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Forecasting The Path Of The Consumer Financial Protection Bureau

December 2011

The recent defeat of the nomination of Richard Cordray, President Barack Obama's choice for director of the Consumer Financial Protection Bureau, may have lulled some into believing that, like an off-shore tropical storm, the agency poses no real threat. (Read our alert on the impact of the congressional vote [here](#).) Companies that do nothing but continue their current business practices, however, may find themselves the focus of a regulatory action if and when the agency's leadership issue is resolved. Although the CFPB currently cannot bring enforcement actions or make rules prohibiting unfair, deceptive and abusive acts or practices by the persons and entities it supervises, the agency has been assembling a full roster of enforcement attorneys, investigators and support personnel, and will be ready - and able - to act as soon as a director is in place.

Communications from and about the CFPB, including its Nov. 30, 2011, report "[Consumer Response: Interim Report on CFPB's Credit Card Complaint Data](#)," as well as the White House's Dec. 1, 2011, report "[Improving Americans' Financial Security: The Importance of a CFPB Director](#)," provide important information about the path the agency likely will take, including what industries and issues the agency will be targeting, once its powers are fully vested. Companies can - and should - pay attention to these communications now, since the next time they hear from the CFPB may be when the agency issues a civil investigative demand, or initiates an enforcement action or rulemaking proceedings imposing new regulatory requirements.

The Interim Credit Card Report summarizes the results of the first three months of the CFPB's Consumer Response office, monitoring consumer credit card complaints, and includes a breakdown of the different types of complaints the agency has received



(Table 4). In addition to reporting on how the agency handled the complaints, the report also states that the complaints provide "potential insights into issues within the credit card marketplace that may inform the CFPB across its full range of activities: supervision, enforcement, rulemaking, research, and consumer education."

Acknowledging that the complaints were drawn from "a non-random sample of roughly 5,000 credit card consumers" - those that contacted the CFPB to register a complaint - the report indicates three areas of concern:

- Many complaints show consumers struggle to understand the terms of credit cards and associated products like debt protection services, indicating "a mismatch between consumer understanding and product function or issuer practice."
- Complaints reveal allegedly fraudulent charges to consumers' credit cards made by third parties, including recurring scams, for which the agency has helped to obtain redress for defrauded consumers.
- A large volume of the complaints involve conflicting factual accounts presented by the issuer and the consumer. The report acknowledged that, in many such cases, issuers have been willing to resolve the complaint.

In conveying this information, the CFPB not only indicates clearly the areas where it will likely focus its attention in the future, but also affords credit card issuers - and others - an opportunity to review, and if necessary alter, the practices that have been generating consumer complaints before the agency initiates any enforcement action or institutes rulemaking to address them.

The Interim Report indicates that the agency intends to expand the Consumer Response complaint system to include additional categories of financial products -



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mortgages and other home-secured loans by the end of 2011, and the majority of all types of consumer financial product complaints and inquiries by the end of 2012.

In stressing the need for a director in order for the agency to fully exercise its powers, the White House Report focuses particularly on the CFPB's current inability to supervise and regulate non-bank financial companies. The report describes the significant role of non-bank financial institutions on Americans - specifically mentioning payday lenders, money-service business and pre-paid card providers, debt collectors, debt settlement companies, non-bank mortgage lenders and servicers, private student lenders and credit reporting agencies - and the need for the CFPB to be able to supervise and regulate these entities.

The report also identifies potentially harmful practices - charging high interests rates and fees, imposing other disadvantageous loan terms, failure to adequately disclose terms, predatory and abusive debt collection practices, and lack of compliance with existing federal consumer financial protection law - suggesting where a fully functional CFPB would focus its efforts in the near future.

Assuming that the political deadlock that has prevented the CFPB from exercising the full measure of its powers will be resolved in 2012, companies should take advantage of the current window of opportunity to "batten down the hatches" by performing a complete review of their marketing and compliance procedures so as to be prepared.

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