

Consumer Protection



**COMMUNITY
BANK PERSPECTIVE
ON THE BUREAU OF
CONSUMER FINANCIAL
PROTECTION**

August 2018

Community Bank Perspective on The Bureau of Consumer Financial Protection

Executive Summary

The Independent Community Bankers of America (ICBA)¹ commends the Bureau of Consumer Financial Protection (BCFP) for initiating a wholistic review of its operations, and inviting dialogue and the pursuit of innovation through the publication of 12 requests for information (RFI). ICBA responded to each RFI with the hope that the bureau uses the comments to reorient itself and focus on what it was intended to accomplish: facilitating greater consumer choice and efficient markets, while still vigorously enforcing consumer financial law in a way that guarantees due process. This paper is a summary of ICBA's response to each RFI.

Community banks are integral pillars of their communities. Because their success and good fortunes are intertwined, community banks strive to provide their customers with financial services and products that will positively affect their lives. Community banks spend considerable time and effort to build close relationships with their customers so that they can find the right product that can help them achieve their goals.

A fair and practical regulatory system can provide an environment that enables community banks to provide these responsible services and products to customers, and simultaneously curbs the practices of bad actors that offer predatory products. While Congress and the Dodd-Frank Wall Street Reform and Consumer Protection Act intended for the BCFP to recognize and encourage the good practices of community banks so that they could flourish, community banks have unfortunately been caught in an unprecedented deluge of regulatory burden with which they have struggled to keep pace.

The current transition in the leadership provides the bureau with the opportunity to examine itself to determine whether it is staying true to its statutory mandates. Part of this introspection includes the bureau's "Call for Evidence," a months-long reassessment of the entire gamut of bureau

¹ The Independent Bankers of America® creates and promotes an environment where community banks flourish. With more than 52,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 760,000 Americans and are the only physical banking presence in one in five U.S. counties. Holding more than \$4.9 trillion in assets, \$3.9 trillion in deposits, and \$3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America.

activities, including enforcement, supervision, rulemaking, market monitoring and education.

While community banks firmly support a balanced regulatory system in which all firms that offer financial products and services are subject to meaningful supervision, examination and enforcement, there has been a growing host of concerns related to bureau activities. At the end of this review effort, ICBA is optimistic that the bureau will better understand these concerns and be more aware of how its rules and policies affect community banks and their customers. This is a new opportunity to reassess the direction that the bureau has taken in recent years, and to orient it for effective regulation for years to come.

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Civil Investigative Demands

Background

The Dodd-Frank Act provides the bureau with the authority to conduct investigations into suspected violations of consumer financial protection laws and to obtain information to aid in those investigations by issuing civil investigative demands (CID).² The bureau uses CIDs as a tool to gather information from entities that are suspected of violating consumer financial laws or from third parties that might have information relevant to the bureau's investigation.



CIDs are official demands for documentary material, tangible things, reports, answers to written questions, or oral testimony that can, if necessary, be enforced in federal court.

Dodd-Frank also outlines the procedural requirements for issuing CIDs and mandates that the BCFP promulgate rules and procedures that govern the process. The bureau's regulations set forth the notice provisions, reply deadlines, petitions to appeal, and other procedural requirements.

ICBA Recommends that the Bureau:

Limit Scope of CIDs

- Set clear limits on its authority and narrow the scope and coverage of CIDs.

Adopt Less Adversarial Tools and Methods

- Differentiate between instances when a community bank is suspected of wrongdoing and when it is merely believed to have information relevant to an investigation, such as when it is a third-party recipient. As such, the bureau should first seek voluntary cooperation before issuing a CID to a third-party recipient.

² 12 U.S.C. § 5562.

- Amend its regulations to require the usage of already available resources and reports before issuing a CID in attempts to gather information.

