

# Best Practices and Recommendations on Financial Consumer Protection

**2012**



ASOCIACIÓN DE SUPERVISORES  
BANCARIOS DE LAS AMÉRICAS



Multilateral Investment Fund  
Member of the IDB Group







# Best Practices and Recommendations on Financial Consumer Protection

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# Contents

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<b>I. Introduction</b>	<b>9</b>
<b>II. Value Chain for Financial Consumer Protection</b>	<b>11</b>
<b>III. Principles for the Implementation of Effective Financial Consumer Protection Systems</b>	<b>13</b>
III.1. Transparency and Information	14
III.2. Financial Education	15
General Literacy	15
Specialized Literacy	15
III.3. Freedom of Choice	15
III.4. Contractual Balance	16
III.5. Customer Protection Culture and Customer Service	17
III.6. Specific Regulation for Consumer Protection	17
III.7. Responsibility	17
<b>IV. Regulatory Framework for Financial Consumer Protection</b>	<b>19</b>
IV.1. Regulation Characteristics	19
IV.2. Key Regulatory Content	
To Ensure Adequate Protection Levels	20
<b>V. Supervisory Systems and Practices</b>	<b>31</b>
V.1. Clear Mandate	31
V.2. Consumer Protection as Mission	32
V.3. Incorporation Into the Supervisory Process	32
V.4. Organizational Structure	32
V.5. Principal Supervision Activities	33
V.6. Supervisory Process Principal Components	34
<b>VI. Institutional Arrangement For Financial Consumer Protection</b>	<b>35</b>
VI.1. Specialization of the Regulator	36
VI.2. Responsibilities of the Financial Supervisor in Consumer Protection	36
VI.3. Dispute Resolution	37
VI.4. The Role of Financial Institutions	38
<b>VII. Best Practices and Conclusions</b>	<b>39</b>
<b>Annexes – Practices in the Region</b>	<b>41</b>
I. Implementation of Consumer Protection Principles in the Americas	43
II. Regulatory Frameworks for the Protection of Financial consumers in the Americas	44
III. Regulatory Framework Contents	46
<b>Members of the Working Group</b>	<b>50</b>





# I. Introduction

In the last fifteen years, financial systems in the Americas have experienced substantial regulatory and institutional changes as a result of periods of crisis. These changes reflect financial sector authorities and regulators' search for sustained economic growth in the region, under stable financial conditions and having removed barriers for the adequate provision of financial services.

In this regard, the provision of financial services has become a priority in various countries in the region, a fact highlighted by a growing number of jurisdictions introducing reforms and commitments to improve the access and use of financial services for a wider population. In this light, the G20 leaders have included in their agenda the advancement of financial inclusion through the creation of the Global Partnership for Financial Inclusion (GPFI) which aims to identify and implement innovative approaches to improve access to financial services, financial literacy, and financial consumer protection.

It is evident for financial regulatory and supervisory authorities that consumer protection issues have gained a similar level of importance, as other technical aspects in the regulatory agenda. This topic's relevance is driven by the continuous discussions regarding the adequate provision of financial services. In a similar manner and without leaving aside the reform agenda that aims at improving regulatory standards and frameworks which dictate how the financial industry operates, it is evident that the relationship between financial institutions and their customers has recently acquired a higher degree of priority.

The establishment of a consumer protection system requires the commitment of both financial institutions and government agencies. This commitment will provide a regulatory framework under which finan-

cial institutions promote a culture of consumer protection, by providing complete information, balanced contracts, and safety features in all transactions. These factors not only demonstrate financial institutions' commitment with consumers, but also offer benefits to these institutions.

To gain a comprehensive understanding of the factors involved in a consumer protection system, it is important to know consumers' fundamental rights. These include the right to be well informed, to know what their rights and duties are, to be charged a fair price and be able to compare these, to receive effective customer service, and to have access to a dispute resolution system, among others. An effective consumer protection system should guard these rights under adequate regulation covering key aspects, such as the operation of financial institutions.

In this context and given the importance of this topic, the Association of Supervisors of Banks of the Americas (ASBA) elaborated this document which presents a series of recommendations and best practices on financial consumer protection, aimed at having a protected and satisfied client. These practices were compiled based on the experience of members of ASBA's Financial Consumer Protection Working Group, as well as banking supervisors in the region, who participated in a regional survey in which 26 ASBA member countries sent their responses<sup>1</sup>.

This paper proposes detailed recommendations on regulatory frameworks, supervisory practices, and institutional arrangements. The paper also presents best practices for each of the stages in what has been denominated as the "value chain for financial consumer protection," which advances concrete measures that can generate substantial changes in the client-institution

<sup>1</sup> The countries that participated in this study include: Argentina, Aruba, Bolivia, Brazil, Canada, Colombia, Costa Rica, Chile, Ecuador, El Salvador, Spain, United States of America, Guatemala, Guyana, Honduras, Cayman Islands, Virgin Islands, Mexico, Nicaragua, Panama, Paraguay, Peru, Puerto Rico, Dominican Republic, Trinidad and Tobago, and Uruguay.

relationship. The proposed “value chain” is expected to guide the analysis of regulatory elements and supervisory mechanisms that would support a healthy expansion of financial services and promote financial management practices that are competitive, transparent, reliable, and efficient.

This paper is comprised of five sections. The first section presents the value chain for financial consumer protection, which covers the most important moments of the relationship between financial institutions and consumers, as well as other institution involved in such relationship.

The second section is devoted to the fundamental principles that should govern the relationship with financial consumers. These are general guidelines that allow users to develop, integrate, and interpret regulation. They are the main source of law and constitute regulatory guidelines that reveal the objective of regulation, and allow for a coherent and consistent implementation of such norms.

Subsequently, the paper presents an analysis on the most important elements to be included in the regulatory framework, which is a set of norms governing a specific subject. In this case, it refers to all aspects that deal with a financial consumer protection system.

Section four discusses supervisory practices to ensure compliance with responsibilities and an adequate financial consumer protection. This is a critical factor because supervisors are responsible for monitoring

the implementation of regulation and the operation of institutions that provide financial services to clients.

Finally, section five presents an analysis on the various institutional arrangements observed in the region. This section refers to all organizational forms, especially public agencies that intervene in the effective implementation of a financial consumer protection system. Much of the success in implementing a consumer protection system depends on choosing an appropriate institutional arrangement and safety features that have been established for this purpose.

The concept of best practices used in this document refers to a set of principles and actions that in a certain context have achieved the desired result expected by the team that designed and implemented it. Thus, best practices are expected to generate similar results, under similar conditions.

However, it is important to consider that the relevance and results from best practices suggested in this paper will be significantly determined by the legal context, the institutional structure and performance, the evolution of consumer protection culture, and how consumer relationships are conducted in each country, among other factors. What may be considered as a best practice in a given context and country may not be considered so in another country, or it may not be feasible to implement from a legal or practical perspective.

# II. Value Chain For Financial Consumer Protection

In order to better understand the dynamics of the customer – operator relationship, this study proposes a conceptual model defined as the Value Chain for Financial Consumer Protection. This value chain model takes into consideration the most important aspects of the relationship between customers and financial entities, as well as other agencies involved in the development of this relationship.

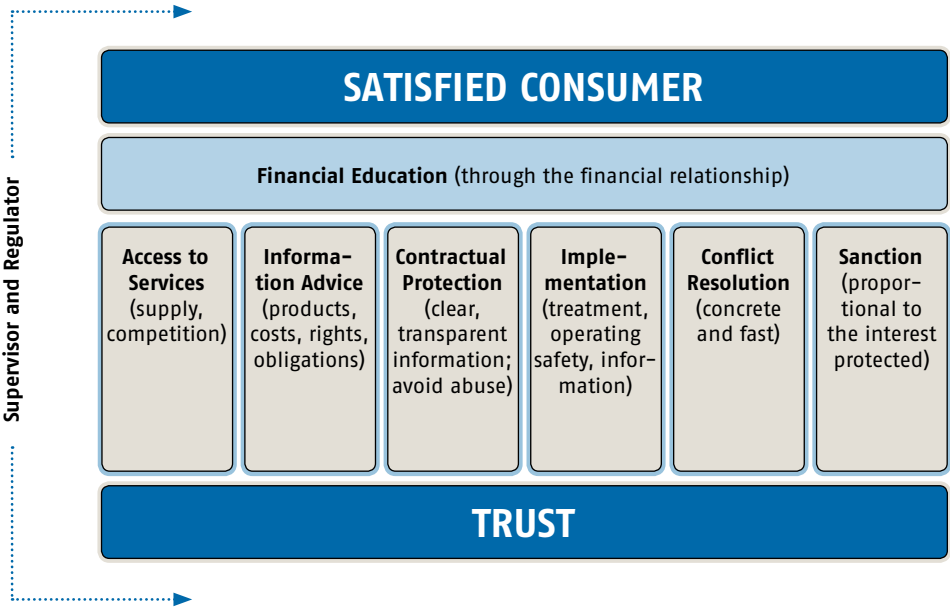
The main objective of the value chain is to have a **SATISFIED CONSUMER**; who is a person who receives what he needs, who understands his rights and obligations, who can pay for the service being offered according to his needs, and receives adequate customer services and feels protected.

A basic element to achieve the objectives is trust and good faith in every moment of the contractual relationship, given that every successful agreement is based on both trust and faith.

The relationship with the financial consumer must also be based on **good faith, which means the conviction of honest, transparent and clear dealings between the parties.**

In summary, the value chain is a basic model that aims to describe the activities that characterize the relationship between consumers and financial entities, which identifies the factors that can contribute to achieving adequate levels of satisfaction and protection.

Cadena de Valor de la Protección al Consumidor Financiero





# III. Principles for the Implementation of Effective Financial Consumer Protection Systems

Principles comprise a significant and formal source of any legal system. That is why it is essential that financial consumer protection legislation be based on these pillars, since these allow to better understand the norms, interpret them, and even fill in regulatory gaps in some cases.

A sound legal system must be governed by principles that act as fundamental regulatory guidelines in this matter; guiding the meaning of regulation and promoting its coherent and consistent development.

