August 31, 2015

Via Electronic Delivery

Ms. Monica Jackson  
Office of the Executive Secretary  
Bureau of Consumer Financial Protection  
1275 First Street NE  
Washington, D.C. 20002

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

Dear Ms. Jackson:

On behalf of the members of the Consumer Data Industry Association (“CDIA”), we submit the following comments concerning the Consumer Financial Protection Bureau’s (“CFPB”) Request for Information Regarding the Consumer Complaint Database: Data Normalization.

Our members are nationwide credit reporting agencies and consumer reporting agencies. We agree that it is important to normalize raw complaint portal data so that the data may be compared in meaningful ways. Different users should be able to have a common understanding as to the data’s meaning. Therefore, when normalizing the raw complaint portal data involving consumers’ complaints associated with credit reporting issues, the CFPB must take into account that our members are a unique population in the CFPB database. Unlike other regulated entities, nationwide credit bureaus and consumer reporting agencies are not consumer-facing and the data should be treated accordingly.

The data in the complaint portal pertaining to the credit reporting ecosystem and, in particular, consumer reporting agencies (“CRAs”) have a number of fundamental flaws:

1. the complaint portal allows consumers to submit disputes about the accuracy or completeness of information as complaints where no dispute was previously submitted to a CRA (“first-look disputes”);

2. complaints are often misattributed to CRAs where the complained-of conduct relates to another party in the credit reporting ecosystem, often the furnisher of the data;

3. complaints submitted by fraudulent credit repair services are not flagged or segregated; and
The complaint portal data does not provide appropriate context in the presentation of data pertaining to CRAs.

Each of these flaws results in data that does not, and cannot, “provide consumers with timely and understandable information to help enable them to make responsible financial decisions and to enhance market efficiency and transparency.”

The CFPB’s complaint portal and the manner in which it makes portal data available are confusing to both consumers and complained-about companies, and this confusion hinder users’ ability to have a common understanding of the data’s meaning. In addition, current treatment of “first-look disputes” in the portal is inconsistent with the statutory framework for complaint referrals in Section 611(e) of the Fair Credit Reporting Act (“FCRA”), a statute that the CFPB has been charged by Congress to oversee and enforce. Without important changes to the complaint portal, the CFPB may be undermining the efficacy and integrity of the FCRA processes that the agency enforces. Moreover, until the CFPB addresses the issues outlined below, the dissemination of this data is inconsistent with federal requirements under the Information Quality Act, which requires that information disseminated by federal agencies be objective and useful. We urge the CFPB to address these important issues as it normalizes the portal data.

I. The Portal Should Aim to Reduce the Submission of “First-Look Disputes” By Directing Consumers to Submit Disputes to CRAs and/or their Lenders, and the CFPB Should Not Include Any First-Look Disputes in its Data.

Unlike all other industries that are within the CFPB’s purview, CRAs do not have a direct customer relationship with consumers. Rather, CRAs prepare reports based on information that has been provided by lenders or other furnishers, or obtained from other sources. Because of the lack of a direct relationship between CRAs and consumers, the FCRA provides a framework for maintaining the accuracy of credit report data by providing a mechanism for consumers to dispute information on their credit reports they believe to be inaccurate with the particular CRA. See 15 U.S.C. § 1681i. When a consumer has a potential problem with data in her file, the consumer may submit a dispute to the CRA, which in turn is required to investigate the dispute (often by submitting the dispute to the source that supplied the data under dispute), and report on the results to the consumer. This process both allows consumers to correct inaccurate information in their credit report as well as provides safeguards to protect the integrity of the credit report from dubious credit repair activity. CRAs have invested millions of dollars in working with consumers who have questions about the data in their files or who wish to submit disputes under the statutory framework constructed by Congress.

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1 Request for Information Regarding the Consumer Complaint Database: Data Normalization (“RFI”), 80 Fed. Reg. 37,237 (June 20, 2015). The comments set forth below address overall issues with consumer complaint data that must be addressed before additional steps to normalization can be taken; however, the comments set forth below are relevant to each of the questions identified in the RFI.

