



## CFPB Announcement About Online Marketplace Lending: Less Than Meets the Eye

On March 7, the Consumer Financial Protection Bureau (“CFPB”) announced it was accepting consumer complaints regarding online marketplace lenders.<sup>1</sup> From the tone of the early press, this has been perceived by some as a significant new event, with the Bureau finally “taking aim” at marketplace lenders. A closer reading of the bulletin, however, reveals that the CFPB’s announcement may be more show than substance.

### The More Things Change, the More They Stay the Same

For example, the CFPB announced that it is “now” taking complaints regarding online marketplace lenders. In fact, depending on the product offered by a particular lender, the Bureau has been accepting complaints about marketplace lenders for quite some time. This is because the CFPB’s consumer complaint system was built out product-by-product—for example, credit cards,<sup>2</sup> then mortgages,<sup>3</sup> then student loans<sup>4</sup>—and not based on the market delivery channels of those products, such as online versus storefront or bank versus non-bank.

The CFPB’s own press release alludes to the product-by-product structure of the CFPB’s consumer

response system when it states: “[b]ecause marketplace lenders offer several types of consumer loans, a consumer submitting a complaint should select among the different complaint categories for products and services that best apply to their situation. For example, a consumer can select products such as ‘mortgage,’ ‘consumer loan,’ or ‘student loan.’” Given this product-oriented focus, it should not be surprising that consumers were already filing complaints about marketplace lenders before this bulletin, and that those lenders have responded, as confirmed by a review of the CFPB’s consumer complaint database.<sup>5</sup>

So what has changed about the CFPB’s gathering of complaints regarding online marketplace lenders? The answer, in short, is not much. The front page of the CFPB’s complaint webpage doesn’t give the option to select “marketplace lending” as a product type, and there is no direct reference to marketplace lending on that page.<sup>6</sup> There are no references to marketplace lending when a consumer seeks to submit a complaint about a mortgage, auto loan, or student loan. Indeed, other than a single sentence on the “Other Consumer Loan” complaint page, clarifying that marketplace loans are a type of installment loans,<sup>7</sup> there

are no references to marketplace lending or options to select marketplace lending as a complaint type anywhere on the Bureau's complaint portal.

## Key Takeaways

Despite the lack of substance in the CFPB's announcement, the press release and accompanying consumer bulletin do contain some important lessons for businesses that are in or considering entering online marketplace lending.

First, the release signals that the CFPB intends to stake out significant turf regarding this emerging market. Online marketplace lenders have a number of state and federal regulators who may claim jurisdiction over their activity. As a national agency with authority over both banks and non-banks, the CFPB may see itself as best positioned to comprehensively address this market. Its ability to do that, however, is hampered by its current lack of supervisory authority over most non-bank marketplace lenders.

This lack of supervisory authority—which the CFPB recently stated it intends to remedy by passing a larger participant rule regarding installment lending<sup>8</sup>—leaves the Bureau with three principal levers: consumer education, consumer response (i.e., the complaint process), and enforcement. The March 7 release touches on two of these three levers, by providing consumer education and inviting consumer complaints.

Does that mean an onslaught of CFPB enforcement activity specifically targeted at marketplace lenders is close at hand? We think not, based on the CFPB's own lengthy list of near-term priorities set forth in its February 25 blogpost.<sup>9</sup> That document, which outlines nine broad priorities over the next two years, addresses the concept of open-use credit but barely touches on marketplace lending, focusing more on traditional payday lending and related debt collection practices.

Given that the CFPB will be hard pressed to accomplish even these nine identified priorities, we think it unlikely it has the capacity to add a tenth, channel-specific priority at this time. Rather, we expect the CFPB to rely primarily on consumer education and the bully pulpit in the near term while it gathers information about how the market functions. That said, if

the Bureau's priorities touch on your company's consumer lending, you may expect an increased focus, regardless of the channels you use.