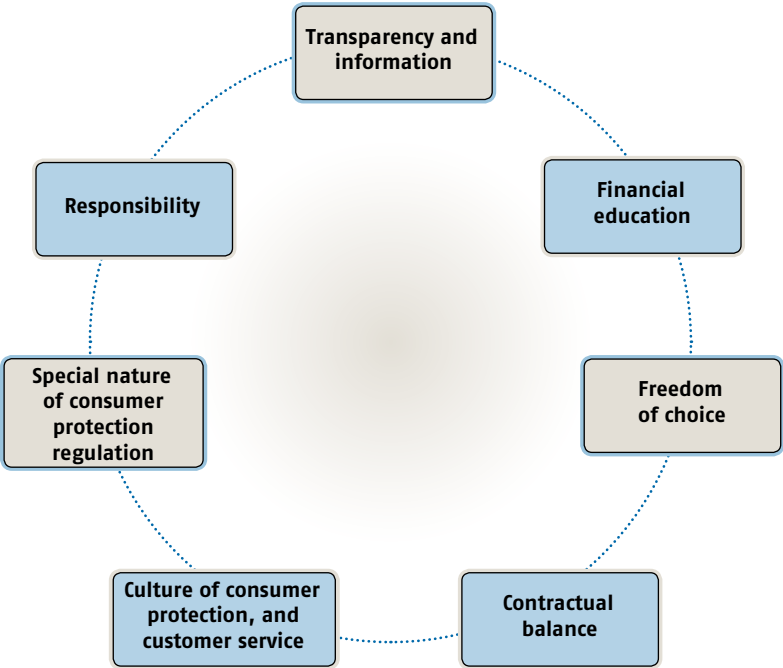
The purpose of including the principles in all consumer protection legislation is to strengthen the basis of a financial consumer protection system. In other words, these principles are considered the pillars on which legislation should be grounded

and which contain elements of integration and regulatory interpretation that are necessary to ensure a successful relationship with consumers, founded on trust and developed within an effective supervisory system.

Therefore, *it is recommended for basic principles to be included in financial consumer protection regulation.* These could be designed according to policies in each country and under an exclusive implementation criterion. The following principles should not be considered as the only principles; however these have been identified as essential when establishing an adequate consumer protection legislation.

A review of basic principles in consumer protection frameworks in the Americas is found in the section I of the Annexes.

## PRINCIPLES



### III.1. TRANSPARENCY AND INFORMATION

The principle of transparency refers to the need for disclosing, in adequate and comprehensible terms, the key aspects and conditions of a financial product. So that consumers understand the rights and obligations acquired when establishing a relationship with a financial institution.

Transparency is a fundamental principle in any financial customer protection structure, as its objective is to balance the contractual relationship between consumers and financial entities. This is achieved by providing timely, clear, and specific information about the products throughout the contractual relationship (signing, execution, and termination), so that consumers understand the features and costs of financial services.

Information transparency starts from the moment when a financial product or

service is offered. It comprises disclosing the terms of the contract to be entered into with the financial consumer, as well as periodically reporting on the status and possible modifications to products, costs, or general conditions of the institution, and addressing complaints and disputes.

Information clarity and accuracy are attributes that promote the understanding of a product or service, so that complex and excessive data do not generate an adverse effect (confusion). These attributes not only allow for the comparability of products and services, but also fosters seller and buyer expectations to be matched, generating trust between both parties.

Many countries have shown interest in establishing transparency policies for information provided to financial consumers. This principle not only refers to information as such, but also to the fact that information should be easily accessible to the public.

#### Selected Regional Practices

In **El Salvador**, the Superintendency has issued information transparency rules for financial services so that consumers make good decisions when acquiring a product or service. In this regulation, the transparency principle is presented as follows:

Art. 4.- "Entities must disclose information, in a transparent and timely manner, covering the establishment and modification of interest rates, fees, surcharges, third party charges, and any other fee associated to deposit and loan transactions offered by the entity, or any services provided by these.

This information must be available to the public in an easy and comprehensible format. Information transparency aims for improving users' access to information, so that they can make decisions based on adequate data regarding the transactions and services they wish to acquire from financial entities."

Source: [http://www.ssf.gob.sv/images/stories/desc\\_normas\\_prud\\_bancos/npb4-46.pdf](http://www.ssf.gob.sv/images/stories/desc_normas_prud_bancos/npb4-46.pdf)

### III.2. FINANCIAL EDUCATION

Financial education refers to having knowledge of the entire financial system: the entities that comprise it, the benefits and risks of the products and services offered, the principles of personal and household financing, the consumer protection regime, and the contractual terms of financial relationships.

The protection of consumer rights will depend on the financial decision made by the consumer himself, according to the contracts signed with the financial institutions.

Thus, knowledge of the system and the principles of personal and household financing become essential to mitigate confusion and conflicts with financial institutions.

A high quality financial education program requires the participation and coordination of public policy authorities, public and private educational entities, financial institutions and, in certain aspects, financial regulatory and supervisory authorities to promote public policies that encourage financial education. The involvement of these agencies will provide important precepts for the design of a coherent financial education strategy focused on top priority topics for consumers.

Financial education must be a constant element in all the stages of a consumer's relationship with a financial entity. Hence, it is important to distinguish between two types of "financial literacy" that can be encouraged by regulation.

#### **General Literacy:**

General literacy aims to "teach" the population about basic financial topics, such as basic financial mathematics, interest rates, an overview of entities and products offered, providing consumers with elementary knowledge of the practical, financial, and legal structure of financial services that

will allow consumers to approach a financial contractual relationship in a safer and better informed manner.

#### **Specialized Literacy:**

Specialized literacy is mostly provided by financial institutions, and is geared toward informing current and potential customers on specific products on the institutions' portfolios.

This type of education guides consumers in choosing a financial institution and the products they require, as well as adequately managing products once they have entered into a contract with the financial institution.

### III.3. FREEDOM OF CHOICE

Consumers' freedom to choose the products that best fit their needs promotes competition among financial institutions that offer financial products and services for the various customer segments and niches.

A regime that safeguards financial consumers' rights should have the necessary information and tools that facilitate the comparison of financial products and services in terms of their characteristics, costs, conditions of service and use, as well as elements regarding the performance of the financial entities. For example, disclosure of the financial entity's risk ratings assigned by rating agencies, publication of data regarding institutions with the largest number of customer complaints, security failures during transactions, among others. Once this type of data becomes mandatory, it will strengthen customers' freedom of choice.

A precondition to freedom of choice is customers' having access to adequate information. Consumers would benefit if contracts have a clause allowing consumers to terminate a contract, switch to other products or services, or change financial institutions if they wish to.

### Selected Regional Practices

In **Mexico**, consumers have access to clear information that allows them, for example, in terms of costs to understand the available options before deciding on which financial entity to acquire financial products and services from. For example, CONDUSEF's website (Comisión Nacional para la Defensa de los Usuarios de las Instituciones Financieras) presents a credit card simulator that makes it easy to compare costs and interest rates for various credit card options.

### III.4. CONTRACTUAL BALANCE

The relationship between a financial entity and consumers must be balanced to ensure adequate protection exists in the contract to protect customers from abusive or unfair clauses that would put financial entities in an advantageous position.

In most ASBA member countries, regulation aims to protect customer against the imposition of unfair and abusive clauses when entering into a contract. Colombia, Mexico, and Peru have special regulations on this issue. However, other countries treat this issue through general consumer protection regulations regarding non-financial goods or services.

Contractual balance is guaranteed, among other things, through disclosure of relevant information that may affect the contractual relationship. This information must be provided to customers in a clear and simple manner, when entering into a

contract and on a permanent basis during the term of the contract (this information includes: interest rates, fees, commissions, due dates, deadlines or other modifications).

In some countries, depending on the type of contract, a summary is drafted to facilitate customer's reading and comprehension of the contract. In other cases, clauses that may cause controversy, based on financial entities' experience and frequency of occurrence, are presented in larger fonts and different colors. This practice is not expected to downplay the rest of the contract, but to clarify doubts.

Consumers should be informed regularly and pedagogically on the development of the contractual activities with the financial entity, before, during, and at the end of the relationship. This communication should mainly refer to any changes in interest rates, commissions or fees to be paid, maturity dates, terms or modifications to any initially agreed upon conditions.

### Selected Regional Practices

The Superintendency of Banks, Insurance, and AFP of Peru publishes on its website the approved clauses by type of contract, for each bank. Through Resolutions, the Superintendency approves the general clauses applicable to each contract type. This allows customers to have peace of mind about the contractual conditions, as these have been previously reviewed by the supervisor.

Source: [http://www.sbs.gob.pe/o/modulos/JER/JER\\_Interna.aspx?ARE=0&PFI=1&JER=980](http://www.sbs.gob.pe/o/modulos/JER/JER_Interna.aspx?ARE=0&PFI=1&JER=980)



III.5. CUSTOMER PROTECTION  
CULTURE AND CUSTOMER SERVICE

Customer protection culture and customer service refers to the need to include for financial institutions to incorporate into their corporate culture adequate customer service and protection as a core value.

Since customers are on the receiver end of financial entities’ activities, it is essential that institutions incorporate respect, adequate customer care and protection into their policies and staff training programs, ensuring an effective adoption of these principles at all levels in the corporate structure.

In this regard, an institution that internalizes a culture of protection and adequate customer care as a principle starting from its shareholders, directors and executive managers will spread such values to the rest of the institution.

This principle should guide every relationship built with customers, by acknowledging them and providing good customer care, resulting in adequate levels of satisfaction. An effective customer care culture will also promote competition among institutions, which will distinguish themselves based on their good practices.

III.6. SPECIFIC REGULATION FOR  
CONSUMER PROTECTION

This principle recognizes that consumer relationships regarding financial services require specific regulatory treatment, given that financial services’ contracts are more complex than other consumer relationships. Therefore, it is recommended for consumer protection regulation to be grouped on a single body of regulation that allows for easy access to consult current regulation, while ensuring clarity and efficiency in the regulatory system.

During this study, a recurrent observation was the dispersion of information and rules, having found several general provisions which were confusing to implement and difficult to understand. In countries with disperse regulation, it is recommended to compile these requirements into a single regulation that governs financial consumer protection topics.

To ensure adequate financial consumer protection, it is essential to have in place a uniform set of rules that govern specific issues in the consumer’s relationship with financial entities, which are specific, easy to access and understand. Consumer protection regulation should be based on this principle; in other words, it should consider the use of specific rules and exclusive implementation. The basic elements that should comprise such regulation are developed later in the paper.

