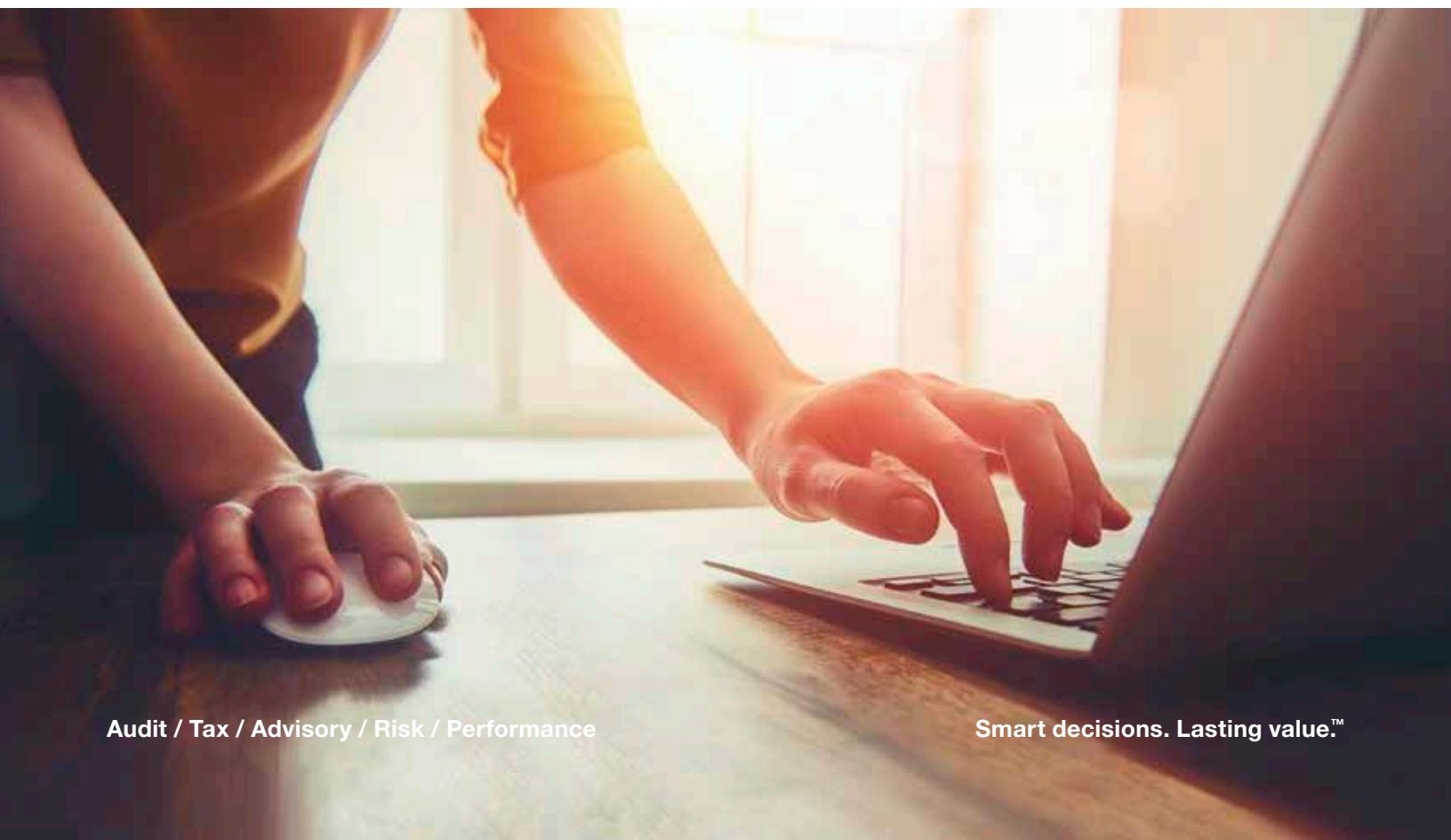




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Using the consumer complaint to stay ahead of regulatory trends

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The expanding role of the Consumer Financial Protection Bureau (CFPB) as a regulatory player in the financial services industry is bringing shifts in the risks financial institutions face regarding compliance. Perhaps most notably, regulatory enforcement actions now are being driven not only by examinations but also by consumer complaints, as reported to the CFPB's Consumer Complaint Database (CCD).

