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CONSUMER COMPLAINT MANAGEMENT: MEETING REGULATORY EXPECTATIONS

The CFPB has identified consumer complaint data as a valuable tool in informing its consumer protection duties. It is taking steps to collect such data from various sources and has identified effective complaint management as a key component of a sound compliance program. This focus on consumer complaint management is shared by other government regulators who have, among other things, emphasized practices related to resolution of consumer concerns in several major consent decrees reached with mortgage servicers during the last 18 months. The authors review the heightened emphasis on this aspect of consumer protection and discuss, in detail, the key elements of an effective consumer complaint management program.

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The recent financial crisis has unleashed unprecedented focus on the business operations of financial institutions, particularly on their interactions with consumers. During the past three years, regulators, legislators, and consumer advocates have voiced concern that consumer interests were not adequately protected during the mortgage meltdown and its precursor events, including concerns that customer complaints were not timely rectified, were not comprehensively addressed, and, in some instances, were simply ignored. These perceptions, whether founded or unfounded, have triggered a variety of actions aimed at enhancing transparency, clarity, and fairness for consumers in connection with financial products and the delivery of related services.

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Among the most significant developments have been the establishment of the Consumer Financial Protection Bureau (“CFPB” or “Bureau”), a fledgling federal agency with broad supervisory, investigative, and enforcement powers over financial institutions¹ and their relationships with consumers. Established pursuant to the Dodd-Frank Act, the CFPB has a broad mandate, which includes, among other things, regulation of the mechanisms by which supervised entities manage consumer complaints. Consistent with this mission, the year-old Bureau has placed significant emphasis on

¹ The CFPB has supervisory jurisdiction over banks with \$10 billion or more in assets and non-banks.

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consumer complaints, identifying consumer complaint management as one of the four pillars of an effective compliance management system. Moving from theory to action over the past year, the CFPB has implemented comprehensive and varied processes for directly receiving and addressing consumer complaints. Even more significant, the Bureau has prioritized top-down regulation of complaint management by incorporating consumer complaint management program reviews as a key part of its compliance examination process.

Consumer complaint management remains an area of focus for other federal and state regulators as well. The federal prudential banking regulators,² historically concerned with safety and soundness of depository institutions, are continuing to emphasize proper and timely management of consumer complaints. Likewise, state attorneys general and state banking departments, whose investigatory work is often triggered by consumer complaints, are placing more emphasis than ever before on ensuring that consumer voices are heard. In this regulatory environment, it is critical that financial institutions develop and implement robust, effective, and efficient programs for managing consumer complaints, especially those organizations that now fall under the CFPB's jurisdiction.

This article discusses regulatory expectations regarding consumer complaint management and explores the regulatory risks that can result from ineffective management of consumer complaints.³ The article then explains the key elements of an effective consumer complaint management program and how those elements may be designed and implemented in order to demonstrate that the institution comprehensively manages complaints and promptly addresses issues of concern to consumers.

REGULATORY RISKS POSED BY AN INEFFECTIVE CONSUMER COMPLAINT MANAGEMENT PROGRAM

FTC Enforcement Actions

An inefficient consumer complaint management program can produce significant regulatory risk. Historically, oversight of consumer complaint resolution has been an integral function of the Federal Trade Commission ("FTC"), the federal agency charged with protecting consumers by preventing fraud, deception, and unfair business practices in the marketplace.⁴ Generally speaking, the FTC exercises this power by enforcing Section 5 of the Federal Trade Commission Act, which prohibits unfair or deceptive acts or practices ("UDAP").