Enhance Due Process Safeguards

- Implement refined statements of purpose, reasonable approaches to “meet and confer,” and non-retaliatory treatment in response to petitions to set aside.
- Adopt standards discussed in recent case law to ensure that subjects receive proper notice of the specific actions suspected to be in violation of law.
- Implement procedural changes to the “meet and confer” requirement.
- Strike language that “disfavors” petitions to set aside and end the chilling effect of making such petitions public.

Adjudication

Dodd-Frank gives the bureau broad authority to seek legal and equitable relief through enforcement actions, including civil penalties and restitution, and permits the bureau to adjudicate those actions through the use of administrative hearings.³ The act also permits the bureau to set rules that govern the procedure of administrative hearings, as authorized under the Administrative Procedures Act (APA).⁴ These rules govern every facet of a hearing, including the commencement of the action, pleadings, motions, discovery, and timing requirements.

In July 2011, the bureau issued interim final rules to govern its adjudication proceedings.⁵ It then finalized those rules in June 2012 after receiving stakeholder comments.⁶ The bureau modeled its own rules on the uniform rules and procedures for administrative hearings adopted by the prudential regulators under the Financial Institutions Reform, Recovery, and Enforcement Act, the Rules of Practice for Adjudicative Proceedings adopted by the Federal Trade Commission (FTC), and the Rules of Practice adopted by the Securities and Exchange Commission (SEC).

In the final rule's preamble, the bureau frequently referenced these models in justifying its approach. The preamble noted that other agencies attempted to make the process less protracted, more efficient and more effective.⁷ The bureau stated that it similarly aimed to "strike an appropriate balance between the need for fair processes and...the desire for efficient and speedy resolution of matters..."⁸

ICBA Recommends that the Bureau:

- **Establish Clear Rules:** Work with appropriate industry stakeholders to develop authoritative written guidance that provides clear examples of permitted and forbidden practices.
- **Provide Forum Choice:** Promulgate a rule or framework that provides an avenue for civil hearings when respondents seek the benefit of well-established procedures and due process protections provided in the Federal Rules of Civil Procedure and Federal Rules of Evidence. Justice will still be sought and served regardless of whether an action is brought in federal court or in an administrative proceeding.

³ 12 U.S.C. §§ 5563, 5564, 5565.

⁴ 5 U.S.C § 500, et seq.

⁵ 76 Fed. Reg. 45338 (July 28, 2011).

⁶ 77 Fed. Reg. 39058 (June 29, 2012).

⁷ *Id.*

⁸ *Id.*

- **Broaden Procedural Deadlines:** Strike regulatory language that needlessly disfavors extensions of time. Further, the BCFP should establish procedural timeframes that mirror the SEC's flexibility, depending on the complexity of the case, so that parties have proper time to prepare. However, the bureau should recognize that administrative actions are subject to statutes of limitation, just as they would be if brought in Federal court.
- **Enhance Discovery:** Afford respondents with opportunities to develop the record through depositions. ICBA recommends that BCFP zealously disclose exculpatory information and not wait until requested by a respondent.
- **Conform to Federal Rules Regarding Admissibility of Evidence:** Adopt the standards laid out in the Federal Rules of Evidence and prohibit the use of hearsay evidence to prove the truth of the matter asserted.
- **Increase Hearing Confidentiality:** Adopt the pragmatic approach of granting protective orders against disclosure of confidential information when the harm of disclosure outweighs any perceived public benefit.
- **Reassess Use of Inferior Officers:** Examine the practice of hiring administrative law judges and determine compatibility with recent court decisions.

