sub-issue, among other options, within its website. Once sorted, the current presentation of the information with headings and subheadings of different font sizes and styles, and ample white space comports with best practices about information presentation.<sup>86</sup> Any changes that the Bureau makes to how complaints are displayed should continue to adhere to these practices.

For the “view complaint data” option, the Bureau should create an interface that displays a spreadsheet in a web browser on users’ personal computers and tablets similar to the Bureau’s current mobile-device ready version of this option. The mobile-device ready version of this option at present brings users to a sortable spreadsheet that displays the data on their smart phones. In contrast, at present, the webpage’s “view complaint data” brings users to the same page as “read narratives.”<sup>87</sup> The duplication is confusing, and misses the opportunity to provide users with the ability to easily access a sortable spreadsheet of data online.<sup>88</sup>

In prior years, this page of the Bureau’s website included “download the data” options that allowed users to pre-sort the downloaded data based on product or service.<sup>89</sup> At present, if a user clicks on “download options,” the user is brought to two options (CSV, JSON) and a link to “filter the data set.” The “filter” link brings the user once again to the same page with complaints as the “view complaint data” option. Such duplication is again confusing, and misses an opportunity to present consumers and third-parties with easily accessible data without needing to download the database. This analysis shows that one tool that the Bureau should consider devoting resources to developing in the near future is a more-easily accessed full version of the Database online, in addition to the Database download tools that the Bureau already provides. This will allow users to be better able to analyze complaint information via multiple interfaces.

### **C. The Complaint Portal and Database Should Be Mobile Friendly**

The complaint portal and Database must be accessible by all consumers regardless of the technology they use to connect to the Internet. Many individuals in America use their mobile devices, such as smart phones, to access the Internet, particularly lower-income users and racial and ethnic minorities.<sup>90</sup> Smartphone usage has helped narrow the prior gap in Internet access based on race and

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<sup>86</sup> See Greiner, et al., *supra* note 84.

<sup>87</sup> Search the Consumer Complaint Database, CFPB, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/> (last visited Apr. 22, 2018).

<sup>88</sup> A spreadsheet currently is accessible through the “view complaint data in Socrata” link on the Search the Consumer Complaint Database page. *Id.* Many consumers and third parties who may benefit from this display of data likely do not understand that this is what they will be routed to if they click this link.

<sup>89</sup> See Consumer Complaint Database, CFPB (May 7, 2016), via Wayback Machine, <https://web.archive.org/web/20160507102109/https://www.consumerfinance.gov/data-research/consumer-complaints/>

<sup>90</sup> Internet / Broadband Fact Sheet, PEW RES. CTR. (Feb. 5, 2018), <http://www.pewinternet.org/fact-sheet/internet-broadband/>.

economic level.<sup>91</sup> As of 2016, 12% of Internet users relied on their smart phones as the only means for gaining access to the web.<sup>92</sup>

At present, the Bureau's website, complaint portal, and particularly the Database, are best viewed through a computer or laptop Internet browser, such as Internet Explorer or Firefox. For instance, the complaint portal prompts consumers to submit a complaint through five steps.<sup>93</sup> Each of these five steps requires consumers to click through a number of options to specify the type of product and problem at issue. To enable consumers to submit complaints, particularly on mobile devices, the Bureau should continue to refine tools that provide cues about content and upcoming questions, allowing people to read text and questions non-linearly.<sup>94</sup>

The Bureau's website also includes a page whereby consumers and third-parties can search complaints. On some mobile devices, this page displays complaints in linear and searchable formats. It also provides an interface to view and download the data in a mobile-friendly format. This is important in advancing access for those without home computers or broadband Internet access. The Bureau should continue to refine tools that ensure that the complaint data are viewable and downloadable in a way that promotes access from mobile devices.

## V. CONCLUSION

Most importantly, the Bureau must continue to make the Database public in order to fulfill its statutory duty to promote transparency and efficiency in the marketplace for financial goods and services. Particularly when combined with the Bureau's lack of new enforcement actions, eliminating the public Database would remove an important check on companies. Ultimately, consumers, law-abiding companies, and the marketplace would suffer. The public Database provides transparency, empower consumers, allows for the dissemination of robust information, and enables market efficiency and fairness.

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<sup>91</sup> Kathryn Zickuhr & Aaron Smith, *Home Broadband 2013*, PEW RES. CTR. 4–5 (2013), [http://www.pewinternet.org/files/old-media//Files/Reports/2013/PIP\\_Broadband%202013\\_082613.pdf](http://www.pewinternet.org/files/old-media//Files/Reports/2013/PIP_Broadband%202013_082613.pdf).

<sup>92</sup> Internet / Broadband Fact Sheet, *supra* note 90.

<sup>93</sup> Submit a Complaint, *supra* note 6 (detailing the “five steps to submit your complaint”).

<sup>94</sup> See Greiner, et al., *supra* note 84, at 1154–56 (discussing organizing and structuring content to make content understandable by laypeople).