



Client Alert

Americas FS Regulatory Center of Excellence



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Complaints Monitoring and Risk Management

Complaints, inclusive of direct consumer complaints, regulatory complaints, and whistleblower and ethics hotline reports have always been a key area for regulatory attention. The Consumer Financial Protection Bureau (CFPB or Bureau) has made many advancements to its complaints database and states that it has used the database to identify emerging trends, issues with new products, and patterns across geographic areas and consumer demographics. The Bureau and other regulators encourage individual financial institutions to make use of complaints in much the same way – to identify current issues and highlight areas of emerging concern. Complaints should be compiled across a broad spectrum of sources including internal whistleblower and hotline portals. In addition, when leveraged with transactional and other data measures, complaints data may be used to provide insights into the institution’s prevailing culture and risk governance frameworks. Institutions are further encouraged to enhance analytics across complaints to develop more robust governance metrics and board reporting. A well-developed complaint management program can help financial institutions promote a “customer first” culture and uncover potential regulatory and reputational risks in advance of supervisory or regulatory enforcement actions.

Complaints and risk management

The CFPB has used its complaints database to “identify spikes in specific complaint types, emerging trends, issues with new and evolving products, and patterns across geographic areas, companies and consumer demographics.”¹ This information has been used to drive targeted examinations as well as to establish the scope of supervisory exams for individual institutions.

The CFPB encourages individual financial institutions to make use of its complaints database in much the same way –to highlight current and emerging issues. Financial institutions can do so by both analyzing the complaints submitted to the CFPB by their own customers and reviewing the complaints submitted against other institutions that operate in the same markets. The CFPB considers such

¹ See Prepared Remarks of CFPB Director Richard Cordray at the Mortgage Bankers Association, October 25, 2016,

available at: <http://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-cfpb-director-richard-cordray-mortgage-bankers-association/>



an exercise to be an “important part of sound compliance management.”²

Institutions, can similarly access complaints reported to other regulatory authorities, such as the Federal Trade Commission or Financial Industry Regulatory Authority, as well as review complaints submitted to social media sites.

Complaints indicate potential regulatory action areas: CFPB-specific example

Since 2012, the CFPB’s consumer complaint database has received over one million complaints on a variety of consumer financial products and services. The CFPB summarizes complaints activity on a monthly basis. In both August and September 2016, the CFPB’s Monthly Complaint Report³ highlighted growing consumer concern around bank account products and services. The reports call attention to a twenty-six percent increase in related complaints compared to the previous year, and identify the most commonly cited issues troubling consumers.

Based on complaints received by the CFPB through August 2016:

- Consumer issues are primarily associated with checking accounts (sixty-four percent).
- Most complaints (approximately forty-five percent) address account management, including:
 - Errors on reports and error resolution procedures;
 - The use of consumer and credit reporting data for account screening;
 - Promotional offers for opening new accounts, including eligibility constraints;
 - Unauthorized transactions; and
 - Provisional credit for disputed transactions.

— The second most common complaints (twenty-five percent) address issues with deposits and withdrawals, including:

- Transaction ordering;
- Overdraft charges; and
- Funds availability and check holding policies.

Recent enforcement actions taken by the CFPB and other federal and state regulators tie to some of the same areas denoted in the CFPB’s complaints reports, including unauthorized transactions, overdrafts and related charges, and funds availability. For example:

- The CFPB took action against a national bank to address findings that bank employees engaged in unfair, deceptive, and abusive acts or practices (UDAAP) by opening bank deposit and credit card accounts without customer authorization. The CFPB also found that employees engaged in improper practices to satisfy sales goals, including promotions and cross-selling, in order to earn financial rewards under the bank’s incentive compensation program. The bank agreed to the CFPB’s Consent Order and to pay a \$100 million civil money penalty. Action was coordinated with the Office of the Comptroller of the Currency (OCC), which separately assessed a \$35 million civil money penalty against the bank for safety and soundness violations, and the City and County of Los Angeles, which assessed a \$50 million penalty.

This specific action has resulted in industry-wide regulatory reviews of retail sales of bank account products and services and cross-selling activity. It has also drawn attention to the role of both external complaints, such as consumer complaints reported to the CFPB, and internal complaints, such as employee reporting to Whistleblower hotlines or portals.

² Ibid.

³ See CFPB Monthly Complaint Report, vol. 14, August 2016, available at: http://s3.amazonaws.com/files.consumerfinance.gov/f/documents/082016_cfpb_August_2016_Monthly_Complaint_Report.pdf

[nts/082016_cfpb_August_2016_Monthly_Complaint_Report.pdf](http://s3.amazonaws.com/files.consumerfinance.gov/f/documents/082016_cfpb_August_2016_Monthly_Complaint_Report.pdf); and CFPB Monthly Complaint Report, vol. 15, September 2016, available at: http://s3.amazonaws.com/files.consumerfinance.gov/f/documents/092016_cfpb_MonthlyComplaintReportVol15.pdf.