Historically, high volumes of consumer complaints have been a driver for the initiation of FTC investigations which, in many instances, have led to enforcement actions. In fact, the FTC has specifically stated that consumer complaints are critical to its work and often a "first indication of a problem in the marketplace and may provide the initial evidence to begin an investigation."⁵ Furthermore, the FTC has expressly stated that consumer complaints "can help [it] detect patterns of wrong-doing, and lead to investigations and prosecutions."⁶

The FTC has brought several landmark enforcement actions against non-bank mortgage servicers and debt collection entities. For example, the FTC obtained settlements with debt collector Academy Collection Service, Inc. in 2008 and individual employees of Academy in 2010, resulting in a \$2.25 million civil money penalty against the company and its owner, the largest civil money penalty imposed to date on a debt

² The prudential banking regulators include the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System ("Federal Reserve Board"), and the Federal Deposit Insurance Corporation ("FDIC").

³ An ineffective consumer complaint management program can lead to other risks beyond those triggered by regulatory expectations. These include operational, litigation, and reputational risks, among others, as noted later in this article.

⁴ The FTC enters complaints it receives into Consumer Sentinel Network, an online database that is accessible by more than 1,500 domestic and international civil and criminal law enforcement authorities.

⁵ FTC, *Where to Go for More Information*, <http://www.ftc.gov/ftc/moreinfo.shtm> (last visited July 19, 2012).

⁶ *FTC Complaint Assistant*, <http://www.ftccomplaintassistant.gov/> (last visited July 19, 2012).

collection business.⁷ Key FTC allegations in the matter included that more than 1,000 complaints against Academy were filed with the FTC, and that Academy inadequately investigated complaints about its business practices. Likewise, spikes in complaints against mortgage servicers sparked numerous non-public FTC investigations during the past decade, some of which resulted in enforcement actions.

The CFPB and Its Powers

In 2010, Congress passed the Dodd-Frank Act, which, among other things, established the CFPB as the first federal regulator solely dedicated to regulating and overseeing consumer financial markets. The CFPB has more expansive powers and oversight over bank and non-bank financial institutions than those previously possessed by the FTC and the prudential banking regulators. In particular, the Dodd-Frank Act heightened protections afforded to consumers, gave the CFPB supervisory authority for banks with greater than \$10 billion in assets, and greatly expanded the scope of federal supervision of financial institutions. The CFPB has jurisdiction over a wide range of non-banks, including state-licensed mortgage companies, student lenders, payday lenders, and larger participants in other financial markets (to be defined by regulation). Therefore, financial institutions of all kinds are faced with greater risks for failing to implement effective compliance programs, including consumer complaint management programs.

In terms of new consumer protections, the Dodd-Frank Act most notably established a prohibition on “abusive” acts or practices to complement the traditional prohibition on UDAP under Section 5 of the FTC Act. Section 1031(d) of the Dodd-Frank Act broadly defines the “abusive” prong of the new unfair, deceptive, or abusive acts or practices (“UDAAP”) standard and gives the CFPB authority to further define the term by regulation. CFPB Director Richard Cordray, however, has indicated in Congressional testimony that the Bureau does not intend to use such authority in the near-term, but will instead define abusive practices through individual enforcement actions. This approach in and of itself suggests that unresolved consumer complaints can mushroom into investigations and enforcement actions, particularly because the concept of UDAAP likely is elastic enough to cover many types of consumer complaints. The prohibition on UDAAP thus provides

⁷ See, e.g., Consent Judgment, *United States v. Academy Collection Serv., Inc.*, No. 2:08-cv-1576 (D. Nev. Nov. 14, 2008).

the CFPB with a powerful supervisory tool and wide latitude to initiate investigations or enforcement actions.

In addition to creating the CFPB and new consumer protections, the Dodd-Frank Act has made consumer complaints a primary focus of the Bureau, designating the collection, investigation, and response to consumer complaints as one of the CFPB’s six primary functions.⁸ In many ways, the CFPB is an analogue to the FTC for bank and non-bank financial institutions, with the noteworthy caveat that the power of the Bureau is significantly broader because it has examination authority in addition to its investigatory and enforcement power. Consistent with its statutory mission, the Bureau has placed significant emphasis on consumer complaints as a foundational component of its consumer financial protection supervisory duties.⁹ During a recent press briefing on the CFPB’s consumer complaint database, Director Cordray said as part of his prepared remarks that the information gathered through consumer complaints has been “very valuable, as it helps to inform our supervisory exams, enforcement actions, and rulemaking. Indeed, Congress authorized us to develop our priorities out of this data, which reinforces its potential value to the broader public.”¹⁰ These statements suggest that, similar to the FTC, consumer complaints will be a primary driver of CFPB investigations and enforcement actions.