Enforcement

In the course of executing its enforcement authority, the BCFP is authorized to investigate violations of federal consumer financial laws and, if appropriate, commence legal proceedings through either administrative adjudication proceedings or civil actions in federal district court.⁹

ICBA Recommends that the Bureau:

- **Establish Communication Process:** Establish a formal process that governs communications between the bureau and subjects of investigations. All communications between the bureau and the subject of an investigation should delineate the specific factors causing concern to the bureau and clear and concise information pertaining to the status of the investigation.
- **Permit In-Person Presentations:** Allow for in-person presentations before a decision is made which is consistent with legal procedural norms and practices and demonstrates a respect for due process.
- **Provide Status Updates:** Communicate the status of the investigation to the subject every three months. ICBA further recommends that when there is no communication between the subject and the bureau for six months, the subject should be able to presume that the investigation is closed.
- **Length of Investigations:** Conclude enforcement actions within two years of the bureau opening an investigation.
- **Notice and Opportunity to Respond and Advise (NORA):** Make the NORA process mandatory, not discretionary subject to the whims of enforcement personnel. Additionally, ICBA strongly urges that: the NORA be made in writing; the oath requirement be removed; and the subject's response time be increased from 14 calendar days to 45 business days.
- **NORA Response Letter:** Adopt revisions to the Sample NORA Letter to align with our recommendations.
- **Enforcement Coordination:** Coordinate enforcement activity with federal or state agencies that may have overlapping jurisdiction.

⁹ 12 CFR Parts 1080 and 1081.

Supervision

The BCFP is authorized to supervise banks with more than \$10 billion in total assets¹⁰ as well as non-bank entities that engage in offering or providing consumer financial products or services, including non-banks that provide mortgage-related products, payday loans, and private student loans.¹¹

Although prudential regulators maintain consumer compliance examination authority over banks with less than \$10 billion in assets, the bureau may still include its examiners on a sampling basis at examinations of smaller banks to assess compliance with the requirements of federal consumer financial law.¹² However, ICBA is currently unaware of any instance in which the bureau has exercised this authority for banks with less than \$10 billion in assets.

ICBA Recommends that the Bureau:

- Add a fourth supervision principle—efficiency—achievable through increased collaboration and coordination with other regulators.
- Increase pre-examination planning and communication in advance of on-site visits to reduce the likelihood of bank delays and confusion in providing information.
- Tailor information requests to the supervised institution, based on the size, complexity and scope of activities of the institution being examined.
- Analyze compliance management systems in a flexible manner, based on the size and complexity of the institution being examined.
- Adjust communication practices to reduce redundant meetings and inquiries.
- Rescind a 2016 BCFP proposal that would expand information sharing with agencies that have no jurisdiction over the supervised financial institution.
- Submit formal notices of “no action” when a corrective measure is satisfactory, or notices that sufficiently identify the shortcomings of corrective actions.
- Establish a minimum time frame between each onsite exam, such as 18 months.

¹⁰ 12 U.S.C. § 5515.

¹¹ 12 U.S.C. § 5514.

¹² 12 U.S.C. § 5516.

- Increase the role of the ombudsman in guiding supervised entities through the appeals process.
- Adopt post-examination surveys that banks can opt to complete.

External Engagements

Dodd-Frank charges the BCFP with establishing a Consumer Advisory Board to advise and consult with the bureau's director on a variety of consumer financial issues.¹³ The Dodd-Frank Act also gave the director authority to create advisory councils as an additional way to reach stakeholders, obtain their input, and hear their perspectives.

In September 2012, the bureau announced the creation of a Community Bank Advisory Council (CBAC), a Credit Union Advisory Council and an Academic Research Council. The CBAC and the Credit Union Advisory Council advise and consult with the bureau on consumer financial issues related to community banks and credit unions, respectfully. The Academic Research Council shares insight relating to research methodologies, data collection and analytic strategies.¹⁴ To date, the bureau has conducted 47 public meetings of the four councils.

Through the CBAC, community banks can share pertinent information on how bureau policies affect them and their customers, provide an understanding of compliance and regulatory challenges, and provide insight regarding technical and operational considerations.¹⁵

The bureau uses other forums such as town hall meetings and field hearings to obtain input from various stakeholders affected by the bureau's rulemakings and other initiatives. Since the bureau's inception, it has hosted 33 field hearings and 15 town halls in more than 40 cities. Finally, the bureau routinely participates in industry-sponsored events.