2 As a result, of changes to the FCRA resulting from the 2003 Fair and Accurate Credit Transactions Act, a consumer may also submit a dispute directly to the furnisher of the information. See 12 C.F.R. § 222.43. As noted below, however, the complaint portal does not allow a consumer to identify the furnisher of the information when filing a complaint through the portal.
A. The current design of the portal and the CFPB’s statements promoting the portal have resulted in a high number of disputes being routed through the portal, resulting in grossly inflated complaint numbers against the CRAs. These numbers cannot meet the “accurate and unbiased” standard of the Information Quality Act.

Through both changes to the design of the portal and recent statements that the CFPB has made to promote the portal, the CFPB has conflated disputes, which are subject to an established statutory scheme to ensure accuracy of credit report data, with complaints, which “express dissatisfaction with, or communicate suspicion of wrongful conduct by, an identifiable entity related to a consumer’s personal experience with a financial product or service.” The result is inflated complaint numbers being attributed to CRAs. When the CFPB first began accepting credit reporting complaints in October 2012, the intake form for credit reporting complaints included the following comment: “To address your issue, you must file a dispute with your credit reporting company.” However, as of December 18, 2013, that comment was removed from the intake form, and consumers were no longer directed to provide credit bureaus with an opportunity to resolve their dispute prior to submitting a complaint directly to the CFPB.

The complaint intake form does not facilitate resolution, but promotes controversy. The current intake form asks consumers whether they have “disputed the issue with the credit reporting company and received a final response,” but the consumer’s answer to that question does not affect whether the consumer is able to submit a dispute/complaint, nor does it appear that the consumer is required to answer that question before proceeding with his or her dispute/complaint. While the intake form could and should encourage dispute resolution, the form does not include any information or direction to consumers about where to file FCRA disputes if they have not previously disputed the issue with the credit reporting company. The lack of consumer information does a disservice to consumers.

The CFPB’s education directed to consumers about disputing errors on consumer reports compounds this confusion. The CFPB website page, which provides consumers with information on how to dispute errors on credit reports, includes at the top left of the page a “GET HELP” box in different shading that gives a link to “Submit a Credit Reporting Complaint” and links to the CFPB complaint portal form. Similarly, via Twitter and Facebook, the CFPB has been actively urging consumers to submit complaints about their credit reports directly to the portal. These Facebook postings and tweets also clearly conflate disputes with complaints, resulting in more consumers submitting disputes through the CFPB portal.

Not surprisingly, consumers are confused and do not distinguish between a true complaint and a dispute under the FCRA. One of our members estimated that for the month of June 2015, 33%

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4 Not surprisingly, the CFPB’s Consumer Response Annual Report for 2014 noted an increase in the number of complaints submitted relating to the nationwide CRAs. CFPB Consumer Report Annual Report, January 1 – December 31, 2014, at pp. 49-50 (March 2015) (“2014 Complaint Report”). Interestingly, although the 2014 Complaint Report notes a number of possible reasons for the increased number of complaints, nowhere does the report mention the significant change made to the complaint portal in December 2013.
5 In the complaint data available to the public on the CFPB’s website, there are large numbers of accuracy complaints that contain no response for “consumer disputed.”
of CFPB complaints were in fact first-look disputes, and this percentage remains fairly consistent month over month. Another member estimates that 27% of all the disputes that they have reviewed from January-July 2015 are first looks. The inclusion of FCRA “disputes” in the complaint portal results in an extremely inflated number of complaints against the CRAs, which numbers cannot meet the “accurate and unbiased” standard of the Information Quality Act. 6

In order to provide accurate complaint data associated with the nationwide CRAs and other consumer reporting agencies, the CFPB should work to differentiate disputes. This differentiation, which should be in both the design of the portal and the information that the CFPB makes available to consumers, should separate those disputes that are subject to the established FCRA statutory scheme from the complaints that may be submitted through the CFPB portal. Specifically, consumers should not be permitted to submit a complaint about the accuracy and completeness of credit report information against a CRA if they have not first exercised their rights under the FCRA by disputing the item directly with the CRA. Further, the CFPB should encourage consumers to submit disputes directly to the CRAs or with their lenders, and not promote the CFPB complaint portal for that purpose. Finally, in reporting complaint data, the CFPB should ensure that the complaint totals do not include first-look disputes, as the inclusion of such disputes greatly inflates the number of complaints associated with any particular CRA. 7