Examination Authority and Outcomes

The existence, robustness, and effectiveness of a financial institution’s consumer complaint management program are critical in satisfying the CFPB’s expectations for a “compliance management system.” In its Supervision and Examination Manual, the CFPB expressly defined an institution’s consumer complaint resolution process as a principal component necessary in establishing an effective compliance management system.¹¹ The Manual further provides that an initial

⁸ 12 U.S.C. § 5511(c)(2).

⁹ See, e.g., CFPB Press Release, Consumer Financial Protection Bureau Ready to Help Consumers on Day One (July 21, 2011), available at <http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-ready-to-help-consumers-on-day-one/> and CFPB Complaint Portal, available at <http://www.consumerfinance.gov/complaint/>.

¹⁰ See, e.g., Remarks by Richard Cordray on the Consumer Complaint Database (June 19, 2012).

¹¹ CFPB, Supervision and Examination Manual 33 (2011), available at <http://www.consumerfinance.gov/wp-content/>

review of an institution's compliance management system is a significant factor in determining the scope and intensity of the CFPB's examination, and an institution's consumer complaint resolution process is a key component of the full-scope consumer compliance examination of the institution.¹²

In connection with compliance examinations, the Bureau may review all complaints submitted to a financial institution, not just those submitted directly to the CFPB.¹³ If the Bureau determines during the examination process that consumer complaints are not being resolved effectively or expeditiously, it may render an adverse examination finding. Such a determination also could trigger an investigation which, in turn, could form the basis for an enforcement action depending on the nature of the information revealed during the investigation.

Independent Complaint Gathering

The CFPB is also gathering and analyzing complaint-related information through a variety of other channels. It is prominently promoting its website as a portal for consumers to submit product-specific complaints. The CFPB's Consumer Response Annual Report, issued March 31, 2012, indicates that between July 21, 2011 and December 31, 2011, it received 13,210 consumer complaints, including 9,307 credit card complaints and 2,326 mortgage complaints. The Bureau began receiving complaints about checking accounts and other bank products, private student loans, and other consumer loans on March 1, 2012, and will begin receiving complaints about non-depository institutions later this year.

The CFPB's website portal is designed to make it easier for consumers to submit complaints. It is likely that this portal may increase the volume of invalid or frivolous complaints that are submitted by consumers because minimal information is required. Regardless of the perceived merit of individual complaints, however, financial institutions must take all complaints seriously and address them using the same procedures.

In addition to its website, the CFPB is actively using other methods to collect complaints by soliciting e-mails

and phone calls from consumers and accepting referrals from other regulators. Moreover, the CFPB is creatively using non-traditional forums for collecting complaints and consumer perspectives, including holding town hall meetings and conducting field hearings. The CFPB held its first field hearing in Birmingham, Alabama on January 19, 2012, at which it invited representatives from government, consumer advocacy groups, and industry to discuss and examine payday lending practices. The CFPB also entered into a memorandum of understanding with the FTC to share consumer complaint information, and the Bureau has also executed information sharing agreements with state attorneys general.¹⁴

The Prudential Banking Regulators, State Attorneys General, and State Regulators

Depository institutions with assets of less than \$10 billion, which are not within the CFPB's examination and enforcement jurisdiction, still face heightened scrutiny in the new environment. Each of the prudential banking regulators has an existing consumer assistance group and program to receive consumer complaints and conducts compliance examinations of banks within its jurisdiction.

