Why Complaint Management Matters (and How to Get It Right)

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WHY COMPLAINT MANAGEMENT MATTERS (AND HOW TO GET IT RIGHT)

This whitepaper explains how a strong complaint management program benefits financial institutions by complying with regulatory requirements, improving risk management, promoting self-correction, and preparing FIs for exams. It outlines the key elements of a complaint management program and debunks common complaint management misperceptions.

What does the word "complaint" mean? It may depend on who at your financial institution you ask.

For a teller, the word might evoke the memory an angry customer yelling because the branch closed early. A loan officer might recall a customer upset because his loan was declined. Compliance folks might think about resolving errors involving a debit card, credit card, or mortgage loan. Human resources might picture a dissatisfied employee unhappy with her paycheck or a fellow co-worker. Senior managers might think of all the times they had to deal with bad press or deescalate a confrontation.

Complaints can be about anything or anyone, but when it comes to financial regulators, the focus is on "consumer complaints." This broad phrase, while critically important, is mostly undefined by regulators—leaving financial institutions to come up with their own definitions. This includes deciding whether a complaint needs to be handled through a formal tracking and resolution process or if it simply requires an acknowledgement and the involvement of customer support.

By failing to define consumer complaints, regulators have given themselves the ability to cast a wide net. They can pick and choose the types of complaints they will help consumers resolve. Each agency has a different approach:

- **FDIC: Categorizes complaints as Fair Lending or Non-Fair lending.**
- **Federal Reserve: States that it will not help resolve complaints regarding a contractual dispute, matters that are being litigated, or disagreements over specific bank policies and procedures that are not addressed by federal law or regulation.**
- **OCC: Helps consumers resolve disputes with applicable banking laws, regulations, and general banking practices.**
- **CFPB: Differentiates consumer complaints from consumer inquiries. It also provides the clearest regulatory definition for consumer complaints: "submissions that express dissatisfaction with, or communicate suspicion of wrongful conduct by, an identifiable entity related to a consumer's personal experience with a financial product or service."**

While these statements are general in nature, they do help narrow down the types of customer complaints FIs are expected to manage.

Identifying Complaints

The agency's remarks and guidance show regulators are mostly interested in FIs managing consumer complaints that suggest non-compliance with consumer protection laws and regulations. That makes it important to quickly address any complaint that includes phrases like:

- **"I'm going to tell everyone not to do business with your financial institution."**
- **"I'm going to contact the [news/radio/TV station/media] about this."**
- **"I'm going to call my attorney" or "I'm going to talk to a lawyer."**
- **"This is not legal."**
- **"I want the number/address for your President or CEO, so that I can [call/write a letter]."**
- **"I expect a written response from your financial institution."**
- **"I want to talk to your manager about this."**
- **"This feels discriminatory" or "This is discriminatory."**
- **"I think I will use that CFPB website."**

These types of statements highlight a consumer's frustration with an FI's products, services, or processes. They also suggest consumer harm.

On the flip side, suggestions, comments, or questions unrelated to non-compliance or harm may not need to be addressed through a formal complaint management program. Examples include, "I don't like the look of your website" or "your tellers are not cordial." To avoid tying up resources, management can identify which complaints the FI will identify as complaints and which customer communications will be viewed as suggestions or customer service issues that can be resolved by branch/support personnel.

WHY MANAGING COMPLAINTS MATTERS

Complaint Management Is A Regulatory Expectation

Regulators expect financial institutions to manage consumer complaints. This expectation is outlined in the Federal Financial Institutions Examination Council (FFIEC)'s interagency guidance on consumer compliance rating systems (CCRS). Each regulator has incorporated the FFIEC's guidance into their examination manuals and supervision handbooks used to rate the effectiveness of a FI's compliance management system (CMS).

According to the CCRS interagency guidance, an effective compliance management system is made up of:

- **board and senior management oversight; and**
- **a compliance program.**

A consumer complaint response program is a primary component of any compliance program. While the formality of the program should vary depending on the size, level of risk, and sophistication of the FI, at a minimum, it should include documented processes to monitor, investigate, and respond to consumer complaints.