- The CFPB partnered with the OCC and the Federal Deposit Insurance Corporation (FDIC) to address findings that a financial institution: failed to credit full deposit amounts to customer accounts; kept money from deposit discrepancies when deposit receipts did not match actual money transferred; and misled depositors when it claimed it verified deposit amounts. Through multiple Consent Orders, the financial institution agreed to pay a total of \$20.5 million in civil money penalties and \$11 million in redress to harmed consumers.
- A federal credit union agreed to settle with the CFPB regarding allegations that the credit union froze consumers' electronic access to accounts and certain services, including debit and ATM cards, when the consumers became delinquent on credit products. The federal credit union agreed to pay \$23 million in redress to harmed consumers and a \$5.5 million civil money penalty.

Connection between complaints, conduct and culture, and risk governance

In addition to highlighting current and emerging issues, complaints can also be used more broadly to serve as an essential input into evaluating an institution's prevailing culture and risk governance. Complaints from all sources (submitted by consumers directly to the institution, submitted by consumers directly to the CFPB or Federal Trade Commission complaints portals, posted by consumers on social media sites, or submitted by employees through Whistleblower hotlines or other internal processes) must be subject to effective policies, procedures, and controls. These policies, procedures, and controls should address: intake, escalation, resolution, monitoring, reporting, root cause and trend analysis, the use of metrics, and linkages to UDAAP. Information gleaned from these processes can be connected to and leveraged with other areas demonstrating an institution's conduct and culture to provide insights into the practices and risk governance frameworks across the institution. Some examples of the processes, results and metrics that can be connected to create this holistic view include:

- Consumer complaints (regardless of source / intake channel);

- Internal complaints (e.g., Whistleblower hotline);
- Issues management (regardless of source) – first line of defense - self-assessments and Legal, second line of defense – Enterprise Risk Management & Compliance, third line of defense - Internal Audit, external auditors, and regulatory exam results (MRAs, MRIAs, and consent orders / enforcement actions);
- Code of Conduct / Ethics policy (and other related policies – e.g., Conflicts of Interest) and related training(s) and annual attestations;
- Employee, customer, and vendor surveys;
- Performance management (including upward feedback);
- Compensation (base and bonus / incentives);
- Employee investigations (including consequences / ramifications);
- Sales practices;
- Enterprise-wide, business unit / division, geography / location, and product strategies;
- Key internal and external communications (e.g., culture, conduct, brand, corporate values, mission, strategy); and
- Executive management, Board, and Board Committee reporting.

Critical observations should be reported to risk management and the board of directors. Their role to provide effective challenge to the risk assessments presented is critical. Consideration should be given to the scope and frequency of monitoring, the metrics used (KRIs/KPIs), the triggers and thresholds established, exceptions reporting, issues management, escalation protocols, root cause analyses, and levels of staffing and technology resourcing.

Closing thoughts

Recent news and regulatory announcements related to bank account products and services have likely heightened public awareness of potential risks for UDAAP and associated consumer financial harm. In the near term, consumer inquiries and / or complaints regarding these products and related securities or investments accounts, may increase as consumers closely review their personal

accounts. Similarly, reports to whistleblower hotlines may also increase based on regulators' interest in such reports to highlight potential culture and consumer protection risks.

Federal banking and securities regulators have initiated horizontal reviews focusing on retail sales programs, including cross-selling efforts within institutions and between institutions and their affiliates. The reviews will encompass the effectiveness of policies, procedures, and controls including complaints processing and monitoring and testing to protect consumers' interests as well as to serve as an indicator of the institution's conduct and culture and overall risk governance.

Based on this heightened industry and public attention, institutions should initiate reviews across both internal and external complaints processes as well as assess how complaints data is further utilized in combination with other data to inform business strategies, strengthen conduct and culture, and support overall risk management. Consistent with the encouragement of CFPB Director Cordray, institutions should also evaluate publicly available complaints against other institutions operating in the same markets to obtain information on current and emerging issues.

A well-developed complaint management program can help financial institutions promote a "customer first" culture and uncover potential regulatory and reputational risks in advance of supervisory or regulatory enforcement actions. At a minimum, an effective consumer complaint management program must:

- Capture the full population of complaints, independent of source (internal and external);
- Categorize and risk assess each complaint;
- Contain escalation and resolution protocols;
- Incorporate root cause analysis, and "bigger picture" resolution; and
- Utilize and action ongoing monitoring, testing, and analysis.

Ideally, the complaint management program should be supported by a sound compliance

Technology & Data Analytics program that can provide:

- A robust, consistent and effective compliance program with validated integrity and scalability features;
- On-demand reporting capabilities; and
- Confidence in the data environment, inputs, analysis, reporting and quality.

KPMG offers a wide-array of services related to compliance analytics and complaint management programs. For additional information, please contact any of the individuals named below.

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