ICBA Recommends that the Bureau:

- Remember its purpose for creating the councils by consistently seeking input from CBAC members.
- Implement a process wherein Council members would have the ability to provide ongoing "real-time" feedback regarding matters that are of concern and impact the day-to-day ability of a community bank to serve their customers.
- Continue to ensure openness and transparency and encourages it to continue in this regard.

¹³ 12 U.S. Code § 5494.

¹⁴ CFPB Announces Consumer Advisory Board Members <https://www.consumerfinance.gov/about-us/newsroom/consumerfinancial-protection-bureau-announces-consumer-advisory-board-members/>.

¹⁵ Consumer Financial Protection Bureau Charter of the CFPB's Community Bank Advisory Council, p.1.

- Consider implementing general rules of engagement if they are not already in place when tapping the CBAC's expertise.
- Increase the number of CBAC members and expand the diversity criteria to include a minority bank representative and various community bank market characteristics.
- Reimburse Council members for all travel costs.

Public Reporting Practices of Consumer Complaint Information

When consumers have a less-than-satisfactory experience with a financial institution, they can file a complaint with the BCFP. Consumers can access the BCFP's website and complete a series of questions and data fields to file a complaint.¹⁶ Complaints about depository institutions with less than \$10 billion in assets are not processed by the bureau, but referred to the institution's primary federal regulator.

Screened complaints are then forwarded to the company named in the complaint. Companies have 15 calendar days to provide an initial response to the complaint. The company may communicate with the customer and determine what action to take in response. They have up to 60 days to provide a final response. The bureau then invites the consumer to review the response and provide feedback.

Information about individual consumer complaints is published in the bureau's public database. The BCFP asserts that it makes the database publicly available to provide timely and understandable information and to improve the functioning of the market.¹⁷

ICBA Recommends that the Bureau:

- Cease publication of disaggregated data, which results in misleading comparisons.
- Recognize that it is exceeding its statutory authority by publishing the database.
- Acknowledge that publication ignores reputational risk for banks.
- Resolve the fact that unverified and insufficient data exacerbates problems associated with public dissemination.
- Concede that regulators are in the best position to interpret and use disaggregated data.
- Account for banks that already strive to resolve consumer complaints.

¹⁶ See "So, how do I submit a complaint?" available at <https://www.consumerfinance.gov/about-us/blog/so-howdo-i-submit-a-complaint/>, providing consumers with information about the complaint process and instructions on how to file a complaint.

¹⁷ 80 Fed Reg 15572 (March 24, 2015).

Rulemaking Processes

Dodd-Frank authorizes the bureau to administer, enforce, and implement federal consumer protection laws.¹⁸ The act further authorizes the director of the bureau to propose rules to enable the bureau to carry out its purpose.¹⁹ The bureau has engaged in rulemakings mandated by Congress as well as discretionary rulemakings. The bureau's rulemaking processes are subject to the statutory requirements discussed below.

The bureau is required to publish a notice of proposed rulemaking (NPRM) in the Federal Register each time it proposes, amends or repeals a rule.²⁰

The bureau is subject to the Regulatory Flexibility Act of 1980 (RFA), which requires the bureau to seek feedback from small businesses prior to proposing a rule. The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) amended the RFA to require some federal agencies to assemble a SBREFA panel prior to issuing NPRMs, if the proposed rule is likely to have a significant impact on a substantial number of small entities. The Dodd-Frank Act subjected the bureau to the SBREFA requirements.

The Dodd-Frank Act requires the bureau to evaluate the potential benefits and costs resulting from its proposed rules.²¹ The bureau also must consider the impact of proposed rules on depository institutions and credit unions with \$10 billion or less in assets and on consumers in rural areas.²²

Pursuant to the Dodd-Frank Act, the bureau must consult with prudential banking regulators or other federal agencies prior to proposing a rule and before issuing a final rule to help ensure consistency with prudential, market, or systemic objectives administered by such agencies.²³ Additionally, the bureau and the FTC are parties to a memorandum of understanding that requires them to consult each other before proposing or finalizing a rule concerning unfair, deceptive, or abusive acts or practices, to avoid duplication or conflict between the agencies.²⁴

18 12 U.S.C. 5512(a).

