

Complaint Management Lessons From Dr. Seuss



Law360, New York (May 21, 2014, 6:58 PM ET) -- To paraphrase a poem by the great Dr. Seuss, *Oh, the places they've been. Oh, the places they'll go!* Consumer complaint management has been top of mind for the Consumer Financial Protection Bureau since the agency opened its doors in July 2011.[1] Under the Dodd-Frank Act, matters related to the collection, investigation and response to consumer complaints are designated as a core function for the CFPB. Consistent with this mission, the CFPB has prioritized consumer complaint management in its work and has identified it as one of the four pillars of an effective compliance management program.[2]

The bureau is using consumer complaints to drive its priorities, to inform rulemaking, to guide supervisory work, and to identify leads for enforcement matters. Complaints have been a core driver for a variety of recent CFPB actions, from templates developed for use by consumers in interacting with student loan servicers, to horizontal reviews of mortgage loan originators being carried out by supervision, to prominent enforcement actions involving credit card issuers.

In its newly released report on consumer complaints[3], the CFPB explains that it now accepts complaints on a wide variety of financial products and services, and plans to expand its portal to accept complaints about additional products and services. In June 2012, the CFPB launched an evolving Consumer Complaint Database that provides anonymous consumer complaint data regarding the complaints it receives. The database, available through the bureau's website, is already being used by consumer activist groups, policymakers and journalists as a resource for data and trends in the marketplace that are then shared with the public. This type of complaint sharing is unprecedented, and creates enhanced legal, regulatory, and reputational risks for providers of consumer products and services.

In this article, we'll take a look at the places the CFPB has been — and the places they intend to go — in consumer complaint management. We will examine the number and types of complaints the bureau is collecting, the methods that the CFPB is using to gather complaints, the importance of complaint management to the bureau, and the essential elements of an effective complaint management system.

Off and Away: CFPB Complaint Gathering

*For complaint gathering it's a new day!
They're off to Great Places!
They're off and away!*

Since its inception through Feb. 28, 2014, the bureau has received approximately 309,700 consumer complaints[4], including 163,700 consumer complaints received in 2013 alone.[5] According to the CFPB's Annual Consumer Complaint Report, to date, mortgage complaints have represented the highest volume (37 percent), followed by complaints regarding debt collection (19 percent), bank accounts (12 percent) and credit cards (10 percent). Complaints related to consumer loans, student loans, payday loans, money transfers and an "other" category each comprised 3 percent or less of the total.[6] Results could be attributable, in part, to the gradual roll-out of complaint types the bureau would accept.

The CFPB gathers and analyzes complaint-related information through a variety of channels, including mail, email, fax or by calling the CFPB's toll-free number, where translation services are available in 180 languages. The bureau also prominently promotes its website as a portal for consumers to submit product-specific complaints, stating that the CFPB will forward the complaint to the financial institution and work to get a response.[7] Further, the CFPB is actively using more creative methods to collect complaints. These include soliciting emails and phone calls from consumers as well as using nontraditional forums for collecting complaints, including holding town hall meetings, conducting field hearings, and partnering with local governments to connect consumers to the CFPB (e.g., through major metropolitan cities' 311 hotlines).

The CFPB accepts referrals from other regulators as well. To this end, the CFPB entered into a memorandum of understanding ("MOU") with the Federal Trade Commission to share consumer complaint information. The MOU ensures that the CFPB and FTC each have access to complaints regarding institutions within their respective jurisdictions. The bureau has also executed information sharing agreements with several state attorneys general. In light of these information-sharing arrangements, the failure to implement an effective consumer complaint management program creates regulatory and enforcement risks beyond just those posed by the CFPB.

Down the Road Between Hither and Yon: Complaint Management

*You have brains in your head.
You have feet in your shoes.
You can steer complaint management
In any direction you choose.*

In its Supervision and Examination Manual, the CFPB indicates that an initial review of a financial institution's compliance management system is a significant factor in determining the scope and intensity of a compliance examination, and that an institution's consumer complaint resolution process is a key component of the compliance examination. In the context of supervision, the CFPB may review all complaints submitted to a financial institution, and if it determines that consumer complaints are not being resolved effectively or expeditiously, it may render an adverse examination finding and/or initiate an investigation that could lead to an enforcement action.