Regulators are looking for more than a complaint resolution program. They also rate whether or not your FI has used complaint information to determine the:

- **root cause of a violation**
- **severity of consumer harm**
- **duration of the violation**
- **pervasiveness of a violation**

These factors help examiners identify weaknesses in the FI's overall CMS. Generally, the more severe the harm and the more consumers are impacted, the more concerned regulators will be.

Complaint Management Improves Risk Management

Complaints are great indicators of risk, including compliance, transaction, strategic, operational and reputation risks. One complaint might be a fluke, but a series of complaints about a product, business unit, employee, or program is a signal of a deeper issue that needs attention.

Frequent complaints are risk indicators. They offer early warnings of increased risk exposure and highlight potential risks that may have a negative impact on an FI's strategic initiatives and objectives. For example, an FI with a strategic objective of growth by merger might be concerned about the risk that regulators might decline a potential merger proposal due to poor management. A string of complaints indicating severe compliance program deficiencies that could lead to consumer harm is a key risk indicator of poor management.

Consumer complaints can also indicate heightened compliance risk. Compliance risk is the potential for an institution to violate a law or regulation or fail to follow the institution's own internal policies. Certain issues, such as unfair, deceptive or abusive acts and practices (UDAAP) can be difficult to uncover during routine compliance reviews. However, they may be highlighted by complaints. FIs can use their internal complaint data or leverage public data, like the CFPB's consumer compliance database, to better identify and prevent compliance violations.

Complaints also point to ineffective controls. Effective risk management programs allow FIs to identify areas of risk, implement controls to mitigate risk, and monitor whether these controls are effective. Controls can be policies, procedures, automated tracking systems, reporting, and other processes built to mitigate risk.

For example, if management establishes a policy against loan officers steering customers into high-cost loan products and the FI receives a complaint that a loan officer pushed a customer towards a payday loan instead of a lower-cost personal loan option, this complaint may indicate that the policy isn't mitigating fair lending risk. When an FI recognizes a weak control, it has the opportunity to strengthen controls, such as by supplementing the policy with fair lending training for all loan officers. Effective controls help prevent violations.

Compliance risk isn't just an internal issue. It also extends to any third-party vendor that provides services to consumers on behalf of the institution. Third parties violating consumer protection regulations are an ongoing problem that costs FIs millions of dollars in penalties and restitution—not to mention reputational and regulatory consequences. Just recently, the Federal Reserve cracked down on a community bank for UDAAP violations caused by a third-party vendor that used deceptive marketing practices and charged bank customers fees without fully disclosing the service. Ultimately, the bank had to pay $4.75 million in restitution to 11,000 consumers because of its third-party vendor's practices. Complaints can be the magnifying glass on issues FIs would otherwise not discover on their own.

Complaint Management Promotes Self-Corrective Action

nteragency guidance on CMSs explains that "when violations involve limited impact on consumers, were self-identified, and resolved promptly, the evaluation may result" in an institution obtaining the best ratings. The reason regulators promote self-corrective action is that it may limit the number of consumers that are ultimately harmed. It also shows regulators that an FI has a culture of compliance. The key to limiting consumer harm is to take notice of errors and violations of consumer protection laws quickly.

Addressing, resolving, and analyzing complaints allows FIs to proactively improve products, services, and processes that are weak or pose a heightened risk for consumer harm. Consider a complaint from a customer who reports being charged fees that were never disclosed on account opening disclosures. This could be an indicator that the FI's account disclosures are outdated or that the fees are buried in fine print. Each of these issues could put the FI at risk for violating the Truth in Savings Act or engaging in deceptive behavior. Proactive FIs will take this complaint as an opportunity to ensure the fees it charges match the fees disclosed and make disclosures more transparent.

While correcting violations of law may not erase the potential for penalties and fees, regulators take note when financial intuitions take self-corrective action. For example, in 2018, the CFPB issued a consent order against Citibank for Regulation Z violations. In its consent order, the bureau commended the bank for "correct[ing] those deficiencies, voluntarily initiat[ing] the process of providing restitution to [a]ffected [c]onsumers and implementing enhancements to its compliance management systems…" This may have limited the regulator's proclivity to impose a more severe penalty or hold management or the board individually liable for the bank's CMS deficiencies. The CFPB has reiterated self-assessing, self-reporting, remediating, and cooperating are factors that may lead to more favorable considerations of enforcement actions in its recently revised guidance on Responsible Business Conduct.

