



MANAGING CONSUMER COMPLAINTS

APPLYING THE LESSONS OF THE CFPB'S COMPLAINT PORTAL

JONATHAN FOXX *

There are two ways to deal with consumer complaints: confront them or ignore them. If you confront them, you usually will overcome them; if you ignore them they usually will overcome you. Ignoring consumer complaints hits almost all the checkboxes for risk failures: reputational, strategic, financial, regulatory, legal, sales, compliance, and even access to credit, to name the more salient risks. Essentially, you can push to resolve complaints or be dragged along by them toward an open abyss of insufferable business challenges.

The Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010 directed the Consumer Financial Protection Bureau ("CFPB" or "Bureau") to find ways and means to mitigate and reduce the risks posed by consumer complaints. The goal was to implement the coordinated collection, monitoring, and response requirements to consumer complaints involving financial products and services.

Over time, the plan was to develop methodologies to ensure that consumers' financial interests were protected while also providing a way for financial institutions to redress their grievances. Supervised entities affected were those involved in credit cards, mortgages, private student loans, consumer loans, credit reporting, money transfers, debt collection, payday loans, prepaid cards, credit repair, debt settlement, pawn and title loans, Federal student loan servicing, marketplace lending, and even virtual currency.

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In due course, it became clear that many of the Bureau's supervised institutions simply had not developed adequate means to resolve consumer complaints. The results of field examinations showed the range of failures running from not even having consumer complaint policies and procedures to resolution methodologies that posed significant legal and regulatory risks to the entities themselves. The vastness of the scope and size of complaints was monumental. Prior to the CFPB, certain types of complaints were usually left to state banking departments and other state governing agencies to investigate. Also, Attorneys General were swamped regularly with complaints. To some extent, the consumer still reaches out to these state government resources. But such state-based agencies, many considered to be consumer advocacy agencies, did not and do not have the human and financial resources to be immediately responsive to consumer complaints.

The CFPB's plan was to establish the Office of Consumer Response ("Consumer Response"),¹ whose purpose would be to answer consumers' questions and send consumers' complaints directly to financial companies. The goal was to get the consumer a response, generally within 15 days. For the most part, this goal was achieved, with response time these days usually in the range of 15 days from receipt of the complaint.

The result of the Consumer Response initiative has led to a learning curve that benefits both the consumers and the financial institutions. That learning curve continues to unfold. The development of the complaint resolution process has not been without challenges and controversy. I have written extensively about these controversies, such as the controversy involving the public facing Consumer Complaint Database.² At this point, however, the Bureau's response mechanisms have improved the intake process, enhanced communication with supervised entities, and helped to create a level field on which consumers and companies can resolve their differences.

In this article, we will take a close look at the CFPB's Company Portal ("Portal"), the Bureau's primary tool for handling Consumer Response. Importantly, I will provide an outline of the actions that a financial institution can implement to ensure an appropriate and timely response to consumer complaints.

PORTAL

The Portal is the primary, electronic interface between Consumer Response and companies. Its purpose is meant to facilitate a coordinated response to consumer complaints. Consumer Response routes complaints to companies through the Portal. By using the Portal, supervised entities are able to read and respond to complaints.

Response time and process flow are critical aspects of the compliance requirements vis-à-vis consumer complaints. The process is supposed to work in such a way as to get the consumer a response, generally within 15 days. The CFPB considers responses to be past due for complaints that have exceeded the 15-

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day limit by which a company must provide an “in progress” status or, on the absolute outside, the 60-day time limit by which a company must provide a final response to a consumer complaint.

The Consumer Response process requires the following nine steps:

1. Consumer submits a complaint about a consumer financial product or service by web, telephone, mail, fax, email, or another agency refers the complaint to the CFPB. Consumers who submit complaints directly to the CFPB’s website can opt to have their complaint narrative published in the Consumer Complaint Database.
2. Consumer Response screens the complaint for completeness and sends it to the company identified by the consumer via the secure portal for a response or refers it to the appropriate regulator.
3. Company reviews the complaint, communicates with the consumer as appropriate, and determines what action to take in response.
4. Company responds to the consumer and the CFPB via the portal.
5. Company selects from a structured list of public company response categories. (This is an option.)
6. CFPB invites the consumer to review the company’s response by logging into the secure Consumer Portal or calling the CFPB’s toll-free number.
7. Consumers are given the opportunity to provide feedback to the CFPB about the complaint process.
8. Complaints are published in the Consumer Complaint Database when the company responds to the complaint confirming a commercial relationship with the consumer, or after the company has had the complaint for 15 days, whichever comes first. With consumers’ consent, scrubbed complaint narratives will be published when the company selects an optional public response or after the company has had the complaint for 60 calendar days, whichever comes first. Complaints can be removed if they do not meet all of the publication criteria.
9. Complaint data and information is shared with other offices within the CFPB, including, but not limited to, Enforcement and Supervision, as necessary.³

