WHY PROCESS COMPLAINTS? THEN AND NOW

Angela Littwin[*]

I. INTRODUCTION

Forty years ago, William Whitford and Spencer Kimball[1] published *Why Process Consumer Complaints?*[2] Their article uses the Office of Commission of Insurance of Wisconsin[3] (the Office) as a case study to explore the reasons why government agencies process consumer complaints and whether these reasons justify the resources that complaint processing entails. Four years ago, the creation of the Consumer Financial Protection Bureau ("CFPB" or "the Bureau") increased the stakes riding on these questions. The CFPB is the most important recent development in consumer law. Its effectiveness, or lack thereof, will influence the financial experiences of millions of consumers for years to come. And processing consumer complaints is one of its core functions.[4] The CFPB not only expends significant resources on this task, but also uses complaints to inform supervision and examination, rulemaking, enforcement actions, and consumer education. In addition, the CFPB publishes a database of most of the consumer complaints it processes,[5] albeit one with significant limitations. This presents an ideal opportunity to apply some time-tested wisdom to a new issue of pressing concern.

As I began this project, it immediately became clear that Whitford and Kimball's insights are comprehensive and relevant today. The framework they develop applies directly to the CFPB complaint process and provides a productive way to analyze it. The authors propose three "obvious" reasons to process consumer complaints: to settle consumer disputes, to inform the agency's regulatory activities, and to generate good will for the agency.[6]

---

* Professor, University of Texas School of Law. I would like to thank Jonathan Lipson for initiating and organizing such a terrific Symposium as well as the other Symposium participants for comments on my presentation and draft. Joshua Cottle, Adrian Leal, and Theanna Sedlock provided helpful research assistance. Finally, I thank Bill Whitford for creating a tremendous body of work that continues to challenge and inspire legal scholars.

1. I refer to them as "the authors" throughout the Article.

2. William C. Whitford & Spencer L. Kimball, *Why Process Consumer Complaints? A Case Study of the Office of the Commissioner of Insurance of Wisconsin*, 1974 WIS. L. REV. 639.

3. Whitford and Kimball refer to this agency as "the Office." *See id.* at 639 n.*. I adopt this shorthand.

4. 12 U.S.C.A. § 5511(c)(2) (West 2014).

5. CONSUMER FIN. PROT. BUREAU, CONSUMER COMPLAINT DATABASE, http://www.consumerfinance.gov/complaintdatabase/ (last downloaded Oct. 14, 2014) [hereinafter CFPB CONSUMER COMPLAINT DATABASE].

6. Whitford & Kimball, *supra* note 2, at 670.

The most fundamental of these reasons is dispute settlement: providing a way for consumers to resolve issues that might otherwise lack a forum. Consumer complaints against companies usually have damages too low to justify hiring an attorney.[7] For low-income or even middle-income consumers, an attorney may be out of financial reach regardless.[8] And few consumers possess the sophistication to file lawsuits on their own.[9] So when Whitford and Kimball used the Office of Insurance as a case study, they were examining whether a government agency complaint process could serve as a low-cost, low-barriers alternative to litigation. I explore this same question with the CFPB.

Next is the regulatory reason to process complaints. An agency that opens itself up to consumer complaints will likely receive enough of them that the complaints can constitute a valuable data source. These data can inform the agency's rulemaking and enforcement objectives,[10] as well as any informal negotiations the agency undertakes with companies. This reason is subject to the caveats that complaint data are not random and thus may not be representative of the consumer population the agency serves.

Finally, good will is not a public policy reason to adopt a complaint process but it is a reason why an agency would want to do so. Generating good will can make it easier for the agency to fulfill the other two functions by creating "buy in" among the constituencies with which the agency works. The authors identify three such constituencies: the public who would see the agency as a source of help, elected officials who would be impressed by the agency's usefulness to consumers, and the companies who were the subject of the complaints.[11] The companies might find that the agency's complaint process had a legitimizing effect. For example, if the agency obtained no more relief for the consumer than the company had granted, that might validate the company's original stance.[12]

I find that the CFPB has mixed success in providing an alternative dispute resolution forum, although I am missing significant key information for this evaluation. I do find one instance in which the CFPB's complaint data may contradict a rosy dispute settlement narrative that has been developing. The CFPB is particularly strong on the regulatory function. It makes significant use

7. *See, e.g.*, Debra Pogrund Stark & Jessica M. Choplin, *Does Fraud Pay? An Empirical Analysis of Attorney's Fees Provisions in Consumer Fraud Statutes*, 56 CLEV. ST. L. REV. 483, 490 (2008) (observing that, in consumer fraud cases, "a very large number of consumers are affected, but the amount of any individual consumer's loss is typically small (i.e. less than $250). In this situation, a consumer is unlikely to bring an individual lawsuit on the basis of the common law action for fraud to recover her losses because the legal fees and costs for the lawsuit far outweigh the amount the consumer could recover from the lawsuit.") (footnote omitted).

8. The annual Altman Weil survey of law practitioners reveals that as of January 1, 2012 the average hourly rate for a lawyer in solo or small practice (typically the practice setting dominated by individual rather than corporate clients) was $190 for associates and $285 for partners. ALM LEGAL INTELLIGENCE, THE SURVEY OF LAW FIRM ECONOMICS 147 (2012).

9. *See, e.g.*, Angela K. Littwin, *The Do-It-Yourself Mirage: Complexity in the Bankruptcy System, in* BROKE: HOW DEBT BANKRUPTS THE MIDDLE CLASS 157–74 (Katherine Porter ed., 2012).

10. *See* Whitford & Kimball, *supra* note 2, at 670.

11. *Id.*

12. *Id.*

of complaint data in its regulatory roles and evinces a commitment to ensuring that companies are handling complaints well.

Finally, there is good will. Even though one would expect an agency with "consumer" in its title to have an important commitment to public good will, I was unable to find much evidence one way or the other. As for good will among government actors, the CFPB created a portal that enables congressional officials to monitor the progress of complaints they have submitted on behalf of their constituents and another portal that enables state and federal regulators to use complaint information to inform their work.[13] However, the CFPB appropriately appears not to apply different treatment to complaints referred by government entities or officials.[14] Finally, the CFPB's complaint data reveal an intriguing possibility that the process may provide some legitimization of companies' complaint resolutions.

This Article proceeds in six Sections. Section II provides an overview of the two complaint systems as well as brief descriptions of the two case studies' methodologies. The next three Sections each analyze one of the three Whitford and Kimball complaint functions. Section VI concludes.

II. THE OFFICE AND THE BUREAU

A subtitle for this Article could be, "The more things change, the more they remain the same after all."[15] Despite very different beginnings and mandates, these two complaint systems evince some striking similarities that shape the analysis that follows.

A fundamental difference is that, although the Office had been processing consumer complaints for more than fifty years by the time the authors studied it,[16] it had no statutory authorization to do so.[17] Wisconsin governors and legislators eventually made clear that they expected the Office to process complaints—in one instance going so far as to question the reappointment of a commissioner who was perceived to be inadequately processing complaints[18]—but the lack of statutory authorization tempered the Office's authority and

13. Telephone Interview with Scott Pluta, Assistant Director for Consumer Response, and Darian Dorsey, Chief of Staff for Consumer Response (Nov. 14, 2014). This interview was my second with the Consumer Response officials. The reason for the second interview is that I was limited to twenty minutes during the first interview. Email from Mallory McLean, CFPB Office of Communications, to author (Sept. 30, 2014, 13:54 CST) (on file with author).

14. Telephone Interview with Scott Pluta & Darian Dorsey (Nov. 14, 2014), *supra* note 13. I also find one data point supporting this assertion. See *infra* Part V.B.

15. The original quotation states the opposite proposition: "So the more things remain the same, the more they change after all," although both versions are used in popular culture. JOHN KNOWLES, A SEPARATE PEACE 14 (Scribner Classics ed. 1996) (1959).

16. Whitford & Kimball, *supra* note 2, at 645.

17. *Id.* at 644.

18. *Id.* at 644 n.27.

willingness to take positions.[19] The CFPB, on the other hand, has a statutory mandate, which outlines the complaint process in significant detail, down to the "single, toll-free telephone number [and] website"[20] that the CFPB must use to accept complaints. The statute makes complaint processing a central CFPB task, designating it one of six "primary functions of the Bureau."[21] The CFPB has explicit authorization to use complaints data in rulemaking[22] and decisions regarding the supervision of non-depository institutions.[23] This strong statutory support should enable the CFPB to develop a process that fulfills any complaint functions it deems a priority.

Another important difference is whether each agency has responsibility for the safety and soundness of the companies it regulates. This matters because regulators with significant safety and soundness duties have often deprioritized consumer protection and sometimes considered it to be in conflict with the financial soundness of the regulated institutions.[24] The Wisconsin Office had two basic functions: insuring the solidity of insurers and the fairness of transactions.[25] Not surprisingly, the authors find that the Office gave "marked priority to the solidity objective."[26] The Examining Division was significantly larger than the others, and it was "solidity oriented,"[27] focusing on each company's financial position and the accuracy of its reports.[28] The Complaints Section had only four investigators at its peak,[29] and they repeatedly told the authors that they thought other Office staff considered them "relatively unimportant."[30]

In contrast, a major impetus for creating the CFPB was the failure of federal safety and soundness regulators to engage in meaningful consumer protection during the credit bubble that preceded the recent financial crisis.[31] The CFPB has no safety and soundness authority. Its examination procedures,

19. *See*, *e.g.*, *id.* at 697–98 (discussing a period early in its history in which the Office took aggressive positions and the companies' reaction of challenging the Office's authority to process complaints at all).

20. 12 U.S.C.A. § 5493(b)(3)(A) (West 2014).

21. *Id.* § 5511(c)(2).

22. *Id.* § 5512(c)(4)(B)(i).

23. *Id.* § 5514(a)(1)(C).

24. *See, e.g.*, Oren Bar-Gill & Elizabeth Warren, *Making Credit Safer*, 157 U. PA. L. REV. 1 (2008); Jean Braucher, *Form and Substance in Consumer Financial Protection*, 7 BROOK. J. CORP. FIN. & COM. L. 107, 109 (2012). Another example comes from Whitford and Kimball, who, when stating that the Wisconsin Commissioner prioritized solidity over consumer protections, mention that this was "consistent with the practices of his counterparts elsewhere." Whitford & Kimball, *supra* note 2, at 643.

25. Whitford & Kimball, *supra* note 2, at 642. The authors define solidity as "essentially financial soundness." *Id.*

26. *Id.* at 643.

27. *Id.*

28. *Id.* However, the authors note that the Office claimed to have recently increased the level of attention it pays to consumer protection in its examinations. *Id.* at n.23.

29. *Id.* at 645.

30. *Id.* at 670 n.100.

31. *See, e.g.*, Bar-Gill & Warren, *supra* note 24.

for example, assess the risks that companies' practices pose for consumers,[32] rather than risks to the companies' financial health. The CFPB is not entirely removed from financial soundness concerns because the Financial Stability Oversight Council can set aside any CFPB regulation that would put the safety and soundness of the U.S. financial system at risk.[33] In addition, CFPB must consult with prudential regulators during rulemaking[34] and address any written objections they have in the rule's release.[35] However, the lack of a prudential mission within the CFPB means that consumer protection has little competition from other regulatory objectives. That, in turn, is likely to influence the CFPB's culture and priorities in ways that are favorable for consumer complaints processing. Indeed, according to Scott Pluta, the CFPB's Assistant Director for the Office of Consumer Response (Consumer Response), the CFPB unit that processes consumer complaints, his office has the highest number of employees in the Bureau.[36] He further stated that, while other regulators often see processing complaints as a necessity, "we see it as a real source of strength."[37]

One final important difference is workload. In 1969, the year for which Whitford and Kimball have the most information, the Office had four investigators and one half-time supervisor.[38] That year, the Office processed 5,013 complaints,[39] which results in a ratio of 1,114 complaints per staff member.[40] On the other hand, the CFPB handled approximately 240,600 complaints in fiscal year 2014.[41] According to Mr. Pluta, Consumer Response has approximately 160 employees as well as 90 people who work in the contract contact center that answer consumers' questions and intake phone complaints.[42] Thus, the Bureau's fiscal year 2014 ratio was 962 complaints per employee, which is 86% of the Office's 1969 ratio. These

32. CONSUMER FINANCIAL PROTECTION BUREAU, CFPB SUPERVISION AND EXAMINATION MANUAL, VERSION 2.0 19 (2012), [hereinafter CFPB EXAMINATION MANUAL], *available at* http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf ("CFPB examinations focus on risks of harm to consumers, including the risk a supervised entity will not comply with Federal consumer financial law.").

33. 12 U.S.C.A. § 5513 (West 2014).

34. *Id.* § 5512(b)(2)(B); *see also id.* § 5531(e) (requiring the CFPB to consult with federal banking or other agencies when promulgating rules "prohibiting unfair, deceptive, or abusive acts or practices").

35. *Id.* § 5512(b)(2)(C).

36. Telephone Interview with Scott Pluta, Assistant Director for Consumer Response, and Darian Dorsey, Chief of Staff for Consumer Response (Oct. 6, 2014). Mr. Pluta stated that he was not bragging but rather illustrating the CFPB's priorities.

37. *Id.*

38. Whitford & Kimball, *supra* note 2, at 645. The supervisor split his time equally between the Complaints Section and another Office division. *Id.*

39. *Id.* at 647 tbl.1.

40. As do the authors, I considered the Office to have 4.5 employees in 1969. *Id.* at 669.

41. CONSUMER FIN. PROT. BUREAU, SEMI-ANNUAL REPORT OF THE CONSUMER FINANCIAL PROTECTION BUREAU APRIL 1, 2014 – SEPTEMBER 30, 2014 21 (2014), *available at* http://files.consumerfinance.gov/f/201412_cfpb_semi-annual-report-fall-2014.pdf.

42. Telephone Interview with Scott Pluta & Darian Dorsey (Oct. 6, 2014), *supra* note 36. Mr. Pluta provided this information.

workload estimates understate the CFPB's advantage because Consumer Response screens out 29% of the complaints it receives through a process that appears to be at least partially automated.[43] Thus, its complaints-to-employee ratio may be lower than 962. More generally, the CFPB complaints system makes significant use of twenty-first-century technology, which undoubtedly reduces its labor needs.[44] While the CFPB engages in much more data processing than the Office did,[45] that is almost certainly not enough to make up for the higher staffing level and advanced technology.

Despite these key differences, the Office and Bureau complaint-processing systems are strikingly similar. At a broad level, both agencies forward most of the complaints they receive to the companies and rely primarily on voluntary company decisions to provide consumers with relief. In both systems, the most important action for a company to take is to respond. The authors describe the Office as having a "firm policy requiring reply" that the companies understood and accepted.[46] Similarly, Mr. Pluta told me, "The one thing my office guarantees is that we will work hard to get you a response."[47] Indeed, the CFPB's authorizing statute requires that companies respond to complaints consumers submit to the Bureau.[48] In both systems, not responding in a timely manner is one of a limited number of company actions that can result in consequences. The Office expected companies to respond within a month of receiving the complaint and sent a reminder if the company failed to do so.[49] Whitford and Kimball find that the Office rarely had to send more than one or two reminders, perhaps because a nonresponse was one of the few situations in

43. CONSUMER FIN. PROT. BUREAU, CONSUMER RESPONSE: A SNAPSHOT OF COMPLAINTS RECEIVED THROUGH JUNE 30, 2014, at 8 (2014) [hereinafter CFPB COMPREHENSIVE COMPLAINTS SNAPSHOT], *available at* http://files.consumerfinance.gov/f/201407_cfpb_report_consumer-complaint-snapshot.pdf. The screening criteria include whether a complaint falls within the CFPB's jurisdiction, whether it is a duplicate, and whether it is from a consumer with a legitimate commercial relationship to the relevant financial institution. *Id.* The duplication factor is almost certainly analyzed with computer software, although the other analyses could require some staff labor.

44. The CFPB's communication with companies takes place through an online portal, which undoubtedly creates major time savings. *See* CONSUMER FINANCIAL PROTECTION BUREAU, CFPB COMPANY PORTAL MANUAL, VERSION 2.9 (Mar. 7, 2013) [hereinafter CFPB COMPANY MANUAL], *available at* http://www.insidearm.com/wp-content/uploads/CFPB-Company-Portal-Manual-v2-9.pdf?8b505b. Similarly, from the beginning through June 30, 2014, 56% of consumers have submitted their complaints online, and only 10% have used the more resource-intensive telephone system. CFPB COMPREHENSIVE COMPLAINTS SNAPSHOT, *supra* note 43, at 11.

45. The Office engaged in very little data processing. *See* Whitford & Kimball, *supra* note 2, at 684–85, 719

46. *Id.* at 663.

47. Telephone Interview with Scott Pluta & Darian Dorsey (Oct. 6, 2014), *supra* note 36.

48. 12 U.S.C. § 5534(b) (2012) ("A covered person subject to supervision and primary enforcement by the Bureau pursuant to section 5515 of this title [12 U.S.C. § 5515] shall provide a timely response, in writing where appropriate, to the Bureau, the prudential regulators, and any other agency having jurisdiction over such covered person concerning a consumer complaint or inquiry . . . .").