In light of the new focus on consumer protection and the standards to be set by the CFPB, the prudential banking regulators are likely to be aggressive and to increase scrutiny of banks. This proactive posture has been demonstrated by their recent consumer protection activities. For example, in 2011, the Federal Reserve Board, the OCC, and the former Office of Thrift Supervision¹⁵ executed consent orders with 14 of the largest mortgage servicers. A key component of these orders is the requirement that each servicer adopt and implement policies and procedures to enable borrowers

¹⁴ The memorandum of understanding with the FTC ensures that the CFPB and FTC each have access to complaints regarding institutions within their respective jurisdictions. The agreements with the state attorneys general facilitate the states' ability to bring enforcement actions against banks and non-banks. Therefore, the failure to implement an effective consumer complaint management program and to properly address complaints creates regulatory and enforcement risks beyond just those posed by the CFPB.

¹⁵ Section 312 of the Dodd-Frank Act required that all functions of the Office of Thrift Supervision be transferred to the OCC on July 21, 2011. As a result, the OCC now has supervisory authority over thrifts. Pursuant to Section 313 of the Dodd-Frank Act, the OTS was abolished effective 90 days after the transfer date.

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themes/cfpb_theme/images/supervision_examination_manual_11211.pdf.

¹² *Id.* at 19.

¹³ *Id.* at 41.

to submit consumer complaints, and ensure that the complaints are promptly reviewed and resolved.¹⁶

In keeping with this theme of increased focus on consumers, federal and state attorneys general also have stepped up enforcement of consumer financial protection laws. For example, in April 2012, the U.S. Department of Justice, 49 state attorneys general, and the U.S. Department of Housing and Urban Development executed a \$25 billion settlement with the nation's five largest mortgage servicers.¹⁷ Among other things, the settlement requires each servicer to develop and implement rigorous consumer complaint management processes that include many of the program elements discussed below, including adequate staffing, written policies and procedures, specific timelines for acknowledging and responding to complaints, and tracking and escalating complaints, when needed.

Other Risks

An ineffective consumer complaint management program can lead to a variety of additional risks beyond those triggered by regulatory expectations. These include risks related to business operations, private litigation, and reputation, among others.

An ineffective complaint management program can present operational risks by failing to resolve individual

complaints, which may serve as an early risk indicator of problematic trends and systemic defects. Litigation risk can arise when unaddressed consumer complaints are an indicator of violations of a host of consumer protection laws that provide for a private right of action. Reputation risk can arise from a number of sources – such as critical postings or reviews on consumer feedback websites, and negative media coverage. Therefore, a successful consumer complaint program can serve as an early warning system for emerging regulatory, operational, compliance, legal, and reputational risks by detecting institutional weaknesses or deficiencies.

KEY ELEMENTS OF AN EFFECTIVE PROGRAM

In our experience, a number of elements are pivotal in crafting a strong, effective, and efficient consumer complaint management program, including the following:

- centralized complaint management;
- written policies and procedures;
- root cause analysis;
- monitoring and tracking of complaints and issue escalation;
- testing;
- internal communications and training;
- publication of the consumer complaint management program to the public; and
- partnering with consumer advocacy groups and regulators.

Each of these elements is discussed in detail below.

Centralized Complaint Management

Creating a centralized consumer complaint management department is critical. Centralization creates consistency in the way complaints are handled through utilization of a single set of policies and procedures, and a common reporting structure. In addition, employees, customers, regulators, and outside parties can better understand and communicate with one consolidated department, which allows complaints to be resolved more effectively. To ensure independence, regulators likely will view it preferable to place the

¹⁶ See, e.g., Consent Order, *Citibank, N.A.*, No. AA-EC-11-13 (OCC Apr. 13, 2012), <http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47c.pdf>. The Federal Reserve System recently published an article on using complaint data to strengthen a compliance management program, demonstrating the prudential banking regulators' emphasis on consumer complaint management. See Andrea Sovich, *Enhancing the Compliance Management Program with Complaint Data*, CONSUMER COMPLIANCE OUTLOOK (Fed. Reserve Bank of Phila.) 2d Qtr. 2012, at 2. As this article states, "consumer complaints contain valuable information that can help an organization better understand its compliance risks and issues . . . [.] validate and strengthen controls[, and] . . . identify high-frequency trends or individual complaints that may indicate significant compliance risk." *Id.* at 2. The article added that "[t]he Board of Governors of the Federal Reserve System (Board) considers complaint data to be a critical component of its risk-focused supervisory program and uses it as a risk factor to assess a financial institution's compliance with consumer regulations." *Id.* at 16.