19 12 U.S.C. 5512.

20 5 U.S.C. 533(b)

21 12 U.S.C. 5512(b)(2)(A)(i).

22 12 U.S.C. 5512(b)(2)(A)(ii).

23 12 U.S.C. 5512(b)(2)(B).

24 12 U.S.C. 5581(b)(5)(D).

ICBA Recommends that the Bureau:

Improve the SBREFA process

- Allow additional time for small entity representatives to review SBREFA meeting materials and prepare for the SBREFA panel and for bureau staff to obtain appropriate knowledge relative to the topic.
- Ensure the final SBREFA report includes justifications for any feedback that will not be considered or reflected in the proposed rule.
- Ensure feedback received from small entity representatives is reflected in proposed and final rules.

Enhance the NPRM

- Streamline the number of pages in the notice by providing a concise list of areas in which the bureau seeks comments immediately after the summary section and by avoiding redundancy in the supplementary information and background sections.
- Add a table of contents that includes links to all sections.
- Establish longer comment periods for proposed rules that do not have a statutory deadline.
- Respond to stakeholder requests to extend comment periods.

Ease the final rule process

- Streamline the number of pages in the final rule by limiting content to the summary, background, section-by-section analysis and legal authority.
- Add a table of contents that includes links to all sections and documents.
- Remove all supplemental content to a separate document.
- Include a separate red-lined final rule to allow for the speedy identification of changes to existing regulations.
- Release all implementation and supporting materials with the final rule simultaneously.
- Respond to stakeholder requests to extend compliance deadlines instead of delaying a decision to a few days before the deadline.

- Work with the prudential regulators to facilitate release of examination procedures six to nine months before a final rule's effective date, and use its authority under the Dodd-Frank Act to exempt community banks from final rules that hamper their ability to provide financial products and services to their customers.

Adopted and Inherited Regulations

Dodd-Frank transferred to the bureau rulemaking authority for federal consumer financial laws previously vested in other federal agencies (“inherited regulations”). The Dodd-Frank Act also provided the bureau with new rulemaking authorities not previously vested with other agencies (“adopted regulations”).

ICBA Recommends that the Bureau:

Consumer Access to Financial Records

- Acknowledge that its statutory authority concerns consumer access to their own data and is not a mandate to provide account data to third parties.
- Carefully consider the privacy, regulatory burden, data security, and legal implications posed by third-party account access.
- Adhere to its statutory limits and not promulgate a rule that would dictate how community banks share customer information with permissioned third parties.

Fair Debt Collection Practices

- Concentrate its efforts and resources on greater supervision of irresponsible actors that are not regularly examined by regulators instead of writing more rules that affect community banks, which are proven responsible lenders and already sufficiently examined.
- Use its statutory authority to exclude first-party debt collectors such as community banks from any debt-collection rulemaking.

Fair Lending

- Develop consistent and transparent fair lending regulations.
- Maintain consistency with the U.S. Supreme Court ruling in *Texas Department of Housing and Community Affairs v. Inclusive Communities*, if the bureau determines that the disparate impact theory is applicable under the Equal Credit Opportunity Act (ECOA).
- Amend Regulation B to confirm that guarantors are not included in the definition of applicant under ECOA.

