December 10, 2015

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Undermining the CFPB:

CHAMBER SEEKS LIGHT REGULATION OF CREDIT CARDS BY LIMITING POWERS OF THE CONSUMER FINANCIAL PROTECTION BUREAU

Acknowledgments

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Contents

Introduction

The enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) was a response to the greatest financial crisis in the United States since the Great Depression. The Great Recession was fueled by lax oversight, fraud, and lack of regulation. Dodd-Frank sought to address many of the glaring shortcomings of financial regulation. One of the crowning achievements of Dodd-Frank was the creation of a new consumer finance regulator. The mission of that regulator, the Consumer Financial Protection Bureau (CFPB). The mission of that agency is to help consumer finance markets work by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives.[1]

In a document laying out its wishes for 2015, the U.S. Chamber of Commerce (the Chamber) spent considerable time and effort discussing ways to restrain the agency under the guise of preserving consumer choice and access to capital. However, a critical analysis of the Chamber's positions demonstrates that it is simply aiming to minimize the agency's reach in order to give greater latitude to large financial institutions at the expense of consumer protections.

The Chamber's antipathy toward the CFPB is not new. In fact, it began before the agency was even established. As early as June 2009, more than a year prior to the enactment of Dodd-Frank, the Chamber announced its opposition to the creation of the CFPB. To put this in context, at a time when the U.S. unemployment rate was approximately 9.5%, due in large part to the overhang of debt consumers suffered from underwater mortgages, the Chamber sided with the nation's biggest banks in opposing creation of a consumer financial regulator.

Soon thereafter, the Chamber announced plans for an aggressive campaign, including spending $3 million on radio, TV and online ads, to oppose the agency's creation. While its efforts ultimately failed, the Chamber continues to oppose the CFPB's efforts to protect consumers in many key areas—from the CFPB's ability to police tricky clauses in contracts that keep customers from suing for corporate wrongdoing to its attempts to improve auto finance regulations.

The Chamber's 2015 agenda document identified several regulatory recommendations it claimed are designed to help preserve consumer choice and access to credit. This paper will illustrate that the most consistent aspect of the Chamber's recommendations is seeking to constrain the CFPB's reach. The predictability with which the Chamber counsels a narrower role for the agency—at times at the expense of the Chamber's intellectual consistency—exposes the group's true motivations and casts great doubt on the sincerity of the arguments it puts forth in discrete cases.

[1] See, Consumer Financial Protection Bureau, "About us," http://www.consumerfinance.gov/the-bureau/.

Chamber Seeks to Protect Financial Companies' Permissions, Limit Consumer Protections

The Chamber claims to represent the interests of more than "three million companies of every size, sector, and region." The association also purports at times to speak on behalf of consumers' interests.

In a May 2015 letter to the CFPB in response to a request for information regarding the credit card market (See, Docket No. CFPB-2015-0007), the Chamber lauded credit cards for offering "consumers enormous convenience and facilitate full participation in the 21st Century" and accused the CFPB of taking or contemplating actions regarding credit cards and related products that it said would harm consumers.

But a closer look at the Chamber's recommendations leads to the conclusion that it is far more concerned with ensuring that its members have the ability to sell products with minimal restrictions and limited regulatory oversight than providing consumers efficient and safe access to credit.

In its May 2015 letter, the Chamber identified five specific recommendations in this area, which this paper will explore and interpret. They were:

- The CFPB should maintain clear rules of the road in the credit card market.
- Rationing credit card credits will not protect consumers.
- The CFPB must be transparent with respect to information it gathers and publishes on credit cards.
- The CFPB should respect the clear limits on its authority regarding credit cards.
- The CFPB should recognize the authority and expertise of other agencies and avoid duplicative regulatory action.

Point #1- The CFPB should maintain clear rules of the road in the credit card market.

The Chamber alleges that the CFPB "has preferred to maintain regulatory ambiguity and to bring 'gotcha' enforcement actions." To support this claim, the Chamber has asserted that the CFPB has "consistently refused to clarify the bounds of liability for abusive acts or practices."

But the Chamber has shown a willingness to challenge rulemaking procedures by other regulators when the business group believed they acted in an arbitrary or capricious manner.[2] As such, it is curious that the Chamber has not brought or supported any challenges against the CFPB. If the CFPB's rules were truly as arbitrary as the Chamber claims claim, it should have a clear case to do so.

