

Handling Customer Complaints In Bank-Fintech Partnerships

By **Jeremy Creelan, Laurel Loomis Rimon and Megan Poetzel** (April 5, 2024)

Bank-fintech partnerships are the foundation for much of the recent exponential growth in new consumer financial products. As these products have developed, consumer complaints have emerged as key components of regulatory risk for both sides of such partnerships.

Regulators regularly research and use consumer complaints to identify potential examination and investigation targets and to corroborate concerns as to alleged unfair or deceptive practices.

For prudentially regulated banks, any mismanagement of consumer complaints by a partner fintech company responsible for handling consumer complaints may result in a regulatory finding or violation against it, including for failure to properly oversee the third-party services.

The partner fintech may also face its own direct exposure to enforcement as a service provider to the bank or from consumer protection regulators.

In this regulatory landscape, it is critical that fintech and bank partners adopt a well-defined and monitored process for ensuring the proper handling of consumer complaints, and we offer the below considerations in doing so.

1. Bank-fintech partners should be deliberate, coordinated and inclusive in establishing a shared definition of what constitutes a "complaint."

Banks and fintechs jointly offering a consumer financial product should be aligned on what types of communications involving customers will be treated as complaints, and will, therefore, be subject to monitoring, analytics and potentially disclosure in response to a government request.

Regulators routinely mine their own sources of consumer complaints, with the Consumer Financial Protection Bureau, Federal Trade Commission, state attorneys general offices and state consumer protection agencies all maintaining their own consumer complaint databases and actively encouraging consumers to file online complaints.

Other public sources of consumer complaints include those made to the Better Business Bureau, social media posts by consumers and media reports.

Nonetheless, not every customer communication is a complaint — some may be requests for technical help or offer feedback not requiring a response.



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However, regulators expect an expansive approach to collecting and monitoring consumer complaints, allowing appropriate reaction when there are signs of customer confusion or misunderstanding, or where customers are frustrated in their efforts to, for example, access their funds on a timely basis.

Bank-fintech partners should ensure they are on the same page as to which customer interactions are going to be responded to, tracked and later analyzed as complaints.

2. Following interagency guidance, bank-fintech partners should tailor contracts to clearly allocate responsibility for complaints handling.

On June 6, 2023, the Office of the Comptroller of the Currency, the Federal Reserve Board, and the Federal Deposit Insurance Corp. issued joint guidance^[1] on risk management related to third-party relationships.^[2] The guidance addresses drafting effective contracts with third-party service providers, including fintech partners.

The interagency guidance specifically states: "[e]ffective contracts typically specify whether the banking organization or the [fintech company] is responsible for responding to customer complaints or inquiries." Banks are specifically advised to evaluate the fintech company's "history of addressing customer complaints or litigation and subsequent outcomes."

Thus, from the outset, the partnership agreement should be tailored to address customer complaints and allocate responsibility clearly.

If the fintech company is responsible for handling consumer complaints, contractual provisions should require the fintech company "to receive and respond to customer complaints and inquiries in a timely manner and to provide the banking organization with sufficient, timely, and usable information to analyze customer complaint and inquiry activity and associated trends," as the June guidance put it.

If complaints handling is the bank's responsibility, it is important to include provisions for the bank "to receive prompt notification" from the fintech company "of any complaints or inquiries" received by the fintech, per the guidance.

In either instance, the interagency guidance emphasizes timely responses to consumers and sharing information between the bank and their fintech partners. The guidance says both parties should monitor "the volume, nature, and trends of customer inquiries and complaints, the adequacy of the third party's responses (if responsible for handling customer inquiries or complaints), and any resulting remediation."

3. Consumer complaints play an important role in prudential exams – which concern both the bank and the fintech company.

During a prudential examination, regulators may use their legal authority to examine a bank's oversight of complaint-handling functions or operations that a fintech company performs on the bank's behalf. The OCC's examination manual provides a window into the role of consumer complaints in prudential exams, stating that consumer complaints are "indicators of potential risk management weaknesses or other deficiencies, such as violations of laws or regulations."^[3]

Banks and fintech companies with high complaint volumes will be more vulnerable to examination, but the OCC says "even a single complaint can be an early warning sign of a problem."