Several countries have specific consumer protection regulations that are exclusively applied. In addition, consumer can easily consult them from a single location, facilitating their access, and allowing customers to have any information that they are interested in. Countries like Canada, Colombia, and Mexico have the abovementioned consumer protection rules that can be easily found at the following web sites:

Country	Website
Canada	<a href="http://www.fcac-acfc.gc.ca/eng/industry/Obligation/index-eng.asp">http://www.fcac-acfc.gc.ca/eng/industry/Obligation/index-eng.asp</a>
Colombia	<a href="http://www.superfinanciera.gov.co">www.superfinanciera.gov.co</a>
México	<a href="http://www.condusef.gob.mx/index.php/quienes-somos/marco-juridico">http://www.condusef.gob.mx/index.php/quienes-somos/marco-juridico</a>

III.7 RESPONSIBILITY

Financial institution’s responsibility toward its customers is continuous, whether it refers to information on the services provided, the safety features of transactions, or timely and efficient management of complaints. As for customers, they share the responsibility of a good relationship with the entity by understanding their rights and obligations, and feeling accountable for complying with these.

It is recommended for financial institution to analyze the reputational consequences generated by failures in the provision of services and customer care, measured through effective complaint mechanisms. Many countries implement these systems; however, data is usually used only for statistical purposes, rather than leading to consequences or implementing mechanisms for improvement.



# IV. Regulatory Framework for Financial Consumer Protection

This section identifies the essential factors to be considered in any financial consumer protection regulation. The relevance of an adequate regulatory body relies on regulation establishing the necessary requirements for an adequate entity-consumer relationship, which includes fundamental contents on consumer protection and compliance with the objectives and principles developed in the value chain.

The following sections identify the key elements that all financial consumer protection regulations must develop.

## IV.1. REGULATION CHARACTERISTICS

*The best regulatory systems are those that comprise regulations that have been drafted by expert regulators on financial, supervisory, and financial consumer protection issues, with precepts and principles that apply exclusively to them.* This is contrary to systems where general regulations apply to all consumer relationships, in such systems regulatory gaps are found when trying to apply these to financial relationships, which are very special and complex. Annex II presents a description of the various types of consumer protection regulatory frameworks observed in the Americas.

*If there are several regulations on the issue, the best practice is to review, compile, and modify these in order to group them under clear consumer protection principles.*

Regulation disclosure is very important, that is why this chapter not only covers concepts related to regulation, but also those related to its disclosure. *For this purpose, the recommendation is for countries to develop adequate internet*

*websites with specific chapters on consumer protection, and where access to information is easy, organized, and effective.* Some website examples with good information practices are:

Country	Internet Portal
Canada	<a href="http://www.fcac-acfc.gc.ca">www.fcac-acfc.gc.ca</a>
Colombia	<a href="http://www.superfinanciera.gov.co">www.superfinanciera.gov.co</a>
El Salvador	<a href="http://www.defensoria.gob.sv">www.defensoria.gob.sv</a>
Spain	<a href="http://www.bde.es">www.bde.es</a>
Mexico	<a href="http://www.condusef.org.mx">www.condusef.org.mx</a>

For people without access to electronic media, it is necessary to design brochures with basic and simple information.

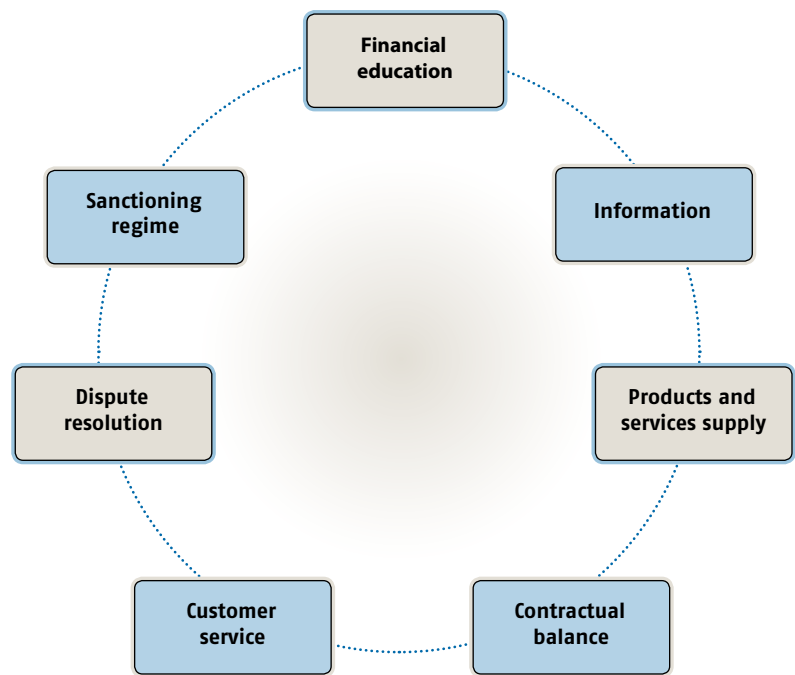
Regulation should, as a minimum, have the following characteristics:

1. Have a specific objective.
2. Have exclusive implementation.
3. Current regulation must be compiled according to topic and effective date.
4. Be easy to access and understand.

As to the minimum content, it must address the following concepts:

1. Financial education.
2. Information rules.
3. Products and services supply.
4. Contractual balance.
5. Customer service.
6. Dispute resolution; and
7. Special sanctioning regime, with grounds for aggravation due to inobservance.

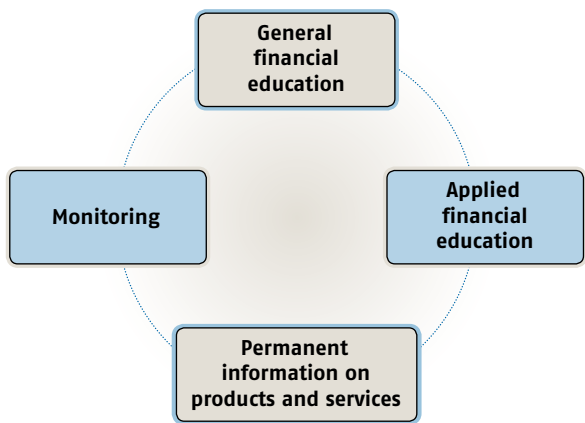
**IV.2. KEY REGULATORY CONTENT TO ENSURE ADEQUATE PROTECTION LEVELS**



As mentioned above, regulation must be developed within the framework of a special law on financial consumer protection, be exclusively implemented, and ensure transparency, balance, and trust.

The following section develops the fundamental regulatory elements, citing best practices found in ASBA member countries, as examples to illustrate the topics discussed.

**a) FINANCIAL EDUCATION**



### **General Financial Education**

General financial education aims to teach, as many people as possible, on financial topics and basic concepts through financial education programs that will support users making informed and responsible decisions

Financial education is a consumer protection pillar because it provides users with tools to adequately manage their relationship with a financial entity.

Adequate financial consumer protection regulation could include government policies on providing basic financial education in schools and universities, according to pedagogical strategies aiming for consumers to have a basic understanding on the subject. These policies should instill financial culture into a large part of the population on topics that will allow them to make adequate future financial decisions.

### **Applied Financial Education**

Applied financial education is directly addressed to financial consumers in their relationship with a financial entity, taking into account the product or service of interest, through the implementation and development of specialized financial education programs. A well trained financial consumer is able to understand his/her rights and duties, a product's service and handling conditions, as well as the contract terms which he/she is subject to. This consumer would know how to submit questions and complaints to the entity, which helps balance his/her relationship with the entity and provides him/her with protection tools.

As for their publication and distribution, these programs need to make use of electronic resources and physical materials to properly train financial customers at all social levels, according to the abilities and needs of each individual. Dissemination of this information should be carried out through the same channels and media used to market the products

### **Permanent Information on Products and Services**

The best practice is to **establish permanent information mechanisms on basic products, such as savings accounts, loans, current accounts, and credit cards.** For example, institutions may disclose the main characteristics of products, including the obligations these products generate for financial consumers.

Financial products are very dynamic, for this reason, it is important that financial consumers receive continuous information on changes and updates made through adequate, clear and simple means.

Easy, didactic, comprehensible information is a key tool in educating consumers because it allows them to become familiar with the financial products they use, making the relationship with the financial system more productive.

It is difficult to find information on products and services that describes each product in detail. Disclosure of this information is very important because it guides financial consumers on the basic characteristics of the services needed, allowing them to make well informed decisions. Many countries provide extensive, but it is presented in a specialized and difficult to understand manner, which hinders the communication process with customers.

In this regard, the challenge is to achieve an adequate balance between brief and specific information, but which will also allow for a clear understanding of the relevant aspects of the relationship. Highly specialized information, technical or legally complex, and in some cases excessive information generates confusion and makes customers even more vulnerable.

### **Monitoring**

Once financial education programs are implemented, it is very important to monitor these by using tools to establish, on a frequent basis, whether the training

programs are being effectively provided to consumers and whether these have met the proposed objectives.

To assess the program’s impact and make adjustments that encourage continuous improvement, some useful tools to conduct this type of measuring include: fre-

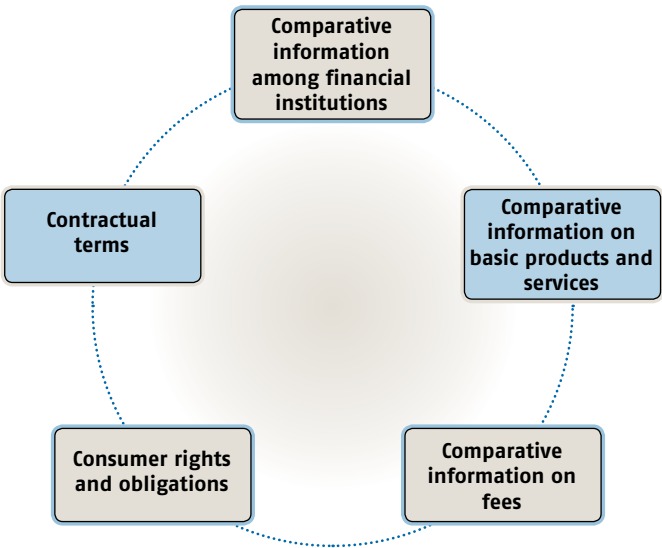
quently asked questions (FAQ) in websites or customer points of service, and hiring third party experts to carry out impact surveys. In the same way, a reasonable assessment of the complaints and concerns received could represent an interesting input for such monitoring.