While the Chamber is correct that the CFPB has not defined abusive acts or practices in its regulations, the definition exists in the Dodd-Frank law. Section 1031(d) provides:

[2] See, e.g., NAM, Chamber and BRT v SEC (conflict minerals rule); Met Life v FSOC (amicus on SIFI designation); Perez v Mortgage Brokers Association (amicus on rulemaking procedures) and many others.

> ABUSIVE.—The Bureau shall have no authority under this section to declare an act or practice abusive in connection with the provision of a consumer financial product or service, unless the act or practice—
> (1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or
> (2) takes unreasonable advantage of—
> (A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
> (B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or
> (C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

If it were to articulate prohibitions much more specifically than is outlined in the law, the agency would run the risk of providing dishonest actors with a roadmap they could use to violate the spirit of the law with impunity.

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The Chamber also claimed that the CFPB "drove major credit card issuers out of the market" through a series of enforcement actions relating to "add-on" products. Moreover, the Chamber argued that the CFPB never explained what was inherently risky or problematic about add-ons.

The CFPB has indeed brought and settled 10 actions against eight credit card companies relating to marketing and sales practices of add-ons, but these companies were not driven out of the market.[3] Each of these providers remained among the top 10 credit card companies according to circulation or outstanding balances as of the fourth quarter of 2014.

Most importantly, each of the Stipulation and Consent Orders[4] flowing from these shows that these companies acted in improper ways. For example, in the CFPB's first enforcement action, the agency found that Capital One's improper sales practices included:

> A. Indicating that having [Add-on Products] (Products) would improve the Cardmember's credit scores and assist them in receiving a credit limit increase on their Capital One card.
>
> B. Referring to the Payment Protection Product as a "back-up fund," indicating to some consumers that the feature would automatically kick in, without any action by the Cardmember, when the Cardmember missed a payment.
>
> C. Misrepresenting the cost of Payment Protection by:
>
> 1. implying that the Payment Protection Product was a free feature of the card;

[3] The CFPB instituted and settled cases involving add-on sales and marketing practices against: Capitol One, Discover, Chase, American Express (in three instances), Bank of America, Syncrony (fka GE Capital), US Bank and Citibank.

[4] *See*, In the Matters of: Capital One Bank, Discover, JP Morgan Chase and Chase Bank, American Express Centurion Bank, American Express Bank, American Express Travel Related Services Company, Bank of America, Syncrony (fka GE Capital), US Bank and Citibank.

> 2. suggesting that consumers would not be billed for the Payment Protection Product as long as they kept up a good payment history;
>
> 3. confirming to a consumer that the product "only costs 99 cents."
>
> D. Responding to requests for additional information by informing Cardmembers that they must first purchase the Products in order to receive full information about them.
>
> E. Failing to determine whether a Cardmember was employed or characterizing any source of income as sufficient to consider unemployed Cardmembers as "self-employed," implying that the Cardmember could be eligible for all benefits of the Payment Protection Product.
>
> F. Stating unsubstantiated statistics, such as "identity theft is the number one crime," and informing consumers that they would have access to "federally certified agents" while selling the Credit Monitoring Products.
>
> G. Describing the Products as "a special tool" available on the account indicating to some consumers that the product came with the credit card without additional charge, when in fact the products were not free.
>
> H. Failing to inform the Cardmember that the Products were optional and describing the Products as if they were features that came with the card.
>
> I. Failing to obtain sufficient affirmative consent from the Cardmember before enrolling them.

The findings in this case—which parallel conclusions that the CFPB reached in its investigations of the other companies—show that the provider acted in a deceptive and dishonest manner toward consumers. The CFPB concluded that in so doing, the company violated Section 1036 of Dodd-Frank, which prohibits a provider from engaging in any "unfair, deceptive, or abusive act or practice."

The Chamber should welcome the CFPB's work to expose and deter improper behavior for numerous reasons, including the role of such work in providing a level playing field for companies that behave honestly and lawfully. Neither the agency nor its defenders should feel obliged to apologize for adverse effects experienced by corporations that act in unlawful ways.

