

# CFPB's Proposed Regulation of Arbitration Agreements & Consumer Response Resources

Woodstock Institute Webinar, May 24, 2016



*Note: This document was used in support of a live discussion.  
As such, it does not necessarily express the entirety of that discussion nor the relative emphasis of topics therein..*

# Proposed Regulation of Arbitration Agreements

Overview of Major Provisions of CFPB's Proposed Rule

Woodstock Institute Webinar, May 24, 2016

Nora Rigby, Counsel, Office of Regulations



# Background

# The Bureau's *ex parte* policy

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- Policy applies when the Bureau has issued a proposed rulemaking.
- Under the policy, input Bureau staff receives is considered *ex parte* because it is outside of or in addition to the formal comment process.
- Bureau policy requires that *ex parte* presentations be summarized and disclosed on the public docket.
- Exemptions include: “Statements by any person made in a public meeting, hearing, conference, or similar event, or public medium such as a newspaper, magazine, or blog.”
- The complete policy is available at [www.consumerfinance.gov/about-us/blog/promoting-openness-in-cfpb-rulemaking/](http://www.consumerfinance.gov/about-us/blog/promoting-openness-in-cfpb-rulemaking/).

# Dodd-Frank Act section 1028

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Sec. 1028. Authority to restrict mandatory pre-dispute arbitration.

- a) **STUDY AND REPORT**—The Bureau shall conduct a study of, and shall provide a report to Congress concerning, the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services.
- b) **FURTHER AUTHORITY**—The Bureau, by regulation, may prohibit or impose conditions or limitations on the use of an agreement **between a covered person and a consumer** for a consumer financial product or service providing for arbitration of any future dispute between the parties, if the Bureau finds that such a prohibition or imposition of conditions or limitations is **in the public interest and for the protection of consumers**. The findings in such rule shall be **consistent with the study** conducted under subsection (a).

# What is a pre-dispute arbitration agreement?

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- Parties to a contract can agree, at the time of contracting, to a non-judicial means of resolving disputes that arise in the future between the parties.
- Arbitration agreements are common in many contracts for consumer financial products and services.
- Arbitration agreements are generally enforceable.
- Many arbitration agreements block consumers from participating in class proceedings.

# Timeline

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Date	Task
December 12, 2013	Preliminary Results of Arbitration Study released
March 10, 2015	Arbitration Study released; field hearing held in Newark, NJ; comments from public requested
October 7, 2015	Outline of Proposals Under Consideration released; field hearing held in Denver
May 5, 2015	Notice of Proposed Rulemaking released; field hearing held in Albuquerque
August 22, 2016	Comment period closes (began May 24, 2016)

# The Arbitration Study

# Topics

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- How prevalent are arbitration agreements and what are their main features?
- What do consumers understand about dispute resolution systems?
- How do arbitration procedures currently differ from procedures in court?
- What types of claims are brought in arbitration and how are they resolved?
- What types of claims are brought in litigation and how are they resolved?
- Do consumers sue companies in small claims courts?
- What is the value of class action settlements?
- What is the relationship between public enforcement and consumer financial class actions?
- Do arbitration agreements lead to lower prices for consumers?

# Data reflected in the Study

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- 850 consumer agreements
- 1,800 arbitration case files
- 3,500 individual consumer finance cases in court
- 562 class consumer class cases in court
- 40,000+ small claims courts
- 400+ class action settlements
- 1,100 public enforcement actions
- 1,000 consumer telephone survey

# The Proposed Rulemaking

# The Bureau's proposed approach

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- The Bureau is not proposing to ban arbitration outright because the evidence is inconclusive on whether there are differences between individual arbitration conducted during the Study period and individual litigation in terms of remediating consumer harm.
- The Bureau is proposing to prevent arbitration agreements from blocking class actions.
- The Bureau is also proposing to monitor arbitration proceedings.

# The Class Proposal

# Class proposal: substance (1 of 2)

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- The proposed rule would prohibit providers of certain consumer financial products and services from using an agreement that provides for arbitration of any future dispute to bar the consumer from filing or participating in a class action with respect to the covered consumer financial product or service.

