ABA Bank Compliance

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Best Practices

When was the last time you personally filed a complaint? Did you take your business elsewhere? Or did you return to the establishment and give it another chance? Whether or not the establishment is given another chance, human nature shows and customer satisfaction surveys indicate that poor experiences are often shared with other people. Many survey results have been published that disclose basically the same statistic–on average, a dissatisfied customer will tell twice as many people about their bad experiences than about their good experiences. The statistic is compounded through the use of social media. Today, expressions of satisfaction and dissatisfaction made through Facebook, Twitter, company websites, and a bevy of media channels can potentially reach millions of people and incite almost immediate response. In addition, these sites are accessible to and perused by bank regulators and plaintiff's attorneys who express interest in protecting the consumer.

for the Consumer Complaint Management Program

Technology has made filing a complaint easy. The Consumer Financial Protection Bureau (Bureau) invites consumers to share their experiences and provides a website with step by step instructions to file complaints. A comprehensive consumer complaint management program is critical for banks not only to meet their strategic business objectives, but to manage their regulatory risk. Of course every bank works hard to attract and keep its customers. While banks strive always to do things right, sometimes things do not go as planned and a customer complains. First and foremost, it is imperative that the complaint handling process ensures the customer is provided a swift response that is clear, factual, and hopefully addresses the complaint in a way that is acceptable to the customer. Second, complaints provide valuable feedback to help understand when a bank's products, services, or employee actions result in a poor customer experience and perhaps inadvertently run afoul of consumer protection laws. Third, the complaint management program becomes even more critical to banks as the Bureau has proposed elimination of pre-dispute arbitration provisions in contracts involving consumer financial products or services, potentially opening the door to more class action litigation.

The prudential regulatory agencies have always had channels for consumers to file complaints. However, collecting, analyzing, and utilizing consumer complaints is a principal focus for the Bureau in its consumer protection role and in carrying out its

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mandate. They specifically require financial service providers to be responsive to complaints and inquiries received from consumers. They also advise entities to monitor and analyze complaints to understand and correct weaknesses in processes that could lead to potential consumer harm and violations of law. A strong complaint management process that incorporates the following methods will help a bank achieve more effective regulatory risk mitigation and better customer satisfaction.

#1 It is About the Customer

Banks have long embraced customer satisfaction as an integral component of their strategic business objectives. Making sure a customer receives satisfactory resolution to a complaint is the subject of many training courses. Clarity of the customer satisfaction message is more important than ever—bank employees need to understand the customer's issue, be able to accurately respond, or know how and to whom an issue should be escalated. A clear standard definition of what the bank considers a "complaint" is critical. Banks typically track all expressions of customer dissatisfaction, including those made in person, by phone, through social media or through a third-party such as the Better Business Bureau. These are in addition to those made in writing to the bank and to the Bureau. Tracking consumer complaints is not easy as it requires a clear understanding of how to recognize a complaint at the front lines and within call centers, and a disciplined process for capturing complaint information. Once a complaint is received, it should be addressed swiftly and in a way that is acceptable to the customer. In the process of addressing the complaint, the root cause of the issue should be identified and necessary corrective action taken before others have the same complaint.

#2 Collection of Bank Data

Complaints are a form of customer feedback and the ability to analyze them will allow a bank manage customer satisfaction and regulatory risk more effectively. Collection of relevant information is imperative and maintaining a central repository for the information is preferred, even in a small bank. Collecting the right information and entering it into a complaint management database or other system will help provide consistency of documentation, tracking, response, and analysis. Small banks may implement database solutions in lieu of the software solutions that handle larger volumes of data. Whatever type of system is chosen, it should be sufficient to handle and facilitate analysis of the number of complaints received by the bank.