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Finally, as a part of its complaints about clear rules of the road, the Chamber argues that the CFPB should not use rulemaking to try to achieve ulterior goals. The business association cites a privacy notice regulation as a case in which it alleges that the CFPB did so. The rule allows financial institutions to forego mailing paper notices if:

- The content of the notice most recently provided to the customer has not changed;
- The financial institution does not share the customer's nonpublic personal information (NPI) in a way that triggers a Gramm-Leach-Bliley Act opt-out right;
- The financial institution has another channel for the opt-out disclosure required by the Fair Credit Reporting Act; and
- The financial institution uses the CFPB's model privacy notice.

The Chamber takes issue with use of consumer data requirements but fails to explain its exact objection to them.

Many financial regulators use the carrot and stick method of motivating compliance with existing regulations. For example, the Securities and Exchange Commission (SEC) restricts issuers from going to market if they haven't paid their accounting support fee to the Public Company Accounting Oversight Board (PCAOB).

Point #2- Rationing credit card credit will not protect consumers.

The Chamber has taken issue with several CFPB activities that the business association claims would restrict consumer choice and access to credit card credit.

The first issue raised relates to the CFPB's involvement with the Military Lending Act (MLA), the statute created to protect service members from predatory financial practices. The Chamber complains that the CFPB has been consulting with the Department of Defense (which has jurisdiction over regulations relating to the MLA) to expand the reach of the MLA to include credit cards and payday lending. The Chamber claims this proposal is "an unworkable, unwise, and unnecessary expansion" of the MLA" and urged the agency to stop this expansion.[5]

While it is true the agency has provided some thoughts on the expansion of the coverage of the MLA, the agency has issued no rules in this area.

The Chamber's objection to the CFPB's commenting on this topic is inconsistent with its stated overarching philosophy on financial regulation. In its 2015 agenda document, the Chamber asked for Congress and the administration to "improve the regulatory process by consolidating or coordinating regulators."

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Another area in which the Chamber has expressed concern that the CFPB will limit credit opportunities relates to deferred interest rate promotions on credit cards. These are marketing gimmicks intended to entice consumers to apply for cards. For example, interest-free introductory offers would be considered deferred interest promotions because interest will be charged (usually back to the date of the initial extension of credit) if the balance is not paid in full during the term of the promotion.

While the CFPB has not initiated any rulemaking in this area, the Chamber is concerned that the agency may do so. This is likely based on CFPB publications[6] explaining the issue to consumers.

As explained in the in *The Wall Street Journal* and other publications deferred interest credit cards have the potential to cost consumers much more than traditional cards if the balance is not paid off

[5] The Department of Defense issued final regulations on the Military Lending Act in July 2015. It applies the protections of the Military Lending Act to all forms of payday loans, vehicle title loans, refund anticipation loans, deposit advance loans, installment loans, unsecured open-end lines of credit, and credit cards.

[6] See, Ask CFPB, and this blog.

by the end of the promotion date. In such situations, interest is charged on the entirely of the initial purchase, even if most of the principle has been paid off.

Because of the potential for abuse, the CFPB would likely be right to act in creating rules on this topic. If the Chamber were truly concerned with ensuring safe use of credit, it would at a minimum support rules that mandate prominent, clear disclosure of the terms of deferred interest agreements and that prohibit deceptive offers.

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The last issue raised by the Chamber concerning its erroneous point that the CFPB is unfairly denying consumers access to credit focuses on risk-based pricing. Generally speaking, risk-based pricing involves charging a higher rate of interest (or providing less favorable terms and conditions) to consumers who pose a greater risk of default than those who poses a lower risk of default.

While the Chamber sites no examples of CFPB efforts to eliminate risk-based pricing for consumer credit, it has nevertheless taken the agency to task in an April 2015 blog by the Center's managing director. The Chamber also referenced risk-based interest rate pricing in its comment letter to the CFPB on credit cards.

> More broadly, the Bureau should not take any steps that impair the use of risk-based pricing in the credit card market. Risk-based pricing has allowed enormous expansion of access to credit. Between the early 1980s and 2001, for example, the lower half of the income distribution experienced 200%–300% increases in the percentage of households with access to a general purpose credit card. Prudential regulators properly encouraged banks to use risk-based pricing as they expanded their customer base. Limit risk-based pricing and this trend of improved access to credit will be reversed. Many customers would find themselves unable to secure credit, others would find themselves paying higher credit costs, and yet others would find themselves approved for more credit than they could safely handle. The Bureau should scrupulously avoid these outcomes.

Also, the Chamber released a report in October 2014 touting the benefits of risk-based pricing in consumer financial markets.

