

## **The CFPB Company Portal — It's Your Company's Radar**

*Law360, New York (September 17, 2012, 12:12 PM ET)* -- Countless clients ask, "How do I know if my company is on a regulator's radar, and how do I stay off of it?!" Historically, the answer required some dedicated sleuthing and guesswork because most regulatory complaint databases, including the Federal Trade Commission's Sentinel system, are not transparent to companies even though the nature and volume of complaints are regular triggers for investigations and enforcement actions. The Consumer Financial Protection Bureau, with its new "company portal" program, has taken a very different direction, one which should be welcomed by companies.

One of the more intriguing concepts that accompanied the CFPB's creation was the agency's announced plan to establish "company portals" to facilitate direct resolutions of consumers' complaints. Unlike "one-way" complaint channels traditionally employed by state and federal regulators to gather beefs about consumer services and products, the company portal platform has been touted as a method of delivering "real-time" notifications of customer complaints to companies, alerting them to potential problems and affording the company the opportunity to respond and the CFPB the ability to monitor the company's handling of consumer issues.

The company portal is a secure Web link between the CFPB, the company and the consumer, providing a forum where the parties can discuss and attempt to resolve the consumer's complaint.

The CFPB encourages companies to enroll in the company portal program on a voluntary basis. Companies that participate in the program receive assistance from CFPB representatives to upload the software and establish the link. The agency can then easily transmit consumer complaints that the CFPB has reviewed and determined to be suitable for company response.

### **Traditional Regulatory Complaint Collection Systems**

Historically, regulatory complaint-gathering systems operated in one of two ways.

In one approach, regulators gathered complaints and compiled them for use in setting investigation and/or enforcement priorities. The FTC's Sentinel system is a good example. The FTC accumulates, categorizes and reports most of the complaints it receives each year, using the data to compile its annual "top 10" list of consumer complaints.

Although certain egregious complaints may lead to an FTC investigation or enforcement action, and others may be shared with state or other federal regulators, most of the Sentinel complaints are utilized for their statistical value rather than for addressing consumer concerns or policing alleged unfair or deceptive practices. Significantly, the company that is the subject of the complaint typically has no awareness that the complaint has been made and no opportunity to respond to the consumer or the regulator.

The second method, typically employed by state attorneys general and/or consumer affairs departments, involves gathering and shipping consumer complaints directly to businesses with a cover letter directing the company to provide a response, either to the consumer, the regulator, or both.

This process can sometimes trigger a dialogue between the company and the consumer, and may even lead to a mutually acceptable resolution, but often this is accomplished beyond the view of the state regulator, for better or for worse. Alternatively, if the company refuses to respond to the regulator's inquiry, the state may initiate enforcement proceedings to seek remediation on behalf of the consumer and/or prevent the company from continuing to do business in the state.

## **How the System Works**

The CFPB's complaint process begins when a consumer submits a complaint by telephone, mail, email, facsimile or through the CFPB's website. The CFPB performs a preliminary evaluation of the complaint to determine its completeness, confirms that it is within the agency's jurisdiction, matches it to a company and ensures that it is not a duplicate. If appropriate, the complaint is posted to the company's portal within approximately three days of receipt, along with a request for a response within 15 calendar days.

The company can perform an initial investigation and respond to the CFPB via the portal. This process gives the company an opportunity to investigate and respond to the complaint, including either proposing a resolution to the consumer or explaining why the complaint is unwarranted. If additional communications are required between the consumer, the company and/or the CFPB, they can occur offline or through the company portal. Once the company's response is posted, the CFPB invites the consumer to review and evaluate the response using the portal or a toll-free telephone number.

In addition to the 15-day response deadline, the CFPB provides companies 60 calendar days from when the complaint is forwarded for the company to resolve the complaint. The system allows companies to select one of four resolutions to complaints: closed with a monetary payment to the consumer, closed without a monetary payment, closed with an explanation, or closed without further explanation.

