

To the Point!

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Legal, Operations and Strategy Briefs for Financial Institutions



CFPB Turns Its Spotlight on Marketplace Lenders

On March 7, the CFPB announced that it is accepting consumer complaints about online marketplace lenders, giving consumers “a greater voice in these markets and a place to turn to when they encounter problems.” The CFPB also issued a bulletin to provide consumers with information on marketplace lending, including guidance on shopping for a loan. Significantly, the CFPB noted in its bulletin that while marketplace lending is relatively new, it is subject to the same state and federal laws as other lenders.

Although consumers have been able to file complaints with the CFPB on marketplace lenders since July 2011 when the agency first began accepting consumer complaints, we anticipate that these recent actions by the CFPB may lead to an increase in complaints against marketplace lenders. As a result, we encourage marketplace lenders to review their complaint-handling policies and procedures and ensure that they are compliant with the CFPB requirements.

CFPB Complaint Process

The CFPB accepts complaints from consumers by telephone, mail, fax, email, and the CFPB web portal (the “Portal”). The CFPB then routes the complaint to the company identified by the consumer through the Portal. The CFPB has published a Company Portal Manual that includes detailed guidance and instructions for companies to respond to consumer complaints via the Portal.

The CFPB reviews each complaint and forwards it and any documents provided by the consumer to the company for response. In order to respond to a complaint, the company should gather all relevant information, including its consumer’s file, and consider contacting the consumer to resolve the matter. As part of its review, the company should determine whether the complaint is an isolated or company-wide issue. After gathering and reviewing relevant information, the company must submit its response to the CFPB. The response must include, at a minimum:

- a description of the company’s efforts to investigate the issue and address the complaint, including attaching all communications to the consumer related to the issue;
- a description of communications received from the consumer in connection with the steps the company took to respond to the complaint, including attaching all communications received from the consumer;
- a description of any planned follow-up actions the company intends to take related to the consumer’s complaint; and
- designation of the general nature of the company’s response by selecting one from a menu of the categories provided on the Portal.

The CFPB expects companies to respond to a complaint within 15 calendar days of receipt and will publish the complaint on its complaint database at that time. If a company cannot respond within 15 days, it can request an extension of up to 60 days.

As of June 2015, the CFPB complaints database may publish a consumer’s narrative description of the complaint if the consumer “opts-in” and agrees to publication. The consumer narrative is not published until the company has had the complaint for 60 days. The company may, but is not required to, include its response to the consumer narrative by selecting one from a menu of public-facing comments provided by the CFPB.

The CFPB reviews the information submitted by the consumer and the company and can choose whether to investigate the complaint further. The agency can share the information with other state and federal enforcement and regulatory agencies for

further action as well. Presumably the CFPB is more likely to exercise these options if the complaint identifies a systemic issue that poses risk to other consumers. For this reason, companies should evaluate all complaints to ensure that a given complaint does not identify a larger, institution-wide issue.

Conclusion

The CFPB has handled over 800,000 consumer complaints since 2011 and has published eight snapshots of these complaints in its monthly Complaint Report. It also files semiannual reports to Congress that include data on consumer complaints. The CFPB uses complaint data to identify areas that require additional regulatory guidance and rulemaking and to direct its investigations and enforcement actions. As a result, the complaint process should be monitored closely, as it can create additional compliance risk and possible litigation risk for financial institutions, including marketplace lenders.

Due to the CFPB's recent announcement, marketplace lenders should become familiar with the Company Portal Manual for responding to consumer complaints. They should ensure that they keep detailed customer service records and supporting documents that identify their efforts to review and respond promptly to all consumer complaints. All marketplace lenders should have an established procedure to ensure that appropriate changes are made if they identify enterprise-wide issues that require correction as part of their complaint response process. Finally, marketplace lenders should update their policies and procedures for document retention and the handling of consumer complaints to ensure that they have access to adequate records in order to comply with the CFPB's consumer complaint requirements.

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