# Class proposal: substance (2 of 2)

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- The proposed rule would also:
  - Require that providers include the following provision in arbitration agreements:

**We agree that neither we nor anyone else will use this agreement to stop you from being part of a class action case in court. You may file a class action in court or you may be a member of a class action even if you do not file it.**

- Allow some providers offering multiple products and services, only some of which would be covered by the Bureau's rule, to include alternate language.
- Allow providers acquiring a pre-existing agreement to also use an alternate provision or send a notice.
- Provide for a temporary exception for general purpose reloadable (GPR) prepaid cards from the requirement to include specific language.

# Preliminary factual findings from the Study and the Bureau's further analysis

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The NPRM makes a number of preliminary findings, including:

- Arbitration agreements block some class action claims and suppress the filing of others.
- Consumers are better protected, and the market is fairer for companies that comply with the law, when consumers are able to participate in group adjudications related to their consumer financial products and services.
  - Public enforcement is not a sufficient means to enforce consumer protection laws and consumer finance contracts.
  - Individual dispute resolution is insufficient in enforcing laws applicable to consumer financial products and services and contracts.
- Class actions provide a more effective means of securing significant consumer relief and changing companies' potentially illegal behavior.

# Preliminary findings that the class proposal is in the public interest and for the protection of consumers

- **Increased Compliance.** Allowing consumers to seek relief in class actions would strengthen the incentives for companies to avoid potentially illegal activities and reduce the likelihood that consumers would be subject to such practices in the first instance.
- **Increased Accountability and Relief to Consumers.** Precluding providers from blocking consumer class actions through the use of arbitration agreements would better enable consumers to enforce their rights under Federal and State consumer protection laws and the common law and obtain redress when their rights are violated.

# Arbitration Monitoring Proposal

# Details of the monitoring proposal

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- The proposed rule would require covered providers to submit the following in connection with any claim filed in arbitration by or against them:
  - The initial claim and any counterclaim.
  - The arbitration agreement filed with the arbitrator.
  - The judgment or award.
  - Any communication the provider receives from an arbitrator that has refused to administer or dismissed a claim due to the provider's failure to pay required fees.
  - Any communication from an arbitrator related to a determination that a pre-dispute arbitration agreement does not comply with the arbitrator's fairness principles.
- The proposal would require providers to redact certain categories of personal information.
- The Bureau is also considering whether to publish the claims or awards on our website in some form.

# Preliminary findings supporting the monitoring proposal

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- The Bureau is concerned that arbitration agreements have in the recent past led to harms to many consumers and is further concerned that these types of harms may recur.
- The Bureau believes that its proposed approach would deter the emergence of unfair arbitrations and also shed light on any unfairness that might emerge, while simultaneously imposing minimal regulatory burdens on current arbitration activity.
- The Bureau believes that monitoring the process would allow the Bureau to assess what is occurring in arbitrations going forward.

# Coverage

# Proposed coverage

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- The Bureau proposes that the rule would cover products and services related to the core consumer financial markets of:
  - Lending money
  - Storing money
  - Moving or exchanging money

# Proposed covered activities (1 of 2)

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- Extending or regularly participating in decisions regarding consumer credit under Regulation B implementing the Equal Credit Opportunity Act (ECOA).
- Engaging primarily in the business of providing referrals or selecting creditors for consumers to obtain such ECOA credit.
- Acquiring, purchasing, selling, or servicing of such credit.
- Extending or brokering of automobile leases as defined in Bureau regulation.
- Providing services to assist with debt management or debt settlement, modify the terms of any extension of consumer credit, or avoid foreclosure.
- Providing directly to a consumer a consumer report as defined in the Fair Credit Reporting Act, a credit score, or other information specific to a consumer from a consumer report, except for adverse action notices provided by an employer.

# Proposed covered activities (2 of 2)

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- Providing accounts under the Truth in Savings Act and accounts and remittance transfers subject to the Electronic Fund Transfer Act.
- Transmitting or exchanging funds (except when integral to another product or service not covered by the proposed rule).
- Certain other payment processing services.
- Check cashing, check collection, or check guaranty services consistent with the Dodd-Frank Act.
- Collecting debt arising from any of the above products or services by a provider of any of the above products or services, their affiliates, an acquirer or purchaser of consumer credit, or a person acting on behalf of any of these persons, or by a debt collector as defined by the Fair Debt Collection Practices Act.