The information that should be collected to facilitate analysis should include the following in addition to the customer specific information:

- Date the complaint was received by the bank
- Channel (branch/in-person, customer service/phone, mail, regulatory agency, Better Business Bureau, social media, website, other)
- Type of product identified in the complaint (consumer loan, mortgage loan, checking account, debt collection, loss mitigation, etc.)
- Type of sub-product identified in the complaint (more specific type of loan such as automobile loan, mortgage refinance, credit card, etc.)
- Issue(s) identified in the complaint (e.g., continued attempts to collect debt not owed)
- Sub-issue identified in the complaint (e.g., debt was paid)
- Consumer complaint narrative

TABLE 1

Problem	Customer complained about a $35 overdraft fee on a one-time debit transaction when they did not opt-in for overdraft services.
Why?	The system is showing the "opt-in" field is checked so the customer must have affirmatively opted in.
Why?	In the case of in-person transactions, the bank's procedure is to have the customer sign the disclosure checking the box that they agree to opt-in for overdraft services or checking the box that they do not wish to opt-in. In this case, the bank could not locate the imaged copy of the signed disclosure or evidence that it provided the consumer with confirmation of their consent in writing.
Why?	The banker thinks the box for the customer opt-in consent was checked on the deposit platform system at account opening, but signed customer opt-in disclosure was not uploaded to the system.
Why?	The banker forgot to image a copy of the consent disclosure and the system did not prompt the upload to the system.
Result	The bank does not have evidence that the customer really did opt-in for overdraft services on ATM and one-time debit transactions. The fee was refunded and the system box for overdraft opt-in unchecked. How many other customers may have this same issue?
Process Change Required?	Yes. In the case of an in-person interaction, the system should be programmed to include a prompt for the banker to upload a copy of the Overdraft Opt-In disclosure to provide evidence of the customer's affirmative consent. If the upload cannot be made mandatory, an exception report should be generated to identify instances where the transaction does not have an imaged affirmative consent. Affected customers should be contacted to confirm their preference and the documentation and system updated. Bankers should be provided training on the system enhancements and ongoing monitoring of performance.

- Response status (in process, closed with explanation, closed with monetary relief, closed with non-monetary relief, etc.)
- Tags (to help identify categories of consumers such as servicemembers or elderly customers)
- Date of bank response to consumer
- Was response timely? If not, why?
- Customer satisfied with response? If the answer is no, document follow-up or escalation.
- Bank assigned risk rating (definitions for risk ratings may differ by bank—it is suggested that any regulatory related complaints regardless of source be rated "high" and escalated for compliance and/or legal department review prior to responding to the customer)
- Other fields of data may be collected based on the bank's products and services.

Whether collecting the information in person or through a customer call center, make sure that documentation about the complaint itself is clear. If abbreviations and shortcuts are used in documenting issues, be prepared to define them for the outside reviewer. Keep in mind that auditors and regulators will view the information and will need to readily understand what transpired. Calls that are received through customer service or a call center are typically recorded and should be periodically reviewed to assess consistency in call handling among customer service representatives.

Centralizing complaints and their processing will help ensure that customers are receiving consistent and timely responses and that potential changes to processes are based on the most comprehensive data.

#3 Root Cause Analysis

By now, most banks are sorting complaint data by the various fields collected and are reporting on trends and key issues identified by month, quarter, and year to senior management and its Board of directors. To manage complaints and their associated risks effectively, management and the Board must understand what gave rise to the complaints. Understanding "why" a complaint surfaced will help identify needed process changes to mitigate future complaints, retain customers, and limit regulatory risk.

One method of investigating complaints is The Five Whys, a technique used in the Analyze phase of the Six Sigma Define, Measure, Analyze, Improve, Control (DMAIC) methodology. It is a simple technique that does not require the use of statistics or other advanced mathematical tools. Basically, repeatedly asking "Why?" enables one to weed through the layers of symptoms and get at the problem's root cause or the interdependent root causes–certainly, a problem may have more than one root cause. It may take fewer or more than five times of asking why to identify the root cause, but once identified any needed process changes can be implemented to prevent the problem, issue, or complaint from recurring. Below is an illustration of how asking "Why?" until the root cause is identified will provide more value than just addressing the complaint on its surface. The end result may be the same–the customer will receive a fee refund and the account set-up will be corrected, but the bank should be able to avoid future complaints by understanding how the complaint came about and make adjustments to its process to prevent similar future occurrences (See Table 1).

