

July 16, 2018

By electronic delivery to:
www.regulations.gov

The Honorable J. Michael Mulvaney
Acting Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Re: Notice and Request for Information, Bureau's Consumer Complaint and Consumer Inquiry Handling Processes, 83 Fed. Reg. 16,839 (Apr. 17, 2018) [Docket No. CFPB-2018-0014]

Dear Acting Director Mulvaney:

The American Bankers Association¹ (ABA) appreciates your leadership in exposing the policies and procedures of the Bureau of Consumer Financial Protection (Bureau or BCFP) to public review and comment through the Request for Information (RFI) process. This process provides a transparent, efficient, and timely opportunity for all of those affected by the Bureau's work to help the Bureau identify how it might improve the way it carries out its important mission.

Throughout the RFI process, ABA has sought to provide constructive feedback on the Bureau's policies and procedures. ABA supports a regulatory approach that is fair, transparent, and fully consistent with applicable law. With respect to consumer complaints, Congress has directed the Bureau to "facilitate the centralized collection of, monitoring of, and response to consumer complaints."² To carry out its statutory directive, the Bureau has established a Consumer Complaint Portal (Portal), through which the Bureau forwards consumer complaints regarding a financial product or service to the financial institution for response. ABA supports the Bureau in the execution of this statutory mandate. Customer satisfaction is key to a bank's franchise value, and banks are committed to addressing expressions of dissatisfaction by customers.

By contrast, the Bureau responds directly to consumers who submit an "inquiry," defined by the Bureau as a consumer's request for information "about consumer financial products or services,

¹ The American Bankers Association is the voice of the nation's \$17 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard \$13 trillion in deposits, and extend nearly \$10 trillion in loans.

² Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1013(b)(3)(A), 124 Stat. 1376 (2012) [hereinafter *Dodd-Frank Act*]; see also *id.* § 1021(c)(2) (listing, as a "primary function[]" of the Bureau, "collecting, investigating, and responding to consumer complaints").

the status of a complaint, an action taken by the Bureau, and often combinations thereof.”³ This obligation derives from the BCFP’s statutory mandate to ensure “consumers are provided with timely and understandable information to make responsible decisions about financial transactions.”⁴

As part of the RFI process, the Bureau has requested information on the “positive and negative aspects of the Bureau’s complaint and inquiry processes” and on “potential updates or modifications” to these processes.⁵ In this letter, we describe the aspects of the Bureau’s complaint resolution process that work well and provide specific suggestions for improvement.

We also recommend that the Bureau encourage consumers to contact their financial institution directly to express a concern with the institution’s product or service prior to filing a formal complaint with the Bureau. In most instances, the concern can be resolved quickly and efficiently, and the experience typically affords the institution the opportunity to improve communication and to strengthen its relationship with the customer.

We do believe, however, that it is a responsibility of the Bureau to respond to consumer *inquiries* in furtherance of its responsibility to promote consumer financial education. The Bureau is well positioned to provide a response to a consumer inquiry: the Bureau maintains an Office of Financial Education, mandated by the Dodd-Frank Act, that is dedicated to providing such information; and the Bureau receives robust funding and staffing to carry out its consumer response and consumer education missions.

I. The Bureau Should Encourage Consumers to Contact their Financial Institution Directly to Express Concern with the Institution’s Product or Service

Customers are most promptly and efficiently served when they contact their financial institution directly with a concern. Most concerns can be resolved quickly by the institution, resulting in a faster resolution for the customer than through the process of a submission of a formal complaint to the Bureau. Indeed, we note that information on “How to File a Consumer Complaint” provided by USA.gov, the official web portal of the Federal government designed to improve the public’s interaction with the U.S. government, encourages consumers to contact the company before filing a complaint with the appropriate government agency.⁶ Similarly, a non-profit organization that advocates for consumer rights advises consumers that, if consumers have a

³ Notice and Request for Information, Bureau’s Consumer Complaint and Consumer Inquiry Handling Processes, 83 Fed. Reg. 16,839, 16,839 (Apr. 17, 2018).

⁴ *Dodd-Frank Act* § 1021(b)(1).

⁵ 83 Fed. Reg. at 16,840.