Mortgage Lending Regulations

- Extend the qualified mortgage (QM) safe harbor status to all community bank loans held in portfolio without regard to their pricing, including balloon loans.
- Make permanent the “QM patch that exempts loans underwritten and documented according to the government-sponsored enterprise automated underwriting systems from the requirements of Appendix Q and the 43 percent debt-to-income ratio. Revise the 43 percent debt-to-income ratio of the QM rule to include compensating factors.
- Increase the small-servicer exemption limit from 5,000 loans to 30,000 loans, or a maximum unpaid principal balance of \$5 billion in mortgages serviced, to preserve the role of community banks in mortgage servicing.
- Initiate a rulemaking or issue authoritative guidance to provide compliance certainty in several unresolved areas. The BCFP’s more recent effort to amend and clarify the TILA-RESPA Integrated Disclosure requirements, while appreciated, left unresolved issues, and new problems continue to surface.

Prepaid Accounts

- Remove the long-form disclosure requirements from the final prepaid accounts rule because this information is already provided to the consumer in the short-form disclosure.
- Exclude non-reloadable products from coverage under the rule and prohibiting issuers from using repeated re-issuances or other tactics to circumvent compliance with the rule.
- Remove the costly and unreasonably burdensome requirement for community banks to anticipate a viewer’s desktop capabilities by requiring electronic disclosures to be viewable across all screen sizes.
- Not use Regulation Z protections for regulating overdraft services for prepaid accounts.
- Amend the prepaid rule to permit each issuer to submit account agreements to the bureau on an annual basis instead of the current quarterly submission requirement.
- Eliminate the 30-day waiting period before offering to link a credit feature to a prepaid account.

Remittance Transfers

- Increase the de minimis safe harbor from 100 to 1,200 transactions annually and modify the definition of “remittance transfer” to provide an exemption for transfers greater than \$1,000.
- Make permanent the provision allowing depository institutions to provide estimates of third-party fees and exchange rates to low-volume corridors in which it is not feasible or economical for providers to make arrangements that enable exact disclosures.
- Reduce the time for consumers filing complaints from 180 days to 90 days.
- Eliminate the “availability date” to remove the burden of community banks having to predict when they believe funds would be available in a foreign location.
- Remove the combined prepayment-receipt disclosure requirements because there is no evidence that consumers comparison shop for service rates, and eliminate several other duplicative disclosure requirements.
- Eliminate the 30-minute cancellation requirement because most consumers value transaction speed over reversibility.
- Remove the inequitable provisions requiring providers to absorb fees and costs that result from sender error and assigning liability to providers for violations committed by agents.

Small Business Loan Data Collection

- Adopt the stance that this data collection will impose significant new burdens on community banks at a time when they are absorbing numerous other regulatory requirements. Imposing any new data collection and reporting requirements under Section 1071 on community bank small-business lenders would negatively affect small-business lending and lead to unfortunate, unintended consequences for small-business owners seeking credit.
- Continue collecting information about the small-business lending market and the impact Section 1071 will have on community bank small-business lenders and other stakeholders. Hold a Small Business Advocacy Review (SBAR) panel under SBREFA before issuing any rulemaking.

- Use its authority under the Dodd-Frank Act to exempt community banks from data collection and reporting, limit any regulation to data points required by statute, and prioritize protecting customer privacy as it considers new data-reporting requirements.

Guidance and Implementation Support

The bureau is seeking comments to assist in assessing its guidance materials and activities, including implementation support. The bureau also seeks comments on whether it would be appropriate to make changes, consistent with the applicable law and regulation, to formats, processes, and delivery methods for providing such guidance.

ICBA Recommends that the Bureau:

- Cease the issuance of stand-alone interpretive rule guidance without opportunities for public notice and comment as required by the APA.
- Submit all existing and future interpretive guidance to Congress for review.
- Create a comprehensive and centralized implementation and compliance portal organized by financial service or regulation.
- Establish and maintain a formal and comprehensive frequently asked questions guide that covers all regulations under the bureau's jurisdiction.
- Make webinars a standard practice for final rulemakings as an implementation assistance tool.
- Streamline the length of final rules and implement other actions described in the final rule section.
- Enhance compliance guidance by drafting in plain language, discontinuing the use of disclaimers, and updating on a timely basis to ensure accuracy.