The Chamber's campaign to retain risk-based pricing is being waged against a straw man, as it provides no evidence that the CFPB aims to prohibit it.

Point #3- The CFPB must be transparent with respect to information it gathers and publishes on credit cards.

The Chamber generally calls for transparency. However in contrast to that, it has taken issue with several aspects of CFPB activities regarding credit card data. It objects to the CFPB collecting credit card data based on the Chamber's dubious claim that such data collection poses a threat to the public's privacy. Also, the Chamber asks the agency to stop disclosing certain consumer complaints because it believes consumers may be confused by the information, it may result in erroneous conclusions or it "will unfairly impugn responsible behavior...."

"American consumers deserve better than to be kept in the dark about how their personal financial information is being collected, used and stored" by the CFPB, the Chamber wrote to the agency in its May 2015 letter. This statement concludes a section of the letter taking the agency to task for its alleged lack of transparency in its credit card data collection program.

The Chamber cites as a smoking gun a September 2014 GAO Report. The Chamber claims that this report concluded that the CFPB and other agencies pushed the boundaries of the Paperwork Reduction Act, which is intended to minimize data collection impositions on businesses. But the actual findings of the report were hardly sinister. More specifically, the report found:

- Of the 12 large-scale collections GAO reviewed, just three included information that identified individual consumers, but CFPB staff indicated that those 3 were not subject to statutory restrictions on collecting such information.
- Other regulators, such as the Board of Governors of the Federal Reserve System (Federal Reserve) and the Office of the Comptroller of the Currency (OCC), collect similarly large amounts of data.
- CFPB has taken steps to protect and secure these data collections. For example, it created a data intake process that brings together staff with relevant expertise to consider the statutory, privacy, and information security implications of proposed consumer financial data collections.
- CFPB staff described a process for anonymizing large-scale data collections that directly identify individuals.
- In addition, CFPB had taken steps to implement an information security program that is consistent with Federal Information Security Management Act requirements, according to the Office of Inspector General for the Federal Reserve and CFPB.
- GAO found that CFPB had implemented logical access controls for the information system that maintains the consumer financial data collections and was appropriately scanning for problems or vulnerabilities.
- CFPB also established a risk-management process for the information system that maintains consumer financial data consistent with guidelines developed by the National Institute of Standards and Technology (NIST).

Notwithstanding these findings, the Chamber focused its outrage on an alleged Paperwork Reduction Act (PRA) violation[7] and chastised the CFPB for agreeing to do no more than to "consult again with OMB about whether the PRA requirements apply to the [CFPB's] collection of certain credit card data."

Several consumer rights groups in July 2013 co-signed a statement in support of the agency's credit card data collection program. Separately, in an opinion piece in the American Banker, Georgetown

[7] Under the PRA, agencies generally must obtain Office of Management and Budget (OMB) approval when collecting data from 10 or more entities to minimize burden and maximize the practical utility of the information collected. The CFPB requested data from nine entities which represented 87 percent of outstanding credit card balances.

University Professor Adam J. Levitin noted the inconsistencies between the Chamber's criticism of the CFPB program and its silence on similar practices by other financial regulators.

> [G]overnment collection of consumer financial data is nothing new — the OCC, FDIC, and Federal Reserve have been doing it for years (often with larger data sets). Indeed, much of the data the CFPB gets is through Memoranda of Understanding with other regulatory agencies. The CFPB's critics have not a word to say about the collection of the same data by other agencies. Apparently, data collection is a problem only when done by the CFPB.

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Since it launched its Consumer Complaints Database (CCD) in June 2012, the CFPB has received more than 460,000 complaints from consumers, including more than 55,000 relating to credit cards. In addition to collecting and investigating consumer complaints, the CFPB decided to disclose the subject matter, the company against whom the complaint had been lodged and the company's response to the consumer, among other details.

The publication of what the Chamber calls "unverified" complaints by consumers has been a complaint of the trade association. While the Chamber did not comment on the CFPB's initial proposed policy statement on the CCD (which was limited to credit cards), the Chamber did express its objections to expanding disclosure to include the narratives of complaints submitted by consumers.

The Chamber wrote in a 2014 letter to the CFPB that the complaint database would "mislead consumers and permit manipulation of the database." The trade group also argued in that letter that it "disproportionately burdens small businesses and improperly forces companies outside the CFPB's jurisdiction to alter high-performing customer service practices."