Complaint Management Prepares FIs for Examinations

All federal banking regulators have their own consumer complaint resolution mechanism. Regulators utilize this data for several important purposes. For example, the CFPB:

- **Forwards each complaint to the appropriate FI for a response or to the appropriate regulator;**
- **Shares complaint data with state and federal agencies & presents an annual report to Congress;**
- **Analyzes complaint data to help with its work to supervise FIs, enforce federal consumer financial laws, and write rules and regulations; and**
- **Publishes complaints in the Consumer Complaint Database.**

Other regulators ensure complaints are reviewed during examinations. For example, the FDIC states that "…on-site examinations always include a review of the complaints received by the institution and its procedures for addressing them." If an FI isn't centralizing the collection of these complaints, it may struggle to demonstrate an appropriate complaint management process is in place. It can be the difference between an effective compliance management system rating or an ineffective rating.

In addition, regulators that receive complaints directly from consumers will provide these to the FI's examiners. If the financial institution has not taken corrective action on complaints that pose a heightened risk for consumer harm, examiners may issue findings, cease-and-desist orders, or public-facing enforcement actions. In addition, regulators may "[r]equire correction of all violations of consumer and civil rights laws and regulations..." to include:

- **Paying restitution;**
- **Adopting appropriate procedures to ensure future compliance;**
- **Retaining a qualified consumer compliance officer;**
- **Establishing regular, ongoing audit and review programs for consumer compliance;**
- **Establishing an ongoing consumer compliance training program for staff;**
- **Reviewing type and number of staff positions needed to manage and supervise consumer compliance program;**
- **Establishing procedures for consumer compliance officer to report to institution's BOD at least quarterly; and/or**
- **Ensuring institution's BOD provides adequate supervision over consumer compliance program.**

Failing to manage complaints forwarded by an agency or complaints received by the institution itself can result in these actions.

THE EFFECTS OF POOR COMPLAINT MANAGEMENT

Failing to manage complaints can have a substantial adverse impact on financial institutions. There is no shortage of examples demonstrating FIs that fail to property mitigate their compliance risk will eventually violate consumer protection laws and harm consumers. Recent examples include:

- **USAA Federal Savings Bank. Last year the bank was fined $3.5 million for failing to properly honor consumers' stop payment requests on preauthorized electronic fund transfers and failing to initiate and complete reasonable error resolution investigations. They also paid $12 million in restitution.**
- **Wells Fargo. In 2018 the CFPB & OCC coordinated efforts resulting in a $1 billion fine against the bank for violating the Consumer Financial Protection Act (CFPA) in its administration of a mandatory insurance program related to its auto loans and for charging certain borrows for mortgage interest rate-lock extensions.**
- **Citizens Bank. In 2015 the CFPB, OCC, and FDIC worked in concert to fine the bank $7.5 million for ignoring deposit discrepancies. It also paid $11 million in restitution.**
- **Park Bank. Just recently in 2020, this community bank in Wisconsin entered into a consent order with the FDIC for failing to implement an effective CMS. The bank's board and management agreed to provide oversight and retain qualified compliance personnel to correct all violations of consumer laws.**

COMPONENTS OF A COMPLAINT MANAGEMENT PROGRAM

Every FI is different, with its own business model and environment. Some focus on retail banking operations while others only offer business banking. It's important to take into account an FI's size, sophistication, and level of risk when crafting an effective complaint management program. Yet despite these differences, there are some components that should be included in every formal consumer complaint program.

Board and Senior Management Oversight.

Anytime a program requires collaboration and cooperation from individuals across different business units, clear direction and buy-in from the FI's senior leadership is necessary. Not only does it improve the likelihood of success, their involvement allows the department in charge of complaint management to hold individuals accountable for failing to follow the complaint program's reporting or resolution requirements. Without accountability, complaints may be underreported or simply go unmanaged.