The CFPB's complaint database's influence can be seen in regulators' growing interest in violations of the unfair, deceptive, or abusive acts or practices (UDAAP) laws prohibiting consumer harm, as opposed to traditional laws and regulations such as the *Truth in Lending Act* (TILA), *Real Estate Settlement Procedures Act* (RESPA), *Fair Credit Reporting Act* (FCRA), and *Fair Debt Collection Practices Act* (FDCPA). Between July 2015 and January 2016, 32 different companies were subjected to UDAAP-related enforcement actions with penalties and restitution totaling a whopping \$1.2 billion.

It seems regulators largely are using complaints to determine whether consumer harm has occurred, as evidenced by the correlation between the companies and practices that are the target of a high volume of complaints and the companies and practices that are the target of enforcement actions. For example, among the institutions with the 20 highest

complaint volumes in 2015, six were hit with CFPB enforcement actions during the 2015 calendar year, and 11 of the 20 have been penalized by the CFPB since its inception.

With the potential cost of UDAAP violations so high, banks can't afford to overlook the CCD in their compliance efforts. Indeed, the complaint database can provide critical guidance that banks can use to help avoid enforcement actions.

Background of consumer complaint database

The CCD stems from the creation of the CFPB in 2011 under the *Dodd-Frank Wall Street Reform and Consumer Protection Act*. The law explicitly highlights collecting and tracking complaints as one of the bureau's core objectives.

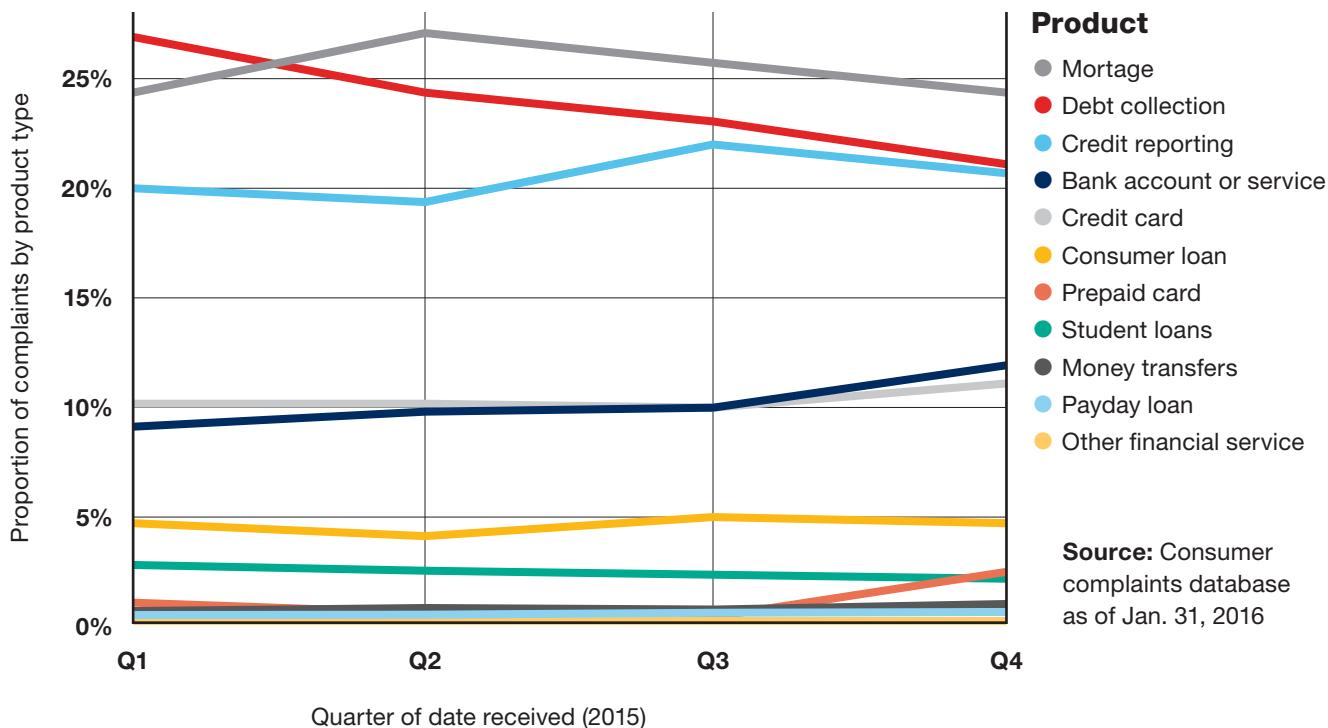
Since its creation, the CFPB has received more than 700,000 complaints; in the 12 months preceding Jan. 31, 2016, more than 167,000 were submitted according to the CFPB website. The CFPB doesn't publish every complaint but, as of Jan. 31, 2016, 516,000 had been published. While not all complaints contain a full narrative, 52,000 do describe the consumer harm fully.