49. Whitford & Kimball, *supra* note 2, at 663.

which the Office was willing to impose forfeitures, at least on insurance agents.[50] Similarly, the CFPB requires a response within fifteen calendar days, and the failure to respond promptly can lead to the Bureau prioritizing a complaint for investigation.[51] In the complaint-processing manual that Consumer Response provides to companies, the section addressing timely response ends with this warning: "On a regular basis Consumer Response produces [reports] detailing complaints for which companies have failed to provide a timely response. These reports are circulated to the CFPB Offices of Supervision and Enforcement."[52] In a telephone interview, Mr. Pluta underscored the importance of promptness for both companies and the Bureau, stating that, "timeliness is incredibly important."[53]

Once companies cross the timely-response threshold, the bar is not high. In both systems, companies voluntarily grant consumers tangible concessions in a substantial minority of cases. In the year for which Whitford and Kimball have detailed Office statistics, companies made voluntary adjustments approximately 33% of the time.[54] Among the complaints in the CFPB database, companies have granted consumers tangible relief 21.9% of the time.[55] In the remaining cases, the focus is on providing consumers with explanations. The Wisconsin Office sent consumers the company's explanation or attempted to explain the

50. *Id.* at 663 & n.87. Even though the forfeitures were imposed only on agents, they still probably had a deterrence effect on companies.

51. CFPB COMPANY MANUAL, *supra* note 44, at 5–6. This version of the Company Portal Manual is valid through March 7, 2013, but I have not been able to find a more recent version. Unlike most of the other CFPB materials cited in this Article, the CFPB does not publish the Company Portal Manuals on its own website. *See* CONSUMER FINANCIAL PROTECTION BUREAU, http://www.consumerfinance.gov/ (last visited Sept. 15, 2015). Companies may also take up to sixty days for a full response by choosing the "in process" option within the first fifteen days. CFPB COMPANY MANUAL, *supra* note 44, at 6.

52. CFPB COMPANY MANUAL, *supra* note 44, at 6.

53. Telephone Interview with Scott Pluta & Darian Dorsey (Nov. 14, 2014), *supra* note 13. Mr. Pluta also noted that Consumer Response has received positive feedback regarding the speed with which it processes complaints. *Id.*

54. Whitford & Kimball, *supra* note 2, at 664–65. The Office divided these adjusted responses into two categories, reflecting whether or not the company had been wrong to not grant the consumer's proposed outcome in the first place. Only 15% of cases met that criterion. The Office considered the companies to be not at fault in the other 18% of voluntary adjustments. *Id.* The CFPB does not make a similar distinction, at least not publicly.

55. Because the CFPB changed the company response options from "relief" to "monetary relief" and "non-monetary relief" in 2012, I include responses in all three categories in this result. *Compare* CONSUMER FIN. PROT. BUREAU, CONSUMER RESPONSE ANNUAL REPORT 8 (Mar. 31, 2012) [hereinafter CONSUMER RESPONSE ANNUAL REPORT 2011], *available at* http://files.gov/f/201204_cfpb_ConsumerResponseAnnualReport.pdf ("Beginning December 1, 2011, response category options included 'closed with relief,' 'closed without relief,' 'in progress,' and other administrative options. Relief is defined as objective, measurable, and verifiable monetary value."), *with* CONSUMER FIN. PROT. BUREAU, CONSUMER RESPONSE ANNUAL REPORT 24 (Mar. 2013) [hereinafter CONSUMER RESPONSE ANNUAL REPORT 2012], *available at* http://files.consumerfinance.gov/f/201303_cfpb_Consumer-Response-Annual-Report-to-Congress.pdf ("[B]eginning June 1, 2012, response category options included 'closed with monetary relief,' 'closed with non-monetary relief,' 'closed with explanation,' 'closed,' 'in progress,' and other administrative options.").

company's position from documents the company sent.[56] Similarly, among cases in the CFPB database, 68.4% are listed as "closed with explanation."[57] This figure understates the percentage of explanation cases going forward because, according to CFPB materials, that option was not available until mid-2012.[58] In 2013 and 2014, respectively, companies resolved 75.9% and 74.8% of complaints with explanations.[59] These findings are in accordance with statements the Consumer Response official made during a telephone interview. They said that the Bureau's primary focus is creating an effective process and that Consumer Response is "generally outcome neutral, except in cases of legal violations, in which case we are very interested in the outcome."[60]

Both agencies review at least some company responses, but here, their practices diverge. The Wisconsin Office reviewed them all.[61] However, the investigators almost always concluded that the companies were correct; it was extremely rare for them to challenge a company at this stage.[62] The CFPB reviews a significantly lower proportion of the complaints it receives, but may review them more rigorously. Consumer Response assesses any feedback a consumer provides about the company's response along with other information such as the timeliness of the company's response to prioritize complaints for investigation.[63] In particular, the Bureau determines whether the complaint suggests a potential regulatory violation.[64] As one of the officials I interviewed stated, the purpose of the review is to see "if there's a regulatory reason to take a closer look."[65] There is no information available about the outcomes of these reviews; the officials said they could not reveal the percentage of consumer disputes found to raise legal issues "due to confidential law enforcement purposes."[66] This, however, is not the final review of consumer complaints. The CFPB's Office of Supervision Examinations also analyzes them (along with complaints submitted to other administrative agencies or directly to the companies).[67] That Office uses consumer complaints for the regulatory purpose

56. *See* Whitford & Kimball, *supra* note 2, at 665.

57. *See* CFPB CONSUMER COMPLAINT DATABASE, *supra* note 5.

58. See *supra* note 55.

59. The CFPB's remaining current company response is "closed," which companies used less than 3% of the time in 2013 and 2014. See *infra* Part V.C. for a detailed discussion of the company response categories.

60. Telephone Interview with Scott Pluta & Darian Dorsey (Nov. 14, 2014), *supra* note 14 (quoting Scott Pluta).

61. Whitford & Kimball, *supra* note 2, at 665.

62. *Id.*

63. CFPB COMPREHENSIVE COMPLAINTS SNAPSHOT, *supra* note 43, at 9.

64. *Id.*

65. Telephone Interview with Scott Pluta & Darian Dorsey (Oct. 6, 2014), *supra* note 36 (quoting Darian Dorsey).

66. *Id.*

67. For a more detailed discussion of the CFPB examination process, see Jean Braucher & Angela Littwin, *Examination as Consumer Protection,* 87 TEMP. L. REV. 807 (2015). See also *infra* Section IV. In addition, the CFPB's Offices of Servicemember Affairs, Students, and Older Americans monitor and publish reports about consumer complaints. *See, e.g.*, OFFICE FOR OLDER AMERICANS,

of prioritizing oversight and assessing the risk that company practices are violating the law and harming consumers.[68]

One final key basis of comparison is the information available about the two complaint systems. Although advancing technology has made some information more accessible in 2015 than when Whitford and Kimball were writing, advancing privacy norms and public relations strategies have made other information less accessible. The authors gather data from a variety of sources: the Office's complaint files, including a detailed sample from 1969; the Office's complaint statistics; a survey of 298 complainants;[69] interviews with company and Office personnel, including the Commissioner; and historical information from a previously unpublished study.[70]

I currently have on my computer a copy of the CFPB Consumer Complaint Database with 294,988 observations,[71] and the CFPB has published a number of statistical reports.[72] Both sources have significant limitations, however. At the time I conducted the data analysis, the database did not contain the narrative portion of complaints, so it was not possible to evaluate the company response in light of the original problem.[73] Even now, the database is missing detail about the relief granted and contains no information about the ultimate outcomes of complaints after CFPB review. The reports also have little information about that last step[74] and their summaries of the narrative data are brief,[75] although I do cite information from them throughout this Article.

Gone are the days in which I could ask Consumer Response for the names and contact information of a complainant sample. The increase in electronic data-processing power has come with an increase in concern about data

CONSUMER FIN. PROT. BUREAU, A SNAPSHOT OF DEBT COLLECTION COMPLAINTS SUBMITTED BY OLDER CONSUMERS (Nov. 2014), *available at* http://files.consumerfinance.gov/f/201411_cfpb_snapshot_debt-collection-complaints-older-americans.pdf; CONSUMER FIN. PROT. BUREAU, ANNUAL REPORT OF THE CFPB STUDENT LOAN OMBUDSMAN (Oct. 2014), *available at* http://files.consumerfinance.gov/f/201410_cfpb_report_annual-report-of-the-student-loan-ombudsman.pdf; OFFICE OF SERVICEMEMBER AFFAIRS, CONSUMER FIN. PROT. BUREAU, COMPLAINTS RECEIVED FROM SERVICEMEMBERS, VETERANS, AND THEIR FAMILIES (Mar. 2014), *available at* http://files.consumerfinance.gov/f/201403_cfpb_snapshot-report_complaints-received-servicemembers.pdf.

68. *See* CFPB EXAMINATION MANUAL, *supra* note 32, at 21.

69. Whitford & Kimball, *supra* note 2, at 658.

70. *Id.* at 645–46.

71. CFPB CONSUMER COMPLAINT DATABASE, *supra* note 5.

72. *See, e.g.*, COMPREHENSIVE COMPLAINTS SNAPSHOT, *supra* note 43.

73. In March 2015, the CFPB adopted the proposal to enable consumers to make their narratives public (with personal information redacted). More than half of the initial group of consumers chose to do so. The CFPB began publishing their narratives on June 25, 2015. Disclosure of Consumer Complaint Narrative Data, 80 Fed. Reg. 155572 (final policy statement Mar. 24, 2015); Press Release, CFPB Publishes over 7,700 Consumer Complaint Narratives About Financial Companies (June 25, 2015), http://www.consumerfinance.gov/newsroom/cfpb-publishes-over-7700-consumer-complaint-narratives-about-financial-companies/.

74. *See, e.g.*, CFPB COMPREHENSIVE COMPLAINTS SNAPSHOT, *supra* note 43, at 34–35 (describing the CFPB review process in broad terms and providing no information about its outcome).

75. See *infra* notes 221–24 and accompanying text.

privacy,[76] and the Dodd-Frank Act itself includes consumer privacy protections in the sections covering CFPB data sharing with other agencies.[77] Given these factors, I had nothing to gain and credibility to lose if I were to ask to survey CFPB complainants. Similarly, in these times of intense public scrutiny of companies and government agencies alike, it has become difficult to have informal conversations with personnel of either. The two top Consumer Response officials allowed me to interview them for almost an hour total,[78] but a public relations representative was on the line at all times, and I was required to clear all quotations I used with the Bureau.[79]

I had analogous predictions for the public relations–screened content I would receive from company interviews, so I focused instead on the wealth of documents that companies and the CFPB produce. These include press releases, court filings, company comments on proposed rules, CFPB responses to those comments, and speeches. Three of the most important sources have been the CFPB Supervision and Examination Manual (Examination Manual);[80] the "Supervisory Highlights" reports,[81] which document the Bureau's examination activity; and the Company Portal Manual (Company Manual),[82] which instructs companies on how to respond to the complaint system.

III. Dispute Settlement

The first reason for a government agency to process consumer complaints is to provide a forum for resolving consumer issues that might not otherwise be addressed. The problem this function addresses is, as Whitford and Kimball stated, "the failure of the courts to provide cost-effective means to resolve small disputed claims, and even to resolve large claims if the claimant is poor."[83] Forty years later, access to justice is still a major issue facing our legal system.[84] Low-

76. *See, e.g.*, U.S. Gov't Accountability Office, GAO-14-758, Consumer Financial Protection Bureau: Some Privacy and Security Procedures for Data Collections Should Continue Being Enhanced (2014), *available at* http://www.gao.gov/products/GAO-14-758 (identifying steps the CFPB should take in order "to reduce the risk of improper collection, use, or release of consumer financial data").

77. *See* 12 U.S.C.A. § 5493(b)(3)(D) (West 2014) (requiring the CFPB to share complaint data with the Federal Trade Commission and other regulatory bodies "subject to the standards applicable to Federal agencies for protection of the confidentiality of personally identifiable information and for data security and integrity").

78. Telephone Interview with Scott Pluta & Darian Dorsey (Oct. 6, 2014), *supra* note 36; Telephone Interview with Scott Pluta & Darian Dorsey (Nov. 14, 2014), *supra* note 13.

79. Email from Mallory McLean, *supra* note 13.

80. CFPB Examination Manual, *supra* note 32.

81. The Supervisory Highlights reports are available on the Bureau's website. *CFPB Supervisory Highlights,* Consumer Fin. Prot. Bureau, http://www.consumerfinance.gov/guidance/supervision/manual/#suphighlights (last visited Sept. 15, 2015).

82. CFPB Company Manual, *supra* note 44.

83. Whitford & Kimball, *supra* note 2, at 640.

84. *See, e.g.*, Jeanne Charn & Richard Zorza, Bellow-Sacks Access to Civil Legal Servs. Project, Civil Legal Assistance for All Americans 22–23, 32–33 (2005); Katherine Porter, *The Complaint Conundrum: Thoughts on the CFPB's Complaint Mechanism*, 7 Brook. J.

income consumers face significant difficulty in affording court process and representation. And low-dollar claims continue to make cost-ineffective lawsuits.[85] In addition, consumers often lack the sophistication required to use the court system well[86] and the knowledge of their legal rights.

Access to dispute resolution for low-income people and low-dollar claims is important not only for individual would-be plaintiffs; it also deters would-be defendants from wrongful conduct and thus perhaps helps future consumers facing the same issues.[87] So developing alternatives for resolving these claims is an important task. Commentators in the early 1970s proposed informal, low-cost, quick-resolution forums,[88] and commentators now continue to do so.[89] A government agency that accepts and processes consumer complaints can be viewed as such an alternative.[90] Whatever it may cost the taxpayers, it costs the consumer nothing, and the process of submitting a complaint is much easier than that of filing a lawsuit.[91]

Whitford and Kimball develop a two-part framework for evaluating the reasons to take complaints. One way to analyze a complaint process is to look for evidence of the agency's "intent" to affect a particular complaint function.[92] This does not entail seeking information about the subjective state of mind of an agency's staff. The question is rather whether its process evinces a commitment to, for example, resolving disputes.[93] I find mixed evidence of a CFPB commitment to dispute settlement, although on balance, it probably is concerned with this function.

The other analysis is to ask whether the agency fulfills the complaint function.[94] Are disputes settled? Do complaint data inform the agency's regulatory objectives? Is good will generated? Due to missing information, my answers to this second set of questions will necessarily be tentative.

CORP. FIN. & COM. L. 57, 77 (2012) ("Multiple factors hinder consumers in pursuing the private rights of action in consumer laws, including difficulty in affording lawyers or proceeding pro se, a lack of awareness that a legal violation has occurred (as opposed to a mere feeling of being wronged), and insufficient or inefficient remedies that undercompensate or take too long.").

85. See *supra* notes 7–8 and accompanying text for examples of the difficulties faced by low-income consumers.

86. *See, e.g.*, Littwin, *supra* note 9.

87. Although, of course, this reason for dispute settlement shades into the regulatory reason as well.

88. *See*, *e.g.*, Whitford & Kimball, *supra* note 2, at 640 n.2 (discussing a reform to small claims court as one possible solution).

89. *See, e.g.,* Ronald J. Mann & Katherine Porter, *Saving Up for Bankruptcy*, 98 GEO. L.J. 289, 290, 323–24 (2010) (detailing alternative low-cost options).

90. Whitford & Kimball, *supra* note 2, at 640.

91. *Id.*

92. *Id.* at 670, 673–74.

93. Likewise, the authors are clear that, "we use 'intent' here only in the sense that any person is said to intend the logical consequences of his actions. We do not suggest that there were necessarily considered decisions whether to structure complaint processing to fulfill any indicated function." *Id.* at 670.

94. *Id.* at 707–09.

A. *Dispute Settlement Intent*

Because dispute settlement concerns whether a complaint process can serve as an effective alternative to litigation, a good way to evaluate an agency's commitment to this function is to examine how it handles complaints that are less likely to be resolved in court.[95] A threshold question, then, is whether the agencies are willing to process the complaints of consumers who have filed lawsuits.[96] If so, they would be less concerned with providing an alternative forum. In both complaint systems, the answer is no. The Office refused to proceed further when a lawsuit was filed or the complainant had legal representation.[97] Similarly, the CFPB instructs companies whose complainants have sued to indicate as such in the company response instead of addressing the consumer's issue.[98]

Two important follow-up questions are whether the agency prioritizes low-dollar complaints and those from low-income consumers, because in both scenarios, the consumers would have less access to court.[99] The authors find no evidence that Office investigators prioritized small-dollar complaints or those from low-income complainants.[100] Similarly, the CFPB does not appear to prioritize complaints from low-income consumers. The low amounts received[101] by consumers who obtain monetary relief from companies may be an indication that Consumer Response is reaching consumers with claims too small to litigate, although it could also be the case that companies are undercompensating consumers. Even consumers who receive monetary relief dispute the company's response approximately 13% of the time.[102]

There are several additional types of evidence that could demonstrate an agency's commitment to serving low-income consumers and other groups that may have less access to the legal system. These include its solicitation strategy,[103] the accessibility of its services, whether it engages in demographic monitoring, and the demographic composition of its complainant population.[104]

95. *Id.* at 678.

96. *Id.* at 674.

97. *Id.* at 678.

98. CFPB COMPANY MANUAL, *supra* note 44, at 9.

99. Whitford & Kimball, *supra* note 2, at 674.

100. *Id.* at 678.

101. In cases in which monetary relief was granted and the amount was reported to Consumer Response, it has ranged from a median of $32 for credit reporting complaints to a median of $445 for mortgage complaints, with most products having relief amount medians in the $100s to $200s range. CFPB COMPREHENSIVE COMPLAINTS SNAPSHOT, *supra* note 43, at 32.

102. CFPB CONSUMER COMPLAINT DATABASE, *supra* note 5. This percentage includes complaints that were "closed with monetary relief" from June 1, 2012 through the present as well as earlier cases that were "closed with relief." The former "closed with relief" category included only monetary relief. *See* CONSUMER RESPONSE ANNUAL REPORT 2012, *supra* note 55, at 25 n.14.