Providing reports on a consistent basis is a good way to maintain senior management and board involvement. Given the right information, management can act on trends, compliance risks, and suggestions for corrective action.

Policies and Procedures.

A formal complaint management process needs to be established through a board-approved policy. It will define complaints, distinguishing them from the types of consumer contacts that aren't considered complaints. For example, some FIs choose to exclude error resolution from their definitions as error resolution has a formal process already established under multiple regulations (Regulation E, Regulation X, Regulation Z, and the FCRA). Whether your FI chooses to include or exclude certain contacts as complaints, it is important to manage any consumer contact that may reveal a CMS weakness or cause consumer harm.

Complaint policies should outline the department or staffer responsible for managing complaints. This individual should be equipped with the appropriate authority to enforce the program and the regulatory knowledge to recognize when a complaint poses a heightened risk for legal or regulatory violations. To ensure riskier complaints are given the appropriate attention, the policy should outline the types of complaints that should be escalated and immediately reported to management. A good start is to ensure complaints that allege discrimination or unfair, deceptive, abusive acts or practices are escalated.

For other complaints that present the potential for consumer harm or allege a violation of law, a good policy will set a timeline for responding to, investigating, and resolving complaints. Keep in mind that certain complaints will have regulatory requirements for resolution depending on the source (e.g., complaints forwarded by the CFPB require a response within 15 days and resolution within 60 days) or product/service (e.g., credit reporting errors should be resolved within 30 days).

Training.

All employees that engage in customer contact as part of their day-to-day job function should be trained on identifying and logging complaints. When deciding which individuals should be trained, think about instances of consumer contact in person, over the phone, or in writing. For example, branch personnel, loan officers, call center employees, chat operators, social media managers and individuals who manage the FI's mail should all be trained and made aware of the complaint management policy. In addition, the person/department responsible for managing complaints should be trained on resolution, escalation procedures, risk indicators, and trend analysis.

Training should be provided on an annual basis and upon hiring or transferring staffers to a customer-facing position. Training should also be supplemented whenever there are changes to policy or procedures. It's also a good idea to give staffers a refresher when there is a significant drop in the number of complaints logged or if the wrong types of consumer contacts are being coded as complaints.

Clear Channels of Communication.

Consumers need to know where they can communicate their complaints. To make it easier for FIs to collect and centralize complaints, FIs may want to establish a specific mailing address, e-mail address, and phone number where customers can send complaints.

In addition, staffers should have a system to quickly and easily log complaints. This system should be accessible by any staffer that has consumer contact and require only limited information. This helps ensure busy branch personnel and other staffers actually complete the forms.

Investigation Process.

It's important to thoroughly investigate the claims and allegations made by consumers. To ensure complaints are treated uniformly, FIs should document the steps staff will take to validate a complaint, ensure the complaint is not a duplicate, and ensure corrective steps are taken. Documenting resolution procedures will save staff significant amounts of time if other similar complaints are received and avoid common errors like forgetting to review the customer's account notation system, sending correspondence, collecting evidence, or escalating complaints.

Written Response.

It's imperative to acknowledge complaints so that customers know they can expect a response from the institution. A good initial written response will detail the steps the FI will take and the department or staffer consumers can contact if they need more information, want to provide additional documentation, or want to check on the status of their complaint. Otherwise, consumers may feel that their complaints are entering a void where they will never be addressed and resolved. This may lead consumers to complain again to a different staffer, duplicating complaint resolution efforts, or even worse, take their dissatisfaction online or to the regulators. Written responses should also be provided after the financial institution has investigated and resolved the complaint. This will ensure customers are made aware of the resolution and the timeframe for refunds or other corrective action.

Even when customers communicate by phone, it's a good practice to respond through a formal written process to avoid confusion and ensure uniformity. This doesn't mean an FI shouldn't return a consumer's call. Rather, a phone conversation should be followed up with a written response. The practice of following up in writing can also help institutions demonstrate their complaint management efforts to regulators or serve as evidence if the complaint escalates to litigation. Finally, if your FI is set up to send electronic communication, keep in mind that some regulations require E-SIGN consent for specific disclosures. If a complaint does not trigger E-SIGN consent, it's a good practice to at least obtain the customer's consent to receiving electronic communication prior to replacing physical communication. This will ensure all customers receive the FI's communication.

