



## CFPB Issues Proposed Policy Statement Governing Disclosure of Credit Card Complaint Data

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### Executive Summary

Consumer complaints have emerged as one of the cornerstones of the Bureau of Consumer Financial Protection's ("CFPB") focus on mitigating consumer risk and enhancing consumer protection. Since beginning operations in July of this year, the CFPB has given consumers a significant voice in its regulatory activities including, soliciting public input to the "*Know Before You Owe*" initiatives intended to simplify disclosures for mortgage transactions, student loans and credit card agreements, and using consumer complaints as a component to set the scope of its supervisory examinations. The CFPB has collected consumer credit card complaints through its Web site since inception and announced the collection of complaints associated with mortgage products beginning in early December 2011. The complaint system will expand across the spectrum of consumer financial products and services during 2012.

On November 30, 2011, the CFPB released a report (the "Interim Report") that summarizes the first three months of the CFPB's credit card complaint system. Through the CFPB's Office of Consumer Response, the credit card complaint system received more than 5,000 credit card complaints through October 21, 2011; by November 15, 2011 more than 3,100 of these complaints had been reported as fully or partially resolved by the issuers.

Also on November 30, 2011, the CFPB released a proposed policy statement ("Policy Statement") that would address the CFPB's disclosure of certain credit card complaint data obtained through its complaint system. The information would be made available in a public online database and in CFPB reports. The CFPB states that no confidential consumer or issuer information would be included and that the database would contain non-narrative fields for each complete consumer credit card complaint and issuer response including, but not limited to: the subject area or areas covered by the credit card complaint; the name of the card issuer; the zip code in which the consumer lives; the date of the complaint; and whether and how the issuer responded. The Policy Statement would be limited to credit card complaints and the disclosures would be limited to complaints concerning issuers subject to the CFPB's authority under Section 1025 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (the "Dodd-Frank Act"), which gives the CFPB authority to supervise insured depository institutions and insured credit unions with total assets in excess of \$10 billion, and their affiliates and service providers.

Comments on the proposed Policy Statement are requested no later than January 30, 2012.

## Background

Section 1013 (b)(3) of the Dodd-Frank Act requires the CFPB to establish a unit to centralize the collection, monitoring and response to consumer complaints regarding consumer financial products and services. The CFPB is also required to report annually to Congress on the complaints it receives, including information and analysis about complaint numbers, complaint types, and, where applicable, complaint resolutions.

Section 1034 of the Dodd-Frank Act further requires the CFPB to establish “reasonable procedures” to provide timely responses to consumers who submit complaints against persons covered by the CFPB’s authority, as well as to require entities subject to Section 1025 (which gives the CFPB authority to supervise insured depository institutions and insured credit unions with total assets in excess of \$10 billion, and their affiliates and service providers) to provide a timely response to the CFPB regarding consumer complaints. (No separate provisions address the CFPB’s authority, following confirmation of a director, with respect to nondepository providers of consumer financial products and services under Section 1024 of the Dodd-Frank Act, which include participants in the residential mortgage, private education and payday lending markets regardless of size, as well as entities that are “larger participants” in yet to be determined “other” financial products and services markets.)

The CFPB’s Office of Consumer Response was established pursuant to Section 1013 and began operations on July 21, 2011 with a focus on credit cards. The CFPB states that it chose this financial product “because of its wide use, and because credit card problems have been historically among the highest kinds of consumer grievances.” The CFPB subsequently began accepting mortgage-related complaints on December 1, 2011 and has plans to expand the complaint system to other consumer financial products and services by the end of 2012.

As described by the CFPB, the current credit card consumer complaint process can be outlined as follows:

- A consumer submits a formal credit card complaint to the CFPB.
- The CFPB’s Office of Consumer Response determines whether the complaint concerns an issuer that is within the CFPB’s jurisdiction (i.e., the issuer is an entity subject to Section 1025 of the Dodd-Frank Act).
  - If the complaint concerns an issuer who is not in the CFPB’s authority pursuant to Section 1025, the CFPB will forward the complaint to the appropriate prudential regulator.
  - If the complaint concerns an issuer that is under the CFPB’s authority pursuant to Section 1025, the Office of Consumer Response will forward the information via a secure web portal to the credit card issuer.
- The issuer reviews the information, communicates with the consumer as the issuer deems appropriate, and determines what action to take in response to the complaint.
- The issuer reports to the CFPB how it has responded to the complaint.
- The CFPB invites the consumer to review the issuer’s response.
- Throughout this process, a consumer can log onto the CFPB’s secure “consumer portal” or call the toll-free number to receive status updates, provide additional information, and review responses provided to the consumer by the credit card issuer.