⁶ USA.gov, *Filing a Consumer Complaint*, <https://www.usa.gov/consumer-complaints> (last visited July 10, 2018); see also Fed. Trade Comm’n, *Solving Consumer Problems*, <https://www.consumer.ftc.gov/articles/0228-solving-consumer-problems> (last visited July 10, 2018) (stating that consumers can have their concern with a product or service addressed “by talking to a store employee” where the purchase was made or returning to the seller’s website if the purchase was made online).

complaint, the “first step should be to take your complaint *directly to the business before you take other action.*”⁷

Unfortunately, the Bureau’s former leadership directed consumers to use the Portal to register a concern, without suggesting that customers first contact their institution directly.⁸ Moreover, the page on the Bureau’s website where consumers can submit a complaint (Complaint Webpage) does not mention that consumers may receive a more timely response if they contact the institution directly.⁹ The Bureau’s legacy approach appeared driven more by a desire to foster public awareness of the agency and “goodwill” than by a desire to resolve consumers’ concerns efficiently.¹⁰

The Bureau should encourage consumers to contact the financial institution directly to resolve their concerns. We recommend that the Bureau prominently state, on its Complaint Webpage, that a customer’s concern may be resolved quickly if the customer contacts the institution directly. We also suggest that the Bureau include a question, during the initial stage of its complaint intake process, that asks whether the consumer has tried to resolve the complaint directly with the institution. If the consumer answers “no”, the Bureau should remind the consumer that his or her concern may be resolved more promptly if addressed directly to the institution.¹¹

While encouraging consumers to contact their financial institution directly to resolve a concern will promote faster and more efficient resolution, it will not diminish the Bureau’s ability to monitor for emerging consumer risks. To maintain customer satisfaction and comply with supervisory expectations, banks respond to, analyze, and track *all* consumer complaints, regardless of the status of the complaint as a “direct” or a “regulatory” complaint. Therefore, as the Bureau oversees a bank’s consumer complaints, it will continue to have insight into those complaints filed directly with the institution and the bank’s response.

⁷ Consumer Action, *How to Complain*, https://www.consumer-action.org/english/articles/how_to_complain (last visited July 10, 2018) (emphasis added).

⁸ The Bureau regularly posted on social media sites Facebook and Twitter to advertise the Bureau’s complaint process. In preparation for a comment letter submitted on August 31, 2015, ABA determined that the Bureau had posted 58 times on Twitter and 42 times on Facebook regarding the Consumer Complaint Database or the submission of complaints by consumers. See Letter from Jonathan Thessin, Am. Bankers Ass’n, to Monica Jackson, Bureau of Consumer Financial Prot. 2 n.7 (Aug. 31, 2015), <http://www.aba.com/Advocacy/commentletters/Documents/cl-ConsumerComplaintDB-Aug2015.pdf>.

⁹ See Bureau of Consumer Fin. Protection (Bureau), *Submit a Complaint*, <https://www.consumerfinance.gov/complaint/> (last visited July 10, 2018). The website’s title reflects the Bureau’s recommendation that consumers submit a complaint through the Bureau, rather than contact the institution directly: “Having a problem with a financial product or service? Tell us about your issue—we’ll forward it to the company and work to get you a response, generally within 15 days.” *Id.*

¹⁰ See Massimo Calabresi, *The Agency That’s Got Your Back: A Little-Known Government Watchdog is Striking Fear into the Lending Industry*, TIME, Aug. 24, 2015, at 47 (“[Director Richard] Cordray knows the bureau’s future will depend partly on public support. He says the agency has created a ‘virtuous circle’ with its complaint service, and he sees it as a way to both maintain goodwill and sharpen the agency’s mission.”).

¹¹ Under the Bureau’s existing approach, a consumer seeking to submit a complaint is asked if he or she has “already tried to fix this problem with the company,” but only *after* answering four questions and proceeding through two webpages. If the consumer answers “no” to this question, the consumer is not advised that he or she may obtain a more prompt response by contacting the institution directly.