Second, the release highlights the CFPB's expectations regarding online lenders' compliance management systems. Advocates for depository institutions have at various times criticized the CFPB for having a double standard when it comes to compliance expectations, permitting a higher tolerance for mistakes when it comes to non-banks. In his statement about marketplace lending, however, Director Cordray made clear that when it comes to consumer lending, the CFPB expects compliance from all lenders, from online startups to large banks.

While not necessarily a cause for alarm, non-bank lending entities should ensure that their compliance programs reasonably fit the size and complexity of their business, and that appropriate consumer protections are in place. For those lenders who have focused on growth, technology, and customer acquisition over legal compliance, the time to add a new priority is now. Because while we do not expect sweeping enforcement activity in the near term, the CFPB may look for an outlier in the market to make an example of and signal its enforcement presence.

Third, the CFPB's announcement may be seen as an intentional effort to encourage consumers to complain about their experiences with the online marketplace lending industry. Regardless of whether the CFPB uses these complaints to generate enforcement leads, if the Bureau is successful in drawing a substantial number of complaints, it will be significant to market participants. The CFPB's complaint database, which contains unverified and anonymous complaints, is searchable by other regulators and by the plaintiffs' bar, who may consider the information useful in their own efforts.

Further, given the competitive nature of the marketplace, the reputational impact of these complaints can have serious consequences on individual companies and potentially the entire fledgling industry. Marketplace lenders need to understand the Bureau's complaint system and figure out how to limit any negative impact both by heading off complaints before they enter the system and dealing with them effectively once they have been made.

While the CFPB's marketplace lending announcement is not really anything new, market participants should not be complacent but should instead use this time to build out or fine-tune their compliance functions in preparation for increased CFPB interest down the road.

## Lawyer Contacts

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our "Contact Us" form, which can be found at [www.jonesday.com/contactus/](http://www.jonesday.com/contactus/).

### C. Hunter Wiggins

Chicago / Washington  
+1.312.269.1554 / +1.202.879.7656  
[hwiggins@jonesday.com](mailto:hwiggins@jonesday.com)

### Lisa M. Ledbetter

Washington  
+1.202.879.3933  
[lledbetter@jonesday.com](mailto:lledbetter@jonesday.com)

### Albert J. Rota

Dallas  
+1.214.969.3698  
[ajrota@jonesday.com](mailto:ajrota@jonesday.com)

### Eitan Levisohn

Washington  
+1.202.879.3881  
[elevisohn@jonesday.com](mailto:elevisohn@jonesday.com)

## Endnotes

- 1 Press Release, CFPB, "[CFPB Now Accepting Complaints on Consumer Loans from Online Marketplace Lender](#)" (Mar. 7, 2016).
- 2 Press Release, CFPB, "[CFPB Ready to Help Consumers on Day One](#)" (July 21, 2011).
- 3 Sartaj Alag, "[CFPB Mortgage Complaint System Is Up and Running](#)," CFPB BLOG (Jan 5, 2012).
- 4 Press Release, CFPB, "[CFPB Now Taking Private Student Loan Complaints](#)" (Mar. 5 2012).
- 5 CFPB, [Consumer Complaints](#) (last visited Mar. 9, 2016).
- 6 "[Submit a Complaint](#)," CFPB (last visited Mar. 9, 2016).
- 7 "[Submit an Online, Store, or Other Loan Complaint to the CFPB](#)," CFPB (last visited Mar. 9, 2016) ("Other loan complaints can be about problems ... other installment loans, such as those used for person-to-person or "marketplace" lending....").
- 8 Kelly Cochran, "[Fall 2015 Rulemaking Agenda](#)," CFPB BLOG (Nov, 20, 2015) (discussing plans to develop a "larger participant" rule for installment lending).
- 9 CFPB, "[Policy priorities over the next two years](#)" (Feb. 25, 2016).

Jones Day publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our "Contact Us" form, which can be found on our website at [www.jonesday.com](http://www.jonesday.com). The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.