Consumer Information

The bureau is seeking comments and information to assist in assessing the overall efficiency and effectiveness of its consumer financial education programs, one of the six primary functions that the Dodd-Frank Act assigns to the bureau.²⁵ The bureau is also statutorily mandated to provide consumers with timely and understandable information to make responsible decisions about financial transactions,²⁶ and to develop and implement initiatives intended to educate and empower consumers to make better-informed financial decisions.²⁷

The bureau achieves these statutory mandates in several ways. The bureau creates educational content that it publishes on its website for consumption by consumers. The content includes a wide range of financial topics, including lending and savings products. The bureau has created guides, webinars, a financial health framework and other educational resources that consumers can access. Finally, the bureau partners with community organizations and outlets, such as community banks and other financial institutions, libraries and social services agencies, to aid in the dissemination of this material. The bureau is issuing this RFI to determine ways to improve its financial education programs and outreach efforts.

ICBA Recommends that the Bureau:

- Broaden its financial education efforts on demographics that are not seeing the same overall improvement in financial health as compared to other demographics.
- Increase its efforts to combat the misconception that unbanked and underbanked populations would not be approved for credit products.
- Expand outreach efforts and produce more material on retirement savings, given the dearth of savings for retirement.
- Not infringe or hamper community banks' efforts to educate their customers, but rather voluntarily work with community banks when they ask for help.
- Work with other Financial Literacy and Education Commission members to make the meetings more routine.

²⁵ 12 U.S.C. § 5493(d).

²⁶ 12 U.S.C. § 5511(b)(1).

²⁷ 12 U.S.C. § 5493(d).

Consumer Complaint and Inquiry Handling Processes

Dodd-Frank directs the bureau to establish a unit “whose functions shall include establishing a single, toll-free telephone number, a website, and a database or utilizing an existing database to facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services.”²⁸ The act also directs the bureau to establish “reasonable procedures to provide a timely response to consumers, in writing where appropriate, to complaints against, or inquiries concerning, a covered person.”²⁹

To comply with the statutory mandates, the bureau’s procedures include the establishment of the consumer complaint portal, where a consumer can complete a series of questions and data fields to file a complaint about a company. The bureau then screens the submission and forwards it to the named company, which has 15 days to provide an initial response. The company is then able to communicate with the customer and determine what action to take, having up to 60 days to provide a final response. The bureau then invites the consumer to review the response and provide feedback.

Part of the bureau’s initial screening process includes ascertaining whether it is a complaint, an inquiry, or feedback about the bureau. Submissions in the latter two categories are not forwarded to the identified company for handling as complaints.³⁰ The bureau also determines whether the submission falls within the BCFP’s primary enforcement authority, is complete, or is duplicative of a prior complaint by the same consumer. If a complaint does not involve a product or market that is within the bureau’s jurisdiction, the bureau refers it to the appropriate regulator.³¹

ICBA Recommends that the Bureau:

- Reconfigure the complaint portal so consumers understand the array of options available.
- Direct consumers to first seek redress directly from the bank before submission of a complaint through the portal, which can provide the speediest resolution.

28 12 U.S.C. § 5493(b)(3).

29 12 U.S.C. 5534(a).

30 77 Fed. Reg. 37558, 37561 (June 22, 2012).

31 Monthly Complaint Report, Vol. 25, July 2017, FN 3 at 3, available at https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201707_cfpb_monthly-complaint-report-vol-25.pdf. If the bureau receives a complaint regarding a bank that has less than \$10 billion in assets, then the bureau forwards the complaint to that bank’s prudential regulator for individual follow-up.

- Broaden the definition of relief by eliminating the emphasis on the monetary component.
- Include more mandatory data fields to provide additional clarity and context.
- Cease publication of disaggregated consumer complaints.

ABOUT

ICBA

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CONTINUE THE CONVERSATION

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