# Proposed exemptions

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- Broker-dealers already subject to arbitration rules issued by the SEC.
- Products or services provided by the Federal government.
- Products offered by State, local, or tribal governments or their affiliates to persons in their jurisdiction.
- Any person providing a covered product or service if they and their affiliates collectively provide it to no more than 25 consumers in the current and prior calendar year.
- Merchants, retailers, and other sellers of nonfinancial goods that assign credit they extend without a finance charge, hidden or explicit.

# Effective date (1 of 2)

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- Proposal would apply to agreements entered into 211 days after publication in the *Federal Register*.
  - Proposed 30-day effective date + 180-day requirement in Dodd-Frank section 1028(d).
- The proposal provides examples of when an agreement **would not** be covered by the rule:
  - A provider enters into an arbitration agreement before the compliance date.
  - Modifies, amends, or implements the terms of a product that is subject to a pre-dispute arbitration agreement that was entered into before the date set forth in § 1040.5(a).
  - Acquires or purchases a product that is subject to a pre-dispute arbitration agreement but does not become a party to the pre-dispute arbitration agreement.

# Effective date (2 of 2)

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- The proposal provides examples of when an agreement **would be** covered by the rule:
  - A provider provides a covered product subject to an arbitration agreement after the compliance date.
  - A provider acquires or purchases a covered product subject to an arbitration agreement and the provider becomes a party to that agreement.
  - A provider adds an arbitration agreement to an existing covered product.

# Questions?

# Overview of Consumer Response

Woodstock Institute Webinar, May 24, 2016

Darian Dorsey, Chief of Staff, CFPB Office of Consumer Response



# What we do

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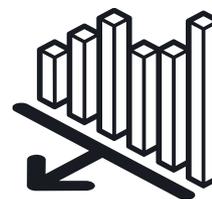
- The Office of Consumer Response uses the latest data technologies to answer consumers' questions and to accept and route consumers' complaints directly to financial companies.
- We share data to empower consumers, inform consumer advocates and companies, and improve the functioning of the marketplace.