103. Whitford & Kimball, *supra* note 2, at 706

104. One could argue that the demographic profile of an agency's complainants is suggestive of dispute settlement fulfillment rather than intent because it is indicative of whether the agency is actually providing an alternate forum for constituencies that have less access to courts. The line

Agencies inundated with consumer complaints may have limited interest in soliciting more of them, and that appears to be the case for both the Office and the CFPB. Whitford and Kimball find that the Office engaged in exactly one solicitation effort. In 1969, it located one investigator in Milwaukee near a low-income area for the express purpose of encouraging complaints from low-income consumers and conducted a "limited direct effort" to solicit complaints.[105] The authors were unable to find information about this effort's success.[106] Similarly, the CFPB has a "submit a complaint" button on every page of its website,[107] but my research did not reveal other solicitation efforts. When I asked about it in my interview with Consumer Response officials, Mr. Pluta said, "We don't solicit complaints, but we recognize there is a vast and untapped demand for our services, and we want consumers to know we're an option."[108] Ms. Dorsey added that the CFPB works with "community intermediaries" to make sure consumers are aware of CFPB tool kits and services, including complaint processing.[109]

Although the authors did not explicitly consider accessibility, the Office's hiring of the Milwaukee investigator is one piece of evidence supporting a commitment to accessibility by low-income communities.[110] I found three examples of Consumer Response making a significant commitment to access by consumers who are likely to have less income or otherwise be disenfranchised from the court system. First, its contact centers provide services "in more than 180 languages and to consumers who are deaf, have hearing loss, or have speech disabilities."[111] Second, the CFPB has a Spanish-language website that, among other things, explains how to submit complaints.[112] It provides the CFPB telephone number and informs consumers that there are Spanish-speaking operators.[113] However, there does not appear to be an option to submit online in Spanish.[114] Third, Ms. Dorsey stated that Consumer Response is increasingly

between intent and fulfillment is often blurry, but I am including this factor here because it does not relate to the outcomes of a complaint process.

105. Whitford & Kimball, *supra* note 2, at 675.

106. *Id.*

107. CONSUMER FINANCIAL PROTECTION BUREAU, *supra* note 51.

108. Telephone Interview with Scott Pluta & Darian Dorsey (Oct. 6, 2014), *supra* note 36; Email from Moira Vahey, CFPB Spokesperson, to author (Jan. 8, 2015, 18:41 CST) (on file with author) (providing comments on an earlier draft of this Article).

109. Telephone Interview with Scott Pluta & Darian Dorsey (Oct. 6, 2014), *supra* note 36.

110. Whitford & Kimball, *supra* note 2, at 675.

111. CFPB COMPREHENSIVE COMPLAINTS SNAPSHOT, *supra* note 43, at 8.

112. OFICINA PARA LA PROTECCIÓN FINANCIERA DEL CONSUMADOR, http://www.consumerfinance.gov/es/presentar-una-queja/ (last visited Sept. 15, 2015) (translation by Adrian Leal, University of Texas School of Law, 2015).

113. *Id.*

114. The CFPB website indicates in Spanish that consumers may submit complaints through the Internet at a certain link. *Presentar Una Queja*, OFICINA PARA LA PROTECCIÓN FINANCIERA DEL CONSUMADOR, http://www.consumerfinance.gov/es/presentar-una-queja/ (last visited Sept. 15, 2015). However, that link takes you to a web page in English. *See id.* (referring to the link below the phone number on the "Presentar Una Queja" tab) (translation by Adrian Leal, University of Texas School of Law, 2015).

designing its forms to be mobile friendly in part because research indicates[115] that many low-income and immigrant families use smart phones as their main source of Internet access.[116]

Collecting statistics about its complainants could be evidence of an agency's commitment to dispute resolution, because without that information, the agency cannot tell whether it is reaching consumers who might have less access to the court system. The Office did not collect information about the demographics of consumers who submitted complaints, recording only basic information about their "role in the insurance transaction."[117] The only demographic information the CFPB appears to collect regards age and servicemember status. I tested the online complaint submission process (without submitting a complaint) and was not asked for any other demographic information. But in an interview with the Consumer Response officials, they stated that they can use geographic information to analyze complainants' demographics.[118]

The results of these accessibility efforts are ambiguous. In 1971 Whitford and Kimball conducted a mail survey of 298 consumer complainants.[119] Although the authors did not ask about income,[120] they obtained interesting findings about the sophistication of their respondents.[121] More than two-thirds of them answered affirmatively a question asking whether they knew about the Office's complaints processing when they "first decided" that they might have a valid complaint.[122] In addition, more than one-quarter of the respondents learned about the complaints system from "'[w]ord of mouth'—friend or relative" and another 14% had "[g]eneral or past knowledge."[123] Both of these results suggest a complainant base with more sophistication than the general population rather than less.

Similarly, there are a few data points suggesting that the CFPB is not reaching less sophisticated consumers. Although the CFPB Complaint Database does not contain complainant demographic information,[124] it includes zip code

115. *See, e.g.*, Kathryn Zickuhr & Aaron Smith, *Digital Differences*, PEW RESEARCH CENTER (Apr. 13, 2012), http://www.pewinternet.org/2012/04/13/digital-differences/ ("Among smartphone owners, young adults, minorities, those with no college experience, and those with lower household income levels are more likely than other groups to say that their phone is their main source of internet access.").

116. Telephone Interview with Scott Pluta & Darian Dorsey (Nov. 14, 2014), *supra* note 13.

117. Whitford & Kimball, *supra* note 2, at 657.

118. Telephone Interview with Scott Pluta & Darian Dorsey (Oct. 6, 2014), *supra* note 36.

119. Whitford & Kimball, *supra* note 2, at 658.

120. *Id.* The authors kept the questionnaire brief, a decision to which they partially attribute their impressive 71% response rate. *Id.* at 658 n.75.

121. They also found that Madison residents were significantly overrepresented while Milwaukee residents were significantly underrepresented in their sample, but were not able to analyze these findings by economic class. *Id.* at 658–59.

122. *Id.* at 659.

123. *Id.* at 660 tbl.7.

124. The only types of demographic information Consumer Response collects are age and servicemember status. I learned this by testing the online complaint submission process (without submitting a complaint).

data, which allow researchers to use the Census Zip Code Tabulation Areas (ZCTA) to associate approximate demographic information with complainants.[125] I used Census ZCTA data[126] to analyze five demographic variables that can shed light on whether the Bureau is reaching consumers who may have less access to the legal system. I compared the average value of each demographic variable across the CFPB Complaint Database and the Census ZCTA data I downloaded, using the latter as the most comparable approximation of U.S. population statistics.[127] See Table 1.

125. *See, e.g.*, Ian Ayres, Jeff Lingwall & Sonia Steinway, *Skeletons in the Database: An Early Analysis of the CFPB's Consumer Complaints*, 19 FORDHAM J. CORP. & FIN. L. 343, 346 & n.5 (2014) (using ZCTAs "to assess the likelihood of certain populations availing themselves of the CFPB's complaints process").

126. I used three Census Demographic Profile tables to obtain the five socioeconomic variables: (1) *DP02, Selected Social Characteristics in the United States, 2008–2012 American Community 5-Year Estimates*, U.S. CENSUS BUREAU, http://factfinder2.census.gov/bkmk/table/1.0/en/ACS/12_5YR/DP02/0100000US.86000 (last visited Sept. 15, 2015) (containing educational attainment data); (2) *DP03, Selected Economic Characteristics, 2008–2012 American Community Survey 5-Year Estimates*, U.S. CENSUS BUREAU, http://factfinder2.census.gov/bkmk/table/1.0/en/ACS/12_5YR/DP03/0100000US.86000 (last visited Sept. 15, 2015) (containing income data); and (3) *DP05, ACS Demographic and Housing Estimates, 2008–2012 American Community Survey 5-Year Estimates*, U.S. CENSUS BUREAU, http://factfinder2.census.gov/bkmk/table/1.0/en/ACS/12_5YR/DP05/0100000US.86000 (last visited Sept. 15, 2015) (containing data on race and ethnicity).

127. The national statistics the Census publishes are from a variety of recent years that do not precisely match the five-year period covered by the data the Census offers for download. In addition, the ZCTA data does not contain all zip codes. So the statistics computed from the downloaded data do not exactly match those that the Census provides on its website. For example, the Census publishes U.S. population estimates for 2013 and 2014, which are 316,497,531 and 318,857,056, respectively. *State & County QuickFacts*, U.S. CENSUS BUREAU, http://quickfacts.census.gov/qfd/states/00000.html (last visited Sept. 15, 2015). My downloaded data is from 2008–2012 and yields a U.S. population estimate of 312,837,202. Similarly, my calculations for all five variables were in the correct range despite not being exact matches with the website statistics. Three of the four percentages I computed were within one percentage point of the QuickFacts statistics, although only one was within one-tenth of a percent. The discrepancy between the statistics for the remaining variable, median income, was approximately $3,500. The QuickFacts Census estimates of the five variables in Table 1 are: Median Household Income (2009–2013), $53,046; Percent High School Graduate (2009–2013), 86.0%; Percent College Graduate (2009–2013), 28.8%; Percent Black Alone (2013), 13.2%; and Percent Latino (2013), 17.1%. *Id.* Because I derived the demographic estimates for the CFPB data from the Census data I downloaded, the averages I computed from those Census data are the most comparable U.S. average estimates for the CFPB data.

TABLE 1. DEMOGRAPHIC COMPARISON BETWEEN CENSUS ZCTA DATA AND CFPB COMPLAINANTS

Variable	*Average Value: Census ZCTA Data*	*Average Value: CFPB Database*
Median Household Income (2012 dollars)	$56,598	$62,637
Percent High School Graduate	84.3%	87.5%
Percent College Graduate	27.8%	32.8%
Percent Black (and reporting no other races)	12.4%	14.6%
Percent Latino	17.3%	17.2%

If the Bureau was attracting consumers with less access to the legal system, we would expect complainants to have lower incomes and levels of educational attainment than the general population. We would also expect ethnic and racial minorities to be overrepresented, especially because these groups encounter credit discrimination and frequently have less access to high-quality credit.[128] Thus, they might be more likely to have negative financial experiences that could form the basis of complaints.

The CFPB complainants appear to have a higher average median income and higher levels of education than the general population, although the differences are modest. For example, an additional 5% of consumers in the CFPB sample went to college, and CFPB complainants have approximately $6,000 more in average median household income. These are real differences, but they may not be large enough to reflect a meaningful discrepancy in consumer sophistication. In addition, Black consumers are slightly overrepresented in the CFPB data, and the percentage of Latino consumers in each database is nearly identical. On the other hand, the ideal would be for lower-income consumers, lower-education consumers, as well as racial and ethnic minorities to be overrepresented among CFPB complainants, but that may be too exacting of a standard.

128. *See, e.g.*, Christian E. Weller, *Access Denied: Low-Income and Minority Families Face More Credit Constraints and Higher Borrowing Costs*, CTR. FOR AM. PROGRESS (Aug. 2007), https://cdn.americanprogress.org/wp-content/uploads/issues/2007/08/pdf/credit_access.pdf (analyzing the Federal Reserve Board's Survey of Consumer Finances and finding discrimination against minorities in both access to credit and the quality of credit).

The second consumer-sophistication point is technology. The same lower-income and minority populations that have less access to the legal system also have less access to the Internet.[129] So an agency with a significant commitment to dispute settlement would want consumers to access its complaint process in low-tech, as well as high-tech, ways. The ratio of consumers who submit CFPB complaints via the Internet mirrors the ratio of U.S. consumers with Internet access. Approximately 85% of American adults use the Internet.[130] As of June 30, 2014, 56% of consumer complaints were submitted through the CFPB website, while 10% were submitted by telephone.[131] Between these two groups, that means submission percentages of 85% online and 15% by telephone. Most of the remainder of complaints are referred from other government actors and thus are not relevant for this calculation.[132] Thus, Consumer Response is "breaking even" here, which suggests a commitment to dispute resolution, although an overrepresentation of telephone complaints would be evidence of an even stronger one.

In addition, initial consumer feedback to the CFPB Ombudsman suggests that less technically savvy consumers did not receive the best service from Consumer Response during the CFPB's start-up period. First, consumers who opted to receive their complaints correspondence by mail instead of online reported not receiving their company responses until close to the deadline for responding.[133] Other consumers were surprised and dismayed to learn that entering their email address meant that they would receive only online correspondence regarding their complaints.[134] In both instances, the Ombudsman reported that Consumer Response had changed its practices as a result of this feedback.[135] It is worth noting that consumers who complained to the Ombudsman had a different technology profile than those who complained to Consumer Response. In the first and second years of the CFPB, more than two-thirds of Ombudsman complainants reached it by telephone.[136]

129. Caitlin Dewey, *The 60 Million Americans Who Don't Use the Internet, In Six Charts*, WASH. POST (Aug. 19, 2013), http://www.washingtonpost.com/blogs/the-switch/wp/2013/08/19/the-60-million-americans-who-dont-use-the-internet-in-six-charts/.

130. Edward Wyatt, *Most of U.S. is Wired, but Millions Aren't Plugged In*, N.Y. TIMES, Aug. 19, 2013, at B1. Although this data point is more than a year old, the rate has plateaued is recent years. *See id.*

131. CFPB COMPREHENSIVE COMPLAINTS SNAPSHOT, *supra* note 43, at 11. I am using statistics from the report rather than my own data analysis, because the CFPB Complaint Database contains only 71% of submitted complaints. *Id.* at 28.

132. Of the total, 24% come from referrals and 10% are submitted via "mail, email, and fax." *Id.* at 11.

133. CFPB OMBUDSMAN'S OFFICE, CFPB OMBUDSMAN'S OFFICE FY2013 ANNUAL REPORT TO THE DIRECTOR 12–13 (NOV. 2013), *available at* http://files.consumerfinance.gov/f/201311_cfpb_annual-report_ombuds-office.pdf.

134. *Id.* at 16–17.

135. *Id.* at 13, 17.

136. CFPB OMBUDSMAN'S OFFICE, CFPB OMBUDSMAN'S OFFICE FY2012 ANNUAL REPORT TO THE DIRECTOR 8 (Nov. 2012), *available at* http://files.consumerfinance.gov/f/201211_Ombuds_Office_Annual_Report.pdf (covering July 1, 2011 through September 30, 2012 and finding that the complaint

B. Dispute Settlement Fulfillment

Whitford and Kimball propose two ways to view a dispute as effectively settled: (1) that the outcome is the correct legal result, or (2) that both parties believe the outcome to be fair.[137] Reaching the correct legal outcome is a useful criterion to which to aspire, yet even with access to all the relevant information, it would be labor intensive to judge. In the case of the CFPB, I do not have access to the information necessary to make my own determination, but the Consumer Response officials I interviewed made it clear that the decision to investigate a complaint was driven primarily by the risk that it described a legal violation.[138] Both parties considering the outcome fair may be a lower bar, although a satisfyingly literal way to consider a dispute "settled." This outcome would be easier to evaluate but neither complaint process provides enough information to do so.[139] Thus, this Part also relies on inferences drawn from the available information.

1. Legally Correct Outcomes

In each of these complaint systems, there are two chances to reach the correct legal outcome. The company could respond correctly or the agency could override the company's erroneous response. In Wisconsin, companies adjusted the outcome in approximately 33% of complaints. The investigators characterized slightly less than half of these adjustments—15% of the total—as the legally correct outcome.[140] The legal validity of the remaining adjusted responses is unclear.[141] Whitford and Kimball note, however, that the relief obtained by Office complainants might not be as significant as it appeared, because companies were most likely to adjust the outcome when the consumer was complaining of a processing delay and least likely to do so when the consumer was challenging a claim denial.[142] In other words, consumers more frequently received adjustments when the adjustments were less meaningful.

submission technology consisted of 67% telephone, 31% email, and the remainder, fax); *see* CFPB OMBUDSMAN'S OFFICE FY2013 ANNUAL REPORT, *supra* note 133, at 8 (covering October 1, 2012 through September 30, 2013 and finding that the complaint submission technology consisted of 73% telephone and 24% email, with no information about the remaining 3%).

137. Whitford & Kimball, *supra* note 2, at 673.

138. See *supra* note 65 and accompanying text for Ms. Dorsey's statement that Consumer Response reviewed complaints in order to see "if there's a regulatory reason to take a closer look." See *supra* note 60 and accompanying text for Mr. Pluta's statement that Consumer Response is concerned with the outcome of the complaint process only when there are potential legal violations.

139. Whitford and Kimball obtain information for this evaluation through their complainant survey. Whitford & Kimball, *supra* note 2, at 658.

140. *Id.* at 665.

141. *Id.* at 664. The remaining 18% of the total responses were ones in which the investigator "believed the company was not at fault in failing to take that position earlier." *Id.* The authors give two examples of factors that influenced the company responses in this category: new information and preservation of the complainants' good will. *Id.* at 665. The former is indicative of a legally correct outcome; the latter is not.

142. *Id.* at 676 tbl.9.

The Office reviewed all of the remaining two-thirds of complaints.[143] Investigators tended to evaluate them on grounds of "reasonableness" defined as "perceptions of generally accepted trade practices" rather than under the law, "although there is naturally considerable congruence between the two."[144] They almost always concluded that the company's response was reasonable or that there were disputed factual or legal issues that the Office did not have the resources to resolve.[145] However, Whitford and Kimball found several instances in which it appeared that the Office could have challenged the company's position but did so inconsistently.[146] These findings suggest that Office review may not have been reaching the correct legal outcome much of the time.

Companies responding to CFPB complainants also granted relief in a substantial minority of cases. From December 1, 2011 through October 6, 2014, companies granted monetary relief in 9.2% of cases and non-monetary relief in 12.7%.[147] They provided explanations for 67.9% of complaints and offered neither relief nor explanation to 2.4% of complainants.[148] Because companies are resolving so many complaints with explanations,[149] the degree to which the process reaches legally correct outcomes depends in large part on the specificity and legal accuracy of the explanations companies are providing. According to the officials I interviewed, Consumer Response currently evaluates explanation quality with the resources it has, but it plans to continue to build capacity and to utilize technology to substantially increase its evaluation capacity in the coming years.[150] In general, it is impossible for me to tell whether companies responding

143. *Id.* at 677.