¹⁷ See, e.g., Consent Judgment, *United States v. Bank of America Corp.*, No. 1:12-cv-00361-RMC (D.D.C. Apr. 4, 2012) available at http://www.justice.gov/crt/about/hce/documents/scra_boa_settle.pdf.

consumer complaint management function in a department separate from a business line. Options include reporting to the Office of the President, Legal Department or Compliance Department to reduce the possibility or perception of improper business line influence on the complaint resolution process. Independence can be maintained in a business line relationship, but regulators may adopt a “show me how” attitude with such a structure.

In general, the consumer complaint management department’s staff size should be commensurate with the size of the institution, the size of its consumer base, and the number and complexity of its products. As a financial institution grows, it may need to consider expansion of the complaint management staff.

All consumer complaints should be routed to the complaint management department, regardless of which division, business line, or channel initially receives the complaint. A financial institution may consider implementing a formal process for coordinating complaint resolution between the consumer complaint management department and various other departments, including the Legal Department, the Compliance Department, and affected business lines. Each department should consider designating a key contact person with whom the consumer complaint management department works. Such a process helps ensure effective and efficient resolution of complaints.

In mortgage servicing, there has been significant support for the appointment of a single point of contact (“SPOC”) for consumers under certain circumstances. The SPOC concept, first introduced in connection with the consent orders issued by the prudential banking regulators in April 2011, may have utility for resolving complaints about other financial services and products. An SPOC can help ensure that a consistent approach is taken with a consumer, facilitate an efficient resolution since the contact will be familiar with the facts and the consumer’s concerns, and can further effective application of policies and procedures by holding a particular person accountable and responsible for effective resolutions. An SPOC also comforts the consumer, putting a “human face” on the institution and notifying the consumer that he or she can contact and rely upon the same representative.

Some institutions might consider appointing a consumer ombudsman to act as an escalation point for consumers dissatisfied with complaint resolution efforts. An ombudsman with greater experience, expertise, and training in dealing with consumers than front-line customer service representatives should be skilled in the

objectivity necessary to address a consumer’s dissatisfaction with the outcome of his or her complaint.

Policies and Procedures

Formal, written, consumer complaint management policies and procedures are fundamental; they should be updated routinely to incorporate new developments in law and regulatory expectations. Policies and procedures communicate the importance of promptly addressing and resolving complaints, make employees aware of the institution’s general approach to consumer complaint management, and provide the step-by-step guidance necessary for successful complaint resolution efforts.

Policies should address, at a high level, the process for receiving, acknowledging, addressing, and resolving consumer complaints. Policies may also

- define the types of inquiries that qualify as “complaints;”
- discuss the types of complaints that present particularly high risks, such as those implicating potential fair lending concerns or involving vulnerable populations, such as minorities, senior citizens, students, and military servicemembers;
- discuss how high-risk complaints are prioritized in the organization;
- explain how complaints are directed to the consumer complaint management department and generally resolved; and
- communicate the need to act on complaints quickly.

