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Troubleshooting Credit Card Data Policies

Law360, New York (February 07, 2012, 5:47 PM ET) -- On Jan. 30, 2012, the American Bankers Association delivered a comment letter to the Consumer Financial Protection Bureau in which it expressed strong disagreement with the CFPB's proposed policy statement on "Disclosure of Certain Credit Card Complaint Data."

The ABA expressed concern that the complaint data will not help and may actually mislead consumers because it is "incomplete, unrepresentative, and unverified." The ABA also argued that the proposed policy "undermines a core mission of the Bureau and impugns its supervisory responsibilities."

We agree with many of the ABA's concerns. The data in question are drawn from complaints consumers have made directly to the CFPB, and include such information as the credit card issuer's name, the subject of the complaint, the consumer's zip code, the date of the complaint and whether and how the issuer responded.

The CFPB argues that releasing this data to the public will give third parties the opportunity to analyze it and "identify trends and patterns that they believe may help inform consumer decisions about credit cards," and that the work that these third parties may or may not do would help provide consumers with "timely and understandable information to make responsible decisions about financial transactions."

There are several problems with the CFPB's position.

First, the CFPB has admitted that the data, alone, is not the type of "timely and understandable" information it is authorized to produce, but will only become so if third parties such as "academics and groups dedicated to empowering consumers" happen to analyze and synthesize it to make it useful. Dodd-Frank authorizes the CFPB to release data that will help consumers, not data that may become useful if third parties take it upon themselves to make it so.

Second, the proposed policy fails to address the fact that third parties may take the data and do the opposite of what the CFPB assumes they will do, and produce information that misleads consumers and hurts individual issuers.

Finally, even those unfamiliar with the principles of statistics understand that data generated by a self-selected group of individuals is not reliable, particularly for the purposes that the CFPB assumes third parties such as "academics" will want to use it. Data drawn solely from a self-selected group of complaining consumers will create a skewed perception of consumer satisfaction.

As an alternative to the proposed policy, the ABA urged the bureau to "obtain analytically sound, fair, accurate, and meaningful data that can withstand peer review, consistent with its pledge to be data-driven." In the interim, the ABA suggested that releasing data such as that reflected by the "Consumer Response interim report on CFPB's credit card complaint

data” can both help consumers and also prevent issuers from being harmed unnecessarily.

The ABA explained that the interim report “provided market-aggregated data based on the complaints filed or referred to the Bureau,” including “a summary of the complaints received, including the number and percentage of complaints based on the type of complaint, as identified by the consumer, and the percentage of complaints resolved.”

The ABA commended the CFPB on the interim report and pointed out that releasing market-aggregated data, as opposed to issuer-specific data, is a better choice until the CFPB can obtain the kind of reliable data that will not unfairly affect issuers. We agree with the ABA.

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