In most cases, the final "whys" should identify a root cause that leads to a process improvement that if implemented will reduce the bank's complaints and its regulatory risk–in this case–citation for non-compliance with the requirements for overdraft services under Regulation E–Electronic Fund Transfer Act and potential for Unfair, Deceptive, or Abusive Acts or Practices (UDAAP).

Once enough data has been accumulated, sorted, and patterns identified, start asking "why". For example, why are there so many more complaints about the foreign ATM fee in one of the five states your bank operates in than the other four? Is it coincidence or is there an issue with the fee set up in your system for that geography? Take a closer look at complaints that are similar in nature to understand why they may be occurring. Chances are if an issue happens for one customer, other customers are also affected, but just have not complained…yet. Root cause analysis has another added benefit. It shows employees the bank is focused on making sure it is striving to do the right thing for its customers and it inspires employees to do their best.

A comprehensive consumer complaint management program is critical for banks not only to meet their strategic business objectives, but to manage their regulatory risk.

Complaint Program—Bureau Examination Objectives

- Consumer complaints and inquiries, regardless of where submitted, are appropriately recorded and categorized.
- Complaints and inquiries, whether regarding the entity or its service providers, are addressed and resolved promptly.
- Complaints that raise legal issues involving potential consumer harm from unfair treatment or discrimination, or other regulatory compliance issues, are appropriately escalated.
- Complaint data and individual cases drive adjustments to business practices as appropriate.
- Consumer complaints result in retrospective corrective action to correct the effects of the supervised entity's actions when appropriate.
- Whether weaknesses in the compliance management system exist, based on the nature or number of substantive complaints from consumers.

Excerpt from *Consumer Financial Protection Bureau Supervision and Examination Manual, Version 2.0—October 2012*

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When complaints happen, they provide an opportunity to correct a problem, improve a product, or make sure that communications with customers are clear whether in person or through advertising and marketing messages.

#4 Review of Bureau Complaint Data

Not only is it important to understand your own complaint data, but it is also wise to review the Bureau's analysis of complaint data. The Bureau has made it easy for consumers to file complaints against financial services companies and consistently maintains that the complaint data it collects is integral to both fulfill its mandate and guide its supervision agenda.

The Bureau's Monthly Complaint Report highlights complaint volumes and spotlights products by type, by state, and by financial services company. Each month a particular state and the types of complaints received through the Bureau database for that state are highlighted. The Bureau continues to expand its complaint handling to include multiple products and services under its authority. The October 2016 Monthly Complaint Report shows the highest increases in the number of complaints related to student loans, bank account or services, credit cards, prepaid, consumer loans, and debt collection respectively. No bank or financial services company wants to be on this list. Regularly reviewing the report will help identify whether your bank may have similar types of complaints that require attention and corrective action.

#5 Policies and Procedures

Never have policies and procedures become more essential to a strong operational environment, robust compliance management system, and an effective consumer complaint management program. Clear articulation of what, how, when, and why something is being done will help employees perform their jobs to their fullest and will help them understand and better explain when something doesn't go as planned. There is nothing more frustrating for a customer with a complaint than the person at the other end of the conversation not understanding or not being able to accurately and confidently respond to the issue.