- The CFPB performs additional review and investigation for complaints where the issuer fails to respond or where the response provided by the issuer is disputed by the consumer.

Parallel complaint systems and disclosure policy statements will be forthcoming as the CFPB's Office of Consumer Response expands its operations to accept consumer complaints for other financial products.

On December 15, 2011, the CFPB announced that it had opened channels for whistleblowers to alert the CFPB to potential violations of Federal consumer financial law, including an email address and a toll free number. An online portal is expected to become available early in 2012. Whistleblower tips and law enforcement information are considered to be distinct from consumer complaints and are not covered by the proposed Policy Statement.

## Description

### Consumer Response Credit Card Report

The CFPB's Interim Report summarizes credit card complaint data submitted to the CFPB by consumers via telephone, fax, mail, referral by other agencies, or through its Web site between July 21, 2011 and October 21, 2011. The data are presented in an aggregated form and in a tabular format detailing:

- Credit card complaints received and actions taken (sent to issuer, incomplete, pending with consumer, pending with CFPB);
- Company review of credit card complaints (Issuer response – full or partial resolution, no relief, reviewing); and
- Consumer review of resolutions reported by companies to credit card complaints (pending, no dispute, dispute).

The report also breaks down (by number and percent) each complaint by type as identified by the consumer. The types identified in the first three months included:

- Advertising and marketing
- Application processing delay
- APR or interest rate
- Arbitration
- Balance transfer
- Balance transfer fee
- Bankruptcy
- Billing disputes
- Billing statement
- Cash advance
- Cash advance fee
- Closing / Cancelling account
- Collection debt dispute
- Collection practices
- Convenience checks
- Credit card payment / Debt protection
- Credit determination
- Credit line increase / Decrease
- Credit reporting

- Customer service / Customer relations
- Delinquent account
- Forbearance / Workout plans
- Identity Theft / Fraud / Embezzlement
- Late Fee
- Other Fee
- Overlimit fee
- Payoff process
- Privacy
- Rewards
- Sale of account
- Transaction issue
- Unsolicited issuance of credit card
- Other

During the three month period, 5,074 complaints were recorded and 4,254 were referred by the CFPB to the issuer. By November 15, 2011, 3,151, or 74 percent, of the referred complaints had been reported by the issuers as fully or partially resolved. Consumers had not submitted disputes to the issuer's resolution of the complaint in 2,238, or 71 percent, of those cases. No issuer's name was identified in the Interim Report (in contrast to the proposed Policy Statement, which would identify issuers of a credit card for which a complaint is submitted (see below)).

The CFPB further indicates that the core focus of the Office of Consumer Response is to address complaints for individual consumers who submit their grievances and seek the help of the CFPB, but notes that the complaints also provide potential insights into issues within the credit card marketplace that may inform the CFPB across its full range of activities: supervision, enforcement, rulemaking, research, and consumer education.

## Proposed Policy Statement for Credit Card Complaints

The CFPB has released the proposed Policy Statement to address the disclosure of information related to credit card complaints, as summarized below. The CFPB separately states that it will develop similar policies for the disclosure of complaint data related to other consumer financial products, such as mortgage-related products, after gaining experience with those other types of complaints.

### *Purpose*

The CFPB intends to disclose certain information about credit card complaints in a public database and in the CFPB's own periodic reports.

The CFPB states that the purpose of such disclosure is "to provide consumers with timely and understandable information about credit cards and to improve the functioning of the credit card market." The CFPB expects the "complaint data disclosures to improve the transparency and efficiency of the credit card market."