Complaint management procedures should comprehensively describe, in detail, the process for receiving, acknowledging, addressing, and resolving consumer complaints. Procedural elements may include the following:

- logging complaints into a centralized database designed to monitor and track complaints to resolution;
- recording target resolution dates that comply with resolution deadlines imposed by federal or state laws. The CFPB requires resolution within 15

calendar days, for example.¹⁸ Financial institutions should strive to resolve complaints by these deadlines, but whenever possible, try to complete the resolution process more expeditiously than required;

- assigning the complaint to one employee within the consumer complaint management department who is ultimately responsible for researching and resolving the complaint;
- acknowledging the complaint and documenting the acknowledgment, preferably in a manner consistent with customer preferences about how they prefer to be contacted;
- providing guidelines for outreach to customers to confirm the issues that need to be addressed and to obtain necessary additional information.
- recording all external and internal communications, actions taken, research conducted, and any other developments during the complaint resolution process;
- defining mechanisms and expectations for communicating with other departments, as needed, to conduct research or fact-finding, such as with the legal department to obtain legal advice, the credit risk management department to discuss underwriting decisions, or the business line that relates to the product or service about which the customer is complaining;
- identifying and approving final action to be taken on the complaint. If the resolution requires an action to be taken by a department other than the complaint management department, such as reimbursement of a fee, then the complaint management department may consider confirming in writing that the remedial action was taken. The complaint management department may consider waiting until the confirmation has been obtained before sending a letter or e-mail to the consumer stating that the problem was addressed;
- following up with the consumer after the advice is communicated, to determine if the consumer is satisfied with the resolution;

¹⁸ CFPB, *Company Portal Manual 1 (2011)*, available at <http://www.cfpbmonitor.com/files/2012/01/CFPBCompanyPortalManualv2.pdf>.

- providing guidance on escalating unresolved complaints or complaints in which the consumer is dissatisfied with the resolution, such as by referring the matter to the legal department or consumer ombudsman; and
- retaining all records related to the complaint for at least seven years or such other period required by law.

Policies and procedures may be tailored to accommodate complaints from vulnerable or high-risk populations, as these may be associated with higher risks to the institution. The provision of financial services to these groups has received significant media coverage, public scrutiny, and regulatory attention, and many of these groups receive special legal protections. For example, the U.S. Department of Justice obtained two high-profile settlements with large mortgage servicers for alleged violations of the Servicemembers' Civil Relief Act in 2011,¹⁹ and recent legislation has added new protections to credit card applicants under the age of 21.²⁰ Regulators and federal and state attorneys general also have initiated investigations based on a single complaint related to the mishandling of concerns by a consumer in a high-risk population.

Accordingly, a financial institution may consider adding options that permit consumers to communicate in other languages, in particular Spanish, when filing complaints through its online complaint site or by telephone. Similarly, the complaint management program can be tailored to senior citizens and those with certain disabilities by including a "large print" link for the online system and a telecommunication device for the deaf ("TDD") option for the call center. For servicemembers, the online portal can include a link that will take them to a platform specifically designed to explain and address issues that arise out of legal protections afforded to military personnel; servicemembers calling into the call center can be directed to representatives trained to be aware of and handle issues being confronted by members of our military. Similar options can be designed for other vulnerable or high-risk populations.

¹⁹ Consent Judgment, *United States v. BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP*, No. 2:11-cv-04534-PA-MRW (C.D. Cal. May 30, 2011); Consent Judgment, *United States v. Saxon Mortgage Services, Inc.*, No. 3:11-cv-1111-F (N.D. Tex. May 26, 2011).

²⁰ Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L.No. 111-24, 123 Stat. 1734.

Policies and procedures should also address customer complaints about an institution's third-party service providers or vendors. The prudential banking regulators have long required bank oversight over third-party vendors,²¹ and on April 13, 2012, the CFPB issued Bulletin 2012-03, which specifically addresses the need for banks and non-banks to exercise oversight over their third-party vendors. Accordingly, financial institutions may consider exercising significant due diligence when selecting and retaining third-party vendors. They should make meaningful efforts to understand vendors' operations, compliance management programs, and policies, procedures, and processes for consumer complaint resolution.²² Ongoing monitoring of third parties can be helpful in evaluating whether they effectively implement and comply with their own consumer complaint policies and procedures, and whether these policies are updated regularly as supervisory and legal requirements change.