144. *Id.* at 678.

145. *Id.* at 665.

146. *Id.* at 679.

147. CFPB CONSUMER COMPLAINT DATABASE, *supra* note 5.

148. *Id.* The remaining 7.8% of cases were still in progress, had no timely company response, or fell under the ambiguous former "closed without relief" company response option. *See id.* The last category encompassed company responses of non-monetary relief, explanation, and no relief or explanation, making it impossible to characterize these responses according to the current categories. See *infra* Part V.C. for a detailed discussion of company responses to consumer CFPB complaints. "Closed without relief" accounted for 67.4% and 27.5% of responses in 2011 and 2012, respectively, which is why the 7.8% figure is so large. For cases starting on or after June 1, 2012 (when the new categories were implemented), the company response breakdown is: 8% monetary relief, 13.9% non-monetary relief, 74.9% explanation, 2.6% no explanation or relief, 0.5% in progress, and 0.2% untimely response. *See* CFPB CONSUMER COMPLAINT DATABASE, *supra* note 5 (end date of date range set to Aug. 30, 2014 in order to minimize "in progress" responses).

149. As noted earlier, this figure actually understates the percent of explanation company responses in recent years. See *supra* text accompanying note 58. Companies did not make significant use of that option until midway through 2012. See *infra* note 331. In 2013 and 2014, explanations comprised approximately 75% of company responses. See *supra* note 59 and accompanying text. In addition, Mr. Pluta stated during a telephone interview that Consumer Response may merge the "explanation" and "closed" responses so that companies will always at least provide an explanation to their consumer. Telephone Interview with Scott Pluta & Darian Dorsey (Nov. 14, 2014), *supra* note 14.

150. Telephone Interview with Scott Pluta & Darian Dorsey (Nov. 14, 2014), *supra* note 14. For example, the software could identify a situation in which a company was providing the same explanation to many consumers. *Id.*

to CFPB complainants are reaching correct outcomes at the company response stage. At the time of data analysis, Consumer Response had not yet released narrative complaint data.[151] In addition, access to the company responses, including the text of company explanations, would be necessary for a complete evaluation, and that is not available, even now.

As in Wisconsin forty years ago, the relief companies provide through the CFPB process may be less meaningful than it first appears. Companies are most likely to grant relief when the costs are low or when relief might have been granted without the CFPB complaint, and they are least likely to grant relief when it would be most significant. Table 2 shows the relief rate for each of the nine products about which the CFPB currently accepts complaints as well as the share of total relief and total complaints for which each product accounts. This Table covers only the period during which the Bureau was accepting complaints about all nine products.[152]

151. See *supra* note 73 and accompanying text.

152. See *infra* note 155.

TABLE 2. RELIEF RATE BY PRODUCT AND PRODUCTS' SHARE OF RELIEF AND COMPLAINTS[153]

Product	Closed	Explanation	Relief	Total	Product's Share of Relief	Product's Share of Complaints
Bank Account	259 4.0%	4487 68.6%	1788 27.3%	6,538 100.0%	12.2%	9.6%
Consumer Loan	18 1.0%	1506 82.6%	296 16.2%	1,823 100.0%	2.0%	2.7%
Credit Card	33 0.5%	4157 65.3%	2178 34.2%	6,368 100.0%	14.8%	9.3%
Credit Reporting	17 0.1%	7542 59.5%	5110 40.3%	12,671 100.0%	34.7%	18.5%
Debt Collection	739 4.1%	13397 75.1%	3578 20.1%	17,839 100.0%	24.3%	26.1%
Money Transfer	7 1.3%	438 82.8%	83 15.7%	529 100.0%	0.6%	0.8%
Mortgage	450 2.3%	18243 91.4%	1242 6.2%	19,965 100.0%	8.4%	29.2%
Payday Loan	8 1.2%	559 84.1%	66 9.9%	665 100.0%	0.4%	1.0%
Student Loan	5 0.3%	1543 80.4%	370 19.3%	1,918 100.0%	2.5%	2.8%
Total	1536 2.2%	51872 75.9%	14711 21.5%	68,316 100.0%	100.0%[154]	100.0%

Data Date Range: 12/01/2013 – 08/31/2014[155]

153. CFPB CONSUMER COMPLAINT DATABASE, *supra* note 5. To make the table more readable, I cut the "In Process" and "No Timely Response" options, which are not relevant to this analysis. Hence, the totals in column 4 are slightly greater than the sum of the numbers in columns 1 through 3.

154. This total is of this column only. Totals do not add up to 100% due to rounding. These statements also apply to the total in column 5.

The products with the highest rates of relief tend to have the lowest levels of relief and vice versa. Approximately 61.7% of the monetary and non-monetary relief companies grant comes from three products that appear to provide less meaningful relief per complaint than other the products do. Bank accounts, credit cards, and credit reports are the only products for which the product's share of relief is larger than the product's share of complaints.[156] Despite providing more than 60% of the relief, these products receive a combined total of only 37.4% of complaints. Simultaneously, they have the three lowest levels of monetary relief per complaint, comprising three of the four products with median monetary relief levels of less than $150. See Table 3.

TABLE 3. MEDIAN MONETARY RELIEF LEVELS, BY PRODUCT[157]

Product	*Bank Account*	*Consumer Loan*	*Credit Card*	*Credit Reporting*	*Debt Collection*	*Money Transfers*	*Mortgage*	*Payday Loan*	*Student Loan*
Median Monetary Relief	$108	$217	$125	$32	$339	$142	$445	$310	$295

Data Date Range: 7/1/2011 – 6/30/2014

The trend continues within products as well. Companies appear to be most generous with both monetary and non-monetary relief regarding issues that are inexpensive to resolve. For example, the issues about which credit card companies are most likely to grant relief involve fees. Issuers grant relief at least half of the time for complaints about late fees (59.1% of complainants received relief) and "other" fees (49.7% relief).[158] Credit card fees are currently not large. This data analysis begins more than three years after the February 2010 implementation of the Credit Card Accountability, Responsibility and Disclosure Act (CARD Act) provision that required all credit card penalty fees

155. CFPB CONSUMER COMPLAINT DATABASE, *supra* note 5. The date range for this data analysis begins on December 1, 2013 because the CFPB began taking complaints on the last of these nine products starting on November 6, 2013. CFPB COMPREHENSIVE COMPLAINTS SNAPSHOT, *supra* note 43, at 3. I also ran this cross tabulation from June 1, 2012 (when the Bureau introduced the current company response categories) and obtained similar results. The only major change is that debt collection complaints comprised a much smaller share of the total, which makes sense considering that the CFPB only began accepting these complaints in mid-2013. *Id.* Debt collection complaints have a mid-range relief rate and hence are not important to this analysis. I did not use data from September and October, 2014 in order to limit the number of "in progress" cases.

156. See *supra* the last two columns of Table 2 for specific data figures.

157. The CFPB Complaint Database does not include relief levels. These data are from CFPB COMPREHENSIVE COMPLAINTS SNAPSHOT, *supra* note 43, at 32.

158. The data date range used to calculate these figures is June 1, 2012, through August 31, 2014.

to be "reasonable and proportional" to the consumer's infraction.[159] The Federal Reserve established—and the CFPB maintained—a safe harbor of $25 for the first fee and $35 for another fee incurred within six months,[160] although the CFPB has recently increased these amounts by one to three dollars.[161] While it is true that companies may charge more than the safe harbor amounts, data suggest that the mean late fee amount has been less than $30 since the safe harbor rules took effect.[162] Moreover, consumers might have obtained late fee relief without CFPB involvement. Consumers frequently have late fees waived by simply asking their credit card issuers. A recent CreditCards.com poll found that 86% of consumers who asked for a late fee waiver received one, making the 59.1% relief rate for CFPB complainants look low by comparison.[163]

Similarly, the one issue for which Credit Reporting Agencies (CRAs) provided relief more than half the time (57.8%) is when consumers complained that they could not obtain their credit reports or scores, issues that are simple and inexpensive to remedy. CRAs generally had high rates of relief,[164] perhaps because of the most valuable relief they can provide to consumers is non-monetary in nature. More than 70%[165] of credit reporting complaints were regarding incorrect information on the credit report, and another 22% were about the CRA investigation process and difficulty obtaining credit reports or scores. Not surprisingly, CRAs have a non-monetary relief rate of 39.8% and a monetary relief rate of 0.6%.[166]

159. 15 U.S.C.A. § 1665d(a)–(b) (West 2014).

160. Truth in Lending, 12 C.F.R. § 226 (2010) (promulgated by the Board of Governors of the Federal Reserve System); Truth in Lending (Regulation Z), 12 C.F.R. § 1026.52(b)(1)(ii) (2010) (the CFPB's safe harbor regulation).

161. The CFPB increased the safe harbor for late fees to $26 for 2014 and to $27 in 2015; the safe harbor for repeat fees was increased to $37 for 2014 and $38 for 2015. Truth in Lending (Regulation Z), 12 C.F.R. § 1026.52(b)(1)(ii) (2014); Truth in Lending (Regulation Z), 12 C.F.R. § 1026.52(b)(1)(ii) (2015).

162. CONSUMER FINANCIAL PROTECTION BUREAU, CARD ACT REPORT 23 (Oct. 1, 2013), *available at* http://files.consumerfinance.gov/f/201309_cfpb_card-act-report.pdf.

163. Martin Merzer, *Poll: Asking for Better Credit Card Terms Pays Off*, CREDIT CARDS.COM (Sept. 24, 2014), http://www.creditcards.com/credit-card-news/poll-ask-better-terms.php. The survey also found that 65% of respondents who asked were able to obtain a lower credit card interest rate. *Id.* The relief rate for consumers who complained to the CFPB regarding interest rates was 37.3%. The CreditCards.com data, however, were self-reported, and it is easy to imagine consumers misremembering or exaggerating their success rates. In addition, there could be differences between the two populations that account for the different results. The CreditCards.com survey was a representative U.S. sample, but found that high-income consumers (and those ages 30 to 64) were significantly more likely to obtain fee waivers. *Id.* Although the average income for CFPB complainants was approximately $6,000 higher than the national average, this is probably not enough to qualify them as high-income consumers. (The CreditCards.com poll did not indicate a cut off for this designation.)

164. See *supra* Table 2.

165. The exact percentage is 71.7. CFPB CONSUMER COMPLAINT DATABASE, *supra* note 5.

166. *Id.*

Bank accounts and services was the only other product that had an issue with a relief rate approaching 50%.[167] Banks granted relief to 48.7% of consumers who complained about "problems caused by [my] funds being low," an issue that includes matters such as "overdraft fees, bounced checks, charged-off accounts, and negative reporting to credit reporting agencies."[168] Because the CFPB has not assigned sub-issue categories to bank accounts, I cannot know the proportion of each type of complaint. But it is worth noting that three of the four sub-issues involve fees (overdraft fees and bounced checks) or credit reporting errors, matter that are likely inexpensive to resolve.

Conversely, mortgages have the lowest rate of relief at 6.2%,[169] but the highest relief levels. The next lowest relief rate is a fair amount higher: payday loans at 9.9%.[170] But payday loan responses have a much smaller impact on consumers because complaints about that product comprise approximately 1% of all complaints, while mortgage complaints have a 29.2% database share, the highest of any product.[171] And these are the only two products with single-digit relief percentages. The next lowest product relief rate, that of money transfers, is much higher at 15.7%.

Mortgages are at the other end of the relief-level spectrum from the high-relief-rate products. Mortgage complaints' median level of monetary relief is the highest at $445, which is over $100 more than the next highest median.[172] See Table 3. And the non-monetary relief mortgagees can grant is likely to be essential to the consumers who receive relief. Providing a foreclosure alternative, for example, is significantly more important to a consumer than providing access to a credit report, and mortgagees provide foreclosure relief only 4.2% of the time.[173]

Of course, these outcomes could all change after Consumer Response conducts its review. The only data I can analyze are those in the publicly available complaint database, which does not cover this final stage of complaint processing.

My evaluation of whether the CFPB is reaching legally correct results in its review suffers from the same constraint. Consumer Response reviews a smaller percentage of cases than the Office did but appears to be more invested in obtaining the correct legal outcome. As mentioned earlier, the CFPB appears to review all complaints in which the consumer disputes the company's response.[174] And in a telephone interview with the two Consumer Response officials, they

167. In fact, the other six products did not have an issue among them with a relief rate of 40% or higher. *Id.*

168. CFPB COMPREHENSIVE COMPLAINTS SNAPSHOT, *supra* note 43, at 19.

169. See *supra* Table 2.

170. See *supra* Table 2.

171. See *supra* Table 2.

172. CFPB COMPREHENSIVE COMPLAINTS SNAPSHOT, *supra* note 43, at 32.

173. CFPB CONSUMER COMPLAINT DATABASE, *supra* note 5. Not counting the "other" mortgage issue category, the only issue within any product that has a lower relief rate is "applied for loan/did not receive money" in payday loans. *Id.*

174. CFPB COMPREHENSIVE COMPLAINTS SNAPSHOT, *supra* note 43, at 8–9.

stated that there are additional grounds for reviewing company responses, but that the CFPB does not release them publicly.[175] According to Ms. Dorsey, each consumer dispute is evaluated on the merits of whether "there's a regulatory reason to take a closer look."[176] But she said they could not reveal the percentage of cases that meet this threshold, and without access to the text of consumer complaints,[177] the company responses, or the consumer disputes, I could not evaluate these decisions anyway.[178] Consumer Response has invested in technology that increases its likelihood of reaching the correct outcome in more cases. It uses a tool that enables investigators who have found a suspected legal violation to search for similar complaints.[179] In addition, there is documented evidence that Consumer Response takes its investigations seriously. According to the Company Manual, if a company fails to respond within ten days to a Consumer Response request for more information, "the complaint is included in a delinquency report circulated throughout the CFPB."[180]

2. Parties' Assessments of Fairness

The Wisconsin Office did not assess whether complainants found the outcomes fair, and Whitford and Kimball note only that complainants "occasionally" responded to the Office's determinations.[181] But when the authors surveyed complainants in 1971, they asked about satisfaction with the process.[182] They found that 60% of complainants were satisfied with the process, 60% felt the company was more responsive afterwards, and 70% would use the complaint process again.[183] There was a caveat, however. The consumers who were not satisfied wrote very negative comments.[184]

175. Telephone Interview with Scott Pluta & Darian Dorsey (Oct. 6, 2014), *supra* note 36 (statement by Scott Pluta).

176. *Id.* (statement by Darian Dorsey).

177. I downloaded and analyzed the database several months before the narratives became available. See *supra* note 73.

178. See *supra* note 73.

179. Telephone Interview with Scott Pluta & Darian Dorsey (Nov. 14, 2014), *supra* note 14.

180. CFPB COMPANY MANUAL, *supra* note 44, at 6.

181. Whitford & Kimball, *supra* note 2, at 665. Most wrote to simply express dissatisfaction. *See id.* But with some similarity to the CFPB practice, if a consumer did provide new information or dispute the company's response, the Office "might" renew the investigation, usually by sending the consumer's new letter to the company. *Id.*

182. *Id.* at 673.

183. *Id.* The authors actually only discuss these results with respect to good will. *Id.* However, consumers' perceptions regarding fairness of outcome probably played an important role in their answers to these survey questions. The other important influence would be "process" factors such as whether consumers thought investigators were respectful and took them seriously. Assuming that the outcome factor played *some* role, I discuss these data in Parts III.B.1 and 2, although subject to the caveat in Section V.

184. Whitford & Kimball, *supra* note 2, at 673.

Similarly, Consumer Response does not make public any data about complainant satisfaction,[185] but the CFPB Complaint Database can shed limited light on this question, at least at the company response stage. Consumers disputed company responses 20.7% of the time.[186] But this does not mean that the 78.0%[187] of complainants who chose not to dispute thought the outcome was fair. There are a number of additional reasons why consumers might not dispute. They could be discouraged, not understand the company's response, think it would be too much work to respond, miss the response deadline, or be unable to gather the documentation necessary to support a dispute.[188] To tease this out, I compared consumer dispute rates to the responses they received from companies. The results are in Table 4.

185. I thought it highly unlikely that the Bureau would allow me to conduct my own complainant survey. See *supra* notes 76–79 and accompanying text.

186. CFPB CONSUMER COMPLAINT DATABASE, *supra* note 5. For all analyses of consumers disputing, I do not use any data after April 30, 2014 because of a missing data issue. Consumer Response appears to upload complaint data at the time the company responds, not at the time the consumer disputes (or not). This means that for more recent months, consumers have not yet decided whether to dispute, which results in missing data. And even though consumers have only thirty days to dispute, the effect ripples for several months. CFPB COMPREHENSIVE COMPLAINTS SNAPSHOT, *supra* note 43, at 33. Part of the reason for the lag is that companies can select an option that allows them to take up to sixty days to process a complaint. CFPB COMPANY MANUAL, *supra* note 44, at 6. This does not explain the multimonth lag, but perhaps the CFPB does not strictly enforce the consumer dispute deadline. The recent consumer dispute missing data percentages are: Sept. 2014, 88%; Aug. 2014, 83.3%; Jul. 2014, 42.3%; Jun. 2014, 10.9%; May 2014, 4.1%. *See* CFPB CONSUMER COMPLAINT DATABASE, *supra* note 5. By April 2014, the missing data rate is down to 2.9%, which is similar to that of the early 2014 months. *Id.* In my August data download, I found the same effect reaching back to February. For the sake of consistency with the tables, I am also excluding data from before June 1, 2012, because the company response options are different before this date. See *supra* note 55. If I include those earlier data, the consumer dispute rate is: yes (21.0%); no (77.5%); and missing (1.5%).

187. Approximately 1.4% of these values were missing. See *infra* Table 4.

188. *See* Porter, *supra* note 84, at 73–74.