Publishing complaints represents a dramatic change to the visibility of regulatory issues. Previously, a consumer could complain to the Office of the Comptroller of the Currency, Federal

Deposit Insurance Corporation, Federal Reserve, or other regulatory agency, and the respective agency would pass the complaint on to the financial institution and see that it responded – but the regulator's involvement essentially ended there. Complaints weren't tracked or recorded across regulators, so a complaint never made it outside any regulator's silo, meaning broader issues could escape notice if there were numerous complaints across regulatory agencies from the same or multiple consumers.

Now, when a consumer files a complaint with the CFPB, the complaint is visible to the bureau, other regulators, and the public, including consumer advocate groups. Some complaints are published within 48 hours of receipt. As a result, industry issues are identified more easily and rapidly, and enforcement actions can be pursued significantly more quickly than when regulators relied on examinations to uncover issues. Banks, therefore, need to be proactive about educating themselves on the issues arising within the industry and instituting measures to help preempt them.

2015 Complaints by product type



Recent enforcement actions

Several financial institutions have been the subject of CFPB UDAAP investigations, highlighting the types of issues the bureau will tackle. For example, in July 2015, the bureau ordered one institution to pay \$70 million in civil money penalties and an additional \$700 million in restitution to customers for deceptive marketing, unfair billing, and deceptive collection practices related to credit card add-on products.

The deceptive marketing practices were related to misrepresenting costs, fees, and benefits of the products, as well as illegal enrollment practices. In addition, unfair billing practices cited included charging customers for benefits they did not receive or failing to provide certain benefits. Finally, collection practices were considered deceptive because the institution offered payment options to delinquent borrowers that included a fee rather than no-cost alternatives. The purpose of the fee was not clearly disclosed.

Another CFPB investigation found that from Jan. 1, 2008, to Nov. 30, 2013, one bank violated the Dodd-Frank prohibition on unfair and deceptive practices by failing to properly credit consumers' checking and savings accounts. The bank generally required its customers making a deposit to fill out a slip listing the checks or cash being deposited and their total. The customer submitted the deposit slip to the bank and received a receipt indicating the amount on the deposit slip for the transaction. The bank scanned the deposit slip and deposit items at a

central location. In cases where the bank's scanner misread either the deposit slip or the checks, or if the total on the deposit slip did not equal the total of the actual checks, the bank failed to take action to fix the mistake if it fell below a certain dollar threshold. In August 2015, the CFPB ordered the bank to provide approximately \$11 million in refunds to consumers in addition to paying a \$7.5 million penalty for the violations.

The following week, the bureau ordered a finance company to provide \$700,000 in relief to victims of deceptive credit enrollment tactics. Many consumers who signed up for the company's deferred-interest loan product at dental offices to pay for dental work were led to believe that the product was interest-free. In fact, the interest accrued from the date of the consumers' purchase and was charged if the balance wasn't paid in full before the promotional period ended. The bureau's investigation found that healthcare providers who were trained and monitored by the company to market the deferred-interest loan product misled consumers about the terms and conditions of the product during the application process. In some cases, dental office staff

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told consumers that the product was a “no-interest” loan and failed to inform them that they would have to pay 22.98 percent interest on the loan if they didn’t pay it off in full by the end of the promotional period. More than 3,200 consumers could have been affected by these deceptive practices. The CFPB ordered the company to notify affected consumers and issue a credit or send a reimbursement check to those with an account with the company. Those without an active account must receive a reimbursement check by mail.

In September 2015, the CFPB announced that it was taking action against two large debt buyers and collectors for using deceptive tactics to collect bad debts. It found that the companies bought debts that were potentially inaccurate, lacking documentation, or unenforceable based on contractual disclaimers, past practices of debt sellers, or consumer disputes. Without verifying the debt, the companies collected payments by pressuring consumers with false statements and churning out lawsuits using “robosigned” court documents. They also filed lawsuits against consumers without having the intent to prove many of the debts, winning the vast majority of the lawsuits by default when consumers failed to defend themselves. The CFPB said these practices violated the FDCPA and Dodd-Frank.

One of the companies was ordered to pay up to \$42 million in consumer refunds and a \$10 million penalty; it also was ordered to cease collection on more than \$125 million worth

of debts. The other company was ordered to pay \$19 million in consumer refunds and an \$8 million penalty and to stop collecting more than \$3 million in debts.

What do all of these cases have in common? They arose from complaints filed with the CFPB.