Application of Root Cause Analysis

An essential component of investigating a consumer complaint is to identify the root cause or causes of the complaint. Root cause analysis helps determine whether a complaint represents an issue unique to the consumer or a systemic failure that may impact multiple consumers. For example, a consumer might complain that she was turned down for credit without explanation. A root cause analysis might reveal either that, in the particular case, an adverse action notice was sent to the customer's former address (a unique issue to the customer who changed residences after application), or that an adverse action notice was not sent at all, as required by FCRA and ECOA. The analysis might further determine that if the notice was not sent, the reason was that an employee did not follow the relevant denial notice procedures or misunderstood the circumstances requiring the notice. Alternatively, the analysis might determine that an adverse action notice was not issued because the institution's computer systems did not properly process a request to issue such a notice. This last case is an example of how root cause analysis assists in uncovering systemic problems that could result in compliance failures.

Monitoring, Tracking, and Issue Escalation

Successful consumer complaint management programs should incorporate periodic quality control checks and routine internal audits. Quality control, internal audit, and monitoring activities may include tracking of complaints to identify systemic problems. Multiple complaints on a specific topic, or about a specific product or product feature, or about a product or service originated at a specific office or branch may be red flags for systemic weaknesses. For example, a close-in-time series of complaints about data security breaches involving customers with e-mail addresses from the same provider might reveal weaknesses in information security controls or non-compliance with privacy laws.

In addition to these formal tools, financial institutions may gain useful information from consumer-focused websites, including general complaint websites and websites created to complain about specific institutions. These websites, and social media feedback (the "thumbs down" icon on Facebook, for example), may highlight specific types of consumer grievances even before they give rise to specific complaints. The CFPB routinely monitors www.ripoffreport.com and www.complaints.com; therefore, financial institutions should consider monitoring these websites to detect complaints that the CFPB itself will be reviewing. With social media emerging as a new frontier for how consumers express complaints, financial institutions should look for and review Facebook pages and Twitter handles that are general complaint vehicles or that are dedicated to complaints about the specific institution.

A financial institution may consider tracking complaints by complaint type, as well as by product or service, branch, geographic region, and other categories in order to determine if there are systemic problems within any such area. An institution should particularly look for trends implicating high-risk issues that are subject to intense public and regulatory scrutiny, including fair lending, UDAAP, treatment of vulnerable populations (such as minorities, senior citizens, students, and servicemembers), data breaches, and fraud.

Finally, monitoring and tracking complaints may lead to issue escalation. Complaint handling procedures should identify situations where it is appropriate for the consumer complaint management department to escalate complaints to senior and executive management or the company's attorneys. For escalated complaints, it is important that senior and executive management be accountable for follow up and for communicating how the problematic issues were resolved.

²¹ See, e.g., FDIC, Fin. Inst. Letter 44-2008: Guidance for Managing Third-Party Risk (2008), and OCC Bulletin 2001-47: Third-Party Relationships (2001).

²² See Jonice Gray Tucker, Khalid R. Jones, and Kendra Kinnaird, *Will Vendors Create New Liability for Servicers?* MORTGAGE BANKING, July 2012, at 52.

Testing

A rigorous compliance testing and analytics program – particularly back-end testing of corrective action – is essential to confirm that non-compliance issues detected through analysis of consumer complaints are remediated. The scope and frequency of testing should be commensurate to the size and risks of the institution. A large financial institution with many products and services, several operations centers, and a wider geographical footprint may wish to consider implementing a sophisticated compliance testing program that tests multiple areas for compliance on a frequent basis. Conversely, smaller institutions may need a less robust testing program that tests for compliance less frequently.

Internal Communication and Training

Internal communications from executive and senior management concerning the importance of resolving consumer complaints proactively and expeditiously can help foster an institutional culture of customer-centric awareness and understanding. Using periodic communications such as e-mails and newsletters, and including consumer complaint resolution as a topic in a “Customer Bill of Rights” can help build this cultural awareness. It is critical that the message come from the top to convey the importance of the communications and the commitment to the message. Executive management and, as appropriate, the board of directors may consider being actively involved in setting the message, defining expectations, and including their names in the communications.