**Selected Regional Practices**

A case that illustrates this point is **Mexico**, where CONDUSEF has implemented monitoring systems for established financial education programs. For example, officials conduct interviews on financial education topics and provide a report on the educational programs. In addition, on their webpage, CONDUSEF presents complaint measurements and information on the implementation of educational programs. These data allows the agency to conclude on the progress achieved by these programs since they began operating and to know how many consumers have benefited from these educational programs.

Source: <http://www.condusef.gob.mx/PDF-s/folleto-avances/index.html>  
See Annex III for additional examples of regional practices.

**b) FINANCIAL INFORMATION RULES**



For an adequate balance in the relationship between financial entities and consumers, it is necessary for consumers to trust financial institutions. A key mechanism to achieve this goal is to have

clear rules on information. If regulation is able to effectively establish guidelines on information, the development of communication means between both parties is guaranteed.

ASBA member countries have shown great interest in the enforcement of consumer rights through information disclosure and transparency rules. However, it is common practice for entities to adopt rules they consider necessary to protect its customers. *A good practice is to regulate information disclosure for the benefit of the consumer protection system.*

Information must be designed to contain brief, comprehensive, and didactic messages. *Regulation should establish the obligation of issuing, publishing and updating information deemed pertinent.* In the region, good information is available, but it is usually outdated given its date of publication.

The following section covers contents that should be taken into consideration when drafting special financial consumer protection rules;

*Regulation on Comparative Information among Financial Institutions*

An excellent tool for financial consumers or customers to choose an entity with which they feel more secure and which inspires greater confidence to pursue a financial relationship, is to have easy access to statistics and analysis on the entity's situation in the

market. For example, this data could include ratings, solvency levels, number of complaints, and concerns compared to similar entities. Information provided to customers must contain indexes that facilitate queries, which guide customers through the available content and allow them to properly use and manage information.

To ensure the effectiveness of comparative information initiatives, information should be presented using standardized criteria and tools that allow customers to compare institutions under similar criteria. As a result, consumers can appreciate the differences between institutions more efficiently.

Comparative information among financial institutions could cover different aspects, such as:

**Statistics on complaints.** Financial consumers have the right to be permanently informed on the complaints filed on financial entities and the reasons behind these. These complaints could be presented by categories, so that customers can easily determine which are the most frequent. This practice allows financial entities and supervisors to measure the effectiveness of internal processes and the level of customer satisfaction.

Selected Regional Practices

**Colombia** has designated a section on the Financial Superintendency's website to inform the public on complaints and concerns filed against financial entities, highlighting the reasons for the sanctions imposed on the entities during an established period of time.

Source: <http://www.superfinanciera.gov.co>:

**Most sanctioned entities.** This criterion seeks to guide consumers about institutions that have received a greater number of sanc-

tions related to their duties with clients. For example: number of complaints, information, transparency, customer service, etc.

Selected Regional Practices

**CONDUSEF** in Mexico informs the public about sanctions imposed on entities and has also designed rating tables ranking institutions based on fines and sanctions received.

Source: CONDUSEF

**Financial situation of banks.** This criterion includes key indicators on the institutions' financial condition, which allows consumer to assess the risk situation of these institutions.

### Selected Regional Practices

**El Salvador** presents on the Superintendency of the Financial System's website a statistical bulletin on banks, which shows: financial statements, assets, loans and deposits taken by each financial entity, on an annual basis.

Source: [http://www.ssf.gob.sv/descargas/boletines/b\\_jul-sep-2011/b\\_jul-sep-2011.htm#](http://www.ssf.gob.sv/descargas/boletines/b_jul-sep-2011/b_jul-sep-2011.htm#)

The Superintendency of Banks, Insurance and Pension Funds of **Peru** publishes on its website statistical bulletins on the financial system, that disclose for each regulated entity: financial statements, as well as credit, liquidity, and market risk exposures, among others.

Source: <http://www.sbs.gob.pe/app/stats/EstadisticaBoletinEstadistico.asp?p=1>

### Regulation on Comparative Information of Basic Products and Services

*Information on basic financial products must be constructed around the minimum basic characteristics of products, so that these can be easily and efficiently compared.* Consumer protection regulation must cover this aspect, and provide necessary guidelines to determine which are the basic products and their comparative characteristics.

The first challenge is to classify products, so they can be compared, given the variety of services offered by the various institutions in the system. It may be useful to prioritize the comparison of mass products, loans and deposits, as well as those that concentrate a larger number of consumer concerns and complaints.

Comparison factors should focus on the main terms and costs of products. The latter should be expressed in standard criteria (periods, effective rates, fees, penalties, etc.).

### Selected Regional Practices

The Superintendency of Banks, Insurance and Pension Funds of Peru regularly informs financial system consumers, through its web page, on effective rates and cost of loan products, such as credit cards and other loans.

Source: [http://www.sbs.gob.pe/o/modulos/JER/JER\\_Interna.aspx?ARE=0&PFL=0&JER=152](http://www.sbs.gob.pe/o/modulos/JER/JER_Interna.aspx?ARE=0&PFL=0&JER=152).

As for credit cards, the website presents a comparison by entity and product of the maximum and minimum rates, fees, commissions, postage, and insurance costs. This allows clients to make well informed decisions.

Source: [http://www.sbs.gob.pe/download/TipoTasa/files/00096\\_1.htm](http://www.sbs.gob.pe/download/TipoTasa/files/00096_1.htm)



### Comparative Information Regulation on Rates

A tool that guarantees consumers' freedom of choice, when acquiring financial products, is having access to information

on the products' costs. These data should cover information on market rates at each financial entity, which should include average interest rates and fees charged for providing each service, among others.

#### Selected Regional Practices

The Superintendency of the Financial System in **El Salvador** publishes on its webpage, comparative information on interest rates, fees and surcharges in a simple and didactic form, which helps consumers when making a decision.

Source: [http://www.ssf.gob.sv/index.php?option=com\\_wrapper&view=wrapper&Itemid=257](http://www.ssf.gob.sv/index.php?option=com_wrapper&view=wrapper&Itemid=257)

A best practice on rates disclosure has been identified in **Paraguay**, where financial entities are required to publish rates and fees of products in a simple, easy and comprehensible manner.

Source: Article 107 paragraph A Law 861 from 1996.

**Chile** also requires financial entities to inform credit consumers about the different alternatives and costs on a common product known as "Universal credit," which entities are required to offer.

While in the region there are countries that regulate financial products' rates or maintain a controlled freedom regime, which requires rates not to exceed certain limits, the freedom to establish prices is fundamental. This freedom promotes sound and vigorous competition among financial institutions.

understanding that the responsibility to develop a good relationship with the financial entity is bidirectional. When rules are clear from the beginning, an environment of trust will undoubtedly be generated. In order for information to be effective, it must be agile, easy to access, and interpret by consumers.

### Disclosure Regulation on Consumer Rights and Obligations

The importance of consumers knowing their rights and obligations lies on them

*It is recommended that regulation includes, in all cases, specific rules on consumer rights and obligations and their disclosure.*

#### Selected Regional Practices

In **Panama**, the Banking Law establishes the obligation of financial institutions to inform consumers' rights and obligations.

Source: Article 193 of the Bank Law

In **Canada**, the Financial Consumer Agency's (FCAC) website informs consumers on the main characteristics of each product, as well as the rights and obligations that each product generates.

Source: <http://www.fcac-acfc.gc.ca/eng/consumers/rights/index-eng.asp>

### Regulation on Disclosure of Contractual Terms

A balanced contractual relationship is based on disclosing contract terms in a clear, simple and comprehensible manner.

This should be achieved through the design of simple contracts that highlight clauses that imply the possibility of modifying the initial terms on the contract, regarding rates, costs, conditions of use, etc.

#### Selected Regional Practices

In **Peru**, financial entities provide customers with information in a simple way regarding the characteristics of the products they acquired, the obligations and rights of the each contracting party. These entities must provide the contract's content in a simplified and didactic manner.

Source: Article 193 of the Bank Law

**Canada** also requires disclosing information on clauses that allow for unilateral modification of the contract regarding rates; whenever there is an increase in rates, consumer must receive a 30-day prior notice. If the notice is sent electronically, entities are required to have prior authorization from customers.

Source: <http://www.fcac-acfc.gc.ca/eng/consumers/rights/banking/index-eng.asp>

In **El Salvador**, the financial consumer information regime is regulated by credit card rules. This provisions indicate when acquiring these products "financial entities must inform user of their rights and obligations.... clearly explaining cardholders their responsibilities when using the credit card, these should be properly documented from the moment the cardholder receives the card."

Source: Article 18 of the Credit Card Law

Regulation must take into consideration these aspects to guarantee that consumers receive adequate information that has been adapted, according to the type of product, as well as the conditions and abilities of target consumers.

#### c) CONTRACTUAL BALANCE AND REGULATION ON CLAUSES AND PRACTICES

In general, banks are considered to hold a stronger and more dominant position than financial consumers. In order to build trust and a good relationship between both parties, a balanced contractual relationship must be reached, where both parties feel comfortable and safe regarding each other, while respect

for rights and information transparency is guaranteed. Therefore, it is recommended that *regulation establishes a special protection regime against the imposition of unfair contract terms or abusive clauses in financial contracts*. This is one of the most important elements when trying to generate trust.

Thus, a good practice is when unfair clauses are included in contract terms, these should be considered void or not written. This expedites the contract signing process.

*The supervisory authority must have clear powers to oversee the enforcement of regulation that prohibits unfair contract terms and actively participate in the approval or prohibition of contract clauses.*

### Selected Regional Practices

In **Panama**, the Banking Law prohibits the use of unfair clauses in contracts. According to this legislation, unfair clauses are null or void. In bank contracts any stipulation that implies a waiver or decrease in rights previously acknowledged are considered null and void.

In **Mexico**, the prohibition to include unfair clauses is more general. The Law for the Protection and Defense of Financial Services Users stipulates that CONDUSEF has jurisdiction to verify whether financial contracts have confusing stipulations or clauses that do not allow users to understand their obligations. It also states that adhesion contracts must contain the following elements: purpose of the contract, parties to the contract, fees or interest rates, term of the contract, termination or modification conditions, and customer service details.

Source: Article 5, CONDUSEF's Sole Provision.

In the **United States**, financial entities are free to change the conditions of a service, as long as consumers are notified through a 30-day prior notice. This period gives consumers freedom to choose whether to continue the contract relationship or not.

The Truth in Lending Act (TILA) protects consumers against unfair practices in loan and credit card charges. In addition, the Fair Debt Collection Practices Act protects financial consumers against unfair debt collection practices.

