

# CFPB Sharpens Focus on Online Marketplace Lenders

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Financial Institutions

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Yesterday, the Consumer Financial Protection Bureau (the “CFPB” or the “Bureau”) announced that it is accepting complaints from consumers on loans from online marketplace lenders, and also issued a brief bulletin advising consumers about basic considerations to take in account when shopping for an online marketplace loan. Although the CFPB’s announcements have generated a fair amount of attention in the trade press, they actually contain no new policies or information: the CFPB has accepted complaints about marketplace lenders for quite some time, and the consumer bulletin simply reiterates advice about loan consolidation and budgeting already available elsewhere. The CFPB’s action, however, could presage greater enforcement activity against marketplace lenders or could be designed to encourage consumer complaints about marketplace lenders. In any event, marketplace lenders should familiarize themselves with the CFPB complaint portal and the complaint resolution process.

## The CFPB and Marketplace Lending

The definition of marketplace lending is sometimes contested, but the Bureau’s announcement describes marketplace lending as “an online interface to connect consumers or businesses seeking to borrow money with investors willing to buy or invest in the loan. Generally, the marketplace lending platform handles all underwriting and customer service interactions with the borrower. Once a loan is originated, the company generally makes arrangements to transfer ownership to the investors while it continues to service the loan.” (This description is much narrower than the definition used in the U.S. Department of the Treasury’s July 2015 Request for Information about online marketplace lending, which referred broadly to “the segment of the financial services industry that uses investment capital and data-driven online platforms to lend either directly or indirectly to small businesses and consumers.”)

While the CFPB’s press release announced that the Bureau is “now” accepting complaints about marketplace lenders, notably, the CFPB had **already** accepted complaints about marketplace lenders. These complaints generally fell within the broad category of “consumer loans” in the CFPB’s Consumer Complaint Database, which is organized by type of product. The CFPB did not create any new category of financial product in its complaint form for marketplace loans as part of its announcement; most complaints about marketplace loans will continue to be made under the category of “consumer loans.” The Bureau did not explain why it made its announcement without making any changes to its complaint process, suggesting that the announcement was a way to signal a heightened focus on the industry, perhaps solicit a greater volume of complaints from the public, and/or respond to calls from the banking industry and others for more regulatory attention to online marketplace lenders.

(For more background on recent heightened scrutiny of online marketplace lenders by federal agencies and policymakers, please see [Signs of Forthcoming Regulation of Online Marketplace Lending](#), BNA Insights (Feb 8, 2016).)

### Overview of the CFPB Complaint Process

The CFPB has been accepting consumer complaints since the agency was established in July 2011, and has incrementally expanded the scope of the complaints that it has accepted from credit cards to mortgages, installment loans, auto loans, consumer loans, and other financial products and services. Consumers can submit complaints by logging on to a consumer portal and submitting complaints electronically, or by phone, mail, or email. None of the methods for submitting a request require the consumer to register. The CFPB processes all submitted complaints, and if a complaint meets certain screening factors—for example, it is about a company or product within the jurisdiction of the CFPB and is complete—the CFPB will forward the complaint to the subject company.

A subset of submitted complaints are published in the Bureau's [Consumer Complaint Database](#). The Consumer Complaint Database currently has over 530,800 complaints that are available to the public, some of which include detailed consumer narratives.<sup>1</sup> The CFPB will typically publish portions of a complaint if it is not duplicative and was submitted by a consumer who has an “authentic relationship” with the company.<sup>2</sup> The Bureau generally does *not* verify the legitimacy of published complaints. A company may request that an otherwise eligible complaint be withheld from publication, but it has the burden of showing that the complaint contains materially inaccurate information. Eligible complaints are published in the Database after the company has had 15 days to respond or when it confirms a commercial relationship with the consumer, whichever comes first. The CFPB's procedures do not provide for the removal of an eligible complaint once it has been published.

Before a complaint is published in the Consumer Complaint Database, the company has access to an online company portal where it can view consumer complaints. A company requests access to the portal from the CFPB by submitting a request on the [company portal website](#). The request must include the company's name, and a representative's name, email address, and phone number. The CFPB will review the request and contact the designated representative if necessary before providing the representative with log-in credentials. The representative can then log on to the company portal and add additional authorized users.

A company has 15 days to respond after receiving a complaint, but if a company indicates that the complaint is “in progress,” the company may provide a response within 60 days. A company can choose to submit an “administrative response” in limited situations, such as a duplicate complaint or where the consumer incorrectly identifies the company. Complaints for which an

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<sup>1</sup> In order for the CFPB to publish a narrative in the Consumer Complaint Database, it must receive the consumer's informed consent. See Consumer Financial Protection Bureau, [Disclosure of Consumer Complaint Narrative Data: Final Policy Statement](#) (Mar 12, 2015).

<sup>2</sup> The Office of Inspector General found noticeable inaccuracies in its analysis of the Consumer Complaint Database and recommended management controls to enhance the accuracy of the reported data. Office of Inspector General, [Opportunities Exist to Enhance Management Controls Over the CFPB's Consumer Complaint Database](#) 7–8 (Sept 10, 2015).

administrative response is provided are not included in the Database. If the company does not qualify for an administrative response, it must choose the appropriate closing response category based on its actions. The closing responses include, among others:

- closed with monetary relief
- closed with non-monetary relief
- closed with explanation
- closed
- in progress<sup>3</sup>

Importantly for marketplace lenders that operate as service providers to the ultimate lenders, the responding company also has the option of redirecting the complaint to a related company with which the responding company is affiliated and/or has a contractual relationship.

After receiving a response from a company, consumers have 30 days to dispute it. A dispute is not transmitted to the company; instead, the CFPB uses disputes for internal investigation purposes.

The CFPB uses consumer complaint data for supervisory purposes, and the CFPB Consumer Response team prioritizes the investigation of complaints to which companies have not responded within the requested timeframes.<sup>4</sup> A significant volume or pattern of complaints against a company within the Bureau's jurisdiction could drive the agency to take one or more enforcement actions against the company. Companies can also expect state attorneys general and plaintiffs' attorneys to use complaint data to find targets for litigation.

### **Consumer Bulletin on Marketplace Lending**

The CFPB's bulletin, titled "Understanding Online Marketplace Lending," offers the Bureau's advice to consumers considering applying for a marketplace loan. The bulletin:

- warns consumers about refinancing debts that carry certain legal protections, such as federal student loans and debts incurred prior to entering active military duty;
- tells consumers to budget their income and spending;
- suggests points of comparison for consumers shopping around for a loan; and
- warns that "marketplace lending is a young industry and does not have the same history of government supervision and oversight as banks or credit unions" while acknowledging that "marketplace lenders are required to follow the same state and federal laws as other lenders."

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<sup>3</sup> If the company fails to respond within the appropriate timeframe, a closing response of "untimely response" is automatically entered.

<sup>4</sup> See, e.g., Consumer Financial Protection Bureau, [Company Portal Manual 2](#) (Mar 7, 2013) ("Consumer Response prioritizes for investigation complaints where the company failed to respond within the requested timeframe or the company's response is disputed by the consumer.").

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Finally, and perhaps unsurprisingly, the bulletin suggests again that consumers submit any complaints they may have about online marketplace lenders to the CFPB.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Financial Institutions practice group:

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