Comprehensive employee training is also key to effective implementation of a consumer complaint management program. First, all employees should receive general awareness training on the consumer complaint management process at the time of hire. Financial institutions may also consider requiring all employees to be trained on the institution’s complaint management policy, including the importance of handling complaints quickly and instructions on how to direct complaints to the appropriate person embedded in their business line or to the complaint management department. Second, an institution may consider developing in-depth training for employees who directly manage consumer complaints or have customer contact – for example, the complaint management department, personnel designated within the business to work with the complaint management department, and customer service representatives and other employees who have direct consumer contact. A mix of general and job-specific training meets current regulatory expectations to

ensure that employees are appropriately knowledgeable about the consumer complaint management process.

Publication

In an age of public transparency, it has come to be expected that financial institutions will make their consumer complaint management programs visible and accessible. Visibility and accessibility communicate that the institution is proactive in dealing with consumer complaints. Visibility and accessibility are promoted through features such as publicly available e-mail addresses for complaints and comments, easy-to-find toll-free numbers, mailing addresses, website pages, and, if applicable, Facebook pages and Twitter handles. Publication of the institution’s complaint management program also is key to managing reputational risks and consumer relations, and identifies the institution as a consumer-friendly provider of financial products and services.

Partnering

Partnering with consumer advocacy groups may help financial institutions create and maintain a strong public image and minimize regulatory, reputational, and litigation risks. Many consumers submit complaints to relevant consumer advocacy groups rather than (or in addition to) to the financial institution itself. Working relationships with these groups can open the door to cooperative complaint-resolution efforts, or reduce the adversarial tone involved in the complaint process. Moreover, advocacy groups can have powerful voices and have been known to praise institutions with sound consumer-oriented practices. For these reasons, some financial institutions may find it worthwhile to nurture cordial working relationships with consumer advocacy groups, even permitting them to refer complaints to the institution in a spirit of cooperation.

A financial institution also should develop and maintain an effective relationship with its regulators, particularly the CFPB, given its consumer protection mission and recent consumer complaint focus. Communicating to regulators that the institution has a strong consumer complaint management program designed to address consumers’ needs will help develop this relationship, and make it more likely that the regulator will work with the institution to resolve a complaint rather than take an adversarial approach.²³

²³ On the issue of regulatory relationship management, see Lori Sommerfield and Jo Ann Barefoot, *Regulatory Relationship Management: Building Trust, Credibility with Regulators*,

CONCLUSION

In today's new regulatory environment, a strong consumer complaint management program is critical to successfully managing the regulatory risks faced by financial institutions. The CFPB has made it clear that it views a robust consumer complaint management program as essential to an institution's overall consumer compliance efforts, and unresolved consumer complaints can lead to adverse examination findings or enforcement actions. Accordingly, effective consumer complaint management programs are necessary to satisfy regulatory expectations and achieve satisfactory examination ratings.

In addition to their role in managing regulatory risks, effective consumer complaint management programs can alleviate other risks because, if appropriately deployed, they are useful tools for detecting and remediating systemic issues or trends in non-compliance that could result in private litigation, compliance deficiencies, or adverse media coverage. Furthermore, effective consumer complaint management programs can demonstrate to regulators, consumers, and the larger public that the financial institution cares about consumer concerns and is committed to resolving problems. ■

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BNA BANKING REPORT, May 3, 2011, available at <http://www.jdsupra.com/post/documentViewer.aspx?fid=abd6ef25-925d-4631-b51c-42e30f07f42b>; and Lori Sommerfield and Jo Ann Barefoot, *Regulatory Relationship Management: Planning, Organizing and Managing Examinations*, BNA BANKING REPORT, May 10, 2011, available at <http://www.jdsupra.com/legalnews/regulatory-relationship-management-plan-37764/>.