The Portal maintains digital security by requiring two-step verification, with a numeric code sent via email for the initial login. Re-verification is required every 90 days thereafter or when a new IP address is used to access the portal.

It should be noted that the Portal contains consumers’ personally identifiable information (“PII”), which must be safeguarded by all of the parties with whom the CFPB shares such information and any other sensitive information. Therefore, in addition to a consumer complaint policy, a company should undertake an information security, cybersecurity, and disaster recovery risk assessments, in order to ensure the highest level of confidentiality, protection, and respect for all of the information involving the complaint.

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The financial institution should ratify a policy and procedure for information security and disaster recovery as part of its overall contact with the use of the Portal. Specifically, the following guidelines ought to be a part of any procedures involving the Portal:

- Do not access, discuss, or otherwise disclose PII for any purpose not related to official duties;
- Secure all physical copies of PII in a locked drawer, cabinet, cupboard, safe, or other secure container when not in use;
- Never leave PII unattended. PII should be properly protected by establishing access restrictions, logging out of systems, or locking computers when not in use;
- Confirm the need to create duplicate copies of PII to perform a particular task with the supervisor and properly dispose of the duplicates when they are no longer needed; and
- Shred or use another secure method to dispose of PII instead of recycling.

The flip side of handling such data is to make sure that company procedures report any suspicion of lost or compromised information to the CFPB via its email at CFPB_StakeholderSupport@cfpb.gov. Also, I suggest White Listing these two other Consumer Response emails: CFPB_ConsumerResponse@cfpb.gov and noreply-notice@cfpb.gov.

The Bureau places the responsibility on the supervised institution to deactivate users or notify Consumer Response when an authorized user, designated as the Point of Contact, no longer requires access to the portal. It also expects the institution to report the receipt of a complaint not related to the company immediately upon discovery and safeguarding all the complaint data to prevent misuse or redisclosure.

The Portal is accessed through the most common browsers, such as Internet Explorer, Microsoft Edge, Mozilla Firefox, Google Chrome, and Apple Safari. However, the Portal is not mobile-enabled.

DASHBOARD

The central focus of the Portal is the Dashboard. Like Cloud-based and SaaS platforms, a Dashboard becomes the means by which the user navigates the entirety of the system solution. In the case of the Portal, the Dashboard displays “tiles,” small framed boxes, with important information linked thereto. There are tiles for:

- Active Complaints: complaints that are open and require action;
- Past Due Complaints: complaints that have exceeded the 15-day limit by which a company must provide an in progress or the 60-day time limit by which a company must provide a final response to a consumer complaint;

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- Due Soon: complaints that are due for company response within 2 days;
- Unread Complaints: complaints that have not been viewed;
- Need More Info: complaints that need more information and the additional information is due within 10 days; and
- In Progress Complaints: complaints where the response has been initiated but not completed, and where the complaint is due within 60 days of when the company received the complaint.

Our clients have not expressed much difficulty in navigating the Portal. The webpage functions themselves are relatively easy to utilize. In addition to the Dashboard, for instance, there is a “Complaints” page, which contains a list of active and archived complaints in a sortable and searchable format. There is an “Export” page, which contains an export tool and a list of historical exports. There is a “Support” page, which contains a link to the company portal manual, the support ticket feature, and a list of current and historical support tickets that a company can access by selecting an individual ticket ID hyperlink. Finally, there is a “News” page, containing news articles related to Consumer Response or the Portal. Most of the foregoing tools are searchable.

COMPLAINT STATUS

In my view, the complaint status at the company level should emulate the complaint status specified by the Bureau in the Portal. In other words, the company should have a process status for each complaint that is similar to the process status given in the Portal, irrespective of whether the consumer complaint is derived from the CFPB.