#### d) CONSUMER SERVICE RULES

**An adequate financial consumer protection regulation should include requirements on customer service.** Proper customer service entails an attitude of adequate service and involves arranging the necessary human and technical resources for clients to receive service according to the terms offered by the institution.

This can be achieved through proper personnel training regarding telephone services, face-to-face services, managing complaints and concerns, while providing customer guidance in a simple and comprehensible manner. To provide adequate services to financial consumers, personnel should know all products and services, as well as consumer protection and transparency norms.

### Selected Regional Practices

**Brazil** has established general rules regarding customer services via telephone, so that consumers receive better services without having to personally visit the financial institution to resolve their inquiries or complaints.

Source: Resolution No. 3849 from 2010

**Bolivia** has also ruled on financial consumer services by issuing guidelines on adequate financial consumer services. For example, regulation stipulates that financial entities must provide comfortable premises, visible and adequate information, and customized facilities for customers with special needs. By adopting this regulation, best practices have been implemented on proper consumer enquiries management. Furthermore, a toll-free hotline has been set up to receive complaints and concerns. Financial entities must not only answer customer queries, but also monitor the degree of customer satisfaction with the proposed solutions.

Source: Regulation for Customer and User Services

In **Chile**, financial institutions must have explicit and public policies regarding customer commitments and compensations in the provision of financial services. Furthermore, Circular N° 3.054 dated May 4, 2000 and Management Letter dated August 6, 2002 from the Superintendency of Banks and Financial Institutions, stipulate that banking institutions must have a specialized center to receive customer queries and complaints, and provide satisfactory solutions to their customers.

### e) DISPUTE RESOLUTION

Regulation on dispute resolution is fundamental for the good development of relationships between financial institutions and their customers. A consumer that has clear regulation regarding dispute management will surely feel more calm, confident, and satisfied.

In some cases, rules concerning these matters, give supervisors the authority to resolve conflicts, especially in small cases, with the objective of quickly repairing damages when a complaint is filed.

In general, ASBA member countries have regulations on complaint and concern management, and in some cases on dispute resolution, either as a general or specific requirement. There is a diversity of practices in this matter, depending on the functions and powers of the financial consumer protection agencies.

The following are some examples that show different practices observed in the region:

## Selected Regional Practices

In **Canada**, when disputes arise between financial entities and consumers, parties can go to the bank's *Senior or Internal Ombudsman*, who will provide a solution to customer complaints. Customers may also go before a neutral third party or independent mediator, but decisions in this case are not binding. The Financial Consumer Agency of Canada (FCAC) has no powers to resolve disputes; it may only impose sanctions on financial entities. Another option is to appear before judges.

In the case of **Mexico**, consumers may approach the National Commission for the Defense of Financial Services Users (CONDUSEF), which has the authority to put forward conciliatory settlements or act as arbitrators rendering binding decisions. If the parties resort to litigation, consumers may request that CONDUSEF provide free legal advice when taking a dispute before the courts.

**Peru** resolves disputes on contract issues through the National Institute for the Defense of Competition and Intellectual Property (INDECOPI). Parties may also go before the Financial Consumer Ombudsman, who has the authority to resolve issues arising among parties and whose decisions are binding. The Superintendency of Banks, Insurance and Pension Fund Administrators (SBS) does not have the authority to settle disputes; it may only sanction financial entities. Moreover, parties may also appear before the regular justice system.

In **Colombia**, parties may go before the Financial Consumer Ombudsman, who may act as mediator or arbitrator. According to Law 1480 dated 2011, parties may also go approach the Financial Superintendency of Colombia, who resolves disputes "between financial consumers and regulated entities exclusively in cases related to the execution and compliance of contractual obligations that arise from financial activities." Furthermore, consumers may go before the court system to resolve the disputes.

See Annex III for additional examples of regional practices.

### f) SANCTIONING REGIME AND GROUNDS FOR AGGRAVATION

*Adequate financial consumer regulation must have a special consumer protection sanctioning regime, which contains grounds for aggravation in terms of sanctions for entities'*

*non-observance of current regulation.* This element is undoubtedly a very valuable tool to conduct supervisory duties and facilitates monitoring financial entities in the performance of their duties, especially regarding the protection of financial customers.

### Selected Regional Practices

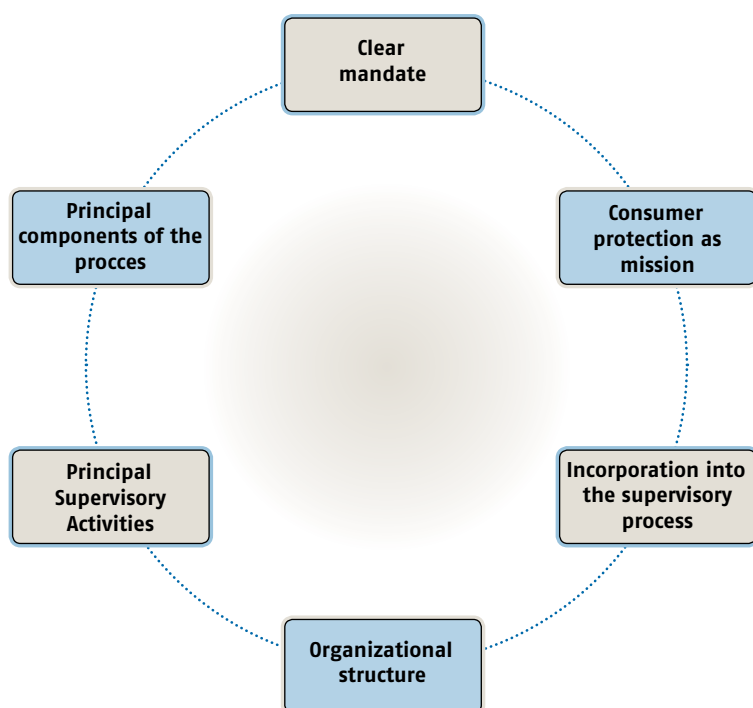
In **Colombia** the competent agency to sanction financial entities is the Financial Superintendency of Colombia. In order to impose sanctions, it must analyze the damages caused by the event according to its characteristics, proportionality and scope. The sanctions may be pecuniary, institutional, personal or a call to attention.

The Financial System Organic Bylaws stipulate that “pecuniary sanctions can continue as long as noncompliance subsists.” The criterion for adjusting sanctions has also been stipulated in this regulation, for example:

- The economic benefit that would have been obtained for the transgressor or third parties.
- The damage that an infringement may cause.
- The reoccurrence of the infringement.
- The resistance to, refusal or obstruction during the investigation or supervisory efforts of the Superintendency.
- The use of fraudulent means to commit the offense, or when a person is used to intervene to hide or cover up the effects.
- The degree of prudence and diligence in performing duties or implementing the pertinent legal regulation.
- The unwillingness or disrespect in complying with orders issued by the Banking Superintendency.

Source: Law 1328 dated 2009, Title I that modifies the Organic Bylaws of the Financial System (EOSF)  
See Annex III for additional examples of regional practices.

# V. Supervisory Systems and Practices



The supervisory model naturally depends on factors that determine the scope of the supervisory authority's powers and responsibilities on this issue. The role of the supervisor in consumer protection depends on the institutional arrangement structure, the existence of other competent authorities, as well as public strategy and policies.

The following detail relevant aspects of the supervisor:

## V.1. CLEAR MANDATE

One of the aspects that can affect the performance of the supervisor in his consumer protection role is the absence of a clear, specific mandate on the objectives of his mission in this regard. Thus, the overlap of functions with other authorities or the

ambiguity in the description of the purpose of his mission must be avoided through specific statements as to what is expected of the supervisor:

- Preventive protection by reviewing aspects related to risks and operational structure that have a bearing on the adequate attention and rendering of services.
- Attention to complaints and concerns.
- Dispute resolution.
- Definition of information dissemination standards.
- Evaluation and registration of the most common type of contracts.
- Disclosure of comparative information.
- Information disclosure on institution's consumer protection performance.

The previous are some of the main powers that could be included in regulation as part of the Supervisory Authority's mandate in relation to consumer protection.

### V.2. CONSUMER PROTECTION AS MISSION

The Supervisory Authority's main responsibility is to protect the system's financial stability. Even without a mandate to attend customer complaints and concern, supervisors should monitor aspects that directly impact the relationship between institutions and consumers, including: corporate governance conditions, operational soundness, and risk management practices.

Regardless of the institutional arrangements adopted, the supervisory agency should address consumer protection matters directly or indirectly, including the coordination with other authorities.

For supervisors, an inadequate provision of services may damage their reputation, compromising the credibility of an entity and generating inconveniences, even structural ones.

### V.3. INCORPORATION INTO THE SUPERVISORY PROCESS

The supervisory process must consider the supervisory authority's objectives, among which compliance with regulation and establishing a well-managed financial system are key, together with an adequate attention to financial consumers.

Considering their mandate, supervisory authorities must design a strategy that would allow them to meet their consumer protection objectives, whether these are regulatory or supervisory in nature. Consumer protection must be part of the scheduled activities under all supervisory strategies and plans.

The supervisory process should comprise the following criteria:

- Determining the objectives of consumer protection supervision.
- Defining on-site and off-site supervisory activities, establishing the aspects involved in each stage, the elements to be

examined, and the expected results of the assessment.

- Defining the responsibilities of the organizational structure in the supervisory process.
- Establishing the necessary information and technology resources, methodology and analysis to conduct the supervisory process.
- Concentrating supervisory activities and resources on products and entities that have the largest number of concerns or complaints from consumers.
- Establishing preventive and corrective actions.

The supervisory strategy for consumer protection must consider, among others, the following steps:

- Raising awareness in the supervisory team on the responsibilities of conducting such assessment, especially in the managing team, to engage them in protection tasks.
- Allocating competent human resources to conduct the agency's responsibilities on consumer protection, including training programs to develop the necessary skills to perform technical supervisory activities, as well as adequate customer service reviews.
- Designing and developing technological and methodological tools to facilitate supervisory tasks.
- Constantly assessing whether the results obtained are meeting the established protection objectives.

### V.4. ORGANIZATIONAL STRUCTURE

The supervisory process must have an adequate organization structure to fulfill its responsibilities

The following are organizational structure examples observed during this paper's analysis:

- Supervisory areas with cross-sectional responsibilities that cover both the assessment of risk components and processes that impact customer service and protection.