A successful consumer complaint management program can serve as an early warning system for regulatory, operational, compliance, legal and reputational risks by detecting institutional weaknesses or

deficiencies. Therefore, the CFPB expects financial institutions to have a consumer complaint management program and use consumer complaints as key risk indicators for emerging issues. In fact, the lack of an effective consumer complaint management system, without regard to the substance of complaints actually received, can result in the financial institution receiving a "matter requiring attention," or even more significantly, could result in an enforcement action against the institution.

Scoring Points with an Effective Consumer Complaint Management Program

*Oh, the places you'll go! But there is work to be done!
There are points to be scored. There are hearts to be won.
And the magical things you must do with that consumer call
will make you the winning-est winner of all.*

The robustness and effectiveness of a financial institution's consumer complaint management program are critical in satisfying the CFPB's expectations for a compliance management system. In our experience, there are several elements that are pivotal in designing a consumer complaint management program, including:

1. Centralized complaint management
2. Written policies and procedures
3. Application of root cause analysis
4. Monitoring and tracking of complaints and issue escalation
5. Testing
6. Internal communications and training
7. Publication of the consumer complaint management program to the public

Each of these elements is discussed separately below.

1. Centralized Complaint Management

Creating a centralized consumer complaint management department is critical to an effective complaint management program, as it provides consistency in the way complaints are handled through a single set of policies and procedures and a common reporting structure. Centralization allows employees, customers, regulators and outside parties to better understand the complaint resolution process and communicate with one consolidated department, which allows complaints to be resolved more effectively. All consumer complaints should be routed to the complaint management department, regardless of which division, business line, or channel initially receives the complaint.

2. Policies and Procedures

Formal written consumer complaint management policies and procedures that communicate the importance of promptly addressing and resolving complaints are fundamental, and should be updated routinely to incorporate new developments in law and regulatory expectations. Policies should address, at a high level, the process for receiving, acknowledging and resolving consumer complaints. Complaint management procedures should comprehensively describe the process for receiving, acknowledging, addressing and resolving consumer complaints at a more granular level.

Policies and procedures should also address customer complaints about the institution's third-party

service providers or vendors. On April 13, 2012, the CFPB issued Bulletin 2012-03 (Service Providers), which specifically addressed the need for banks and nonbanks to exercise oversight over their vendors. Vendor management remains a significant thread that has run through the CFPB's enforcement actions since the creation of the bureau. Accordingly, financial institutions should exercise significant due diligence when selecting and retaining vendors, including understanding the vendor's processes for consumer complaint resolution.[8] Vendors should have a clear process for addressing complaints received, including forwarding or notifying the financial institution about complaints related to the vendor's work for that institution. Ongoing monitoring of vendors should be performed to evaluate the vendor's compliance with its own consumer complaint policies and procedures, and to ensure policies are updated regularly by the vendor.

3. Root Cause Analysis

An essential component of investigating a consumer complaint is to identify the root cause or causes of the complaint. Root cause analysis helps determine whether a complaint represents an issue unique to the consumer or a systemic failure that may impact multiple consumers. This analysis is critical not only to understanding and resolving a specific complaint, but also in determining whether process or system changes are required to prevent similar, future complaints.

4. Monitoring, Tracking and Issue Escalation

All complaints should be tracked and appropriately categorized so the complaints can be monitored on an aggregate basis for trends that indicate potential risks that may subject the financial institution to regulatory and public scrutiny. Analyzing trends or themes of complaints that are received through the CFPB's Complaint Portal is particularly important, so the institution is aware of and can proactively address the risks the bureau may identify and investigate. In addition to these formal tools, financial institutions may gain useful information from consumer-focused websites, including Internet complaint sites such as www.ripoffreport.com and www.complaints.com, which may highlight specific types of consumer grievances even before they give rise to specific complaints.

Monitoring and tracking complaints may identify issues that require escalation; therefore complaint handling procedures should identify situations where it is appropriate to escalate complaints to senior and executive management or the legal department. For escalated complaints, it is important that senior and executive management be accountable for follow-up and to communicate how the problematic issues were resolved.