Each complaint has a status that reflects action taken to date or the most recent response category provided. At a minimum, the statuses that should be consider are:

- Pending Action by Company
 - Complaint has been forwarded to the company by Consumer Response and is awaiting a timely response within 15 calendar days of the date the complaint was sent to the company; or
 - Complaint has been sent to the compliance department from a consumer or a company employee, requiring procedures to recognize the commencement of the 15-calendar day review period.
- In Progress
 - An interim responsive explanation to consumer and the CFPB, indicating that the complaint could not be closed within 15 calendar days and that the final responsive explanation to consumer will be provided through the company portal at a later date; or
 - An interim responsive explanation to consumer from the company, indicating that the complaint could not be closed within 15 calendar days and that the final responsive

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explanation to consumer will be provided at a later date.

- Provided Administrative Response
 - Indicates that the company provided an administrative response to CFPB, including one of the following response category types: “alerted CFPB,” “duplicate complaint,” “incorrect company” or “sent to regulator;” or
 - Indicates that the company provided an administrative response to consumer, including one of the following response category types: “alerted management,” “duplicate complaint,” “incorrect company” or “sent to regulator;” or
- Provided Closure Response
 - A final response to the CFPB regarding the consumer, indicating that the company provided one of the following response category types: “closed with explanation,” “closed with monetary relief,” or “closed with non-monetary relief;” or
 - A final response to the consumer, indicating that the company provided one of the following response category types: “closed with explanation,” “closed with monetary relief,” or “closed with non-monetary relief.”

PROCESSING COMPLAINTS

When processing consumer complaints, it is critical to monitor the way the complaints are being reviewed. Just having a list of complaints is insufficient. It is a due diligence review! The monitoring process has to continue through the complaint procedures. This allows the company to move the complaint from an active to an archive basis, thereby ensuring that there is a timely review as well as appropriate record retention.

For Active complaints, there are five process levels. These are:

1. Unread: Complaints that are appearing in the portal or complaint database for the first time with the timing convention that requires a timely response within 15 calendar days.
2. Due Soon: Complaints which require a response from the company in under 48 hours.
3. In Progress: Complaints to which the company has submitted an initial response, and which are awaiting a closure response.
4. Past Due: Complaints to which the company has failed to provide a timely response. The company must prioritize and respond to any complaints with a “Past Due” status.
5. *Important*: Consumer Response shares information about delinquent responses within the Bureau and state regulators will evaluate if the financial entity has responded in an appropriate timeframe.
6. Needs More Information: Complaints for which Consumer Response or the company has requested additional information. With respect to the Portal, the company must respond to requests for additional information appearing within 10 calendar days of receipt.

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For Archive complaints, there are seven process status levels. These are:

1. Closed with Explanation;
2. Closed with Monetary Relief;
3. Closed with Non-Monetary Relief;
4. Alerted CFPB or Management;
5. Duplicate CFPB Complaints Reported;
6. Incorrect Company; and
7. Sent to Regulator.

DETAILING THE COMPLAINT

The company's complaint log should designate the file location for compiling complaint details and recording a narrative about the complaint.

Each log should contain at least the following sections:

- Primary Consumer Information Name, contact information, and preferences for the consumer submitting the complaint and information indicating whether the person associated with the account is or was a servicemember or dependent or spouse of a servicemember.
- Product Information Type of product or service and type of issue for which the complaint is submitted.
- What Happened Consumer's narrative description of what happened, issue, date of the incident, and monetary loss (if any).
- Desired Resolution Consumer's description of what he or she considers a fair resolution to the complaint.
- Response Recipients The consumer and the individual(s) who will receive the company response.
- Initial Response If the complaint is active and an initial response has been provided, an explanation for why additional time may be needed, and the date the initial response was sent.
- Returned Response If initial response to the consumer was provided, state the information relating thereto.
- Company Response After the company has provided a response, state such information as the response type, response date, and supporting information.
- Company Public Response If the company elects to provide a public response after providing a response to the consumer, state the response type, response to the complaint, and response sent date.
- Attachments Documents related to the complaint as provided by the consumer or the company related to the complaint.

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TIMING THE RESPONSE

Lenders Compliance Group is often asked to provide guidance with respect to what is considered a timely response to a consumer complaint. The answer is somewhat nuanced, as the timing requirement often depends on the alleged violation of a specific regulation. Many regulations set forth specific timing requirements for handling consumer inquiries.