Answer questions



Handle complaints



Analyze and share data

# How we answer questions and handle complaints

Ask CFPB

25K+ calls  
per month

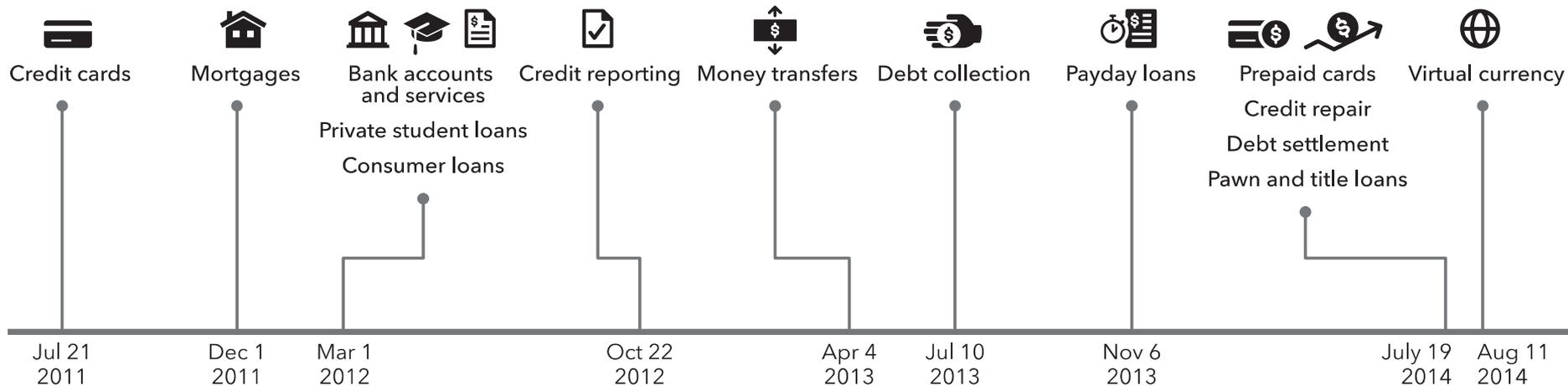
(855) 411-2372

The screenshot shows the CFPB website interface. At the top, there is a header with the CFPB logo and the text "Consumer Financial Protection Bureau". Below the header is a navigation menu with options: HOME, INSIDE THE CFPB, GET ASSISTANCE, PARTICIPATE, LAW & REGULATION, and a highlighted "SUBMIT A COMPLAINT" button. A search bar is also visible. A callout box points to the "SUBMIT A COMPLAINT" button, containing the text "Contact us (855) 411-2372". Another callout box points to the "GET ASSISTANCE" menu item, which is expanded to show a list of topics: "Ask CFPB", "Paying for College", "Owning a Home", and "Trouble paying your mortgage?". The "Ask CFPB" item is highlighted, and a callout box points to it with the text "Ask CFPB Get answers to your financial questions.".

[consumerfinance.gov/complaint](https://consumerfinance.gov/complaint)

# Complaints we accept now

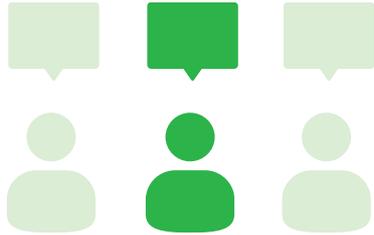
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As of May 1, 2016, we've handled over **880,000 complaints**

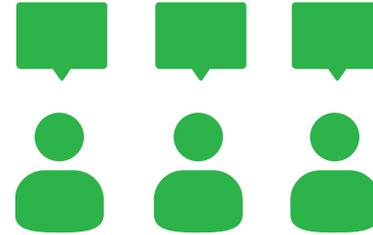
# How we help

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## Individual assistance

We turn complaints into action. We work to get a response to complaints – **generally within 15 days**

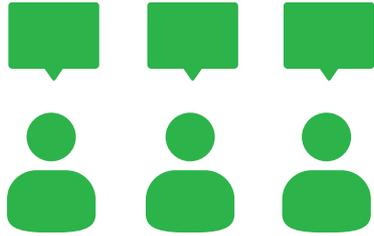


## Market-wide information

**Every complaint provides insight** into problems consumers are experiencing, allowing us to improve the marketplace

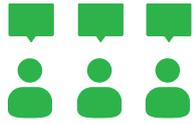
# How we help

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## Market-wide information

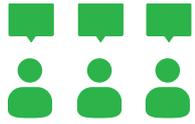
- Analyze complaints, companies' responses, and consumers' feedback to identify market issues
- Report to Congress
- Monthly Complaint Report
- Share data with regulators, including Federal Trade Commission's Sentinel Network
- Report and share with stakeholders
  - Supervision
  - Enforcement
  - Fair Lending
  - Research, Markets, and Regulations
  - Consumer Education and Engagement
- Consumer Complaint Database



# How we help: Complaint analysis

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- Consumer Response uses a variety of approaches to analyze consumer complaints to identify trends and possible consumer harm including:
  - Cohort analyses
  - Text analytics
- Analyses may prompt:
  - Investigation of individual complaints
  - Investigation of groups of complaints
  - Referral to colleagues in the CFPB's Division of Supervision, Enforcement, and Fair Lending & Equal Opportunity for further consideration and possible actions to benefit large numbers of consumers.



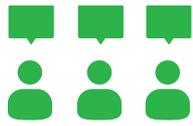
# How we help: Complaint analysis

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Consumer Response shares complaint data, analyzes, and offers insights to other offices to help the Bureau:

- Understand problems consumers are experiencing in the marketplace and the impact of those experiences on their lives;
- Develop tools to empower people to know their rights and protect themselves;
- Scope and prioritize examinations and ask targeted questions when examining companies' records and practices;
- Identify and stop unfair practices before they become major issues; and
- Investigate issues and take action when we find problems.