B. The CFPB’s Current Practices Are Inconsistent with the Complaint Referral Program Created by FCRA Section 611(e).

The 2003 Fair and Accurate Credit Transactions Act (“FACT Act”) amended the FCRA to establish a program whereby the CFPB (formerly the Federal Trade Commission (“FTC”)) refers complaints received by consumers about the accuracy or completeness of the information in their credit file to the nationwide CRAs for a second look. See 15 U.S.C. § 1681i(e). The statute requires that agency “compile all complaints that it receives that a file of a consumer that is maintained by a consumer reporting agency . . . contains incomplete or inaccurate information, with respect to which, the consumer appears to have disputed the completeness or accuracy with the consumer reporting agency” and “transmit each such complaint to each consumer reporting agency involved.” 15 U.S.C. § 1681i(e)(1)(A)-(B). The nationwide CRAs are then to review the complaints to determine whether the CRAs had met all legal obligations imposed by the FCRA. This “second look” was not designed to be a measure of the prevalence of incomplete or inaccurate information in the consumer’s credit files, but was designed to enable consumers to obtain a second review when they remained dissatisfied after having completed the dispute process with the CRAs. As a policy matter, Congress made clear that this complaint referral

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6 See Pub. L. 106-554, § 1(a)(3) [title V, § 515], Dec. 21, 2000, 114 Stat. 2763, 2763A-153; Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8452 (Feb. 22, 2002). Of further concern is that by promoting the use of the portal for disputes, the CFPB has added an additional, unnecessary layer to the dispute process that will simply delay the handling of disputes.

7 In a document entitled “Monthly Complaint Report” dated August 2015, the CFPB recently listed the entities with the highest number of complaints through the portal. If the numbers of complaints were adjusted to eliminate “first-look disputes,” the complaint volumes for the consumer reporting agencies would be greatly reduced.
The process was to give primacy to the formal dispute process set forth by the FCRA – the program requires that the consumer has submitted his or her dispute to the CRA first before his or her complaint is referred.

The FTC’s experience with the complaint referral program prior to responsibility for the FCRA shifting to the CFPB illustrates why disputes should be referred to CRAs in the first instance. The Commission, on a monthly basis, retrieved, compiled, and referred consumer complaints to the relevant CRAs it had received that (i) pertained to the completeness or accuracy of information in a consumer report maintained by that CRA, (ii) indicated that the consumer submitted a dispute to the CRA but was dissatisfied with the response, and (iii) contained sufficient identifying information to allow the CRA to locate the consumer’s file. See FTC Report on Complaint Referral Program Pursuant to Section 611(e) of the Fair Credit Reporting Act, at 3 (Dec. 29, 2008).

Over a three-year period involving over 23,000 complaints, the Commission found that “in most cases, the favorable resolutions took place as part of the normal dispute process, and not as a result of the referral program.” Id. at 5 (emphasis supplied). The data showed that “over 90 percent of disputes that were resolved ‘as requested by the consumer’ were resolved before the CRA processed the referral from the Commission.” Id. at 5 (emphasis in original). Notably, despite the Commission’s efforts to identify complaints where the consumer had previously disputed and was dissatisfied with the response, the Commission’s report demonstrated that in many cases the consumer contacted the CRAs at the same time they filed a complaint with the Commission.

After the Dodd-Frank Act transferred authority for Section 611(e) to the CFPB, the CFPB decided to utilize its online consumer complaint portal as a means to address the requirements of the FCRA. As demonstrated above, however, this online complaint portal lacks proper safeguards to ensure that consumer disputes be made with CRAs first and undermines the FCRA’s policy that the dispute process should be the primary means of ensuring consumer credit report information is accurate. To date, the CFPB has yet to acknowledge the tension between its complaint portal practices and the requirements of Section 611(e). Rather, it simply includes a separate section in its Consumer Response Annual Report relating to credit reporting complaints.

