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## CFPB Focus: Consumer Protection Or Consumer Complaints?

Law360, New York (December 12, 2011, 11:16 AM ET) -- On Nov. 30, 2011, the Consumer Financial Protection Bureau released its interim report on credit card complaints, including some statistics about the complaints and the conclusions it has drawn from the 5,000 credit card complaints it received since July 21.

One of the most striking things about the data is how little it seems to relate to the CFPB's regulatory and enforcement functions. The bureau notes that it passed along most of the complaints to the card issuers (84 percent), who promptly resolved a high percentage of the complaints (74 percent of the ones forwarded). Largely, customers seemed satisfied with the resolution of their complaints (with only 13 percent of the consumers disputing an issuer's handling of the complaint).

So, in essence, the bureau's complaint procedure essentially functioned as an extension of the card issuers' customer service channels with regard to the majority of the complaints received. Did we need a new federal consumer protection agency for this?

Moreover, the data released by the CFPB doesn't shed light on any particular regulatory or legal issue. The bureau established a large number of categories for consumers to identify their complaints with, but the categories themselves are vague (like "delinquent account" or "transaction issue"), and the bureau admitted in its report that the list of categories is "under review" because consumers had difficulty understanding the categories, leading to inconsistent labeling of similar complaints. Moreover, the categories themselves provide no insight into whether any federal consumer protection law has been violated, or whether any existing regulation is working or not.

Yet, from this data, the CFPB announced that it had concluded that consumers are "struggling to understand" their credit card terms, and that there is a "mismatch between consumer understanding and product function." No data is cited to support this conclusion; presumably it comes from the bureau's review of the complaints, but no further information, or even any concrete example, is given to substantiate the overarching observation the CFPB draws from the complaints.

Presumably, this consumer complaint data will be used as the justification for new disclosure requirements for credit card issuers, or substantive regulation of the terms of credit. But the use of complaint data in this way marks a huge — and dangerous — departure in regulation. If the barometer of a regulatory agency is to test consumer happiness or satisfaction and to regulate terms or practices that consumers do not like, the regulatory effort will have lost all connection to the purpose of regulation in the first place.

Consumer protection laws exist to ensure that customers have a fair opportunity to understand the products they buy, and regulation is supposed to prevent fraud or other practices that would prevent a diligent consumer from making an informed decision. But when the gauge is shifted to focus on the mere existence of dissatisfaction among consumers, there is no principled basis to support any regulatory rule, and more importantly there is no focus on allowing consumers to experience the consequences of their own choices.

That is why I find the bureau's focus on consumer complaints so worrisome — and it shows up not only in the report on credit cards, but also in other places like the Mortgage Servicing Examination Procedures. The CFPB should be focusing on whether complaints show violations of law, not on whether consumers are generally happy with a particular issuer's terms or practices.

I fear that the bureau's focus on customer satisfaction, coupled with its nascent UDAAP (unfair, deceptive, or abusive act or practice) authority, is a recipe for the regulation of terms merely because they are unpopular with the subset of customers who choose to complain. If the bureau adopts that model of rulemaking, we can look for an even greater contraction in the availability of credit cards beyond what has already been caused by the Credit Card Accountability Responsibility and Disclosure Act.

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