TABLE 4. CONSUMER DISPUTE BY COMPANY RESPONSE

	Relief Granted	*Explanation Provided*	*No Relief or Explanation*	*Total*
Consumer Disputed	5,110	29,877	1,000	174,095
	13.1%	23.0%	21.4%	20.7%
Consumer Did Not Dispute	33,863	98,301	3,563	135,729
	86.5%	75.6%	76.4%	78.0%
Missing	162	1875	103	2,378
	0.4%	1.4%	2.2%	1.4%
Total	39,135	130,053	4,666	174,095
	100.0%	100.0%	100.0%	100.0%

CFPB Complaint Database, Data Date Range: 06/01/2012[189] – 04/30/2014. Cross tabulation significant at p=.000.

Table 4 provides some evidence that consumers are disputing in accordance with their belief that the outcome was fair, because consumers who obtain relief are significantly less likely to dispute the company's response than other consumers. This relief could be monetary, such as the waiver of a credit card late fee, or it could be non-monetary, such as the removal of a negative item from a credit report.[190] I include both types under "Relief Granted." The third option is providing the consumer with an explanation "tailored to the individual consumer's complaint."[191] Finally, a company may simply designate the case as "closed."[192] The Bureau defines the "closed" response option in the negative, instructing companies that it includes "closing the complaint without relief or explanation, consistent with the above definitions of 'Closed with monetary relief,' 'Closed with non-monetary relief,' and 'Closed with explanation.'"[193] Considering that the "explanation" option encompasses individualized

189. Consumer Response overhauled the company response options on June 1, 2012, and the most frequently selected former category does not scale forward. See *supra* note 55. I ran this cross tabulation with multiple date ranges and each time obtained the same dispute pattern and very similar results. In general, eliminating the 2014 data lowers the missing values level and slightly increases the percentage of consumers who dispute. This suggests that the cases that take longer to process may be more likely to result in consumer disputes or that consumers who dispute may take longer to decide upon a course of action than consumers who do not.

190. CFPB COMPREHENSIVE COMPLAINTS SNAPSHOT, *supra* note 43, at 28.

191. CFPB COMPANY MANUAL, *supra* note 44, at 12.

192. CFPB COMPREHENSIVE COMPLAINTS SNAPSHOT, *supra* note 43, at 28.

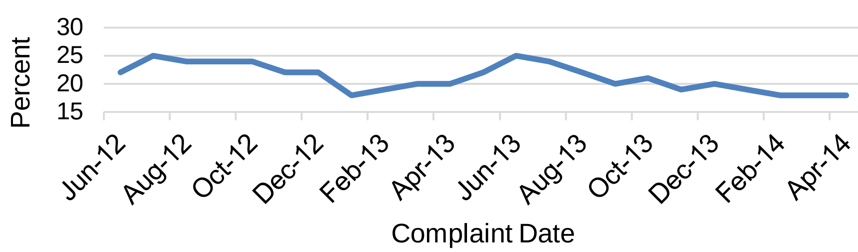
193. CFPB COMPANY MANUAL, *supra* note 44, at 12.

responses, the remaining possibilities for "closed" include generic explanations or nothing at all. One of the Consumer Response officials I interviewed suggested that the "closed" option is reserved for one-off situations, such as when the consumer has previously complained and received a response.[194]

Interestingly, consumers are more likely to dispute when they receive an explanation than when they do not, which could suggest that consumers with "closed" cases are more discouraged than satisfied with the outcome. Moreover, 76.4% of these consumers did not dispute. Consumers with "closed" complaints obtained neither relief nor an individual explanation from the complaint process and so would seem more likely to dispute than those who received detailed explanations. If the perceived fairness level were the main factor driving dispute behavior, we would expect most, if not all, of these consumers to dispute. On the other hand, if many consumers with "closed" complaints had previously obtained responses to prior complaints about the same issues, then it would make sense for this dispute rate to be low.

Another way to analyze consumer satisfaction with company responses is to examine changes over time in the percent of consumers who dispute, and that rate has been falling. See Figure 1.[195] In an interview with the Consumer Response officials, Mr. Pluta made this point, specifically arguing that one factor contributing to the decline in the consumer dispute rate is that companies are providing better explanations, whether with relief or not.[196] He stated that, on average, consumers have contacted the company three times without result before they submit CFPB complaints, so "it may be that all some consumers want is a response."[197]

Figure 1. Decline in Consumers Disputing Company Responses



194. Email from Moira Vahey (Jan. 8, 2015, 18:41 CST), *supra* note 108.

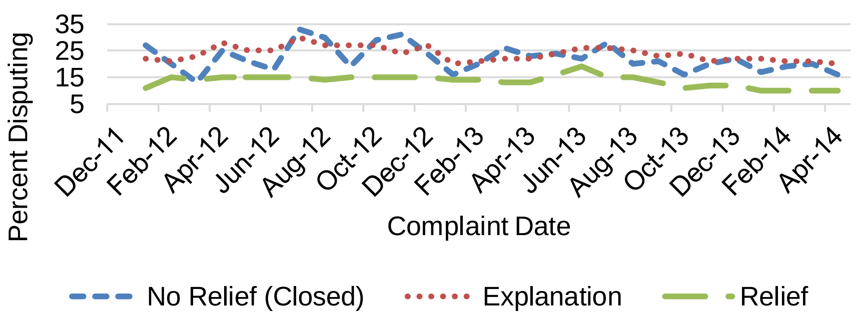
195. In a regression controlling for product and type of relief, the likelihood that a consumer disputed declined in inverse relation to the log odds of the complaint date. The slope was negative .000319, and the standard error was .000031.

196. Telephone Interview with Scott Pluta & Darian Dorsey (Oct. 6, 2014), *supra* note 36. A Deloitte report makes a similar argument. *See CFPB's Consumer Complaint Database Analysis Reveals Valuable Insights*, DELOITTE (Sep. 2013), http://www2.deloitte.com/content/dam/Deloitte/us/Documents/financial-services/us-fsi-cfpb-consumer-complaint-database-091913.pdf.

197. Telephone Interview with Scott Pluta & Darian Dorsey (Oct. 6, 2014), *supra* note 36.

The data in Figure 2, however, could suggest that this explanation may not be correct. The percentage of consumers disputing is declining most steeply for complaints in which the consumer received relief. And while it is not entirely clear from Figure 2, regression analysis shows that the dispute rate for closed cases is declining more rapidly than that for explanation cases. See Table 5. Because the consumers with closed complaints did not receive relief or detailed explanations from the company, company responses are unlikely to have significant influence on that decline.[198] Of course, if the population of "closed" complaint consumers is different than that of the other consumer complainants, then comparing the "closed" complaint dispute rate with those of the other company response options is not meaningful.

Figure 2. Consumer Dispute Rate by Company Response



198. This suggests a few possibilities. The decline could be a random fluctuation that will later change course. Consumer Response may have changed a feature of the consumer dispute process. I have not seen any information about that, but Consumer Response does not publicize the contents of its consumer dispute forms, so it may not have publicized a change.

TABLE 5. CHANGE OVER TIME OF CONSUMER DISPUTE RATE WITHIN COMPANY RESPONSE OPTIONS[199]

	B	*S.E.*	*df*	*Sig.*
Relief	-.000436	.000081	1	.000
Explanation	-.000272	.000035	1	.000
Closed	-.000390	.000200	1	.051

CFPB Complaint Database, Data Date Range: 06/01/2012 – 04/30/2014

IV. THE REGULATORY FUNCTION

A second reason for an agency to process consumer complaints is to use the information it gains from them to inform its regulatory objectives—or more generally, to increase companies' compliance with the law. Here, the Office and the Bureau's practices diverge substantially. The Office had occasional time periods when it used consumer complaints to pursue regulatory goals, but for the most part, it did not seek to change company practices this way. In contrast, the CFPB makes significant use of complaint data in its examinations and other regulatory actions.[200]

A. *Statistics*

A threshold question is whether an agency keeps complaint statistics, especially about topics of regulatory importance.[201] The authors find that the Wisconsin Office kept statistics only sporadically[202] and that the Office's complaint classifications were so vague that any statistics kept would be useless for identifying trends and troubling practices.[203] For example, the authors cite categories such as "claim denied unjustly" and "unfair business methods"[204] that do not provide sufficient detail for analysis. The authors note that one reason

199. This table contains excerpts from three regressions with the database split by company relief category. The dependent variable is whether the consumer disputed. The data reported are for the complaint date. Each coefficient represents the change in dispute rate relative to the log odds of the date. The negative coefficient of relief is the largest, followed by that of closed, leaving the dispute rate for explanation cases to fall the least steeply. It is not surprising that the coefficients are so low when measuring change over the course of days (as opposed to month or years). I controlled for the product about which a consumer was complaining.

200. For the regulatory function, the line between intent and fulfillment is so blurry as to not be useful.

201. Whitford & Kimball, *supra* note 2, at 699–700.

202. *Id.*

203. *Id.* at 684–85.

204. *Id.*

investigators may not have collected statistics is that they did not receive adequate data-processing service.[205]

Forty years later, a lack of data-processing resources is certainly not a constraint the CFPB faces.[206] Consumer Response takes advantage of this fact in two ways. First, it conducts its own data analysis, which informs its public reports.[207] Second, it publishes the CFPB Complaint Database, and outside researchers may use that in ways that ultimately have a regulatory impact. The CFPB almost certainly collects data beyond those that it releases publicly,[208] and as discussed below in Part B of this Section, these internal data appear to be very useful for informing CFPB regulatory functions. For the purpose of comparing the CFPB's collection of data to that of the Office, however, I can evaluate only the information to which I have access. The public complaint database and reports contain a tremendous amount of information, but they may not have the depth that would enable researchers to conduct analyses that lead to policy proposals.

Consumer Response's complaint classifications are significantly more useful than the Office's for developing statistics. The categories are product (e.g., debt collection), sub-product (medical debt collection), issue (taking/threatening illegal action), and sub-issue (seized/attempted to seize property).[209] But because consumers categorize their own complaints, analyzing their narratives to measure the accuracy, or at least consistency, of their classifications would be necessary in order to rely on these data for policy proposals. At the time of data analysis, the database did not include these narrative data,[210] but even now, analyzing them would contain distortions. Consumers choose whether to make their narratives public, and consumers who release their narratives may differ from those who do not. The CFPB is unlikely ever to release all the narratives because doing so would undermine its consumer-protection function by potentially discouraging consumers from complaining. Thus, even going forward, the reliability of the public complaint database will be unclear unless the CFPB conducts and releases its own analysis on this point.

Consumer Response has indicated that some data may be inaccurate in this way. First, when I asked the Consumer Response officials about using this type

205. *Id.* at 685. This is how the authors describe the data-processing deficiency under which the Office operated: "It is not within the competence of either of the authors to evaluate the extent of this problem, but accounts we have heard of the administrative difficulties faced by the Office in changing any of its data processing practices shock these two academics accustomed to the sophisticated, convenient and cheap data processing service available in a major university." *Id.*

206. See *supra* Section II for a discussion of the differences between the complaint-processing systems utilized by the Office and the Bureau.

207. *How We Use Complaint Data*, CONSUMER FINANCIAL PROTECTION BUREAU, http://www.consumerfinance.gov/complaint/data-use/ (last visited Sept. 15, 2015).

208. For example, the CFPB examination process described in Part B of this Section could not use complaint data to analyze the risk that companies are committing regulatory violations if it had access only to the public reports and database.

209. *See* CFPB CONSUMER COMPLAINT DATABASE, *supra* note 5.

210. See *supra* note 73 and accompanying text.

of discrepancy to develop consumer-education materials, Mr. Pluta said that that was an area in which they wanted to see some growth because the data can show them "the delta between what the consumer sees as the product and issue versus what they actually are."[211] However, in my second interview with the officials, Ms. Dorsey stated, "When we've conducted analyses, consumers are pretty good about understanding the issue, subissue, product, and subproduct for their complaints."[212] Second, the Semi-Annual Report covering the second half of 2012 states, "[T]he CFPB's experience to date suggests that consumers may have differing interpretations of what these categories mean. For example, one consumer might choose to categorize a problem as a billing dispute, while another might identify the same issue as a concern with a provider's setting or changing of an interest rate."[213] The report further notes that the Bureau is analyzing data for the purpose of improving these classifications. I have found one instance of such a change. Effective December 18, 2013, two of the student loan issue categories changed from "Repaying your loan" and "Problems when you are unable to pay" to "Can't pay my loan" and "Dealing with my lender or servicer," respectively.[214] The latter categories do seem more specific and easier for consumers to apply, but my review of the public database has not revealed other improvements. For example, I examined the issue options for credit cards[215] over time and there do not appear to be any changes.[216]

Data in public reports also reveal weaknesses in some of these classifications. For example, in Consumer Response's most comprehensive snapshot, covering complaints from July 21, 2011 through June 30, 2014, 45% of consumers selected "other" for type of mortgage.[217] This was the plurality response.[218] The snapshot provides no qualitative data explaining what types of complaints fell in the "other" category.[219] Similarly, 33% of consumers chose "other" for debt collection subproduct, and another 24% chose "I do not

211. Telephone Interview with Scott Pluta & Darian Dorsey (Oct. 6, 2014), *supra* note 36.

212. Telephone Interview with Scott Pluta & Darian Dorsey (Nov. 14, 2014), *supra* note 14.

213. SEMI-ANNUAL REPORT OF THE CONSUMER FINANCIAL PROTECTION BUREAU JULY 1, 2012 – DECEMBER 31, 2012 22 (2013), *available at* http://files.consumerfinance.gov/f/201303_CFPB_SemiAnnualReport_March2013.pdf [hereinafter CFPB SEMI-ANNUAL REPORT FALL 2012]. This quotation appears to refer to credit card complaints.

214. CFPB COMPREHENSIVE COMPLAINTS SNAPSHOT, *supra* note 43, at 23 n.13.

215. I chose credit cards because Consumer Response has been taking complaints about them for the longest period of time. *Id.* at 3.

216. CFPB CONSUMER COMPLAINT DATABASE, *supra* note 5. I looked for categories in which there were no complaints in the early months (because Consumer Response may not yet have added that option). The only one I found was that there were no "cash advance" complaints during the first month, December 2011, but there are other months during which that option received no complaints, and its monthly complaint numbers are usually in the single digits. *See id.*

217. CFPB COMPREHENSIVE COMPLAINTS SNAPSHOT, *supra* note 43, at 11 fig.3.

218. *Id.*

219. *See id.*

know,"[220] meaning that more than half of complaints fall under noninformative categories. There is no narrative discussing this chart either.[221]

These two examples reveal another weakness, which is that there is a lack of depth to the publicly available data. In its reports and snapshots, Consumer Response often follows its quantitative data with qualitative narratives, but this practice is inconsistent,[222] and the narratives tend to be brief.[223] Similarly, despite containing nearly 300,000 observations at the time I downloaded it,[224] the database contains only thirteen substantive variables, which means that there are almost certainly missing variables in any regression.[225]

This analysis, however, almost certainly does not reflect the quality of statistics the Bureau uses to inform its regulatory functions. The CFPB must analyze internally the narratives consumers submit. Otherwise, its complaints findings would not be useful in the rigorous examination process described in Part B of this Section.

B. Regulatory Actions

The contrast between the two agencies is at its greatest here, probably due to the CFPB's advantages of having a statutory mandate and improved technology.[226] In the fifty-year period that Whitford and Kimball studied, the Office used complaint data for regulatory purposes only three times.[227] First, there was a period from 1919 through 1923 in which the Office took regulatory positions on company practices. Companies frequently challenged the Office's authority, because the Office had no statutory authority even to process consumer complaints, much less to take positions regarding concerns they

220. *Id.* at 14 fig.5. That nearly a quarter of responses are "I don't know" is reasonable, because debt collectors frequently refuse to provide the name of the original creditor. The Fair Debt Collection Practices Act requires the debt collector to provide the name of the original creditor only if the debtor sends the debt collector a written request for the information, and does so within thirty days of the collector's initial communication. 15 U.S.C. § 1692g(a)(2) (2012).

221. *See* CFPB COMPREHENSIVE COMPLAINTS SNAPSHOT, *supra* note 43, at 14–15.

222. *See, e.g.*, *id.* (providing no qualitative narrative for figure 5 but providing one for figure 6).

223. *See, e.g.*, *id.* at 19.

224. See *supra* notes 5 and 186.

225. I have added estimated demographic variables by using Census ZCTA data. See *supra* notes 124–27 and accompanying text.

226. Even though most of the CFPB work here takes place outside the Consumer Response Division, and thus I do not have employment numbers, it is my understanding Consumer Response conducts the analysis of complaints data before passing it on to the other divisions. I arrived at this understanding from Mr. Pluta's reference to the Supervision and Enforcement Division as a "client." Telephone Interview with Scott Pluta & Darian Dorsey (Oct. 6, 2014), *supra* note 36.