Given that the CFPB is relying on the online complaint portal to fulfill its responsibilities under Section 611(e), it is striking to note that in the CFPB’s latest annual report to Congress (for the year ending Dec. 31, 2014), the CFPB states by its own estimation that only 41% of consumers report having previously contacted the credit reporting company to address their issue. See 2014 Complaint Report at 59. The fact that, according to the CFPB’s own data, 59% of consumers during this period ostensibly either reported they had not first contacted the company to address their issue or did not respond at all to the question illustrates the extent to which the complaint portal system may be re-characterizing disputes as complaints.

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8 The FTC administered the Section 611(e) complaint referral program from 2004 until responsibility was transferred to the CFPB in 2011.
If the CFPB is to fulfill its mandate under Section 611(e), the portal must be redesigned to filter out complaints where no dispute was previously submitted to a CRA. Further, any first-look disputes that are forwarded should not be counted in the CFPB’s reports on complaint portal data.

II. The Dissemination of CFPB Complaint Portal Data is Inconsistent with Federal Requirements Under the Information Quality Act.

Congress passed the Information Quality Act to ensure that information federal agencies disseminate meets certain quality standards. Pub. L. 106-554, § 1(a)(3) [title V, § 515], Dec. 21, 2000, 114 Stat. 2763, 2763A-153. The statute empowers the Office of Management and Budget (“OMB”) to promulgate regulations for maintaining the accuracy and integrity of such information. 44 U.S.C § 3516. The OMB regulations direct agencies to develop procedures to ensure “the quality (including the objectivity, utility, and integrity) of information before it is disseminated.”9 “[A]gencies shall adopt a basic standard of quality” and “should take appropriate steps to incorporate information quality criteria into agency information dissemination practices.”10 The two elements of “quality” relevant here are (1) objectivity and (2) utility.11 “Objectivity” encompasses both the presentation and substance of the information, and requires the presentation of information in an accurate and unbiased manner.12 “Utility” means the usefulness of information to the public.13 Current practices for disseminating portal data relating to CRAs fail both of these elements, and for this reason alone, the CFPB should cease publication of monthly reports and a top-ten list until it has remedied these failings.

The particular problem the Information Quality Act sought to address is highly relevant to complaint portal data: the Act seeks to guard against publishing inaccurate information on the Internet. See 67 Fed. Reg. at 8452 (“the fact that the Internet enables agencies to communicate information quickly and easily to a wide audience not only offers great benefits to society, but also increases the potential harm that can result from the dissemination of information that does not meet basic information quality guidelines”). It is well-recognized that in the age of the Internet, “the ‘speed and power of internet technology makes it difficult for the truth to catch up to the lie.’” In re Anonymous Online Speakers, 661 F.3d 1168, 1176 (9th Cir. 2011). Here the CFPB makes complaint data available through searchable databases and reports. As the CFPB works toward improving the data on the complaint portal, it should ensure the utility and objectivity of information disseminated from the portal by addressing the issues identified below:

11 The third element of quality is “integrity,” which refers to maintaining the security of the information. Id. at 8460.
12 Id. at 8459.
13 Id.
A. The Portal Should Screen and Discount Complaints Improperly Attributed to the CRA.

As demonstrated in our September 22, 2014 letter of comment regarding the CFPB’s Federal Register notice regarding the disclosure of consumer complaint narrative data, there is compelling evidence that complaints are often misattributed to CRAs when it is the furnisher’s conduct that is actually the subject of the complaint and that this misattribution further contributes to complaint inflation on the portal. For example, in a review of the FTC’s 2012 publication of research on the accuracy of credit reports, CDIA found that 88% of the complaint types identified by consumers pertain to the manner in which the data furnisher reported their accounts and not in the way the CRA matched the account to a credit report. See 9/22/14 CDIA Letter of Comment re: Disclosure of Consumer Complaint Narrative Data, Docket No. CFPB-2014-0016, at 5.