5. Testing

A rigorous compliance testing and analytics program — particularly back-end testing of corrective action — is essential to confirm that any compliance issues detected through analysis of consumer complaints are remediated. The scope and frequency of testing should be commensurate to the size and risks of the institution.

6. Internal Communications and Training

Periodic internal communications from executive and senior management concerning the importance of resolving consumer complaints proactively and expeditiously can help foster an institutional culture of customer-centric awareness and understanding. It is critical that these messages come from the top to convey the importance of the communications and the commitment to the message.

Comprehensive employee training is also key to effective implementation of a consumer complaint management program. All employees should receive general awareness training on the consumer complaint management process at the time of hire, and in-depth training for employees who directly manage consumer complaints or have customer contact should be strongly considered.

7. Publication

In an age of transparency, regulators expected financial institutions to make their consumer complaint management programs visible and accessible through publicly available email addresses for complaints and comments, easy-to-find toll-free numbers, mailing addresses, website pages, and, if applicable, Facebook pages and Twitterhandles. Publication of the institution's complaint management program also is key to managing reputational risks and consumer relations, and identifies the institution as a consumer-friendly provider of financial products and services.

On a final note, financial institutions should also develop and maintain an effective relationship with the CFPB, given its consumer protection mission and consumer complaint focus. Responding quickly to complaints received by the CFPB and communicating that the institution has a strong consumer complaint management program designed to address consumers' needs will help develop this relationship.[9]

Your Mountain is Waiting...

*You're on your own. And you know what you know.
And you are the one who'll decide where you go.*

In today's regulatory environment, a strong consumer complaint management program is critical to successfully managing risk. Effective consumer complaint management programs are essential for satisfying regulatory expectations and achieve satisfactory examination ratings, and are useful tools for detecting and remediating systemic issues or trends in noncompliance that could result in private litigation, compliance deficiencies, or adverse media coverage. *Your mountain is waiting. So ... get on your way!*

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[1] See Section 1021(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), 12 U.S.C. § 5511. The Dodd-Frank Act established the CFPB as the first federal regulator solely dedicated to regulating and overseeing consumer financial markets, among other things. The CFPB has supervisory authority for banks with greater than \$10 billion in assets, and has jurisdiction over a wide range of non-banks, including state-licensed mortgage companies, student

lenders, payday lenders, and larger participants in other financial markets (to be defined by regulation).

[2] CFPB Supervision and Examination Manual, Version 2 (Oct. 2012) available at http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf.

[3] CFPB Consumer Response Annual Report Jan. 1 – Dec. 31, 2013 (Mar. 2014) available at http://files.consumerfinance.gov/f/201403_cfpb_consumer-response-annual-report-complaints.pdf.

[4] *Id.* at 6.

[5] *Id.*

[6] *Id.* at 12.

[7] See CFPB, Submit a Complaint, available at <http://www.consumerfinance.gov/complaint>. Note that financial institutions must obtain and respond to complaints made through the CFPB website as outlined in the Company Portal Manual, Version 2.6 (June 2012), available at <http://www.aba.com/Compliance/Documents/CompanyPortalManualVersion2.6.pdf>, and the Response Guidance, Version 1 (June 2013), available at <http://www.cfpbmonitor.com/files/2013/08/guidance-from-cfpb-re-responding-to-complaints-2.pdf>.

[8] See Jonice Gray Tucker, Khalid R. Jones & Kendra Kinnaird, Will Vendors Create New Liability for Servicers?, MORTGAGE BANKING, July 2012, at 52, available at http://www.buckleysandler.com/uploads/36/doc/7-12-mb_tucker-jones-kinnaird.pdf.

[9] On the issue of regulatory relationship management, see Lori Sommerfield and Jo Ann Barefoot, Regulatory Relationship Management: Building Trust, Credibility with Regulators, BNA BANKING REPORT, May 3, 2011, available at <http://www.jdsupra.com/post/documentViewer.aspx?fid=abd6ef25-925d-4631-b51c-42e30f07f42b>; and Lori Sommerfield and Jo Ann Barefoot, Regulatory Relationship Management: Planning, Organizing and Managing Examinations, BNA BANKING REPORT, May 10, 2011, available at <http://www.jdsupra.com/legalnews/regulatory-relationship-management-plan-37764/>.