227. The Office was more aggressive in investigating and developing regulatory solutions for agent misconduct, but those complaints were usually filed by other agents rather than consumers, at least when the Office took them seriously. Whitford & Kimball, *supra* note 2, at 694–95. This is more analogous to the CFPB's whistleblower program than consumer complaints. *See* Kent Markus, *The CFPB Wants You to Blow the Whistle on Lawbreakers*, CONSUMER FIN. PROT. BUREAU BLOG (Dec. 15, 2011), http://www.consumerfinance.gov/blog/the-cfpb-wants-you-to-blow-the-whistle-on-lawbreakers/.

raised.[228] After that, the Office settled into a long stretch in which investigators rarely challenged companies.[229] There was one major exception during the 1940s and 1950s, but it applied to a single company whose complaint levels and refusal to address them were extreme.[230] Finally, in the early 1970s—possibly because of the influence of the consumer movement[231]—the Office began including complaints in its examination process and consulted the Complaints Section for input regarding an important rule.[232] Whitford and Kimball published *Why Process Complaints?*[233] in 1974, so it is unclear whether the Office's newfound regulatory commitment was a trend or an interlude. Over the period of the study, the authors conclude that the Office was constrained by a lack of resources but that it could have made small changes that would have enhanced its regulatory effectiveness.[234]

In significant contrast, the CFPB not only has a statute that requires it to process complaints, but also has explicit authority to use complaint data when making certain regulatory decisions.[235] For example, within its rulemaking authority, the CFPB is required to monitor risks to consumers,[236] and one source from which it "may" gather such information is consumer complaints.[237] Similarly, if the CFPB is deciding whether to supervise a non-depository institution not otherwise under its supervisory authority,[238] it is to base this determination "on complaints collected through the system under section 5493(b)(3)[239] of this title or information from other sources."[240] The CFPB has used this authority. The Bureau's examinations make significant use of

228. See *supra* Section II.

229. Whitford & Kimball, *supra* note 2, at 698.

230. *Id.* at 701–02.

231. *See id.* at 644 n.27 ("The consumer movement has significantly affected the Office's self-image and the image others have of it.").

232. *Id.* at 701.

233. *Id.* at 639.

234. *Id.* at 705.

235. *See* 12 U.S.C. § 5534 (2012).

236. *Id.* § 5512(c)(1).

237. *Id.* § 5512(c)(4)(B)(i).

238. All companies providing consumer financial products or services are "covered persons" under the statute. *Id.* § 5481(6). But not all "covered persons" automatically fall under the CFPB's supervisory authority. *See id.* § 5514(a). The Dodd-Frank Act grants the CFPB supervisory authority over all non-depository institutions in the markets for mortgages, private student loans, and payday lending. *Id.* § 5514(a)(1)(A), (D), (E). To supervise other non-depository institutions, the Bureau must find them to be "larger participants" in a consumer-finance market or find that their business poses risks to consumers. *Id.* § 5514(a)(1)(B) & (C). The Bureau also uses consumer complaints in determining the order of risk priority for examinations of non-depository consumer financial service companies, although complaints are one of many sources of information used in this analysis. CFPB EXAMINATION MANUAL, *supra* note 32, at 16.

239. This section establishes the consumer complaint process.

240. 12 U.S.C. § 5514(a)(1)(C). Another statutory example is that the CFPB must share complaints with other federal agencies and vice versa in order to facilitate, inter alia, "supervision and enforcement activities, and monitoring of the market for consumer financial products and services." *Id.* § 5493(b)(3)(D).

complaints in meeting regulatory objectives. And while the public information about the CFPB's rulemaking, enforcement actions, and lawsuits makes these functions appear to be less complaints-driven, the Bureau almost certainly privately uses complaint data in these contexts.

This analysis has an important caveat, which is that the CFPB has access to multiple data sources with which to implement its regulatory objectives, and data such as those obtained via supervision may be of higher quality than complaint data. Consumer complaints are "prone to error and bias in reporting,"[241] although the CFPB does assess for complaint credibility.[242] Moreover, they are not randomly submitted and therefore may not be representative of a company's regulatory violations. A more robust practice than relying solely on complaint data would be for the CFPB to use all the information at its disposal. There are signs that it is doing just that. In a speech Director Richard Cordray gave when introducing the public complaint database, he stated that the Bureau uses complaint data as "leads" in its enforcement work,[243] presumably to be followed by analysis of more reliable data. The CFPB's supervision and examination procedures follow this "use all data" approach and also add a new regulatory dimension: the evaluation of companies' internal processes for managing complaints.

1. Examinations

Examinations are the regulatory function about which the most information on the Bureau's use of complaints is publicly available. The CFPB provides this information in two sources. First is the CFPB Supervision and Examination Manual (Examination Manual),[244] which instructs examiners on how to conduct the process. Second, the Bureau's Supervisory Highlights reports provide public, generalized accounts of its examination activities.[245]

The publicly available information shows that complaint data play an important role in this process. According to both the Examination Manual and *Supervisory Highlights I*, examinations are "data driven."[246] The Examination

241. Daniel Carpenter & Patricia A. uchMcCoy, *Keeping Tabs on Financial Innovation: Product Identifiers in Consumer Financial Regulation*, 18 N.C. BANKING INST. 195, 205 (2013).

242. For example, the CFPB Examination Manual instructs examiners to consider "the context and reliability of complaints." CFPB EXAMINATION MANUAL, *supra* note 32, at 183.

243. Richard Cordray, Director, Consumer Fin. Prot. Bureau, Prepared Remarks of Director Richard Cordray at the Consumer Response Field Hearing (Mar. 28, 2013), http://www.consumerfinance.gov/newsroom/prepared-remarks-of-director-richard-cordray-at-the-consumer-response-field-hearing/.

244. CFPB EXAMINATION MANUAL, *supra* note 32. For an explanation of the difference between supervision and examination, see Braucher & Littwin, *supra* note 67, at 815 n.50.

245. CONSUMER FIN. PROT. BUREAU, CFPB SUPERVISORY HIGHLIGHTS FALL 2012–WINTER 2015, *available at* http://www.consumerfinance.gov/guidance/supervision/manual/#suphighlights.

246. CFPB EXAMINATION MANUAL, *supra* note 32, at 9 ("Data driven" is one of "[t]hree main principles" that "guide the CFPB supervision process." The other two are "[f]ocus on consumers" and "[c]onsistency."); CONSUMER FINANCIAL PROTECTION BUREAU, SUPERVISORY HIGHLIGHTS: FALL 2012, 3 [hereinafter SUPERVISORY HIGHLIGHTS I], *available at* http://files.consumerfinance.gov/f/201210_cfpb_supervisory-highlights-fall-2012.pdf.

Manual frequently cites complaints among the data points examiners are to consider.[247] In addition, each company's process for handling complaints is an important element of compliance management, which is at the heart of the CFPB examination process.[248]

The overarching goal of CFPB examinations is to evaluate the risk of companies failing to comply with their legal obligations regarding consumer protection.[249] Complaint data[250] provide key evidence of these risks, and a company's compliance management system—of which its internal complaints-processing system is an important component[251]—is the process by which

247. For example, among examiners' "basic monitoring activities" is reviewing twelve types of data which include consumer complaints. CFPB EXAMINATION MANUAL, *supra* note 32, at 17. Another example is that during pre-examination planning, examiners are instructed to gather information from many sources including "[c]omplaint information (internal, state, CFPB, other sources)." *Id.* at 19. A third example is that the "Compliance Management Review" instructions regarding training directs examiners to "[r]equest and review training developed as a result of management commitments to address . . . issues raised in consumer complaints and inquiries" as well as "monitoring, audit, or examination findings." *Id.* at 41.

248. For example, the CFPB expects a company's compliance management system to be "integrated into the overall framework for product design, delivery, and administration—that is, the entire product and service lifecycle." *Id.* at 34; *see also* SUPERVISORY HIGHLIGHTS I, *supra* note 246, at 2–4; CONSUMER FINANCIAL PROTECTION BUREAU, SUPERVISORY HIGHLIGHTS: SUMMER 2013, 3–5, *available at* http://files.consumerfinance.gov/f/201308_cfpb_supervisory-highlights_august.pdf [hereinafter SUPERVISORY HIGHLIGHTS II]; CONSUMER FINANCIAL PROTECTION BUREAU, SUPERVISORY HIGHLIGHTS: SPRING 2014 3–11, *available at* http://files.consumerfinance.gov/f/201405_cfpb_supervisory-highlights-spring-2014.pdf [hereinafter SUPERVISORY HIGHLIGHTS IV] (all three feature a section on compliance management immediately after the introduction). All six Supervisory Highlights mention compliance management systems (or CMS) throughout. *See, e.g.*, SUPERVISORY HIGHLIGHTS I, *supra* note 246, at 1, 2, 4, 5, 7, 9. *See generally* SUPERVISORY HIGHLIGHTS II; CONSUMER FINANCIAL PROTECTION BUREAU, SUPERVISORY HIGHLIGHTS: WINTER 2013, *available at* http://files.consumerfinance.gov/f/201401_cfpb_supervisory-highlights-winter-2013.pdf [hereinafter SUPERVISORY HIGHLIGHTS III]; SUPERVISORY HIGHLIGHTS IV; CONSUMER FINANCIAL PROTECTION BUREAU, SUPERVISORY HIGHLIGHTS: SUMMER 2014, *available at* http://files.consumerfinance.gov/f/201409_cfpb_supervisory-highlights_auto-lending_summer-2014.pdf [hereinafter SUPERVISORY HIGHLIGHTS V]; CONSUMER FINANCIAL PROTECTION BUREAU, SUPERVISORY HIGHLIGHTS: FALL 2014, *available at* http://files.consumerfinance.gov/f/201410_cfpb_supervisory-highlights_fall-2014.pdf [hereinafter SUPERVISORY HIGHLIGHTS VI].

249. The short paragraph that describes the process's "[f]ocus on consumers," the first of three "main principles guide the CFPB supervision process," concludes thus: "As we conduct our reviews, we will focus on an institution's ability to detect, prevent, and correct practices that present a significant risk of violating the law and causing consumer harm." CFPB EXAMINATION MANUAL, *supra* note 32, at 9.

250. My reading of the Examination Manual is that, unless otherwise specified, it is referring to all consumer complaints, regardless of whether a given consumer originally filed it with the company, the CFPB, or another regulatory body. For example, in the "Consumer Complaint Response" subsection of examiners' "Compliance Management Review" instructions, the first of six "examination objectives" is to evaluate whether "consumer complaints and inquiries, *regardless of where submitted*, are appropriately recorded and categorized." *Id.* at 43 (emphasis added). Similarly, in this same subsection, steps one, three, and five of "examination procedures" involve obtaining complaints data from the CFPB, other regulators, and the company, respectively. *Id.* at 43–44.

251. For example, the Examination Manual states: "How the entity handles complaints is . . . a key element in evaluating its compliance management system." *Id.* at 21. It additionally characterizes

companies are expected to manage risks of this type.[252] The fact that the CFPB is evaluating how well companies handle complaints demonstrates a strong regulatory commitment because this approach incentivizes companies to address potential regulatory issues on their own, before the CFPB is involved. As the CFPB stated in *Supervisory Highlights I*: "[I]t is best to help financial institutions avoid compliance problems before they start."[253]

The CFPB uses complaint data throughout its examination process. First, these data play an important role in the groundwork examiners lay before an examination, and their use here is explicitly regulatory. The pre-examination risk assessment represents an examination team's preliminary understanding of a company's risk and forms the baseline from which the examination proceeds.[254] When preparing this risk assessment, "examiners should consider both the volume and the nature of consumer complaints received by the entity or by regulatory bodies including the CFPB."[255] Specifically, complaints "may provide indications of potential regulatory violations," although the Examination Manual cautions examiners not to reach specific legal conclusions during this preliminary risk assessment.[256]

The CFPB continues evaluating complaints and companies' complaints processes during the examination itself. In the procedures that apply to all products and statutes under the Bureau's jurisdiction, issues arising from complaints are one of five "[e]xamination activities to be undertaken to review."[257] The CFPB is using complaints for the regulatory purposes of evaluating a given company's consumer response procedures[258] and determining whether those procedures effectively address potential legal violations.

---

responding to consumer complaints as one of four "interdependent control components" commonly found in "an effective compliance management system." *Id.* at 35. The other three are "[b]oard and management oversight; compliance program; [and] . . . compliance audit." *Id.* As a result of this designation, "Consumer Complaint Response" has its own subsection within the Examination Manual's "Compliance Management Review" section on examination procedures. *Id.* at 43–44. Each of the other three domains have a subsection as well. *Id.* at 36–46.

252. For examples, see the following three quotations. "To maintain legal compliance, a supervised entity must develop and maintain a sound compliance management system . . . ." *Id.* at 34. "Weaknesses in compliance management systems can result in violations of law or regulation and associated harm to consumers." *Id.* "However compliance is managed, a provider of consumer financial products or services under CFPB's supervisory purview is expected to comply with Federal consumer financial laws and appropriately address and prevent violations of law and associated harms to consumers through its compliance management process." *Id.*

253. SUPERVISORY HIGHLIGHTS I, *supra* note 2466, at 2.

254. CFPB EXAMINATION MANUAL, *supra* note 32, at 21–23. The risk assessment is the first of two components of the initial "Scope Summary," which provides "a central point of reference throughout the examination." *Id.* at 22–23. The Scope Summary's second component is "[e]xamination activities to be undertaken to review." *Id.* at 23.

255. *Id.* at 21.

256. *Id.*

257. *Id.* at 23.

258. The Examination Manual instructs examiners to "[r]equest and review from the institution being examined its policies and procedures for receiving, escalating, and resolving consumer complaints and inquiries." *Id.* at 44.

Examiners are instructed to identify complaints alleging "deception, unfair treatment, unlawful discrimination, or other significant consumer injury" as well as other legal violations and to review the company's handling of them.[259]

The remainder of the Examination Manual covers specific products, such as credit cards or credit reporting, and specific statutes for which the CFPB has regulatory authority. Complaints continue to be a major theme here as well. For example, the section on mortgage servicing has nine "modules," or topics, to cover,[260] and all but one refer to evaluating complaints as a method for determining a company's risk.[261] The remaining module covers companies' handing of complaints.[262] Similarly, the section on credit reporting includes procedures for grading companies' handing of CFPB complaints[263] as well as complaints submitted directly to the companies.[264] For short-term, small-dollar lending, the Examination Manual instructs examiners to evaluate whether companies "have procedures in place to ensure that inquiries and complaints concerning reported data are appropriately resolved in accordance with FCRA requirements."[265] And within mortgage origination, the Examination Manual specifies three instances in which examiners are to interview consumers if complaints raise concerns.[266] Finally, the statute-specific material in the Examination Manual contains a subsection on using consumer complaints to identify "Unfair, Deceptive, or Abusive Acts or Practices" under the Dodd-Frank Act.[267] Complaints are otherwise mentioned more than a dozen times.[268]

Because examinations are confidential,[269] we cannot know the degree to which the CFPB is following its Examination Manual procedures, but the Supervisory Highlights provide strong evidence that the Bureau's examinations are rigorous.[270] One goal of the Supervisory Highlights series is to provide examination transparency without compromising the confidentiality[271] necessary to conducting successful examinations.[272] And these reports indicate that the

259. *Id.*

260. Module topics include Servicing Transfers, Loan Ownership Transfers, and Escrow Disclosures; Credit Reporting; and Collections and Accounts in Bankruptcy. *Id.* at 131, 144, 146.

261. *Id.* at 131–54.

262. *Id.* at 140.

263. *Id.* at 176.

264. *Id.* at 175.

265. *Id.* at 171.

266. *Id.* at 115 (General Considerations), 116–17 (Loan Disclosure and Terms), 124 (Closing).

267. *Id.* at 182–83.

268. *See, e.g.*, *id.* at 201, 230, 248, 250–54, 271, 285, 306, 647, 663, 714, 717, 779, 822, 864, 869, 872.

269. *Id.* at 11 (noting that "[t]he CFPB considers all supervisory information, including examination reports and ratings, highly confidential").

270. For a more detailed discussion, see Braucher & Littwin, *supra* note 67.

271. The Bureau preserves confidentiality by not releasing company names unless the company's legal compliance issues rise to the level of meriting a public enforcement action. *Compare* SUPERVISORY HIGHLIGHTS I, *supra* note 246, at 11–13 (referring to violators in nonpublic supervisory actions only as "a financial institution"), *with id.* at 7–9 (naming the three entities against which the CFPB had taken public enforcement actions).

272. SUPERVISORY HIGHLIGHTS I, *supra* note 246, at 2–3.

Bureau is conducting thorough examinations. For example, the first Bureau action *Supervisory Highlights I* describes is the issuance of a general directive requiring companies to create or implement more effective compliance management systems, both for themselves and for any third-party service providers they use.[273] The Bureau has also brought and settled seventeen public enforcement actions, which appear to have grown out of the examination process.[274] And even for nonpublic enforcement actions, the Supervisory Highlights provide information about company legal violations and the corresponding CFPB-mandated corrective actions,[275] some of which include monetary restitution to consumers.[276]

2. Other Regulatory Activity

There is little public information about the CFPB's use of complaint data in other regulatory contexts, such as enforcement or rulemaking. However, a Consumer Response representative told me that the Rule Making,[277] Enforcement, and Fair Lending teams frequently use complaints to inform their work and develop cases.[278]

One of the only public instances in which the Bureau documented using complaint data in these contexts was its first enforcement action. The CFPB used complaint data as leads and followed up with data obtained during supervision. As the press release accompanying the enforcement action states, "Complaints received by the CFPB indicate – and the Bureau's supervisory experience confirms" that Capital One Bank misled consumers regarding credit card add-on products.[279] The CFPB further increased the regulatory impact of this action by issuing a "compliance bulletin" that put other companies on notice as well.[280]

273. *Id.* at 4–5.

274. *See, e.g.*, *id.* at 7 (three enforcements); SUPERVISORY HIGHLIGHTS II, *supra* note 248, at 17 (one enforcement); SUPERVISORY HIGHLIGHTS III, *supra* note 248, at 3–4 (six enforcements); SUPERVISORY HIGHLIGHTS IV, *supra* note 248, at 3 (one enforcement); SUPERVISORY HIGHLIGHTS V, *supra* note 248, at 4 (one enforcement); SUPERVISORY HIGHLIGHTS VI, *supra* note 248, at 3 (five enforcements).

275. *See, e.g.*, SUPERVISORY HIGHLIGHTS V, *supra* note 248, at 16–17 (describing how indirect auto lenders found to have illegally discriminated against borrowers were given their choice of several compliance mechanism options, and were ordered to remunerate harmed consumers).