Not surprisingly, CDIA’s members have found a similar experience with the consumer complaints referred through the portal. After reviewing more than 1,000 consumer complaints referred through the portal, CDIA found that 77% of those complaints were in fact about how the consumer’s lender reported the data. Our members are reporting similar findings as they review the actual complaints coming in from the portal monthly. These findings clearly demonstrate that the complaint portal improperly—and inaccurately—attributes complaints to the CRAs, when they are in fact about another company in the credit reporting ecosystem.

When viewed in contrast to the reports issued by the CFPB, the data quality issues created by failing to properly attribute complaints is quickly apparent. In the CFPB’s recent Monthly Complaint report, for example, the CFPB reported that only 1% of credit reporting complaints are being made about furnishers (see figure 3 on p. 14), meaning that 99% of the complaints are directed towards the CRAs.

This significant problem with the data is compounded by the limitations of the complaint portal. Although the CFPB has noted that “the Bureau empowers the consumer to elect whom to submit a complaint against (dependent, as noted, on an existing commercial relationship),” see Disclosure of Consumer Complaint Narrative Data, Docket No. CFPB-2014-0016, at 17, consumers are not given the option to add or redirect their complaint to the furnisher when submitting a complaint involving consumer reporting. This failure to properly design the portal compounds the problem of misattributing complaints about a lender’s reporting or investigation to the consumer reporting agency.

In considering this problem, it is important to understand that CRAs are different from other entities on the portal because they are not consumer-facing businesses. Our members operate third-party databases that are reliant on information provided by the furnishers. There is not an ongoing customer relationship between our members and consumers and, unless a consumer submits a dispute under the FCRA, no interaction before a consumer complains on the portal. Attributing a dispute to the proper party is uniquely difficult in this situation, especially where the complaint portal is not designed to give consumers proper guidance to minimize the number of disputes directed at the wrong party. If a consumer believes there is a problem with
information in their credit records, they may perceive it to be the fault of the CRA when it is in fact the fault of the furnisher. Publishing reports containing this raw data without addressing this issue serves only to spread unreliable and inaccurate information about the industry.

**B. Complaints submitted by fraudulent credit repair services are not segregated in the data.**

Many of the complaints on the portal relating to CRAs appear to have been generated by credit repair agencies. Fraudulent credit repair companies have no incentive to engage in lawful disputes on behalf of clients and may misuse the complaint portal tool to seek the deletion of accurate data. The portal no longer allows our members to identify to the CFPB that an incoming complaint submitted by a consumer through the portal is a result of credit repair. Because the CFPB no longer allows our members to notify the CFPB of credit repair activity, the aggregate complaint data on a per-company basis is inflated and likely populated by fraudulent attempts. We urge the CFPB to reverse this practice.

**C. The CFPB’s reports on its complaint portal do not provide appropriate context for the data.**

A discussion of data normalization should include the question of how to set raw data into a proper context. Large industries (and individual companies) will inherently have large raw numbers of complaints and disseminating this information without putting it in context of the overall industry size is misleading. Moreover, presenting data in a proper context should also account for situations where an industry is highly concentrated in terms of the number of competitors or where their products are used in billions of transactions each year. In these cases—both of which are true for our members—it is almost inevitable that the raw number of complaints associated with individual corporate names will appear large. But when these data are set into a fair and proper context (and where failings in the design of the portal are addressed), the company names may not be worthy of being highlighted in a report.