For instance, the Real Estate Settlement Procedures Act (RESPA) provides timing requirements involving a Qualified Written Request (“QWR”). While not necessarily a categorical consumer complaint it certainly can be considered one. A QWR is a written correspondence that a mortgage servicer receives from a consumer to resolve errors related to the account and/or obtain information regarding the account. Without reference to an extension of the time limit, a servicer must respond not later than 10 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives an information request for the identity of, and address or other relevant contact information for, the owner or assignee of a mortgage loan; and for all other requests for information, not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the information request.⁴

That said, a general outline for a timing convention can be applied, in light of the Consumer Response expectations. Any timing response better than the timing rules required by the Bureau should be undertaken, and, of course, any statutory response pursuant to a regulatory requirement is not obviated by the Bureau’s expectations.⁵ Thus, the flow of the complaint process, as conceived by the CFPB, is one where the company provides a response to each complaint through the Portal within 15 calendar days of the complaint being sent to the financial institution via the Portal. When a complaint cannot be closed within 15 calendar days, the company may indicate that its work to close the complaint is “in progress” and provide a final responsive explanation to the consumer through the portal within 60 calendar days of the complaint being sent to the Portal. Handling the complaint process in this way, even if not initiated via the Portal, should be the basic format to implement by a company.

Getting a “past due” in the timing requirement can lead to administrative action against a financial institution. If a response is not given within 15 calendar days, the complaint becomes “past due.” The company still is required to respond to complaints that are past due, but now the spotlight of regulatory scrutiny is highlighting the issue. The Consumer Responses position is that the company will not have the opportunity to select a company public response for any complaint where the initial or final closing response is delinquent.

INVESTIGATION

Each element of the complaint investigation contributes to its review and resolution.

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In our guidance to clients, we recommend the following three steps in the complaint investigation.

1. Steps taken to respond to the complaint. This is the narrative of the response, including a description of communications with the consumer. Attachments and narratives of all responses (written or oral) should be kept.
2. Communication(s) from the consumer. Describes communications received from the consumer in response to the steps taken, attaching copies of all written communications received from the consumer in response.
3. Follow-up actions or planned follow-up actions. Describes any follow-up actions taken or planned to resolve the complaint.

Realistically, there are many aspects to a complaint investigation. But, for many institutions, the findings can be denoted by certain possibilities. Here are a few of the common findings we have come across.

- Third Party. Company believes complaint caused principally by actions of third party outside the control or direction of the company.
- Isolated Error. Company believes complaint is the result of an isolated error.
- Discontinued Policy or Procedure. Company believes complaint relates to a discontinued policy or procedure.
- Opportunity for Improvement. Company believes complaint represents an opportunity for improvement to better serve consumers.
- Company acted Appropriately. Company believes it acted appropriately as authorized by contract or law
- Misunderstanding. Company believes the complaint is the result of a misunderstanding.
- Unable to Verify Facts. Company can't verify or dispute the facts in the complaint.
- Factual Dispute. Company disputes the facts presented in the complaint.

RESOLUTION

The Portal provides for certain potential resolutions and, frankly, these should be sufficient in a company's policy and procedure for resolving consumer complaints. In the list below, I provide a basic outline of the possible resolutions.

1. In Progress

This is akin to the interim responsive explanation to the consumer and the CFPB, indicating that the complaint could not be closed within 15 calendar days and that the final responsive explanation to the consumer will be provided through at a later date.

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2. Closed with Explanation
Final responsive explanation to the consumer, indicating that the company has provided an explanation tailored to the individual consumer's complaint.
3. Closed with Monetary Relief
Final responsive explanation to the consumer, indicating that the steps taken or will be taken include objective, measurable, and verifiable monetary relief to the consumer.
4. Closed with Non-Monetary Relief
Final responsive explanation to the consumer, indicating the steps taken or will be taken, including other objective or verifiable relief to the consumer.
5. Administrative Response Categories
This is a category that bodes for the intervention of a regulatory review.
6. Alerted CFPB or Regulator
Used when the company cannot take action due to suspected fraud, a pending legal matter, or a complaint submitted by unauthorized third party.
7. Duplicate CFPB or Regulatory Complaint
Used when the company cannot take action because the complaint is a duplicate of a complaint the company has already received from the CFPB or the regulator and a response has been given.
8. Incorrect Company
Used when the company cannot take action because complaint is not related to the company.
9. Sent to CFPB or Regulator
Used when the company cannot take action because complaint is about a product or issue that needs to be routed to the CFPB or another regulator.