- Specialized teams in assessing consumer protection issues in regulated entities.
- Customer service areas (complaints and concerns) in the supervisory agency. Usually, these areas also process statistical data on complaints.
- Areas for reviewing regulation and contracts.
- Areas responsible for establishing programs and metrics on consumer protection and financial education.

Regardless of the organizational structure adopted, supervisory agencies should include the following practices:

- Determining an area responsible for imposing sanctions on supervised entities for not complying with consumer protection regulation.
- Establishing the area in charge of assessing the components affecting consumer protection. It is recommended for general supervisory teams, especially those responsible for assessing certain risks or highly sensitive processes in providing services (such as, operational risk, legal aspects, etc.), to include in their assessment how these risks affect the entity's performance with its customers. To build a comprehensive vision of an entity, supervisors should avoid practices that disconnect the supervision of technical and structural issues, from those related to consumer protection.
- In case the aforementioned areas are separated within the supervisory authority, the recommendation is to "connect" the areas that have direct contact with the regulated entity with those that monitor its performance with consumers, so that data on this issue can reinforce the supervisory process.

Notwithstanding the wide range of possible supervisory structures, it is important to consider that while the financial supervisor is involved in various consumer protection activities, it is clear that some roles

may pose conflicts of interest (such as those related to dispute resolution).

## V.5. PRINCIPAL SUPERVISORY ACTIVITIES

### a) Off-site supervision

Off-site supervisory activities for consumer protection involve the verification of, among others:

- Prior authorization of products, contracts or policies, if established by regulation.
- Statistical analysis on complaints and concerns to establish the reasons for structural weaknesses, the type of product, and geographic concentration of complaints.
- Consumer protection reports presented to supervisory authorities. For example: supervised entities' internal and external audit reports, reports presented by the Ombudsman office or similar institutions, and those prepared by specialized consultants.
- Monitoring compliance with orders issued by the supervisory authority.
- Information that could reveal problems with consumers. For example, information related to lawsuits filed against the entity.
- Customer service policies, manuals and best practices.
- Advertising campaigns and incentive schemes.
- Information disclosure and financial education programs.

### b) On-site supervision

The off-site analysis points out the entities and/or sectors that concentrate the largest amount of protection related issues are scheduled.

On-site supervision methodology should be deployed on regular or particular visits that have been specifically designed to review the component.

## V.6. SUPERVISORY PROCESS PRINCIPAL COMPONENTS

### a) Approach

Specialized supervision that implements a methodology based on evaluating and rating various elements in the entity's management structure and governance practices, which may have an impact on consumer protection, emphasizing the evaluation of compliance with regulation.

### b) Scope

Supervisory activities should cover consumer service areas, as well as governance, risk management, internal and external control areas, and relationship with the supervisor.

### c) Effects

The implementation of the supervisory process on consumer protection should generate a report on the entity's profile and provide:

- Recommendations.
- Instructions or corrective actions.
- An estimate of the initiation of sanctioning processes.

### d) Some methodology components

#### *Corporate Governance*

- Evaluation of the organizational commitment (at all levels) to implement the main elements of protection.
- Protection policies and monitoring the entity's performance in aspects reviewed by the Board.
- Adequate allocation of resources.
- Corporate incentives to encourage customer service and protection culture in the entity.

- Board evaluation of complaints, concerns, and adopted actions.
- Board oversight of relevant supervisor requirements on the subject.
- Evaluation of reports from audit and other agencies, such as the Public Ombudsman's office.

#### *Risks*

- Evaluation of the impact of some risk management practices in the provision of services.
- Emphasis on operational and credit risks (loan granting/settlement infrastructure).
- Evaluation of the entity's most sensitive products.

#### *Performance of control areas*

- Activities in control areas (internal and external) related to protection issues.
- Supervisory requirements.
- Monitoring of responses to orders and recommendations.

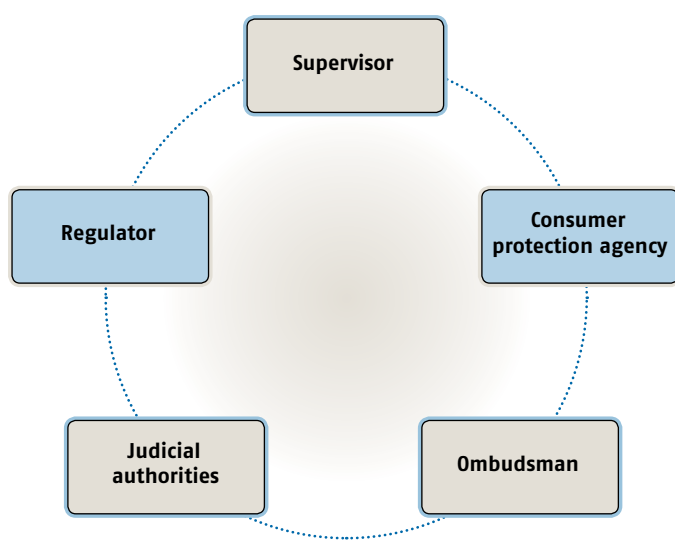
#### *Service areas and public ombudsman's office*

- Evaluation of the quality of statements made to consumers.
- Evaluation of conditions and customer service area performance (resources, indicators).
- Queries, complaints and other indicators used for continuous improvement.
- Existence of service quality surveys and satisfaction measuring mechanisms.
- Public Ombudsman's Office: Evaluation of the agency's quality, its independence, allocated resources, and quality of management.

#### *Disclosure*

It is highly recommended for the entity's performance results on protection to be disclosed, along with any sanction measures adopted.

# VI. Institutional Arrangement for Financial Consumer Protection



The institutional arrangement of the various agencies (organic and functional distribution) determines the responsibilities and legal attributions each institution has towards financial customer protection. Each country's legal tradition will significantly affect the expected roles that each agency must play.

In some jurisdictions, supervisors assume responsibilities regarding the management of customer complaints and concerns; while others focus their work on overseeing the financial system, restricting their actions to ensuring the conditions of regulated entities.

The institutional arrangement regarding financial customer protection includes the participation of the following stakeholders:

- Regulator
- Supervisor
- Specialized consumer protection agency
- Consumer protection agencies (public ombudsman's offices)
- Legal authorities (legal system)

The best practices analysis considers various criteria which provide several points of view, for example:

- A specialized regulator on financial customer protection versus a general regulator.
- Supervisor's responsibilities on financial consumer protection:
  - ~ Financial Supervisor with functions related to financial consumer protection versus a generic supervisor overseeing all types of consumer relationships.
  - ~ Financial Supervisor with powers to deal with complaints and concerns versus a supervisor without such functions.
  - ~ Supervisors with powers to resolve disputes versus a supervisor without the powers to resolve disputes.
- Specialized agency (different from the supervisor) with powers to protect financial customers versus a generic protection agency.

- Legal authorities specialized in financial disputes versus legal authorities that have generic capabilities.
- Agency specialized in dispute resolution, non-public, endogenous to financial entities versus a specialized agency in solving disputes, non-public, exogenous to the financial entity's structure.

Without detriment to the analysis carried on some institutional arrangement variables, the following conditions are deemed to be necessary:

- Clear mandate for each agency towards consumer protection objectives.
- Clear definition of competencies among authorities or agencies.
- The assignment of consumer protection functions should not compromise the mission of the agency.

The following is an analysis of the previously mentioned institutional arrangement variables:

## VI.1. SPECIALIZATION OF THE REGULATOR

Having a specialized consumer protection regime determines the dynamics on financial consumer protection. Although, general consumer protection regulation includes rules on information, contractual protection, and guarantees, these rules are based on a principles approach and includes cross-sectional mandates that disregard the specific characteristics and sensitivities of financial services.

This feature requires *the consumer protection regime to include special rules that apply to financial services*. Thus, an expert regulator is needed to design a preventive and corrective framework, given its expertise on financial products, features, conditions of use, and aspects that cause consumer dissatisfaction.

A specialized regime may adopt different institutional arrangements. For example, a financial regulator may oversee consumer protection aspects; alternatively, a consumer protection regulator may have the support of an expert team on financial

products. Regardless of the institutional arrangement, the regime must have a specialized agency that intervenes in the regulatory process.

## VI.2. RESPONSIBILITIES OF THE FINANCIAL SUPERVISOR IN CONSUMER PROTECTION

Financial supervisor's responsibilities on consumer protection is one of the most discussed topics when determining the adequate institutional arrangement. Countries that have assigned consumer protection functions to their financial supervisor, conceive these functions not only as an activity that promotes general stability of the financial system and individual institutions, but also as an essential premise in maintaining contractual balance, providing adequate services through risk management (especially operational), transparency, data disclosure, and, in certain cases, providing individual complaint services.

In other countries, the institutional arrangement strives to isolate financial supervisors from the demanding tasks that consumer protection may entail, especially those related to customer complaint services. This approach gives priority to channeling supervisory resources to overseeing systemic stability and appropriate performance of entities, without disregarding the supervision of some elements that impact an adequate provision of financial services, avoiding issues such as contractual protection, revision of individual complaints, etc.

Both models present opinions in favor and against them. In the first case, the financial supervisor has the expertise and ability to understand the provision of these services, given their permanent contact with the industry and with consumer concerns allows them to adopt corrective actions when they observe trends revealing flaws in the institution's management practices or infrastructure. Under this approach, an entity's performance on customer service becomes a fundamental input for the supervisory strategy, so much so that it determines, in addition to prudential issues, the actions to achieve improvement.

However, when this scheme requires

supervisors to be responsible for handling complaints and concerns; it is evident that substantial human and technical resources must be allocated to perform this task. Under this model, it is important not to compromise the primary role of the supervisor, which is to ensure adequate risk management in financial entities and systemic stability.

When financial consumer protection tasks are managed by other authority, the financial supervisor is freed from these demanding tasks and focus on his prudential functions. Under this scheme, a specialized consumer protection agency may develop strategies addressing customer protection, including financial services.

This last arrangement allows financial supervisors to fulfill their responsibilities and better allocate resources to their tasks. However, it may also “disconnect” aspects related to the entity’s management, risk management, and structural soundness to the provision of financial services. It can also be exposed to the lack of knowledge of the generic protection agency regarding special aspects of financial services, changes in regulation and ways to render services.