276. *See, e.g.*, SUPERVISORY HIGHLIGHTS III, *supra* note 248, at 13 (consumers were given $2.6 million in restitution); SUPERVISORY HIGHLIGHTS IV, *supra* note 248, at 23–24 (nonpublic supervisory actions led to $70 million in remediation); SUPERVISORY HIGHLIGHTS V, *supra* note 247, at 16–17 (indirect auto lenders were directed to pay approximately $56 million in remediation).

277. Email from Moira Vahey, CFPB Spokesperson, to author (Feb. 13, 2015, 14:23 CST) (on file with author).

278. Email from Moira Vahey, CFPB Spokesperson, to author (Feb. 5, 2015, 16:29 CST) (on file with author); Email from Moira Vahey (Jan. 8, 2015, 18:41 CST), *supra* note 108.

279. Press Release, Consumer Financial Protection Bureau, CFPB Probe into Capital One Credit Card Marketing Results in $140 Million Consumer Refund (July 8, 2012), http://www.consumerfinance.gov/newsroom/cfpb-capital-one-probe/.

280. *Id.*

The only other public evidence I found that the CFPB continues to make significant use of complaint data in regulatory matters is that the Bureau's message about the importance of companies managing their complaints is being heard, at least by companies' lawyers. A surprising number of law review articles about complaints to the CFPB are by practicing attorneys advising companies to strengthen their procedures for responding to complaints. For example, the article *Lessons Learned from the First Public CFPB Enforcement Action and Bulletin 2012-06*[281] is written by four lawyers from SNR Denton.[282] The authors advise companies to develop robust complaint-processing procedures to avoid enforcement actions and reputational costs from the public database.[283] Similarly, in *Consumer Financial Protection Bureau's First Major Enforcement Action, and What the $210 Million Settlement Means*, three lawyers from Greenberg Traurig have this advice: "[R]eviewing practices related to consumer complaints should be top priority of entities under the Bureau's reach."[284] And in 'L*eveling the Playing Field': Implications of CFPB Authority over Non-Depository Financial Institutions*, three attorneys at Skadden, Arps, Slate, Meagher & Flom discuss the Capital One enforcement action (as well as two others that do not mention complaints) and warn that "[s]maller institutions will not escape scrutiny. Consumer complaints will drive investigations and rulemaking."[285] I found three additional law review articles in this "genre,"[286] so if they are any indication, the CFPB's regulatory message is having an impact.

V. THE GOOD WILL FUNCTION

Unlike the other two functions, generating good will for an agency does not serve a broader public policy purpose, unless one posits that the agency is itself

281. Sandra D. Hauser, Stephen F.J. Ornstein, Scott D. Samlin & Jerome Walker, *Lessons Learned from the First Public CFPB Enforcement Action and Bulletin 2012-06*, 66 CONSUMER FIN. L. Q. REP. 395, 405 (2012).

282. *Id.* at 395. The firm is now called Dentons. *See* DENTONS, www.dentons.com (last visited Sept. 15, 2015) ("Dentons is the global law firm created by international law firm Salans LLP, Canadian law firm Fraser Milner Casgrain LLP (FMC) and international law firm SNR Denton . . . .").

283. Hauser et al., *supra* note 281, at 404.

284. *See* Laureen E. Galeoto, Karen Y. Bitar & Gil Rudolph, *Consumer Financial Protection Bureau's First Major Enforcement Action, and What the $210 Million Settlement Means*, 129 BANKING L.J. 713, 716 (2012).

285. Joseph L. Barloon, Darren M. Welch & Neepa K. Mehta, *"Leveling the Playing Field": Implications of CFPB Authority over Non-Depository Financial Institutions*, 27 ANTITRUST 71, 73–74, 76 (2013).

286. *See* Benjamin G. Diehl, *Regulatory Scrutiny Increases on Lenders' Collection Practices with Respect to Third Parties and Data Integrity*, 131 BANKING L.J. 143, 147 (2014) ("Oversight of debt buyers should include monitoring their handling of consumer complaints . . . ."); Laureen E. Galeoto, Karen Y. Bitar & Gil Rudolph., *The Consumer Financial Protection Bureau: The New Sheriff in Town*, 129 BANKING L.J. 702, 705 (2012) ("[I]mplementation of compliance with consumer protection laws and a consumer complaint management scheme before Bureau intervention will be key for the days ahead."); Alan S. Kaplinsky, *CFPB Expanded Consumer Complaint Database Raises Concerns*, 67 CONSUMER FIN. L.Q. REP. 189, 189 (2013) ("[I]t would be foolish for banks and other companies to ignore the database. The CFPB has repeatedly stated that it will consider complaints as a basis for deciding who to examine and/or investigate.").

so essential that good feeling among its constituencies becomes important. I am not discounting that possibility. Whitford and Kimball identified three groups from whose good will the Office might benefit: the general public, elected officials, and the insurance companies the Office regulated.[287] The CFPB has similar constituencies, although because it works extensively with other regulatory bodies, I am broadening the "elected officials" group to include them. For the first two groups, there are not clear answers, except that the Office did prioritize complaints referred by elected officials and the CFPB appears not to do so. With both agencies, however, there are interesting company good will effects.

A. The General Public

Although Whitford and Kimball frame this group as the general public, they discuss it in terms of consumers who complain,[288] probably because they are the members of the public with whom the Office interacted on this issue. The authors find evidence of the Office's commitment to consumer good will in the fact that it processed all complaints, regardless of merit, unless it thought that the complainant would not object to a summary disposition.[289] Sending all complaints to the companies is a sign of the good will intent, because sending the meritless ones can serve no purpose besides satisfying the complainant,[290] and the resources consumed by sending them could have been used for another purpose.[291] The authors infer that investigators evaluated the likelihood complainants would accept summary dismissal from the fact that most complaints disposed of this way were submitted by telephone or in person, giving the investigator the opportunity to assess the consumer's state of mind.[292] Many fewer of the complaints submitted by mail met this fate.[293]

Analyzing the fulfillment of the good will function is tricky because it intersects with the "perceived outcome fairness" prong of dispute resolution.[294] Perhaps dispute resolution relates more to people's satisfaction with the outcome of the dispute, while good will would concern opinion about the process as a whole. But a party's evaluation of the outcome is bound to influence satisfaction, and neither the authors nor I have the nuanced data necessary to

287. Whitford & Kimball, *supra* note 2, at 670.

288. *Id.* at 671 ("If the main concern of the Office were to enhance good will, it would [help] . . . as many complainants as possible . . . .").

289. *Id.* at 671–72.

290. *Id.* at 671. And a company might very well grant the consumer relief in order to preserve good will. The authors suggest that at least some of the 18% of "adjusted but company not at fault" cases fell into this category. *Id.* at 664.

291. *Id.* at 672. ("It is difficult to measure the resources the Office could have saved by disposing of [meritless] complaints summarily . . . . But *some* resources could have been saved and devoted to other purposes . . . .").

292. *Id.*

293. *Id.* The authors note that, after 1970, the Office began disposing of more complaints summarily. *Id.* at 672 n.104.

294. See *supra* Section III.

flesh out this distinction. The only evidence the authors find of whether the Office was fulfilling this function is the survey they conducted, which found complainant satisfaction rates in the 60 to 70% range.[295] But the authors are not sure that these numbers are meaningful, because the dissatisfied consumers felt very strongly; a "fairly common" response was to call the Office an "apologist" for the companies.[296]

The CFPB's *raison d'être* is protecting, serving, and educating consumers,[297] so one would expect a high level of commitment to consumer good will. The CFPB's forwarding policy is similar to the Office's, but it plays out differently as evidence of good will intent because of technological advances. The CFPB sends most complaints it receives to companies (approximately 71%),[298] and the screening it conducts at this point is not based on a legal evaluation of the complaint.[299] However, the CFPB's screening process is largely automated, as is the process of routing complaints to the appropriate company.[300] Thus, it is almost certainly more efficient to forward all the remaining complaints, regardless of whether they describe potential legal violations, than it would be to review each complaint. Modern technology also means that there is probably little marginal cost to sending a complaint to the company. These factors suggest that forwarding a large percentage of complaints is not necessarily evidence of a commitment to consumer good will. On the other hand, Consumer Response does engage in some manual complaint processing, mainly with respect to complaints submitted by mail. For example, when complainants send by postal mail incomplete complaints, Consumer Response writes back and attempts to retrieve the missing information.[301] That is evidence of a good will commitment.

I have no information about consumer satisfaction with the complaint process as a whole. The data presented earlier on the percentages of consumers who dispute company responses[302] do not reflect consumer satisfaction with Consumer Response's process, only with the dispute outcome—and not even the final outcome at that. And as mentioned earlier, I do not think a complainant survey like the one the authors conducted would be possible today.[303]

295. Whitford & Kimball, *supra* note 2, at 673.

296. *Id.*

297. *See, e.g.*, *About Us*, CONSUMER FIN. PROT. BUREAU, http://www.consumerfinance.gov/everyone-has-a-story/ (last visited Sept. 15, 2015) ("Our mission is to make markets for consumer financial products and services work for Americans . . . .").

298. CFPB COMPREHENSIVE COMPLAINTS SNAPSHOT, *supra* note 43, at 28.

299. It screens complaints for factors such as whether the complaint falls within the CFPB's jurisdiction, is complete or is a duplicate as well as whether the complainant has a commercial relationship with the financial institution. *Id.* at 8.

300. Telephone Interview with Scott Pluta & Darian Dorsey (Nov. 14, 2014), *supra* note 14.

301. *Id.* Because complainants using postal mail are more likely to be unsophisticated than those complaining via the Internet, this additional attention to mailed complaints is also evidence of a commitment to dispute resolution.

302. See *supra* Section III.

303. See *supra* notes 76–79 and accompanying text for a discussion of the difficulties associated with conducting such a survey.

B. Government Actors

Administrative agencies have many reasons to generate good will among elected officials and other government actors. Beyond the obvious factors such as appropriations[304] and job security,[305] there are more subtle reasons such as having good working relationships and accumulating good will for future agency needs.

The Wisconsin Office did favor complaints referred by legislators. Whitford and Kimball learned that investigators gave these complaints expedited treatment and informed companies of the legislator's interest. Not surprisingly, Office personnel thought that companies were more likely to adjust their initial decisions in these cases.[306]

In addition to impressing elected officials, the CFPB has incentives to generate good will among other regulators, such as the federal prudential administrators, the Federal Trade Commission, state consumer agencies, and the offices of state and federal attorneys general. The Dodd-Frank Act instructs the CFPB to share complaint data with the Federal Trade Commission (FTC), other federal agencies, and state agencies.[307] In addition, the Bureau must coordinate examination schedules with prudential and state banking regulators in order to minimize the burden on companies.[308] Moreover, the CFPB has one particularly strong reason to seek effective relationships with the other federal financial regulators: Their directors sit on the Financial Stability Oversight Council,[309] which can override CFPB regulations in certain circumstances.[310]

Notwithstanding these incentives, the CFPB does not appear to use consumer complaints to generate government good will. Nearly a quarter of complaints the CFPB received from its inception through June of 2014 were referrals,[311] with the vast majority coming from other federal agencies such as the prudential regulators and the FTC.[312] According to one of the Consumer

304. The CFPB's budget is tied to that of the Board of Governors of the Federal Reserve's. Twelve percent of the Board's funding must go to the CFPB. 12 U.S.C. § 5497(a)(2)(A)(iii) (2010). However, recent Republican budgets have proposed cutting the CFPB's budget significantly. *See, e.g.*, Peter Schroeder, *House Bill Would Cap CFPB Budget*, THE HILL (Feb. 4, 2015, 6:21 PM EST), http://thehill.com/policy/finance/231783-house-bill-would-cap-cfpb-budget (observing that a bill sponsored by a Republican and passed by the House on Feb. 4, 2015 "would cap CFPB funding at $550 million—$36 million less than the Congressional Budget Office estimated the CFPB would spend in fiscal 2016").

305. The Wisconsin Commissioner of Insurance needed reappointment by the legislature. Whitford & Kimball, *supra* note 2, at 644 n.27.

306. *Id.* at 672. The authors acknowledge that they are unable to verify these statements but that they have no reason to doubt them, because "special concern for legislator interest is typical of administrative agencies . . . ." *Id.*

307. 12 U.S.C. § 5493(b)(3)(D) (2012).

308. *Id.* § 5514(b)(3).

309. The CFPB's director does so as well. *Id.* § 5513.

310. *Id.*

311. CFPB COMPREHENSIVE COMPLAINTS SNAPSHOT, *supra* note 43, at 11.

312. Telephone Interview with Scott Pluta & Darian Dorsey (Nov. 14, 2014), *supra* note 14.

Response officials I interviewed, complaints that these agencies refer are submitted "almost to the exclusion of" other referrals.[313] This is not surprising because consumers may not know which agency is the correct one for a particular matter.[314] Some evidence for consumer confusion is that the CFPB refers 18% of the complaints it receives to other regulatory agencies.[315]

According to the Consumer Response officials I interviewed, congressional offices and the White House submit some referred complaints, although not nearly as many as the federal administrative agencies do.[316] Consumer Response provides a congressional portal through which legislative officials can view status updates.[317] But portals like this are not unique to Congress. Consumer Response has established them for consumer complainants[318] as well as the companies that are the subject of complaints.[319] And aside from the portal, the Consumer Response officials stated that they "handle congressional complaints like any other complaint."[320]

The CFPB Complaint Database provides support for these assertions. See Table 6. Referral cases do not appear to have better outcomes than others. They have neither the lowest rates of cases closed without relief or explanation nor the highest rates of cases with relief. In fact, they are in the middle of both spectrums. Companies do not appear to be responding to referral cases more quickly or carefully either. These cases have the same timely response rate as the average, although companies have incentives to respond to all cases on time.[321] And there is nothing unusual about the referred complaints' percentage of cases with the "in progress" status. Companies can select this option to provide themselves with sixty days to resolve the complaint[322] (so they might do so when they want to treat cases with more care), but they do not appear to be exercising this option more frequently when complaints are referred.

313. *Id.* (quoting Darian Dorsey).

314. *See* Bar-Gill & Warren, *supra* note 24, at 99–100 (noting that, before the CARD Act, financial product regulation followed the providers, rather than the products).

315. CFPB COMPREHENSIVE COMPLAINTS SNAPSHOT, *supra* note 43, at 28 n.14.

316. Telephone Interview with Scott Pluta & Darian Dorsey (Nov. 14, 2014), *supra* note 14.

317. *Id.*

318. *Submit a Complaint*, CONSUMER FINANCIAL PROTECTION BUREAU, http://www.consumerfinance.gov/complaint/ (last visited Sept. 15, 2015).

319. CFPB COMPANY MANUAL, *supra* note 44, at 1.

320. Telephone Interview with Scott Pluta & Darian Dorsey (Nov. 4, 2014), *supra* note 14 (quoting Scott Pluta).

321. See *supra* Section II.

322. CFPB COMPANY MANUAL, *supra* note 44, at 6.

TABLE 6. COMPANY RESPONSE BY SUBMISSION METHOD

	Email	Fax	Phone	Postal Mail	Referral	Web	Total
Relief	60 18.2%	750 15.9%	4,994 21.2%	4,404 21.4%	15,342 20.7%	39,182 22.8%	64,732 21.9%
Explanation	193 58.7%	3,704 78.3%	16,096 68.3%	14,844 72.0%	48,959 65.9%	117,933 68.8%	201,729 68.4%
Closed (current)	11 3.3%	104 2.2%	671 2.8%	460 2.2%	2149 2.9%	3659 2.1%	7054 2.4%
Closed[323] *(former)*	61 18.5%	121 2.6%	1,632 6.9%	599 2.9%	7,160 9.6%	8,344 4.9%	17,917 6.1%
In Progress	0 0.0%	41 0.9%	128 0.5%	264 1.3%	411 0.6%	1,814 1.1%	2,658 0.9%
No Timely Response	4 1.2%	10 0.2%	60 0.3%	41 0.2%	223 0.3%	560 0.3%	898 0.3%
Total	329 100.0%	4,730 100.0%	23,581 100.0%	20,612 100.0%	74,244 100.0%	171,492 100.0%	294,988 100.0%

CFPB Complaint Database, Data Date Range: 7/1/2011 – 10/4/2014

C. *Companies*

It may seem counterintuitive that a consumer complaints process could generate good will for an agency among the companies about which consumers are complaining. Yet Whitford and Kimball found that companies obtained two benefits.[324] First, many of the company officials the authors interviewed thought that the complaints process helped them by "legitimizing company action,"[325] with one company going so far as to recommend that a consumer file a complaint against it.[326] Second, several agents described suggesting consumers file complaints when their claims were denied.[327] This could be a "win/win" for an agent because when consumers were successful with a complaint to the Office, they would be grateful to the agent; when they were not, that would validate the agent's inability to obtain relief for them earlier.[328]

In today's environment of script-based customer service, it is unlikely that company representatives would refer consumers to the CFPB complaints process

323. Consumer Response eliminated this company response option on June 1, 2012. CFPB SEMI-ANNUAL REPORT FALL 2012, *supra* note 213, at 33 n.16. It used to cover non-monetary relief, explanation and no relief. *Id.* at 19.

324. Whitford & Kimball, *supra* note 2, at 672.

325. *Id.* at 672–73.

326. *Id.* at 673.

327. *Id.*

328. *Id.* at 670.

and its associated public database. This is especially true because the Bureau includes company names in the complaints database and considers complaint volume in decisions such as which companies to prioritize for supervision.[329] However, the complaints process may still be serving a legitimizing function for companies.

