

# Consumer Financial Protection Bureau: The New Cop on the Regulatory Beat

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# What is the CFPB?

- New federal agency
- Created by the Dodd-Frank Act of 2010
- Separately-funded directly by the Federal Reserve
  - Estimated budget - \$450 million in 2013
  - Independent of the Congressional appropriation process
  - Keeps any civil penalties exacted in enforcement actions
- Headed by a single Director appointed by the President
- Hired about 900 employees to date
  - CFPB's plan: 1,350 employees by 2013 year end
  - **More than half of the CFPB's employees are assigned to supervision and enforcement**



# CFPB's Purpose

- Primary ***rulemaking, supervisory*** and ***enforcement*** authority over entities offering “consumer financial products and services”
  - Supervises banks and “covered” non-banks, **including debt settlement**
  - Prevents unfair, deceptive or abusive acts and practices
  - Investigates and responds to consumer complaints
  - Requires “covered persons” to respond to such investigations
  - Initiates civil and administrative enforcement actions against violators



# “Consumer Financial Product or Service”

- “Consumer financial product or service” includes:
  - Extensions of credit
  - Servicing or brokering loans
  - Providing real estate services
  - Handling deposits
  - Stored value instruments
  - Check cashing
  - Payment processing
  - Credit reporting
  - Debt collection
  - **Debt settlement**
  - Many other activities...



# CFPB's Initial Targets

- **Large banks**, thrifts and credit unions, their affiliates and certain service providers
- Nonbanks in the **residential mortgage, private education lending and payday lending** markets
- Nonbanks determined to be “**larger participants**” in other markets that pose risks to consumers
  - Large **consumer reporting agencies**
  - Anticipate: Large **debt collection companies**



# What is UDAAP?

## CFPB's Prime Directive:

- Prevent **“Unfair, Deceptive, or Abusive Acts or Practices” (“UDAAP”)**
- **“Unfair”**
  - Likely to cause substantial injury to consumers
  - Not reasonably avoidable by consumers
  - Not outweighed by benefits to consumers or competition
- **“Deceptive”**
  - False or misleading
  - Unsubstantiated



# What is UDAAP?

- **“Abusive”**
  - Interferes with consumer’s ability to understand a term or condition
  - Takes unreasonable advantage of consumer’s:
    - Lack of understanding of risks, costs, conditions
    - Inability to protect own interests
    - Reasonable reliance on the seller to act in their interest.





# The CFPB's UDAAP Examination Manual

## “The Role of ***Consumer Complaints*** in Identifying Unfair, Deceptive, or Abusive Acts”

- Complaints “Play a Key Role in the Detection of UDAAPs”

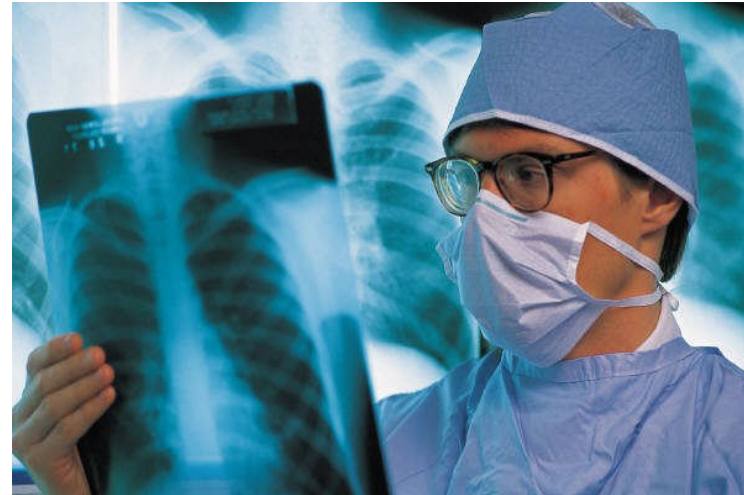


# How Does The CFPB View Complaints?

**Customer complaints are symptoms!**



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# The CFPB's UDAAP Examination Manual

## CFPB's view:

Complaints can show “weaknesses in the company’s Compliance Management System”

- Training
- Internal controls
- Monitoring



# How Should You View Complaints?



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# What Should You Do With Complaints?

- Find them!
- Gather them!
- Analyze them!
- Respond to them!
- Document your responses!
- Preserve records showing all of the above!



# Who is Already Tracking Your Complaints?

- FTC – Sentinel Network
  - Shared with the CFPB and the States
  - Not shared with companies
- Internet Crime Complaint Center ([www.ic3.com](http://www.ic3.com))
  - Not shared with companies
- States
  - Sometimes shared with companies)
- Better Business Bureau ([www.bbb.org](http://www.bbb.org))



# Who is Already Tracking Your Complaints?

- Online websites:
  - The Ripoff Report ([www.ripoff.com](http://www.ripoff.com))
  - Steve Rhodes ([www.getoutofdebt.org](http://www.getoutofdebt.org))
  - [www.complaints.com](http://www.complaints.com)
  - [www.pissedconsumer.com](http://www.pissedconsumer.com)
  - [www.scam.com](http://www.scam.com)
  - [www.consumeraffairs.com](http://www.consumeraffairs.com)
  - [www.scambusters.com](http://www.scambusters.com)



# CFPB Company Portal

- CFPB has created its own “Company Portal”
  - Secure forum for resolving consumer complaints
  - Consumers can submit complaints via website, telephone, email or snail mail
  - Vetted complaints are forwarded by CFPB to company
  - Must respond through the portal **within 15 days.**
    - Complaints must be resolved within 60 days
  - Consumers may respond to the company’s response
  - Unanswered, unresolved and disputed complaints may be investigated!