# How we help: Market-wide information

An official website of the United States Government

Español 中文 Tiếng Việt 한국어 Tagalog Русский العربية Kreyòl Ayisyen



Contact us (855) 411-2372

Search

HOME INSIDE THE CFPB GET ASSISTANCE PARTICIPATE LAW & REGULATION **SUBMIT A COMPLAINT**

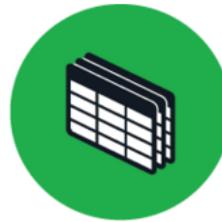
## Consumer Complaint Database

Each week we send thousands of consumers' complaints about financial products and services to companies for response. Those complaints are published here after the company responds or after 15 days, whichever comes first. By adding their voice, consumers help improve the financial marketplace.



Consumers have let us know they want to share their complaint descriptions so others can learn from their experience.

[Read consumer narratives](#)



View, sort, and filter data right in your browser.

[View complaint data](#)



All complaint data we publish is freely available for anyone to use, analyze, and build on.

[Download options and API](#)

# Consumer Complaint Database

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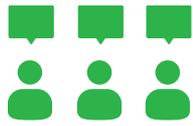
- **June 19, 2012:** The Bureau began publishing consumer complaints in its public-facing Consumer Complaint Database
- **July 23, 2014:** The Bureau submitted a notice in the Federal Register for comments on proposed policy of publishing consumer narratives. Comments were accepted until September 22, 2014
- **March 24, 2015:** Announced policy in Federal Register regarding disclosure of consumer complaint narratives on the Consumer Complaint Database. Narratives would only be published from complaints submitted on March 19, 2015 and onward if the consumer opted-in
- **June 25, 2015:** CFPB announced the first set of consumer narratives had been published. Over 7,700 narratives were added to the public database

# Disclosure of consumer complaint narrative data

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- Consumers who submit complaints directly to the CFPB can **opt-in** to publish their complaint narrative in the Consumer Complaint Database
  - Sensitive information and personal identifiers will be redacted from consumer complaint narratives
  - Whether or not consent is given will have no impact on how the Bureau handles a consumer's complaint
  - Consumers can withdraw their consent at any time and their complaint narrative will be removed

[consumerfinance.gov/complaintdatabase/](https://consumerfinance.gov/complaintdatabase/)



# How we help: Market-wide information

**WHAT HAPPENED?**  
Incomplete **1**

**COMPANY INFORMATION**  
Incomplete **2**

**MY INFORMATION**  
Incomplete **3**

**REVIEW AND SUBMIT**  
Incomplete **4**

**Form trouble? Chat now.**

Describe what happened so we can understand the issue...

3900 characters remaining

Do not include sensitive information like your name, contact information, account number, or social security number in this field. We will collect certain personal information at a later step.

I want the CFPB to publish this description on [consumerfinance.gov](https://consumerfinance.gov) so that others can learn from my experience. The CFPB will take steps to remove my personal information from this description but someone may still be able to identify me. [Learn how it works](#). I consent to publishing this description after the CFPB has taken these steps.

I want the CFPB to publish this description on [consumerfinance.gov](https://consumerfinance.gov) so that others can learn from my experience. The CFPB will take steps to remove my personal information from this description but someone may still be able to identify me. [Learn how it works](#). I consent to publishing this description after the CFPB has taken these steps.

Publishing this description will not affect how the CFPB handles your complaint.





# How we help: Market-wide information



## Consumer Complaints with Consumer Complaint Narratives

### Based on Consumer Complaints

Each week we send thousands of consumers' complaints about financial products and services to companies for response. Complaints are listed in the database after the company responds or after they've had the complaint for 15 calendar days, whichever comes first.

We publish the consumer's description of what happened if the consumer opts to share it and after taking steps to remove personal information. See our [Scrubbing Standard](#) for more details

We don't verify all the facts alleged in these complaints, but we take steps to confirm a commercial relationship. We may remove complaints if they don't meet all of the publication criteria. Data is generally refreshed nightly. Company level information should be considered in context of company size and/or market share.