II. The Bureau Should Continue to Improve the Efficiency of Portal Operations

Since the Bureau established its consumer complaint Portal, it has implemented a number of program features that enhance the ability of financial institutions to view and respond to complaints. We appreciate that Bureau staff regularly seek informal feedback from bankers and other members of industry on ways the Bureau can improve the efficiency of Portal operations, and that Bureau staff promptly respond to questions or concerns submitted by institutions through the Bureau's "ticket" process. For example, in response to banker feedback and the recommendation of the Bureau's Ombudsman,¹² the Bureau now permits institutions to classify as a duplicate complaint *any* complaint that duplicates an already-submitted complaint, including non-verbatim duplicate submissions. This change has reduced unnecessary regulatory burden on institutions and allowed them to focus on responding to unique complaints.¹³ Other positive, mostly operational changes the Bureau has made to its complaint resolution process include (a) asking consumers for their account number (or, as applicable, loan number) as part of the complaint intake process, to facilitate the institution's identification of the consumer within the institution's system; (b) permitting an institution to revise its response after submission to the consumer; (c) permitting a company to "save" batches of complaints in the Company Portal for work at a later time; and (d) expanding the number of complaints that can be exported through the Portal (i.e., the Bureau's complaint management system) from 100 to 500.

The Bureau should also make the following additional improvements to Portal operations:

- The Bureau should establish a process for institutions to notify the Bureau that the complaint does not concern the *institution's* product or service, but instead concerns another institution's product or service. Currently, for example, when multiple financial institutions are listed in a complaint, the Bureau will forward the complaint to each institution listed, even when the consumer has complained about the conduct of only one institution.
- The Bureau should state more clearly to consumers that the Bureau's role in its complaint resolution process is to facilitate an institution's response to the consumer's complaint, *not* to require the institution to provide a particular form of relief. Such a statement would prevent consumers from being inadvertently misled about the Bureau's role in this process. ABA members report that many consumers expect that by submitting a complaint the Bureau will direct the institution to provide the specific relief requested by the consumer, even if the consumer is not entitled to that relief or the complaint is not valid.

¹² See Wendy Kamenshine, Ombudsman, Bureau, *2016 Annual Report to the Director* 37 (Nov. 15, 2016), https://files.consumerfinance.gov/f/documents/201611_cfpb_Ombudsman-Office-FY2016-Annual-Report.pdf (describing Ombudsman's recommendation that the Bureau "provide an updated definition for a duplicate consumer complaint that is not, as the definition at that time required, a verbatim copy" of a complaint).

¹³ See *Dodd-Frank Act* § 1021(b)(3) (one objective of the Bureau is to ensure "outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens").

The Bureau also should continue to reject calls for it to collect complaints regarding small businesses. The Bureau lacks statutory authority to collect complaints regarding small businesses. The Dodd-Frank Act authorizes the Bureau’s consumer response unit only to “facilitate the centralized collection of, and monitoring of, and response to *consumer* complaints regarding *consumer* financial products or services.”¹⁴

We encourage the Bureau to continue to solicit feedback from financial institutions on additional ways in which the Bureau could support institutions in promptly responding to consumer complaints. When modifications are considered, we recommend that the Bureau test any proposed modification prior to making the change operational. We also ask that the Bureau provide training to bank personnel on any significant modification to the Portal and incorporate time for that training into the Bureau’s implementation schedule for the modification.

III. The Bureau Should Continue to Respond to Consumers Who Submit an Inquiry

The RFI asks whether the Bureau or a financial institution should respond to a consumer’s “inquiry,” which (as stated above) the Bureau defines as a consumer’s request for information “about consumer financial products or services, the status of a complaint, an action taken by the Bureau, and often combinations thereof.”¹⁵ We urge the Bureau to continue its current practice of providing a response directly to a consumer who submits an inquiry to the Bureau and not impose this responsibility on financial institutions (except where an inquiry clearly concerns only one institution’s product or service).