# CFPB Company Portal

- Currently the CFPB collects complaints on ***credit cards, mortgages and auto loans***
- Planned expansion to other consumer financial industries, **including debt settlement**
- Requires company registration
- **“Government Portal”** to be rolled out within one month!
- Can be monitored by FTC, DOJ, State AGs



# CFPB Company Portal

## Pros:

- Get off to a good start with the CFPB
- Awareness of consumer complaints received by the CFPB
  - And soon, visible to all regulators!
- Opportunity to explain or resolve complaints
- Opportunity to respond to marketing, operations issues before they become regulatory issues



# CFPB Company Portal

## Cons:

- If you're not handling your complaints, the regulators will know it!
- As if the CFPB won't notice even if you're not seeing your complaints
- Late responses, unresolved and disputed complaints may be investigated
- However, companies that refuse to participate may also be investigated, at least on the consumer complaints received by the CFPB



# Track Your External Complaints!

- Regularly monitor every available source
  - Google® daily “email alerts” on your company
  - All of the websites mentioned above
- Create your own “feedback loop”



# Create Your Own “Feedback Loop”

- Ask your customers for feedback!
  - Make it easy for consumers to provide it.
    - Solicit both **Positive** and **Negative** input.
- Use multiple modes to seek feedback:
  - Surveys
    - Store brochures
    - Customer service reps
    - Emails
  - Create your own tracking website
- Reward consumers for providing input.
- Incentivize employees for gathering feedback



# Analyze That Feedback!

## 1. Look for patterns:

- Multiple complaints about the same product
- Multiple complaints about the same practice
- Multiple complaints about the same issue

## 2. Look for “hot” complaints.

- “A single substantive complaint may raise serious concerns.”
- “Complaints about false or misleading statements”
- “Complaints about failures to disclose”



# Don't Forget Your Affiliates!

Pay attention to complaints about affiliates!

- Gather, monitor and respond!
- Includes:
  - Subsidiaries
  - Affiliates
  - Third party service providers



# Document and Preserve Your Responses!

- Responses without documentation:
  - Might as well have never happened!
- Preserve Your Responses!
  - Value of written documentation: it's Evidence
  - Value of immediate access to your Complaint Data
    - Demonstrates your company's compliant mindset to regulators and plaintiff's attorneys
    - Deters unfounded civil and class action claims
    - Saves you money in defense costs!
- "Help me help you!"





# Questions?



# Thank You!

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# Bonus Coverage!

## If we have time, we'll also discuss:

- The CFPB's first two enforcement actions
- The CFPB's enforcement remedies
- What you can **and should** be doing now to prepare for CFPB supervision



# CFPB's Initial Enforcement Actions

- ***CFPB v. Chance E. Gordon, et. al.***
  - Filed in USDC CD Cal. before Judge Ronald Lew
  - Follows FTC “playbook”
    - Facially egregious small loan modification operation
    - Ex parte TRO freezing assets and naming receiver
    - Unlikely to be significant assets to defend
  - Interesting aspects:
    - CFPB allegedly imposed 90-day freeze before filing by leveraging its supervision over defendant’s bank
    - Defendants have challenged CFPB’s authority based on director’s recess appointment, constitutionality



# CFPB's Initial Enforcement Actions

- Capital One credit card marketing settlement
  - Capital One ordered to pay \$210 million in fines, restitution
  - Alleged deceptive telemarketing of add-on products **performed by third parties**
    - Payment protection plans
    - Credit monitoring programs
- Consumers allegedly misled about:
  - Nature of products
  - Potential benefits of services
  - Eligibility for benefits
  - Cost of various benefits



# CFPB's Initial Enforcement Actions

## Capital One settlement terms:

- Stop marketing add-on products
- Pay full restitution to consumers for product fees and lost benefits (\$140 million)
- Additional fines and penalties totaling \$70 million
- Submit to ongoing reviews by independent auditor



# CFPB Enforcement Remedies

## Statutory Penalties:

- First Tier – violation of a law, rule, final order or CFPB-imposed condition
  - cannot exceed **\$5,000 for each day** violation continues
- Second Tier – **reckless** violation of a Federal consumer financial law
  - cannot exceed **\$25,000 for each day** violation continues
- Third Tier – **knowing or intentional** violation of a Federal consumer financial law
  - cannot exceed **\$1,000,000 for each day** violation continues
- Must notify DOJ if evidence of federal crimes



# CFPB Enforcement Remedies

## Additional Remedies:

- Rescission or reformation of contracts
- Refund of monies or return of real property, restitution
- Disgorgement or compensation for unjust enrichment
- Public notification regarding the violation, including costs of notification
- Limitations on the activities or functions of the person
- Recovery of government's attorney's fees and costs





# CFPB Enforcement Remedies

## Potentially Liable Parties:

- Persons who provide "substantial assistance" to a covered person in engaging in an "unfair, deceptive or abusive act"
- Directors, officers or employees charged with managerial responsibility
- Controlling shareholders
- Agents
- Affiliates/other related entities
- Service providers



# Your CFPB Action Plan

1. Familiarize yourself with CFPB rules and examination manuals (especially UDAAP)
2. Develop policies and procedures for:
  - a. Tracking and responding to consumer complaints
  - b. Collecting and organizing documents for CIDs
  - c. Responding to examination manual recommendations
  - d. Reviewing advertising and marketing materials
  - e. **Documenting all of the above**



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