How banks can use CCD data to identify potential risks

With the volume of complaints clearly driving the initiation of enforcement actions, financial institutions should take heed of the products and practices garnering the most complaints. It’s likely that those products and practices will be scrutinized closely by regulators, whether through CFPB or other investigations or annual examinations.

The information available in the CCD is granular, allowing banks to drill down into different areas, including company, product, subproduct, issue, subissue, date of complaint, type of company response, state, and zip code. A redacted version of the complaint narrative and company response also are included in some instances. The granularity makes it possible to understand the UDAAP risks that might apply to a particular product or service when completing a risk assessment and to gain further insight into what current products and practices should be reviewed.

Fend off CFPB complaints with your internal complaint processes

Financial institutions that take an aggressive approach to handling consumer complaints lodged directly with the institutions might be able to head off consumers filing complaints with the CFPB and, in turn, enforcement actions.

For example, a delinquent student borrower complained to a financial institution about repeatedly receiving collection calls at 6:00 a.m. When the bank failed to respond satisfactorily, the student took his complaint to the CFPB. The bureau turned the complaint over to the Federal Reserve Bank (FRB), which investigated and discovered that the bank used cell phone numbers to reach student borrowers, even if they had landlines. Many students have cell phone numbers with area codes located in different time zones than where they actually reside – a call to a student with an Eastern time zone cell phone number actually could be made to the Pacific time zone.

This practice of calling cell phone numbers was used only in the student loan division of the bank; other divisions contacted borrowers only through home numbers. The FRB found the practice to be abusive and assessed a heavy penalty on the bank, a penalty that could have been avoided if the initial complaint had been handled properly internally.

Banks must see that their central complaint processes cast a sufficiently wide net to catch compliance-related complaints that might not come from the usual channels, such as through a regulator or the Better Business Bureau. All personnel with customer contact, including those manning call centers, require training that helps them route complaints to a central point, even if the complaints were brought to resolution. Personnel should be overly inclusive about complaints that should be referred to the compliance department for quality assurance and trending.

Banks also should develop policies and procedures to properly handle complaints received online and through social media, including those complaints submitted to specific complaint portals as well as those that might be posted, for example, in a reply to a bank's posting on Facebook, Twitter, or other similar outlets. In addition, banks need tools for collecting verbal complaints made in branches and written complaints made on customer feedback forms. Individual employees reviewing such matters should not be allowed to make the call on whether a complaint is compliance-related.

Once a bank has a process in place for centralizing all forms of consumer complaints, it must be able to filter the complaints to identify trends – for example, are certain products or practices the subject of numerous complaints? If so, prompt remedial action is essential to mitigate the risks. Be proactive – don't wait for a complaint to become an undue burden.

Access to this data is especially valuable in the often nebulous realm of UDAAP. Unlike traditional regulations, which are rules-based, UDAAP regulation is more principles-based. The laws don't lay out specific prohibited practices or definitions of "consumer harm." The phrase "unreasonable advantage" is used in Dodd-Frank and certainly can lead to confusion without the proper context. The CCD currently is the best indicator of the practices regulators will consider to constitute consumer harm because it provides a useful baseline for understanding the practices that can lead to enforcement actions.

In 2015, mortgage products had the highest volume of complaints in the CCD, accounting for about 25% of the total activity in the database. Among the roughly 42,000 complaints attributed to mortgage products, most related to either modification and foreclosure (44%) or loan servicing (38%).

Although debt collection had represented the largest proportion of 2015 first quarter complaint activity, with nearly 27% of the total, the proportion of complaints attributable to this activity gradually decreased to approximately 21% in the fourth quarter. During the 2015 calendar year, the CFPB issued enforcement actions against nine debt collectors, including the debt collectors ranking first and third in complaints received during the year. The most common complaints about debt collectors regarded the attempts to collect debt when not owed (46%), followed by the use of improper collection tactics (16%).

Financial institutions also would be wise to dig into the complaint data for their peer institutions to develop an understanding of complaint triggers as well as recent enforcement actions. Banks that take the time to autopsy enforcement actions against other institutions by reviewing the complaints that led to the violations can learn vital lessons to help them maintain compliance across a broad range of areas.

With the volume of complaints clearly driving the initiation of enforcement actions, financial institutions should take heed of products and practices garnering the most complaints.

Put the CCD to work

Regulators increasingly are using consumer complaint data to drive their exams and enforcement actions, but savvy banks can use the data to prepare for exams and help steer off complaints that lead to enforcement actions. In particular, compliance officers should wrangle the CCD data to help identify UDAAP that they haven't previously considered.



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