An important aspect in both schemes is that, in the first case, supervisors should not disregard their duties regarding systemic stability to comply with consumer protection tasks. In the second case, authorities should work together to avoid a complete “disconnection” between supervisory duties and consumer protection tasks, considering that some supervisory aspects directly impact the conditions in which services are provided.

Therefore, it is reasonable to consider establishing a specialized agency on financial consumer protection. This agency would concentrate on aspects related to information quality, transparency standards, contractual balance, as well as complaints and concerns services. Even though this agency may be different from the supervisory authority, it should be permanently in contact with the Supervisor to generate inputs and practices that improve consumer protection standards.

### VI.3. DISPUTE RESOLUTION

Financial institutions are in principle required to adequately resolve concerns and complaints from their customers. If the attention given to the complaint is not timely and adequate, consumers may file a complaint before the supervisory authority or other competent agency. As a last resort, consumers can approach judicial authorities or an agency with dispute resolution powers to obtain a permanent solution to a dispute.

Consumer disputes may be characterized into two main groups. On group comprises disputes related to the condition under which services were received and the quality of information. The other group covers disputes in which consumers seek an explicit recognition of a right, that is, a definitive solution to a contractual dispute.

Some countries in the region have given their supervisory authorities judicial-like powers to resolve consumer disputes in some cases, granting them the power to rule on the enforcement of contracts and, eventually, stipulating the recognition of economic rights. This approach must be carefully evaluated considering the impact it may have on the supervisory agency’s objectives, the balance in the government structure, and the generation of conflicts of interest within the supervisory agency when performing its traditional supervisory duties; thus, affecting the neutrality of the agency.

Even though this approach expects to provide financial consumers with an expert and technical agency that can rapidly issue a decision on a particular conflict, it also gives rise to the following concerns:

- The possible existence of conflicts of interest when conducting supervisory actions. Is the supervisor truly autonomous and independent to resolve the dispute?
- The role of resolving disputes significantly affects the agency’s objectives, especially those associated to the conservation of systemic stability.

In most of the region, the supervisory authority does not have the power to resolve disputes, which means it cannot pass judgment on disputes between financial entities and their customers. In Colombia, for example, the Superintendency has been given judicial-like powers to solve some causes.

In this context, the absence of a judicial system that provides expedite procedures to resolve disputes between customers and financial entities, may be addressed through alternative dispute resolution mechanisms or a specialized protection authority that can resolve disputes efficiently and with technical expertise.

Regardless of whether the designated agency is public or private, the resolution of financial consumer disputes should have the following characteristics:

- **Independence:** Whoever issues rulings concerning differences between financial entities and consumers must be objective and independent from being influenced by the involved parties, especially the financial institutions.
- **Technical capacity:** It is necessary to have expert bodies with the necessary knowledge to pass judgment on legal and operational aspects related to financial transactions.
- **Implementation of expedite procedures:** financial products seek to satisfy the basic needs of individuals and their families. Therefore, dispute resolution

must be carried out through expedite procedures to quickly and effectively solve disputes.

- **Access:** Dispute resolution procedures should be free of charge, or have a cost that does not prevent consumers' access to these.
- **Clear and accurate pronouncements regarding the dispute:** Legal decisions must specifically refer to the issue that caused the difference between parties. In this sense, these should grant or deny a right and be effectively enforceable.

#### VI.4. THE ROLE OF FINANCIAL INSTITUTIONS

Within the institutional arrangement, financial entities, in their role as service providers and key executioners of best practices, are called to build a true protection culture.

In this context, financial entities must be characterized by:

- Prioritizing corporate policies and practices in relation to consumer protection.
- Fostering a culture of trust and consumer protection in their activities.
- Establishing special resources and procedures to protect financial consumers.
- Proactively reacting to recommendations and instructions provided by the supervisor or other authority regarding consumer protection.



# VII. Best Practices and Conclusions

The following include the main findings and conclusions of this study:

- **Financial consumer protection** is relevant to most supervisory authorities in the Americas and their respective financial systems.
- The **level of development of consumer protection regulation**, supervisory activities, and banking practices are dissimilar due to, among other things, the context of each country and the responses generated in times of crisis.
- Supervisory authorities recognize the importance of consumer protection, but this task must be **reconciled with the mission and goals of the supervisor, especially those related to systemic stability**. While supervisors recognize the importance of their role in adequate consumer protection, they realize the need to assess the extent of their responsibilities given the need to prioritize their strategic responsibilities of protecting the stability of the financial system.
- The **level of depth of consumer protection regulation** is an ongoing topic of discussion, which is mainly focused on the mandatory provision of services, price regulation, a balanced approach that encourages self-regulation, and the implementation of best practices.

## *Legal and regulatory frameworks*

- An approach based on **general rules** for the protection of financial customers prevails.
- Some countries have developed protection *by laws*.
- In other cases there are special regulations, but dispersed in various regimes (regulatory dispersion).

- Nevertheless, there is a growing development of specific financial consumer protection regulation or initiatives to improve such regulation.
- In certain cases, there are complexities regarding the implementation of general regulations and special provisions on financial issues.
- The value of **transparency** and the need to have **effective information mechanisms** is widely acknowledged.

## *Supervision*

- Almost all of supervisors have in their own **mandate** an obligation to oversee the enforcement of protection regulation.
- Whenever the **consumer protection agency is different from the supervisor**, coordination between authorities is required.
- Initially, supervision concentrated on providing **customer complaint services**, but it has gradually incorporated elements from the protection structure into the supervisory evaluation by using **risk-based criteria, and even by developing specialized analysis**.
- The appropriateness of granting supervisors the roles to establish prices and resolve disputes is being discussed in different countries.

## *Dispute resolution*

- In most countries, the agencies in charge of financial consumer complaints and concerns lack the authority to resolve disputes on a definitive basis.
- In general, judicial authorities are in charge of resolving disputes. However, some countries have given supervisors this power, or are in the process of evaluating whether it should be granted to them.

- Complaint and dispute resolution procedures are quite similar whether these are conducted in financial institutions, the ombudsman office (when it exists), the supervisor, the justice system or an ADR mechanism (Alternative Dispute Resolution).
  - There is a need to strengthen agile and effective dispute resolution mechanisms, especially when they relate to small claims.
- This is the proper time to work on optimizing financial consumer protection systems in the Americas, as this study evidently shows there is a great interest on this topic. Most countries in the study have identified opportunities and critical improvement factors that match those proposed by this study.



# **ANNEXES**

## **PRACTICES IN THE REGION**



# Annex I - Implementation of Consumer Protection Principles in the Americas

As a general rule, ASBA member countries do not have a consumer protection model based on principles exclusively implemented for financial consumers' relationships. A deep analysis of current legislation shows that principles refer to general consumer relationships, which in many cases are inadequate to financial practices.

In **El Salvador**, Law 776 published in 2005 is a general norm that contains some chapters dedicated to financial consumer protection. This Law makes reference to constitutional principles, such as social justice, market economy, equality and opportunities; and includes others such as legality, guilt, due process, equality between parties, economy, and celerity.

In **Colombia**, Law 1328 dated 2009, identifies principles directly related to financial consumers, such as responsibility (of supervised entities in managing complaints), freedom of choice (of entities and consumers in choosing their counterparties to enter into a contract), due diligence (of entities when offering products or ser-

vices), transparency, adequate conflict of interest management, among others.

In **Peru**, the Consumer Protection and Defense Code is a general law applicable to all consumer relationships, with some articles dedicated to financial consumers. This Code includes principles, such as consumer sovereignty (consumers have freedom to make decisions), pro-consumer principle (the government must act in favor of consumers), correction of asymmetries (includes rules to correct distortions or bad practices between consumers and providers).

In **Spain**, the Royal Legislative Decree 1 dated 2007 approves the text of the General Law for the Defense of Consumers and Users, which makes reference to constitutional principles including information and economic framework.

Even though in **Mexico**, the Law for the Protection and Defense of the Financial Services User is a specific law in this matter, it does not mention the principles that guide regulation.

## Annex II - Regulatory Frameworks for the Protection of Financial Customers in the Americas

ASBA country members' regulatory frameworks can be classified into the following groups:

- **Specific Regulation:** Canada, Colombia, and Mexico have specific financial consumer protection regulations. The following are some cases of specific regulation exclusive for consumer protection that are currently implemented in ASBA member countries:

- ~ **Canada** has established the Financial Consumer Agency of Canada (FCAC) to permanently regulate financial consumer rights and financial products and services, in particular. The Financial Consumer Agency of Canada Act grants the FCAC the power to issue regulation and impose penalties through fines. In addition, the FCAC can conduct studies on the behavior of financial consumers and provide them tools to help them understand and compare financial products and services. On their website, consumers are able to consult regulation on an efficient manner, as norms have been compiled to facilitate their access<sup>2</sup>.

- ~ **Colombia**, in Law 1328 dated 2009, specifically regulates financial consumer rights and obligations, information disclosure, creates the System for Financial Consumer Services (SAC), provides guidelines for the financial consumer defender or ombudsman (dispute resolution, conciliation, and spokesperson), regulates unfair and abusive clauses, and establishes a special sanctioning regime. The Financial Superintendency of Colombia, on its website, dedicates a

section on financial consumer protection, where consumers can consult regulations as these are classified by topics<sup>3</sup>.

- ~ **Mexico** is a best practice example in consumer regulation, as it has the Law for Protection and Defense of Financial Service Users. This legislation has a specific character and regulates financial consumer protection through the National Commission for the Defense of Users of Financial Services (CONDUSEF), which has the power to resolve complaints and concerns, conduct conciliations, act as arbitrator, promote and preserve consumer's rights. In addition, this Law establishes rules on information and a sanctioning regime. CONDUSEF also regulates unfair and abusive clauses in contracts.

CONDUSEF has a website where financial consumer regulations are consolidated in a single section, which facilitates its access.

- **General Regulation:** El Salvador, Chile, Peru, Uruguay, and Argentina implement general consumer protection rules used for any goods or services to financial consumers. These rules include special articles related to financial consumer protection within the general norm.

- ~ **Bolivia** has a general consumer protection law that is applicable to financial consumers.

- ~ In **Brazil**, there are general rules for consumer protection and specific rules for financial consumers which have a lower hierarchy, such as circu-

<sup>2</sup> <http://www.fcac-acfc.gc.ca/eng/industry/Obligation/index-eng.asp>

<sup>3</sup> <http://www.fcac-acfc.gc.ca/eng/industry/Obligation/index-eng.asp>

lars, regulatory agreements, etc.