Corrective Action.

Whenever a complaint pertains to a specific violation of a regulation or error on behalf of the FI, it's important to make the consumer whole again. That may mean refunding fees or issuing credit. If a complaint establishes that an error took place, staffers should investigate whether the error affected only one individual or other consumers as well. Taking corrective action for every affected consumer—and not just the one complaining—can limit future violations, severity of the harm, and the FI's legal liability.

Monitoring & Testing.

The department in charge of managing complaints should monitor the number of complaints received to establish a baseline for normalcy. When implementing a formal complaint program for the first time, the FI may see an influx of complaints. The number of complaints may then begin to decline as corrective action is taken and program weaknesses are reduced. However, if complaints begin to steadily decline without corrective action, it may be a sign that staff needs to be reminded to log complaints.

Complaint managers should also ensure policies, procedures, and processes associated with complaint resolution are being followed. To do this, complaint managers can review a portion of complaints received, analyze whether the complaint was resolved in the appropriate manner, and review the case file for evidence of written responses, resolution timeframes, and corrective action taken.

Retaining and Analyzing Data.

Certain regulations have retention requirements for complaints that allege an error. For example, Regulation Z section 1026.25(a) specifies that financial institutions should retain records as evidence of compliance with the regulation for a period of two years. Complaints not associated with a particular regulation might not have a prescribed period of time for retention. For those complaints, FIs should consider retaining the records for at least one full examination cycle to demonstrate compliance with their internal complaint management programs. FIs can choose to retain complaint data for longer in case of litigation and state law liability statutes.

Once complaints are collected, investigated, and resolved, they should also be analyzed holistically. Unless complaints are compared and analyzed, it will be difficult to determine if there are trends that reveal control weaknesses, an increased risk posed by a new product or service, or other compliance deficiencies that need to be corrected.

The CCRS interagency guidance recommends examiners engage in a detailed analysis of any violation of law or consumer harm. The analysis should take into account:

- **the root cause, or causes, of any violations of law;**
- **the severity of any consumer harm resulting from violations;**
- **the duration of time over which the violations occurred; and**
- **the pervasiveness of the violations.**

FIs should implement this analysis to ensure weaknesses in its compliance management system are identified and corrected.

TIPS FOR MAKING YOUR COMPLAINT PROGRAM MORE EFFECTIVE

If you have a complaint program in place, there are still areas that should be reviewed to ensure effectiveness. Make sure your complaint program:

1. Makes it easy for consumers to file complaints.
Information on how consumers can submit their complaints should be readily available on your website and in all customer-facing communications, such as newsletters and your phone directory. Having this information available may prevent consumers from getting frustrated and turning to your regulator's complaint center, the Better Business Bureau, or social media.

2. Acknowledges complaints immediately.
Consumers expect immediate communication. Your complaint program needs to provide an immediate response to consumers to temper expectations and ensure they don't duplicate their complaints.

3. Centralizes and log all complaints.
Complaints can originate in virtually any department. It is important that all complaints are funneled to the department responsible for managing complaints so that complaints are handled or escalated uniformly. Failing to centralize complaints can lead to duplicate efforts or even worse, conflicting results. Not every consumer contact counts as a complaint. Make sure staff knows to log all suspected complaints and let the complaint manager determine whether it meets your FI's definition of a complaint.

4. Reviews social media.
A proactive complaint management program includes investigating complaints from all sources. Even if your FI doesn't have a Facebook page or Twitter handle, consumers might still be talking about your FI online. It's important to capture these conversations to investigate if any allegation is factual and implement corrective action. When scrubbing the internet for complaints, remember not to provide personal information about your customers and instead encourage the complainant to log their complaint through one of your FI's formal channels.