As mentioned earlier,[330] in the spring of 2012,[331] Consumer Response changed the company response options. The decision was "[b]ased on industry comments received about disclosure of credit card . . . data."[332] When the CFPB proposed making the complaint database public, companies and their trade associations objected strongly, challenging the proposal on grounds ranging from a lack of authorization under the Dodd-Frank Act to concerns about the unverified and unrepresentative nature of the complaints.[333] For the most part, the Bureau responded by explaining why it disagreed with the companies and trade associations.[334] But in the case of the company response options, the CFPB made changes. These changes made sense because the earlier response categories were misleading. Prior to the spring of 2012,[335] companies' response

329. See *supra* Section IV.

330. See *supra* note 55 for a comparison of the company response selections available in 2011 with those available in 2012.

331. CFPB reports characterize this change as occurring on June 1, 2012. CONSUMER RESPONSE ANNUAL REPORT 2012, *supra* note 55, at 23–24; SEMI-ANNUAL REPORT OF THE CONSUMER FINANCIAL PROTECTION BUREAU JANUARY 1 – JUNE 30, 2012, at 22 (2012) [hereinafter SEMI-ANNUAL REPORT OF THE CFPB WINTER/ SPRING 2012], *available at* http://files.consumerfinance.gov/f/201207_cfpb_Semi-Annual_Report.pdf. However, according to my database analysis, the new categories were phased in earlier in the spring and at least by May 2012, even if the old ones were not completely phased out until that June. For example, in May 2012, companies made use of the three new categories in the following percentages of their responses: closed with monetary relief, 7%; closed with non-monetary relief, 12%, and closed, 2%. CFPB CONSUMER COMPLAINT DATABASE, *supra* note 5.

332. CONSUMER RESPONSE ANNUAL REPORT 2012, *supra* note 55; SEMI-ANNUAL REPORT OF THE CFPB WINTER/SPRING 2012, *supra* note 331.

333. Disclosure of Certain Credit Card Complaint Data, 77 Fed. Reg. 37558 (Jun. 22, 2012). The reason that credit card data was the issue is that the Bureau published its proposed Policy Statement on this issue on December 8, 2011. At that time, credit cards complaints were the only ones the Bureau had been accepting for more than a week. The CFPB had been accepting credit card complaints since the day it opened, July 1, 2011, and began accepting mortgage complaints on December 1, 2011. CFPB COMPREHENSIVE COMPLAINTS SNAPSHOT, *supra* note 43, at 3.

334. Disclosure of Certain Credit Card Complaint Data, 77 Fed. Reg. at 37560–63.

335. Actually, from the beginning through November 30, 2011, the CFPB had an entirely different set of company response options, including "full resolution provided," "partial resolution provided," and "no resolution provided." CONSUMER RESPONSE ANNUAL REPORT 2011, *supra* note 55, at 8 n.10. These categories are no longer included in CFPB reports. Expressed in terms of the "second-generation" company response options, the Bureau considered both of the "resolution" responses to fall under "closed with relief" and the "no resolution" response to fall under "closed without relief." *Id.* This first categorization overhaul is probably why the public database begins on December 1, 2011. *See* CFPB CONSUMER COMPLAINT DATABASE, *supra* note 5. I draw this inference because the database initially dated back only to June 1, 2012, when the current company response categories came into effect. *See* Disclosure of Certain Credit Card Complaint Data, 77 Fed. Reg. at 37759.

choices were "closed with relief" and "closed without relief."[336] "Closed with relief" included only monetary relief,[337] while "closed without relief" included not only no-relief responses, but also explanations[338] and non-monetary relief.[339] So it is not surprising that the companies objected and that the CFPB listened.

More interesting is what happened next. First, "closed without relief" was not modified to exclude non-monetary relief and explanations. Rather, a new "closed" category was introduced.[340] "Closed" sounds significantly less negative than "closed without relief," so the change may legitimize company responses that provide the consumer with very little. However, if many of the "closed" case consumers were repeat complainants who had previously received responses, then that considerably weakens the argument for a company-legitimization effect. It may, instead, provide legitimization for those particular consumers. Instead of labeling these complaints as problematic, Consumer Response uses the value-neutral term "closed" to describe them.

336. CONSUMER RESPONSE ANNUAL REPORT 2011, *supra* note 55, at 8.

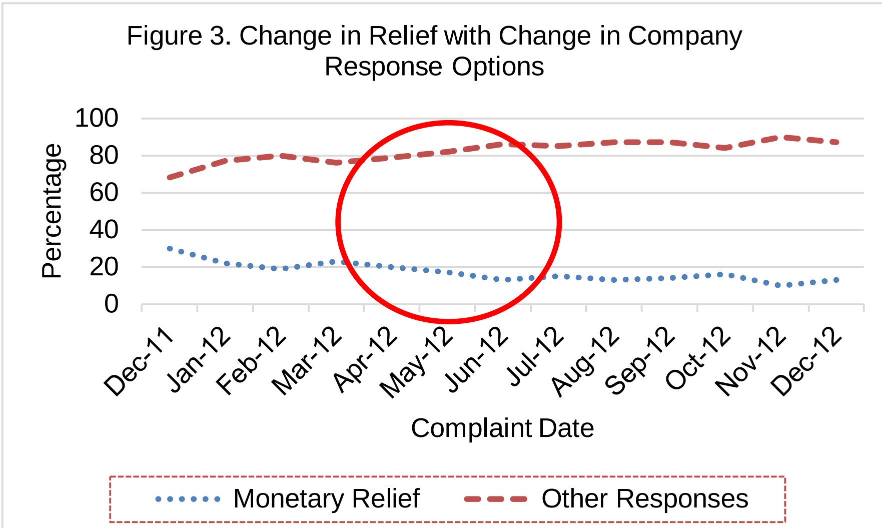
337. *Id.*

338. CONSUMER RESPONSE ANNUAL REPORT 2012, *supra* note 55, at 25 n.14 (stating that "responses categorized as . . . 'closed without relief' are . . . [now] categorized as 'closed with explanation'").

339. CONSUMER RESPONSE ANNUAL REPORT 2011, *supra* note 55, at 8 (noting "'[c]losed without relief' indicates that the steps taken by the company in response to the complaint did not result in monetary value to the consumer . . . but may have addressed some or all of the consumer's complaint involving non-monetary requests").

340. CONSUMER RESPONSE ANNUAL REPORT 2012, *supra* note 55, at 24.

Second, under the cover of the category changes, companies reduced the amount of monetary relief—and possibly the amount of total relief—they provided. Figure 3 shows the decrease in monetary relief and increase in all other responses that occurred as the company response options were shifting. The time period of change is circled.



CFPB Complaint Database, Data Date Range: 12/01/2011 – 12/31/2012.

It was important to test this finding in a regression because different products had different complaint-handling rollout dates[341] and have different company response profiles. For example, credit reporting agencies have lower rates of monetary relief and higher rates of non-monetary relief than other products,[342] which is not surprising considering that the vast majority of complaints about them involve disputed items on a credit report.[343] And mortgagees appear to grant relief less frequently than other companies.[344] The finding that monetary relief decreased across 2012 holds in a regression that controls for the products about which the Bureau was taking complaints at that time. See Table 7.

341. CFPB COMPREHENSIVE COMPLAINTS SNAPSHOT, *supra* note 43, at 1–2 (providing a timeline for when the CFPB began accepting complaints about the various products and services under its authority).

342. *See* CFPB CONSUMER COMPLAINT DATABASE, *supra* note 5.

343. *See* CFPB COMPREHENSIVE COMPLAINTS SNAPSHOT, *supra* note 43, at 16 fig.7.

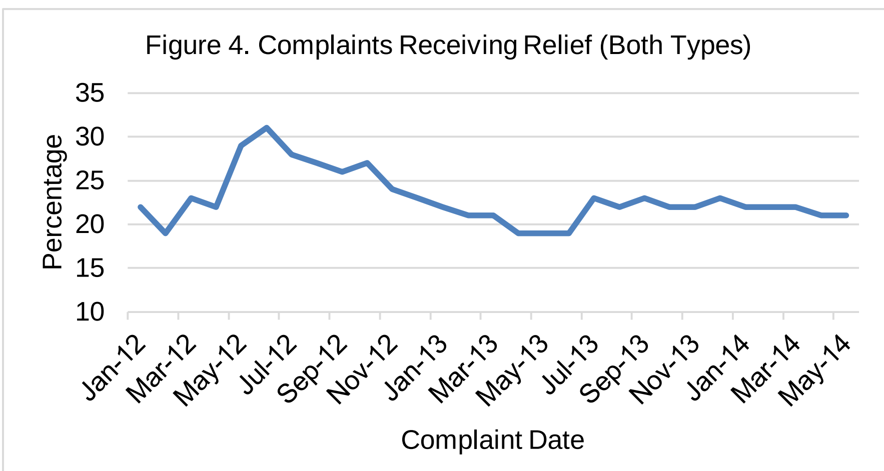
344. *CFPB's Consumer Complaint Database Analysis Reveals Valuable Insights*, *supra* note 1966. *See also* CFPB CONSUMER COMPLAINT DATABASE, *supra* note 5.

TABLE 7. DECREASE IN MONETARY RELIEF WITH CHANGE IN RESPONSE OPTIONS

	B	*S.E.*	*df*	*Sig.*
Complaint Date	-.003097	.000143	1	.000
Credit Card	1.632	.078	1	.000
Mortgage	-.227	.079	1	.004
Consumer Loan	.704	.106	1	.000
Bank Account	1.682	.079	1	.000
Credit Report	-2.501	.713	1	.000
Constant	124.748	5.890	1	.000

CFPB Complaint Database, Data Date Range: 12/01/2011 – 12/31/2012.
Dependent variable: Monetary Relief.

I examined whether an increase in non-monetary relief could explain the increase in other responses, and while the use of that category did increase dramatically when it was introduced, its use decreased over the remainder of 2012. I graphed the changes in total relief over time. See Figure 4. The large jump in the spring of 2012 is almost certainly due to the introduction of the non-monetary relief category. However, because non-monetary relief was previously included under "closed without relief," there may not have been an increase in the real number of non-monetary relief outcomes.



CFPB Complaint Database

Cumulatively, these data suggest that companies who offer consumers relatively little may be receiving legitimacy benefits from the current response labels. As relief resolutions of both types have declined, explanation cases have risen to take their place. In 2013 and 2014, companies provided explanations to approximately three-quarters of complaints.[345] And while an individualized explanation sounds reasonable, consumers are disputing more frequently when they receive tailored explanations than when they receive generic explanations at the most.[346]

VI. CONCLUSION

Forty years after Whitford and Kimball published *Why Process Consumer Complaints?* the need for effective forums for resolving small-dollar consumer claims remains acute.[347] The recent establishment of the CFPB complaint process is a strong potential candidate. Like the Wisconsin Office of the Commissioner of Insurance, the CFPB's "routine complaint processing"[348] has resulted in significant relief for consumers, although the frequency with which companies are granting relief appears to be declining.[349] The authors point to the Office's "substantial leverage" over companies and the bureaucratic nature of the companies' operations as important factors in this success.[350] This leverage existed because companies wanted to remain in the Office's good graces. The argument regarding bureaucratic companies is that a complaint process can find and resolve violations of the bureaucracy's own rules.[351] The CFPB has both of these advantages. Even if companies were tempted to ignore Consumer Response, the Office of Supervision Examinations serves as an important backstop.[352] And the financial services sector has seen significant consolidation in recent years,[353] which almost certainly results in bureaucratic processes.

The key issue with which the authors grapple, however, is the Office's ineffectiveness in handling the harder cases, such as those raising issues of fact or law.[354] Once companies responded, the Office almost never attempted to mediate or "adjudicate" the complaint.[355] The authors repeatedly cite the Office's twin constraints of low staff levels and lack of statutory authority as the reasons why the Office did not go further.[356] But the bigger question is whether an agency should invest the very substantial resources required to provide individualized determinations about complaints. Perhaps the CFPB's approach is correct then: engage in bulk complaint processing and provide individualized

345. See *supra* Table 4.

346. See *supra* Section III.

347. Whitford & Kimball, *supra* note 2, at 712.

348. *Id.*

349. See *supra* Section V.

350. Whitford & Kimball, *supra* note 2, at 713.

351. *Id.*

352. See *supra* Section IV.

353. *See, e.g.*, Odysseas Papadimitriou, *Market Share by Credit Card Issuer*, CARDHUB, http://www.cardhub.com/edu/market-share-by-credit-card-issuer/ (last visited Sept. 15, 2015).

354. Whitford & Kimball, *supra* note 2, at 714.

355. *Id.*

356. *See, e.g.*, *id.* at 714–16.

attention when consumers request it. However, the low consumer dispute rates, especially among "closed" cases, suggest that factors such as discouragement or lack of wherewithal may influence disputing behavior.[357] And much rides on the user-friendliness of the information and forms Consumer Response provides regarding disputing a company response. The Consumer Response officials I interviewed stated that there was an additional set of factors for determining whether to review a company response, but because they did not reveal those factors, I cannot evaluate them.[358] A reasonable process might consist of randomized spot checks combined with particular attention to companies or practices that fared poorly in recent examinations or the complaint data.

That type of process begins to shade into the regulatory reason for processing consumer complaints. As the authors state, a regulatory commitment can "fulfill a dispute settlement function of a different type, that of preventing potential disputes."[359] And using complaints for regulatory purposes is significantly more cost-effective than resolving them individually.[360] The CFPB's examination procedures regarding complaints,[361] intensive though they may be, almost certainly contain economies of scale when compared with individualized dispute resolution.

Moreover, the regulatory function may be more effective than dispute resolution at deterring illegal company behavior. The low numbers of consumers seeking relief combined with the low damages available under most consumer protection laws means that consumer disputes—individually or in total—will rarely result in penalties steep enough to induce company compliance.[362] This is especially true in a process like the CFPB's, in which some of the relief companies grant is voluntary.[363] Indeed, the weakness of voluntary responses can be seen in the fact that companies in the CFPB Complaint Database are most likely to provide relief when relief costs the least[364]—and hence probably benefits consumers the least. That is why regulatory intervention—either through Consumer Response's automated process for tracking repeat company violations[365] or through the efforts of other CFPB divisions—is crucial.

357. See *supra* Section III.

358. Telephone Interview with Scott Pluta & Darian Dorsey (Oct. 6, 2014), *supra* note 36.

359. Whitford & Kimball, *supra* note 2, at 719.

360. *Id.* at 718 n.240.

361. See *supra* Section IV.

362. William C. Whitford, *Structuring Consumer Protection Legislation to Maximize Effectiveness*, 1981 WIS. L. REV. 1018, 1026, 1029–30; *see also* Braucher & Littwin, *supra* note 67.

363. See *supra* Part III.B.1. Again, I do not know the percentage of relief that is voluntary because the CFPB does not release information about any relief it compels companies to provide. See *supra* notes 65–66 and accompanying text.

364. See *supra* Table 2. Similarly, William Whitford also hypothesized in a 1981 article that companies are most likely to comply with laws when compliance costs the least. Whitford, *supra* note 362, at 1039. This hypothesis is obvious with respect to direct costs of compliance. The key insight concerns what he calls opportunity costs, referring to any substantive redistributive impact of a given law. *Id.* The lower this effect, the more likely companies are to comply. *Id.*

365. *See* Richard Cordray, Director, Consumer Fin. Prot. Bureau, Prepared Remarks by Director Richard Cordray Before the National Association of Attorneys General (Mar. 6, 2012),

Whitford and Kimball argue that the Office could have better fulfilled the regulatory function by keeping statistics and focusing resources on the problems they revealed.[366] They note, however, the Office might need an increase in the number of complaints before this could be truly useful.[367] The CFPB, on the other hand, certainly has the complaint volume. The Bureau makes substantial use of it in examinations and probably in other regulatory contexts as well, despite the lack of public information on the latter point.[368]

Last comes good will. Whitford and Kimball note that it is easy to denigrate this function's importance, but that if an agency's failure to fulfill it were to result in budget cuts or other harms, "the consequences could be severe and unfortunate."[369] Given the lapses in consumer credit oversight leading up to the recent financial crisis,[370] the importance of a federal consumer financial regulator is difficult to overstate. This increases the value of generating good will among the CFPB's constituencies. The publicizing of complaint information in speeches and reports probably increases good will toward the Bureau from government actors and the public. And the CFPB reaching out to consumer intermediaries with a tool that can help the populations they serve must generate public good will. As for the companies, Consumer Response has made certain major decisions in spite of financial companies' vociferous objections. The choice to publish the complaint database with company names[371] and the more recent decision to publish narrative data[372] have been particularly controversial. So if a little whitewashing of the company response options can perhaps generate some company good will, it might be a worthwhile tradeoff.

Finally, it has been inspiring to work with such a thoughtful and thought-provoking article. The questions Whitford and Kimball asked and the insights they develop apply equally well today. The thoroughness and carefulness of their data analyses—they left no piece of information unturned—reinvigorates my commitment to empirical work, as I know Whitford's work has done for others. It is humbling to be continuing his tradition in my own small way.

http://www.consumerfinance.gov/newsroom/prepared-remarks-by-richard-cordray-before-the-national-association-of-attorneys-general/ (discussing the CFPB's "Repeat Offenders Against Military (ROAM) database, which will track completed enforcement actions against companies and individuals who repeatedly scam military personnel").

366. Whitford & Kimball, *supra* note 2, at 719.

367. *Id.*

368. *See supra* Section IV.

369. Whitford & Kimball, *supra* note 2, at 719.

370. *See, e.g.*, Bar-Gill & Warren, *supra* note 24, at 70–95 (discussing why the then-existing oversight structure was incapable of providing adequate consumer protection).

371. Prepared Remarks of Director Richard Cordray at the Consumer Response Field Hearing, *supra* note 243.

372. See *supra* note 73 and accompanying text. The proposal was controversial enough to merit an extension of the comment period. *See* Disclosure of Consumer Complaint Narrative Data, 79 Fed. Reg. 45183, 45184 (Aug. 4, 2014) (extending the original thirty-day comment deadline to sixty days); Disclosure of Consumer Complaint Narrative Data, 79 Fed. Reg. 42765 (July 23, 2014).