Moreover, as the June 2023 interagency guidance[4] confirmed, prudential regulators may exercise their authority to issue legal process directly to bank service providers. And, as the interagency guidance notes, they "may pursue corrective measures, including enforcement actions, when necessary to address violations of laws and regulations or unsafe or unsound banking practices by the banking organization or its third party."

4. The CFPB is expanding supervision over nonbanks and relying on consumer complaints to do so.

In the Dodd-Frank Wall Street Reform and Consumer Protection Act, Congress granted the CFPB authority to supervise nonbank entities providing consumer financial products or services where it determined, after notice and an opportunity to respond, that the entity poses risks to consumers.

The statute directs that this determination be made based on complaints collected through the CFPB portal or other information from different sources.[5] In 2022, the CFPB publicly announced[6] its intent to invoke this authority, which it had previously allowed to remain dormant, to supervise nonbank entities.[7]

In late February, the CFPB indicated it had issued notice to a number of nonbank entities that did not contest the CFPB's exercise of supervisory authority over them.[8]

One recipient, however, contested this action, arguing that there were insufficient grounds for the CFPB to have a reasonable belief its product was a risk to consumers. As particularly relevant here, the lender World Acceptance Corp. challenged whether the bureau could have a reasonable belief supporting supervision based on unverified complaints, and where the volume of complaints made against the entity was not out of line with those made concerning similar companies.

In a public decision,[9] CFPB Director Rohit Chopra found that any number of "unverified" consumer complaints are sufficient to satisfy that burden.[10]

5. Be ready to demonstrate proficiency in handling complaints.

With the above considerations, expectations and risks in mind, banks and fintech companies should develop processes for handling complaints that inspire confidence in regulators and be prepared to respond to a regulator's request for complaints and related policies and procedures. The following reminders highlight fundamental, but often difficult, steps:

- Define and inventory every category of communication within the bank or fintech company's system that may constitute a complaint;
- Know where the complaints are stored and how to access them, particularly where data and information is shared by multiple parties or allocated to one or the other;
- Document and track record-keeping practices for complaints that change over time;
- Establish responsibility among partners for collecting, analyzing and reporting on complaints metrics, trends and data; and
- Be prepared to demonstrate that complaint data and analysis are acted upon as appropriate and necessary to improve the customer experience.

Conclusion

Complaints handling is a core focus for federal and state financial regulators, and an early warning system for bank-fintech partnerships.

If these complaints are not properly collected, analyzed and used to improve the consumer experience, financial institutions may be blind to significant risks. In a bank-fintech partnership, addressing these risks takes early planning and intentional cooperation.

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[1] <https://www.occ.gov/news-issuances/bulletins/2023/bulletin-2023-17.html>.

[2] Federal Reserve System, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency, Interagency Guidance on Third-Party Relationships: Risk Management, (June 9, 2023).

[3] <https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-handbook/index-comptrollers-handbook.html>.

[4] <https://www.federalregister.gov/documents/2023/06/09/2023-12340/interagency-guidance-on-third-party-relationships-risk-management>.

[5] 12 U.S.C. §5514(a)(1), (b)(1).

[6] <https://www.consumerfinance.gov/about-us/newsroom/cfpb-invokes-dormant-authority-to-examine-nonbank-companies-posing-risks-to-consumers/>.

[7] Consumer Financial Protection Bureau, CFPB Invokes Dormant Authority to Examine Nonbank Companies Posing Risks to Consumers, (April 25, 2022).

[8] Consumer Financial Protection Bureau, CFPB Orders Federal Supervision for Installment Lender Following Contested Designation, (Feb. 23, 2024).

[9] <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-federal-supervision->

for-installment-lender-following-contested-designation/.

[10] In the Matter of World Acceptance Corp., CFPB File No. 2023-CFPB-SUP-0001, 18 (Nov. 30, 2023) (decision and order).