It is also critical that the bank has documented procedures for the complaint management process and that employees understand these procedures. The Bureau has published objectives for its examination of the consumer complaint response process that infer what must be included in a bank's complaint management program. In meeting these objectives, the Bureau will review consumer complaints it receives directly, in addition to complaints received by the bank's prudential regulator, state regulators, state attorneys general, licensing and registration agencies, and from private or other industry sources. They will also request bank policies and procedures for receiving, escalating, and resolving complaints along with a list of complaints received for a specific period of time. The complaints will be reviewed to identify those alleging deception, unfair treatment, unlawful discrimination, significant consumer injury, violation of law/regulation, and whether the complaints were handled timely, satisfactorily, and whether timely prospective or corrective actions were taken. If the bank works with third party service providers or other parties referring business to the bank, the Bureau expects the bank to ensure prompt and appropriate handling of service provider related complaints. Lastly, as with other elements of the compliance management system, the Bureau expects that analysis of consumer complaints and resulting changes to policies, procedures, training, and monitoring are reported to senior management and the board of directors enabling timely and meaningful oversight.

#6 Training and Reinforcement for All Customer-facing Employees

Policies and procedures are only part of the equation. A robust training program is needed to ensure the policies and procedures are properly implemented and are operating as intended. Monitoring performance against the policies and procedures will help to ensure the effectiveness of the training program and identify any required revisions and reinforcements. Training that helps employees understand how their performance affects customer satisfaction—whether through operational execution, service orientation, or regulatory focus—should make the exercise more meaningful and memorable. It will also empower front line employees to resolve complaints at the first point of contact thereby limiting the escalation process which can sometimes lead to a more frustrated customer.

#7 Program Optimization

The business of banking is constantly evolving. Whether it is new products, new services, new technologies, new regulations, new customer expectations/attitudes, the programs in place at your bank will require periodic updates and enhancements if they are to keep up with the evolution of the business. The complaint management program is no different. There are various sources of information that will yield improvements to the program including your bank's experiences, industry complaint analysis, and input from regulatory agencies. One additional input may be from your internal audit function. As they audit the complaint management program they may provide recommendations to enhance the efficiency and effectiveness of the program in handling customer complaints, ensuring the program addresses applicable regulatory requirements and meets the Bureau's or your primary regulator's expectation of a consumer complaint response program.

Pending Bureau Proposal

Banks need to pay attention to pending regulatory changes that could affect the complaint management process. On May 5, 2016, subsequent to a study on the use of mandatory arbitration clauses in contracts for consumer financial products or services, the Bureau issued proposed rules prohibiting clauses that prevent consumers from filing or participating in class-action litigation. These clauses have typically appeared in contracts for credit cards and bank accounts among other financial products. According to the Bureau press release, "These clauses typically state that either the company or the consumer can require that disputes between them be resolved by privately appointed individuals (arbitrators) except for cases brought in small claims court. Where these clauses exist, either side can generally block lawsuits from proceeding in court. These clauses also typically bar consumers from bringing group claims through the arbitration process.

As a result, no matter how many consumers are injured by the same conduct, consumers must proceed to resolve their claims individually against the company." The proposed rule would allow consumers to file class action lawsuits or join a class action filed by someone else. Although arbitration clauses would still be allowed in contracts, they would have to explicitly state that they cannot be used to stop a consumer from being a part of a class action suit. The proposal provides specific language that banks must use. While release of the final rule is still pending and is anticipated in early 2017, the proposal is a clear indication of the direction the Bureau is taking and it certainly highlights the need for a robust consumer complaint management program that not only addresses individual customer complaints, but also deters similar complaints that could give rise to class action litigation.

While staying out of regulatory hot water and class action litigation is an incentive, understanding and managing consumer complaints is imperative in meeting strategic business objectives, customer retention, and profitability. In financial services, as in most consumer service fields, complaints offer valuable information that can inform a bank about how well it provides its services and products to its customers. While complaints are never desired, they do happen. When complaints happen, they provide an opportunity to correct a problem, improve a product, or make sure that communications with customers are clear whether in person or through advertising and marketing messages. A customer that complains does not need to be a dissatisfied customer. A bank can recover from misunderstandings or mistakes and in the process turn an unhappy customer into a loyal customer and at the same time meet its regulatory obligations. ■

ABOUT THE AUTHOR

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