The Bureau is well equipped to respond to consumer inquiries. Congress gave the Bureau a primary duty in promoting financial education, and responding to consumer inquiries is a key aspect of this work. In the Dodd-Frank Act, Congress listed the Bureau’s first “objective” as providing consumers with “timely and understandable information to make responsible decisions about financial transactions.”¹⁶ To facilitate the Bureau’s achievement of that goal, Congress delineated “conducting financial education programs” as the first of the Bureau’s functions.¹⁷ Acting Director Mulvaney has affirmed the importance of that statutory objective and statutory function, stating that the Bureau’s mission — in its entirety — is to “regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws *and to educate and empower consumers to make better informed financial decisions.*”¹⁸

¹⁴ *Dodd-Frank Act* § 1013(b)(3)(A) (emphasis added); see Letter from Jonathan Thessin, Am. Bankers Ass’n, to PRA Officer, Bureau of Consumer Fin. Protection (Sept. 14, 2017), <http://www.aba.com/Advocacy/commentletters/Documents/cl-PRA-ConsumerComplaint2017.pdf> (asserting that the Bureau cannot use a generic clearance to conduct testing on questions that could be used to collect complaints regarding small businesses).

¹⁵ 83 Fed. Reg. at 16,839.

¹⁶ *Dodd-Frank Act* § 1021(b)(1).

¹⁷ *Id.* § 1021(c)(1).

¹⁸ Bureau, *Bureau of Consumer Financial Protection Strategic Plan: FY 2018 – 2022*, at 4 (Feb. 12, 2018), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_strategic-plan_fy2018-fy2022.pdf (emphasis added); see also *id.* at 2 (“We have drawn the strategic plan’s mission statement directly from Sections 1011 and 1013 of the Dodd-Frank Act: ‘to regulate the offering and provision of consumer financial products or

To support the Bureau in carrying out that objective, Congress established a dedicated office within the Bureau — the Office of Financial Education — that is charged with “developing and implementing initiatives intended to educate and empower consumers to make better informed financial decisions.”¹⁹ That Office has established a webpage, titled “Ask CFPB,” where consumers can search for answers provided by Bureau staff to commonly asked consumer questions.²⁰ The Bureau also has ample resources to respond to consumer inquiries; the Bureau provides robust funding and staffing for the Office of Financial Education, for the Office of Consumer Response (which administers the Portal), and for consumer education programs more broadly. Moreover, by responding directly to each consumer inquiry, the Bureau advances its statutory objective to “reduce unwarranted regulatory burdens.”²¹

The Bureau is also better positioned to provide neutral, objective information about the wide variety of financial products and services available today. The Bureau has no financial interest in the financial choices consumers make. Moreover, by virtue of its status as a Federal agency, the Bureau can use consumer inquiries to inform the topics on which it publishes consumer education information.

In addition, the Bureau can draw upon a broader range of knowledge about the market than an individual institution can. Each financial institution offers a different suite of financial products and services and customizes those products and services to meet the needs of its customer base. Consequently, each institution will have information about its own products and services, but will not necessarily be knowledgeable about the full range of products and services available in its market or in other markets. As a Federal agency charged with promoting consumer financial education, the Bureau is well positioned to understand the variety of products and services in the market and to respond to consumer inquiries about those products and services.

In sum, the Bureau has the statutory mission, funding, staffing, and responsibility to respond to consumer inquiries.

IV. Conclusion

We appreciate the opportunity to provide our feedback on the Bureau’s processes for ensuring that consumer complaints and inquiries are promptly addressed. ABA members are committed to the prompt resolution of customer concerns. We support the Bureau as it carries out its statutory mission to facilitate the timely response to consumer complaints, and we appreciate the Bureau’s continued efforts to improve the efficiency of the Portal.

Moreover, because customers are served most promptly and efficiently when they contact their financial institution directly, the Bureau should encourage consumers to do so, instead of going

services under the Federal consumer financial laws’ and ‘to educate and empower consumers to make better informed financial decisions.’”).

¹⁹ *Dodd-Frank Act* § 1013(d)(1).

²⁰ Bureau, *Ask CFPB*, <https://www.consumerfinance.gov/ask-cfpb/> (last visited July 10, 2018).

²¹ *Dodd-Frank Act* § 1021(b)(3).

to the Bureau first. The Bureau should also continue to respond directly to consumers who submit *inquiries*.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Thessin". The signature is written in a cursive, flowing style.

Jonathan Thessin
Senior Counsel, Center for Regulatory Compliance