### *Public Access, Data Fields*

As proposed, the CFPB would provide public access to certain complaint information after the effective date of the proposed Policy Statement. In particular, the CFPB would provide public access to a database containing non-narrative fields for each

complete consumer credit card complaint and issuer response within the scope of the CFPB's authority under section 1025 of the Dodd-Frank Act,

The information in the database would be linked by a unique identifier for each complaint and cover non-narrative fields, including, but not limited to:

- The subject area or areas covered by the credit card complaint (complaint type);
- The name of the card issuer (unless the issuer has been wrongly identified);
- The zip code in which the consumer lives;
- The date of the complaint; and
- Whether and how the issuer responded.

Under the proposed Policy Statement, the CFPB would not disclose information that is exempt from disclosure under the *Freedom of Information Act*. It would not publish confidential or personally identifying information, such as the name, full address or credit card account number associated with a consumer's complaint, or any confidential and proprietary business information provided in an issuer's response.

Complaint data would not be included in the database until one month after the initial submission of data to give each issuer identified in a complaint opportunity to determine if it is actually the issuer of the credit card. The database would enable user-defined searches and would also be downloadable.

The CFPB suggests that a consumer's narrative description of "what happened" and of "fair resolution," as well as an issuer's narrative response would be excluded "at least until the CFPB can conduct further study." Such study would assess whether there are practical ways to disclose narrative data in a manner that improves consumer understanding without undermining privacy or the effectiveness of the credit card complaint process and would not expose issuers to reputational injury from "potentially misleading, inaccurate or incomplete narratives."

### *Reports*

The CFPB intends to periodically publish reports containing patterns and trends identified by the consumer credit card complaint date. Further, the CFPB intends for these reports to include some standardized metrics that would provide comparisons across reporting periods. The reports will also describe the CFPB's use of credit card complaint data across the range of its statutory authorities (i.e., supervision, enforcement, rulemaking, research, and consumer education) during a reporting period.

The CFPB specifically requests comment on certain data aggregations including the availability and appropriateness of any normalization metrics to address:

- The relative size of an issuer's credit card business for pattern and trend analysis;
- Products that by their nature generate higher complaint rates across all issuers; and
- Situations where the relief procured by the CFPB for consumers is small in relation to the number of complaints, but is actually appropriate given the issuer's products and internal controls.

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## Commentary

Consumer complaints have emerged as a central focus of the CFPB's activities to protect consumers. As outlined in the newly released Supervisory and Examination Manual, consumer complaints will play a key role in the CFPB's assessment of an entity's compliance risk management system as well as in setting the scope for each examination. An entity's response to consumer complaints will factor heavily into this assessment. In addition, the CFPB has been directing its initial regulatory activities toward those areas that have historically generated the most consumer complaints, including credit cards practices, mortgage disclosures, and private student loans.

The CFPB has also actively solicited consumer input to serve as a guide for many of its actions and initiatives, including:

- The three "*Know Before You Owe*" initiatives (mortgage disclosures, private student lending and credit card agreements) where consumers can comment directly on the clarity and usefulness of proposed disclosures;
- Issuing advance notice of proposed rulemakings seeking general comment on financial products and services, such as the recent solicitation for information on private education loans and private education lenders;
- Conducting numerous town hall meetings and product/disclosure testing forums;
- The "*tell your story*" button at the top of the Web site home page, which solicits a consumer's experience, "good or bad," with a financial product or service.

The proposed Policy Statement, which would identify individual credit card issuers and permit the public to perform independent database searches, is likely to further heighten the focus on consumer complaints. CFPB supervised entities must be cognizant of potential risks arising from a consumer's description of "what happened" (though not proposed to be disclosed) and whether the consumer believes they were discriminated against (a yes or no button on the complaint intake form.) CFPB supervised entities must consider management of consumer complaints to be central to their own internal consumer risk assessment processes and ensure that they can demonstrate active effort to give feedback to consumers who submit complaints as well as to achieve resolution. Entities are further encouraged to review complaint data to identify key areas for improvement in product design, service and/or transparency.

Finally, it is important to note that although the proposed Policy Statement is directed to credit cards, additional policy statements will be forthcoming as the CFPB gains experience with complaints for mortgage loans (collection launched early December) and other financial products (to be accepted beginning sometime this year.)

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This is a publication of KPMG's  
Financial Services Regulatory Practice

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