5. Involves the right staffer(s) early on.
Most complaints are time sensitive. Complaints should be logged and assigned to the appropriate party quickly or the FI may not have enough time to properly investigate the issue. Preemptive conversations with department heads and written policies can cut down on the amount of time a complaint manager spends chasing the right individual during complaint resolution.

6. Retains and organizes case files.
When a consumer disagrees with a complaint's resolution, it is important to retain all evidence gathered and the steps taken to demonstrate the FI's position to consumers, examiners, or litigators. Having all account documents, written communications, and investigation materials in one place, along with the time they were created, will save staff hundreds of hours—especially as case files can contain hundreds of documents and screenshots. In addition, your internal auditors and examiners may want to review a few files to ensure the FI is following its policies and procedures.

7. Leverages software for tracking and analysis.
The more sophisticated your FI is, the more likely you'll need software for managing complaints. The right partner can help you centralize your complaints, assign complaints to the right staffers, follow up on resolutions, keep all files organized, and provide for meaningful complaint analysis. Software can free up time spent on administrative tasks, such as sending reminders and notifications, allowing staff to focus on higher-value tasks such as complaint resolution, risk management, and taking self-corrective action.

DEBUNKING COMPLAINT MANAGEMENT MYTHS

FIs offer many reasons for failing to implement a centralized complaint management program, but none of those reasons are valid. Let's take a closer look.

1. We don't have any complaints.
Many FIs operate under the belief that they don't have any complaints. This misperception gives FIs a false sense of security. The truth is that every FI has complaints—if an FI doesn't report any, it simply means they aren't being logged. As a result, the FI is missing the opportunity to detect violations and mitigate risk.

2. Tracking complaints will expose our weaknesses to examiners.
Many FIs fear that managing complaints will lead to more regulatory scrutiny. This view is short sighted. Failing to proactively manage complaints leads to reactiveness and allows minor issues to multiply. Managing complaints leads to happier customers, a culture of compliance, and ability to avoid potential UDAAP and third-party issues by identifying and remediating them quickly.

3. Each department oversees its own complaints.
This siloed approach to complaint management creates operational issues resulting in redundancies, inefficiencies, and discrepancies. For example, if a customer complains to a teller and then calls the call center to complain again, two departments will work on the same complaint, possibly coming to different resolutions. Meanwhile, the lack of holistic reporting causes the FI to miss out on risk management opportunities.

CONCLUSION

When an FI understands the value of complaint management and implements a program that allows it to identify trends and take prompt corrective action, it does more than fulfill a regulatory requirement. It reduces compliance and reputational risk by focusing on holistic fixes that uncover the root cause of problems and stop future complaints.

Don't make the mistake of assuming that if you don't track complaints the regulatory agencies won't find out about them. Aggrieved consumers have no shortage of agencies where they can report their complaints—and many agencies act on that data.

Complaints are the canary in the coal mine. Don't ignore this valuable tool. Make sure your FI has a centralized complaint management program.

About NCONTRACTS

Ncontracts provides risk management and compliance solutions to a rapidly-expanding customer base of more than 1,300 financial institutions located in all 50 states and U.S. territories. The company's powerful combination of software and services enables financial institutions to achieve their risk management and compliance goals with an integrated, user-friendly, cloud-based solution suite that encompasses the complete lifecycle of operational risk.

About NCOMPLY

Ncomply is a comprehensive compliance management software application that empowers bank and credit union compliance officers to proactively research rules and regulations, understand compliance requirements and stay on top of rapidly changing regulatory requirements. With Ncomply, financial institutions can easily demonstrate and maintain a culture of compliance at all times, ensuring audit-readiness while tracking complaints with built-in complaint management.

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Ms. Lyon directs Ncontracts' compliance program, which includes product development and content. Prior to joining Ncontracts, she was a senior compliance counsel at NAFCU where she advised over 800 financial institutions on compliance-related topics. Ms. Lyon serves as a faculty member for compliance and bank secrecy schools and is a well-regarded speaker and author. She got her start in the industry by serving in key roles at financial institutions in risk management, compliance and BSA operations, and is serving as an Advisory Member for the George Washington University Credit Union Initiative. Ms. Lyons received her J.D. at the George Washington University.

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