[More about the Consumer Complaint Database](#) | [How we use complaint data](#) | [Technical documentation](#)

[🔗 Date received](#) [📄 Product](#) [📄 Sub-product](#) [📄 Issue](#) [📄 Sub-issue](#) [📄 State](#) [📄 ZIP code](#) [📄 Tags](#) [📄 Consumer consent provided?](#) [📄 Subr](#)

<b>Date received</b> 02/25/2016	<b>Consumer complaint narrative</b> Wells Fargo re-ordered my transactions to post the newest, largest debit first and the oldest, smallest debit last so that the first would put my account into the negative and then charge XXXX {\$35.00} overdraft fees. There were only XXXX debits. XXXX for {\$4.00} and XXXX for {\$20.00}. Wells Fargo purposely re-ordered the transactions to result in XXXX fees instead of just XXXX as the first was covered by my balance in the account. The second was a bill payment that they rushed through on the same day when it normally takes that payment XXXX3 days to post. So they rushed the {\$20.00} bill payment through in order to incur {\$70.00} in overdraft fees. I made a deposit of {\$40.00} cash the next day and then discovered that the bill payment had already posted and incurred the fees. The previous month, it took 3 days for that payment to post to my account which is normal as I have been making that monthly credit card payment for years and it always takes several days to post.	<b>Company</b> Wells Fargo & Company
<b>Product</b> Bank account or service		<b>Date sent to company</b> 02/25/2016
<b>Sub-product</b> Checking account		<b>Company response to consumer</b> Closed with monetary relief
<b>Issue</b> Problems caused by my funds being low		<b>Timely response?</b> Yes
<b>Sub-issue</b>		<b>Consumer disputed?</b> Yes
<b>State</b> SC		<b>Complaint ID</b> 1804437
<b>ZIP code</b> 296XX		
<b>Tags</b>		
<b>Consumer consent provided?</b> Consent provided		
<b>Submitted via</b> Web	<b>Company public response</b> Company chooses not to provide a public response	

# Disclosure of consumer complaint narrative data

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- Companies have the opportunity to respond publicly to the consumer complaints they receive from the CFPB
  - Companies are under no obligation to avail themselves of this opportunity
  - Companies have the option to select from a set of structured options to be included as a public-facing response
- No changes to the timely response requirements or to closing or administrative response categories
- The Company Response narrative and attachments are not subject to publication under this policy
  - Companies do not have the opportunity to select public response for any complaint where the initial or final closing response is delinquent

[consumerfinance.gov/complaintdatabase/](https://consumerfinance.gov/complaintdatabase/)

# Consumer Complaint Database

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- We remove information that could be used to identify consumers
- The Bureau has published anonymized data from more than 569,000 complaints on our website to educate the public and improve the functioning of the marketplace
- Since June 25, 2015, we've already published over 70,000 narratives from consumers' complaints

- ✓ What happened?
- ✓ Desired resolution
- 3. **My information**
- 4. Product information
- 5. Review

Select both boxes if submitting this complaint for a joint account. Select "Someone else" if assisting someone in submitting a complaint. Provide your information under "My contact information" and the other person's information under "Someone else".

I am submitting on behalf of  Myself  Someone else

Submitting on behalf of someone else may require signed, written permission.

[Form trouble?](#)  
[Chat now.](#)

**TIP 3:**  
Only check "Someone else"

### My contact information

Salutation (Optional) ▼

First name \*

Last name \*

Suffix (Optional) ▼

Mailing address \*

Apartment, suite, building (Optional)

City \*

State ▼

ZIP code \*

United States ▼

Phone (Optional)

Email \*

Enter organization name in this box.

**TIP 2:**  
Be sure to enter your email address

**TIP 1:**  
Your contact information goes in the "My contact Information" section

Someone else

What is your relationship to this person? \*

Choose... ▼

Salutation (Optional) ▼

First name \*

Last name \*

Suffix (Optional) ▼

Mailing address \*

Apartment, suite, building (Optional)

City \*

State \* ▼

ZIP code \*

United States ▼

Phone (Optional)

Email (Optional)

Account Holder's age is  (Optional)

The consumer is a servicemember or is a spouse or dependent of a servicemember. (Optional)

Continue

[Back](#)

TIP 5:  
Enter the  
consumer's  
contact  
information  
here

TIP 4:

Tell us your relationship to the  
consumer

Most advocates choose:

- Advocate
- Attorney
- Housing counselor

# Questions?

# Woodstock Institute

Dory Rand, President