- ~ **El Salvador** consumer protection in Law 776 dated 2005. This regulation creates the Consumer Protection Agency, responsible for protecting consumer rights and obligations. This agency regulates information rules, unfair practices and clauses, procedures for complaint and concern services, as well as the sanctioning regime which is also stipulated in the Financial System Supervision and Regulation Law.
- ~ In **Nicaragua**, consumer protection regulation is general, with the excep-

tion of some specific clauses on protection of credit card users.

- **Regulatory Dispersion:** Some countries do not gather together all regulation on financial consumer protection, making it difficult to find these. The main consequence of this dispersion is that consumers are limited when trying to consult regulation, finding it hard to locate essential provisions.
- **Lack of Regulation:** There are countries with few or no financial consumer protection regulations.

## Annex III - Regulatory Framework Contents

**Financial Education** – Some countries in the region have financial education programs which are continuously being updated on topics covering financial products and services. In addition, training modules for educators have been observed, while the region is working on designing mechanisms to measure the effectiveness of these programs:

- **Brazil**, has adopted a national financial education strategy with the objective to promote a financial education culture that would enable citizens to make informed decisions regarding the management of their resources, which contributes to strengthening financial markets (capital, insurance, pension and capitalization), and incorporates a larger number of segments of the population into the financial system. In addition, basic financial topics are taught in schools.
- In **Colombia**, the Ministry of Education and ASOBANCARIA recently designed a financial education program to be included in the curriculum in schools, so that children become familiar with concepts related to personal finance and recognize their importance.
- **México** has developed both comprehensive education programs that are easy to understand and educational programs for children. It has also implemented a national week dedicated to financial consumers, during which consumers are trained on their rights and obligations as well as the proper management of their finances. In addition there is an on-line certificate program available.

- In **Peru**, there is a financial education counseling program for educators, which provides training on financial aspects so that the teachers can then transmit this learning to students in public schools.
- **Trinidad and Tobago** has a financial literacy program set up to provide basic financial education to children, young people, and adults regarding minimum financial education management concepts<sup>4</sup>.

**Financial Information** – The following include best practices identified in the region in terms of information disclosure on financial services and products:

- **El Salvador** conducts outreach campaigns that consist in providing brochures on financial literacy topics covering financial product characteristics, as well as the rights and obligations acquired by consumer when contracting loans, insurance, credit cards, pensions, securities market accounts, and using ATMs and online banking. The brochures also cover glossaries on banks, insurance, warrantors, money laundering, as well as the procedure to file claims and a collection of financial systems laws. Furthermore, El Salvador has implemented an educational radio program covering the above mentioned financial products.
- **Spain** offers training material on the Bank of Spain's website, which provides information on the Bank's competencies and functions within the framework of financial consumer protection. More-

<sup>4</sup> <http://www.nflip.org.tt/>

over, the Central Bank trains financial consumers on the characteristics of financial products, rates and fees, obligations that these products generate, as well as the consequences in case of misuse<sup>5</sup>.

- In **México**, CONDUSEF conducts campaigns that consist in delivering brochures on various financial products and services available in the market. It also publishes a monthly magazine “Proteja su Dinero” (Protect Your Money) that addresses financial topics in a clear and concise manner. The magazine has a section designed to guide consumers by giving practical examples on topics, such as savings, investments, loans, family budget, among others.

**Products and Services Offering** - Some ASBA member countries have implemented a financial services mandatory offering regime. This regime requires financial entities to offer certain products without the ability to refuse to do so; if entities refuse, they should provide a written statement justifying their actions.

- **Brazil** regulates the mandatory offering of services in Resolution 3919 dated 2010. This resolution states that financial entities have a duty to provide basic financial services to individuals, however, the resolution does not state which financial services are considered basic.
- **El Salvador** has established in its Bank Law that the functioning of financial entities is mandatory and therefore, these have a duty to offer all financial products in their service catalogue.
- **México** has established in its legislation a financial services mandatory offering regime within the Ley de Instituciones de Crédito, (Law of Credit Institutions), which stipulates that “*credit institutions that take demand deposits from individuals are required to offer a basic payroll account, either a deposit or savings account.*”

**Dispute Resolution** – The following are some examples of dispute resolution practices identified in the region:

- **Brazil** has alternative mechanisms to resolve disputes, aimed at reaching an amicable solution between consumers and financial service providers through the National System for Consumer’s Defense, which is coordinated by the Department of Consumer Protection and Defense (DPDC).

In **El Salvador**, dispute may be resolved through arbitration or mediation at the Center for Conciliation or the Consumer’s Advocate, both agencies may impose penalties for noncompliance with consumer protection regulations. The Superintendency of the Financial System does not have the authority to resolve disputes; however, it has the power to impose sanctions on financial entities and provide advice to financial system users.

- In **Spain**, financial consumer complaints can be channeled through the Financial Customer’s Ombudsman Office; however, its decisions are not binding. It is recommended for customers to go before the National Securities Market Commission (CNMV) or the Directorate-General of Insurance and Pension Funds (DGSFP) that have the mandate to resolve disputes among parties, through the Commission for the Defense of Financial Services Customers.
- In **Guyana**, when a dispute arises, parties primarily seek a direct settlement between the bank and the customer or through mediation by the Consumer Affairs Commission.

**Sanctioning Regime** – The region has a broad range of practices regarding sanctioning regimes, the following are some examples:

- In **Bolivia**, Banking and Financial Institutions Law No. 1488 establishes the sanctioning regime applicable to financial entities, in case of violations to consumer protection regulation. Bolivia also has Supreme Decree N° 26156 that sets forth sanctioning provisions for financial entities in the stock market. These provisions are imposed by the Fi-

<sup>5</sup> <http://www.bde.es/clientebanca/productos/productos.htm>

financial Supervisory Authority (ASFI) on financial entities when violating financial consumer protection regulations.

- In **Brazil**, there is a sanctioning regime (covering warnings, fines or disqualification of financial institution's directors) for financial entities that do not comply with the provisions established by the National Monetary Council. The agency responsible for sanctioning institutions is the Central Bank of Brazil. Brazil also has a sanctioning regime with grounds for aggravation.
- **Canada** has a sanctioning regime which provides the Financial Consumer Agency of Canada (FCAC) with the power to impose sanctions on financial entities for non-compliance with financial consumer protection regulation. Section 19 of the FCAC law, establishes pecuniary penalty procedures, according to proportionality criteria (intention or negligence of the entity in protecting consumers and the damage caused to the consumer) and the imposition of sanctions with aggravation grounds based on the historical background of the financial entity.
- **Chile** in its Law 19.496 on the protection of consumer rights, which was modified by Law 19.955 dated 07/14/2004, stipulates a sanctioning regime to be implemented in cases when financial entities violate consumer protection regulation. In addition, Law 19.659 stipulates sanctions on illegal collection procedures, which range from fines to criminal proceedings according to the violation.
- The Superintendency of Banks and Financial Institutions (SBIF) notes that the General Banking Law stipulates the sanctioning regime for financial entities. However, it does not have grounds for aggravation for non-observance of such regime. In **Ecuador**, the Organic Law for Consumer Protection states that violations to consumer protection regulation, and misleading or unfair advertising will be sanctioned through financial penalties.

The Superintendency of Banks (SBS) stated that the General Law on Financial System Institutions and additional SBS Resolutions stipulate the SBS's competence to impose sanctions on financial entities for actions that violate financial consumers' rights. There is also a sanctioning regime with grounds for aggravation, in accordance with the General Law on Financial System Institutions.

- **El Salvador** under Title II, chapters I and II of the Consumer Protection Law stipulate that the Consumer Ombudsman is the agency in charge of imposing sanctions, which can range from warnings to the permanent closing of the financial institution.

The Superintendency of the Financial System in El Salvador also has powers to impose sanctions on financial entities for non-compliance with financial consumer protection regulations. In the first instance, the Consumer Ombudsman should impose punitive actions as established in its laws and regulation, given it is the agency in charge of regulating the actions of financial providers with their customers. However, but to a lesser degree, the Superintendency has imposed fines and penalties on supervised entities for non-compliance of such regulation. El Salvador does not have grounds for aggravation due to nonobservance of the regime.

- In **México** there are two special regulations for financial consumer protection that establish a sanctioning regime. These regulations are: the Law for the Protection and Defense of Financial Services Users and the Law for the Transparency and Regulation of Financial Services. Sanctions are imposed on violations to the current legal framework, which includes suspension of advertising and suspension of activities whose contract or account statement are not in accordance to the legal framework.

The agency responsible for imposing sanctions on financial entities for violation of financial consumer protection



regulations is CONDUSEF. As to the grounds for aggravation for nonobservance of the sanctioning regime, the applicable regulation is the Law for the Transparency and Regulation of Financial Services.

- **Peru** has established a sanctioning regime for non-compliance with consumer protection regulation. The law provides penalties for failure to comply with such standards, along with grounds for aggravation. The Superintendency of Banks, Insurance and AFP of Peru through Law N° 26702 (Organic Law of the Financial and Insurance Sys-

tem) has the power to impose sanctions on financial entities according to the seriousness of their actions (fines, warnings, suspension, etc.).

- The Superintendency of Banks of the **Dominican Republic** has developed a general sanctioning regime, applicable to financial consumer protection. This regime is found in the Sanctions Regulation of the Superintendency and its Modifications. The agency responsible for implementing the regime is the Superintendency. Sanctions may be: financial, either temporary or permanent suspensions, according to each case.

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## **MISSION**

Contribute to the strengthening of bank regulation and supervision and financial system stability in the Region by actively sharing information and disseminating knowledge; providing support and services that lead to increased technical capacity and leadership; supporting the adoption and implementation of sound supervisory practices; and promoting timely and relevant international dialogue

## **OBJECTIVES**

- a. Promote and maintain close communication among the Association's Members, in order to facilitate co-operation among them, and to promote the improvement of their respective capabilities;
- b. Provide its members with a high-level discussion forum for the exchange of information, ideas, techniques, experiences and knowledge over their scope of competence;
- c. Promote and carry out research and analysis on financial regulation and supervision as well as financial stability;
- d. Organize and conduct systematic and permanent training programs as well as technical cooperation amongst its Members;
- e. Promote cooperation and exchange relationships with non-member bank supervisors, with financial standard setting institutions, with international and multilateral technical cooperation institutions, with other organizations with similar objectives and with organizations representative of the supervised entities; and
- f. In general, to carry out every activity related to its purposes.