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Public Disclosure of Consumer Complaint Narratives: The CFPB's Latest Consumer-Protection Initiative

Financial Institutions Committee Meeting – August 12, 2014



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The Basics: Status Quo on Consumer Complaints

- Since 2011, the CFPB has collected consumer complaints on (among other things) credit cards and mortgage loans
- Consumer complaints are accepted on the CFPB's website, as well as by telephone, e-mail, fax, and by referral from other agencies

The Basics: Status Quo on Consumer Complaints (cont'd)

- Customer complaints are forwarded to the appropriate company by a secured online portal
- Once received, the company reviews the complaint, attempts to address the issue with the consumer, and then reports back, also via the secure portal, to the CFPB

The Basics: Status Quo on Consumer Complaints (cont'd)

- While some information about customer complaints is already publicly available (including in annual CFPB reports), the information currently includes only the following:
 - the name of the company that is the subject of the complaint
 - the date the complaint was submitted to the CFPB and the date it was submitted to the company
 - the consumer's zip code
 - the product type
 - the issue the consumer is complaining about by category; and
 - whether or not the company provided relief

The Basics: New Proposal – Narratives

- The CFPB has now proposed to add complaint narratives to the information that is publicly available (narratives being the consumer's explanation of what happened that led to the complaint)
- Narratives would be added only with the consumer's consent, and the subject company's response, if made within 15 days, would be published alongside the consumer's narrative. If the company does not respond within 15 days, only the consumer's narrative complaint would be published.

Arguments For the Proposal

- The Proposed Policy Statement issued by the CFPB states the following (among other things) in support of publicizing narrative consumer complaints:
 - “Consumer, civil rights, and open government groups supported disclosure on the grounds that disclosing narratives would provide consumers with more useful information on which to base financial decisions and would allow reviewers to assess the validity of the complaints.”
 - “[F]or some consumers a primary reason for submitting a complaint may be to share their experience with other consumers. Complainants may desire to do so as a means of providing information they deem useful to others who may be considering doing business with a particular financial institution or as a means of letting others who may be experiencing a similar situation know that they are not alone. These needs cannot be served by the Bureau simply by disclosing the non-narrative portions of the complaint. Indeed, some consumers may choose to submit a complaint only if they will have the opportunity to share their story and other consumers may overcome their reticence to submit a complaint by reading the experiences of others.”

Arguments For the Proposal (cont'd)

- In other words (and summarized), the policy in favor of publicizing narratives appears to be:
 - Consumers will be encouraged to file complaints after reading about other consumers' similar experiences
 - Because consumer reviews and complaints are a “reliable signal of product quality,” published narratives will be a useful tool for consumers when deciding which institutions to do business with; and
 - Narrative complaints will invite comment by advocates, academics, the press, and entrepreneurs
- In short, the CFPB intends to create, and also archive, a “superblog” of complaints by consumers against the financial institutions with which they do business

Arguments Against the Proposal

- Financial institutions and industry groups have suggested numerous reasons why such a “superblog” may not be practical or useful, and may even be damaging to the CFPB’s mission, including:
 - Customers’ Privacy Concerns
 - Reputational Issues for the Institutions Involved
 - The Utility May Be Undermined Given Too Much “Unfiltered” Information
 - The Cost Imposed on Financial Institutions

Arguments Against the Proposal (cont'd)

- Customers' Privacy Concerns
 - The CFPB has suggested that negative comments by consumers may be counterbalanced by responses from the financial institutions. But financial institutions are limited by federal and state privacy laws from disclosing certain consumer information. As a practical matter, financial institutions may not be able to substantively respond without subjecting themselves to liability under certain privacy laws. The “superblog” may therefore be very much one-sided.

Arguments Against the Proposal (cont'd)

- Reputational Issues for the Institutions Involved
 - Publishing complaints in official reports and on official websites may lend credibility to otherwise meritless complaints
 - Publicizing complaints, while constraining the subject institution's ability to respond, obviously has repercussions for the institution's reputation
 - This problem is compounded by basic market data that, as a general matter, only unsatisfied consumers voice their opinions. A favorable resolution of a complaint is unlikely to be published.

Arguments Against the Proposal (cont'd)

- The Utility May Be Undermined Given Too Much “Unfiltered” Information
 - Complaints are useful to other consumers only if based on facts. But as most litigators who represent financial institutions can tell you, borrowers facing a foreclosure, a collections action, or repossession are not always prone to relying on facts.
 - “Unfiltered” information is already available on non-government websites (“stopforeclosurefraud.com”). Adding another that includes only “raw” information that has not been verified may not be very useful.

Arguments Against the Proposal (cont'd)

- The Cost Imposed on Financial Institutions
 - Financial institutions already spend millions on responding to consumer complaints. These costs are likely to go up where the institutions' responses, if written to be published alongside the corresponding complaints, will also need to be reviewed for privacy issues.
 - Costs will also go up because responses are likely to be more scrutinized if published, requiring additional follow-up and clarifying responses.

Comment Period Extended

- On August 4, 2014, the CFPB extended the comment period on the new proposal to September 22, 2014. Comments may be submitted online or by letter.

Questions? Comments?

- Any questions, comments, or if you just want to discuss, please contact Dykema's Los Angeles Office:
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