If the consumer disputes the company's response, the consumer response unit investigates the complaint further, evaluating the agency's jurisdiction, attempting to reconcile the positions of the consumer and the company, identifying potential consumer violations and/or opportunities to provide consumer education, and communicating the results of the investigation to the consumer. If a company fails to respond to a complaint on a timely basis or if the consumer response unit suspects a possible violation, the complaint may be referred to the CFPB's supervision and enforcement units for further action.

## **Benefits of the Company Portal**

The CFPB's consumer portal offers several advantages over the traditional methods used by regulators to gather and disseminate consumer complaints. First, the direct nature of the consumer portal can potentially lead to faster resolutions of consumers' complaints. The company must meet strict deadlines for responding to and resolving complaints, which will likely lead to greater focus on and faster evaluations of complaints that can and often should be resolved.

The process is also transparent, since it is conducted via the CFPB system. The online communications between the consumer and the company, while not necessarily confidential, occur in plain view of the CFPB, affording the opportunity for the company to demonstrate its responsiveness, its reasonableness and the logic behind its position regarding the consumer's complaint. Early data provided by the CFPB indicates that most of the consumers that have responded have been satisfied with the resolutions they reached with companies that responded to their complaints through the portal program.

## **Potential Downsides of the Portal Program**

Although online communications between companies and consumers cannot be accessed directly by the public, the communications are not confidential. While confidential consumer information will be protected from disclosure, no exemption would apparently prevent the CFPB from disclosing other information provided by the company to third parties in response to a Freedom of Information Act request.

These potential problems can be avoided, to a great extent, by restricting substantive discussions to offline communications directly between the company and consumer. The company's attorneys can craft or review any communications that are posted to the portal to prevent the publication of statements that might be used against the company in subsequent regulatory, class action or other proceedings.

A company that voluntarily agrees to participate in the portal program could experience negative consequences in two other situations. First, if the company fails to respond to consumer complaints that are forwarded via the portal on a timely basis, the complaint may be referred to the agency's supervision or enforcement units for follow-up as a possible violation of the Consumer Financial Protection Act. Similarly, if a consumer disputes a company's response, the CFPB will investigate further. Depending on the circumstances, either of these events could potentially lead to a CFPB investigation or enforcement action against the company relating to the consumer's complaint.

## **“One Way or Another — They're Gonna Getcha”**

Whether a company volunteers to participate in the company portal program may not really be a choice, since the CFPB undoubtedly will pursue companies that refuse to participate in the program if complaints are sufficient in number or nature to require regulatory intervention. Consumer response unit representatives will probably first contact a company about which they have received complaints and ask that the company agree to enroll in the company portal program on a voluntary basis.

If the company declines to act, the CFPB may forward the complaints directly to the company for response within a given period of time. If that does not produce a response, the next communication from the CFPB is likely to be a civil investigative demand, the equivalent of a civil subpoena, demanding the production of information and documents relating to the complaint, including the company's response. In addition, the CFPB may also forward complaints to the FTC, the applicable state attorney general and/or other appropriate regulators.

In other words, the CFPB "can do this the easy way or the hard way" — the choice is the company's.

### **Coming Next — The Government Portal**

At a recent industry briefing, Scott Pluta, head of the CFPB's consumer response unit, announced that, within a month, the CFPB plans to launch a "Government Portal," which will make consumer complaints received by the CFPB accessible to various state and federal regulators. All of the consumer complaints within the CFPB's jurisdiction will be shared with the FTC, Department of Justice, state attorneys general and others.

This development is one more reason it makes sense for businesses to embrace and utilize the company portal program effectively so that a positive, rather than negative, regulatory reputation established with the CFPB will be shared with other regulators.

Despite the CFPB's "iron fist" authority to compel companies to cooperate in consumer complaint investigations, so far the bureau's consumer response team appears to be using a "velvet glove" approach, working to build confidence among its stakeholders, which it says include the businesses that are being encouraged to participate in the portal program. The unit has engaged in an extensive outreach program to invite and assist companies to set up and use their portals.

Although it may be tempting to resist the CFPB's friendly invitation to enroll in the company portal program, we believe that companies that weigh the pros and cons should conclude that it presents an excellent opportunity for companies to know whether they are on "the radar" with a good chance of getting off before it is too late.

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