PUBLIC AWARENESS OF COMPLAINTS

A financial institution should not lose sight of the fact that the Bureau publishes after a company confirms a commercial relationship with the consumer and responds with the status of *In Progress*, *Closed with Explanation*, *Closed with Monetary Relief*, or *Closed with Non-Monetary Relief* or after a company has had the complaint for 15 calendar days, whichever comes first.⁶

The CFPB provides consumers who submit their complaints directly to the CFPB the opportunity to

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consent to publication of their complaint narratives in the Consumer Complaint Database.⁷

The CFPB began publication of consumer complaint narratives on June 25, 2015. The CFPB retains its discretion to withhold complaints from publication upon request from consumers, companies, or CFPB personnel, including, but not limited to, when one or more of the following are true, such as if the complaint:

- was fraudulently submitted on behalf of the consumer,
- was submitted without the actual knowledge of the consumer,
- would reveal confidential trade secret information, or
- involves a whistleblower or tipster, and disclosure could impact a law enforcement proceeding, was referred by the CFPB to another regulator.

But, according to the Bureau, whether or not consent is given has no impact on how the CFPB handles the complaint. Indeed, the Portal does not indicate whether the consumer has consented to publication of the complaint narrative. Furthermore, the consumer may withdraw consent at any time and the narrative will be removed from the Consumer Complaint Database by calling the CFPB. The Bureau contends that it implements a personal information scrubbing standard and methodology to remove personal information from the complaint to minimize the risk of reidentification. Whatever the case, with consumers' consent, scrubbed complaint narratives are published when the company selects a public response or after the company has had the complaint for 60 calendar days, whichever comes first.

An important take-away here is that after providing a final response of *Closed with Explanation*, *Closed with Monetary Relief*, or *Closed with Non-Monetary Relief*, Portal users do have the option to select from a structured list of public company response categories. If selected, that response would be eligible to be published in the Consumer Complaint Database. If no option is selected, no public company response will be published.

The House Financial Services Committee has long wanted to terminate the Consumer Complaint Database, even if it has provided useful information and assistance not only to consumers but to businesses as well. Indeed, some members of this Committee seek the elimination of the Bureau's authority to punish unfair, deceptive or abusive practices among banks and other lenders. According to the CFPB, database complaints have contributed to obtaining nearly \$12 billion in relief to 29 million aggrieved consumers in the past five years.⁸

Whatever the future may be for the Portal, consumer complaints are here to stay, and every financial institution or supervised entity must take appropriate measures to ensure that financial protection is afforded all consumers. Implementing structured procedures to process consumer complaints, and,

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where possible, using the conceptual format offered by the Portal, is the best way to ensure such protection.

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¹ This article will rely on the rules, guidelines, processes, and descriptions, as set for in the *Company Portal Manual*, Version 3.0, Consumer Financial Protection Bureau, April 2017

² For instance, see Foxx, Jonathan, *CFPB's Company Portal for Consumer Complaints*, National Mortgage Professional Magazine, December 2012, Volume 4, Issue 12, pp 8-38

³ I provided these nine steps in my FAQ, *Steps for Responding to Consumer Complaints*, published on November 24, 2017. See <http://mortgage-faqs.blogspot.com/2017/11/steps-for-responding-to-consumer.html>.

⁴ §1024.36(d)(1)(ii)(2)(i)

⁵ The CFPB response time requirements do not replace or necessarily satisfy certain statutory or regulatory requirements (other than those found in section 1034(b), 12 U.S.C. 5534(b) of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010)

⁶ It may be possible to obtain a Freedom of Information Act (FOIA) exemption, though a request, the operatively set forth in 5 USC § 552(a)(3)(A). In the event that the CFPB receives a request for documents so designated, then the CFPB will follow the procedures set forth in FOIA regulations (see 12 CFR Subpart B, § 1070.10 et. seq.).

⁷ CFPB Policy Statement, dated March 19, 2015

⁸ Stanger, Tobie, *Days May Be Numbered for the Consumer Complaint Database, A plan to weaken the CFPB could eliminate a popular consumer protection tool*, February 10, 2017, Consumer Reports

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