Below is an excerpt from our September 22, 2014 letter of comment to the CFPB regarding the CFPB’s Federal Register notice regarding the disclosure of consumer complaint narrative data. It is a compelling explanation of the serious problem of presenting raw data and using such data to publish Monthly Complaint Reports without placing that data in proper context:

“In the CFPB’s Semi-Annual Report issued May 2014, the Bureau reports that in May 2013 they added to their public disclosure complaints on credit bureaus dating back to October 22, 2012, and has collected 29,600 complaints. See the chart below for examples of how the CFPB could put these complaints into context:
<table>
<thead>
<tr>
<th>Context Statistic</th>
<th>% of Consumers Complaint Relative to a Context Statistic</th>
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<tbody>
<tr>
<td>40,000,000 of consumer obtain a copy of their credit file.</td>
<td>0.074%</td>
</tr>
<tr>
<td>Each nationwide consumer reporting agency has 1.3 billion active tradelines</td>
<td>0.0023%</td>
</tr>
<tr>
<td>CDIA estimates that a total of 3 billion consumer credit reports are sold annually.</td>
<td>0.0009%</td>
</tr>
</tbody>
</table>

Efforts to provide a proper context should be tested before further publication of any monthly reports that include individual company data. Moreover, further reports should include clear and conspicuous disclaimers about the accuracy and other recognized limitations of the data.

D. Proposals for Data Normalization.

The flaws in the complaint database which we summarized above cry out for changes in the complaint system. CDIA believes the following changes are necessary to improve the objectivity and utility of the CFPB’s complaint portal data before such data meet the standards set forth in the Information Quality Act:

1. **First-Look Disputes:**

   The CFPB should work to differentiate disputes subject to the established FCRA statutory scheme from complaints that may be submitted through its portal. We recommend the following changes.

   a. The portal should be designed—and tested—to reduce as much as possible the submission of first-look disputes.

      i. Messaging pushed out to consumers via press releases, speeches, social media should not encourage the use of the complaint portal to submit first-look disputes to CRAs.

      ii. Current complaint databases should, to the extent possible, be purged of first-look disputes.

      iii. CRAs should have the opportunity to identify first-look disputes submitted through the portal so that the CFPB does not improperly count them as complaints. The CFPB should not then count these disputes as complaints, publish these narratives, or retain such data.
2. **Misattribution:**

CRAs are not consumer-facing businesses and operate third-party databases that are reliant on information provided by furnishers. However, consumers may mistakenly attribute the problems with their credit records as the fault of the CRA and not the furnisher. We recommend the following changes.

a. CRAs should have the ability to identify complaints involving information furnished by a third party so complaints that misattribute the conduct to the CRA (when it in fact involves the furnisher) are not counted against the CRA.

b. Alternatively, consumers should at the very least have the ability to identify the furnisher on the portal when submitting a complaint involving a credit dispute.

3. **Credit Repair:**

Fraudulent credit repair companies may misuse the complaint portal tool to seek the deletion of accurate data. We recommend the following changes.

a. Complaints involving credit repair organizations should not count against CRAs in the CFPB’s data reporting.

b. CRAs should have the ability to identify complaints resulting from credit repair organizations so these are not improperly counted.

4. **Context:**

Large industries will inherently have large raw numbers of complaints and disseminating this information without putting it into context of the overall industry size is misleading. We recommend the following changes.

a. Efforts to provide a proper context should be tested before further publication of monthly reports and the inclusion of individual company data.

b. Further reports should include clear and conspicuous disclaimers about the accuracy and other recognized limitations of the data.

E. **Conclusion.**

CDIA appreciates the opportunity to provide input as the CFPB contemplates how to normalize the raw complaint portal data. Our members remain deeply concerned with the current state of the portal data. Addressing the issues described above is crucial to transforming the raw data on CRAs into something useful and accurate. With the exception of the responsibility to respond to the CFPB concerning complaints referred under 611(e) of the FCRA, CRAs are under no legal responsibility to participate in the complaint portal or to respond to complaints from consumers submitted through this channel. The CRAs have chosen to participate in order to facilitate the
resolution of consumers’ concerns. However, the issues with the accuracy and objectivity of the data on the portal and the CFPB’s reports summarizing such data undermine any incentive CRAs have to volunteer to be part of the portal. We urge the CFPB to address these issues to ensure that complaint portal data on the credit reporting industry is reliable and useful.

Thank you for the opportunity to comment.

Sincerely,

[Signature]

Stuart K. Pratt
President & CEO