CFPB Director Richard Cordray has answered this criticism by saying that complaints are not posted until the company has had a reasonable opportunity to respond. The CFPB has said the information helps empower consumers.

Point #4- The CFPB should respect the clear limits on its authority regarding credit cards.

For an organization that repeatedly claims that its recommendations to the CFPB are designed to protect consumers, the Chamber devotes significant to undermining efforts that appear likely to better protect consumers.

Recently, the Chamber argued that the CFPB should limit the scope of its authority in three areas. First, the Chamber argued that the CFPB should not develop a set of "best practices" for credit card companies. Second, the Chamber argued that the agency should limit the reach of its rulemaking on debt-collection matters covering third-party collection activities. Third, the Chamber argued against the CFPB requesting information about agreements between universities and financial services providers under the agency's "Initiative on Safe Student Banking." These are recommendations that are clearly driven by the Chamber's desire for less regulation of financial services companies rather than a sincere interpretation that they would hinder consumer protections,

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In a letter to the CEOs of several major credit card companies, CFPB Director Cordray said, "We need to get more Americans to pay closer attention to their credit standing, which would benefit lenders, consumers, and the national economy. You can now, relatively easily, help us achieve this goal."

Cordray urged the CEOs to provide credit scores to their customers free of charge. "I strongly encourage you to make the credit scores on which you rely available to your customers regularly and freely, along with educational content to help them make use of this information. We will consider this to be a 'best practice' in the industry."

The Chamber objected to this request:

> The [CFPB] undertook no public process to evaluate this idea. Nor did [the CFPB] perform a cost-benefit analysis to decide whether the benefits of this change (assuming there were any) would outweigh its costs. And the [CFPB] did not address the numerous questions its proposal raised, such as whether a credit card issuer should provide the credit score it used in credit decisions even if it was a proprietary score that did not correspond to other scores with which the consumer might be familiar.

The Chamber's comments here further reveal the lack of intellectual honesty or pragmatism in its comments. The notion, as the Chamber suggests, that there might not be any benefits from providing consumers with their credit cards is preposterous.

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The Chamber has also opposed the CFPB's consideration of an expansion of its authority to rein in unfair and deceptive debt collection practices.

At present, the CFPB has authority to address debt collection practices by third-party collection agencies under the Fair Debt Collection Practices Act, but it does not have authority over "first-party" collectors, which are companies seeking to collect debts owed to them. However, in an Advanced Notice of Proposed Rulemaking, the CFPB discussed using authority it was granted in Dodd-Frank to regulate first-party collectors and cited several specific statutory provisions supporting this notion.

The Chamber has vigorously objected to this idea. The primary policy arguments against regulating first-party collectors is the "long-standing congressional recognition that creditors' desire to preserve ongoing customer relationship provides substantial protection to consumers in the first-party collection process." Perhaps in some contexts this is true, but this is certainly not a universal truth. In fact, the debt collection practices by certain first-party payday lenders or other consumer lending companies exemplify the need for greater regulation in this area.

Numerous examples exist of first-party debt collectors engaging in unfair or deceptive trade practices. The Consumer Federation of America documented several in comments it submitted to the Federal Trade Commission (FTC) in 2007. One example, came from a legal services attorney in Florida.

> On May 24, 2007, she received a call from "Sharon Jackson at (name of company)" …They told her they were collecting the payday loan she owed…Ms. Jackson told her she had exactly one hour to wire her the money owed which she claimed to be $650 on a $430 debt. Ms. Jackson said if payment was not received within the hour they were sending out a squad car to have her arrested. They told her the failure to pay her debt was a felony.

Another involved a payday lender in Virginia.

> Storer v. Buckeye Check Cashing of Virginia, Inc. alleges a "campaign of relentless harassment by the Defendant, a Payday Lender, that included false and specifically prohibited threats of criminal prosecution, in violation of the Virginia Payday Loan Act." A collector allegedly left a taped telephone message stating "We are going to continue calling, and eventually what is going to happen is our legal department is going to press charges against you." The plaintiffs are Social Security recipients whose checks are protected by federal law from assignment, levy, garnishment or other legal process.

Another involved a payday lender in Arizona.

> The Arizona Attorney General ordered Check Center, a Tucson payday lender, to refund all funds collected from consumers who were sent letters that illegally threatened them with jail and criminal prosecution for failure to repay loans. The 2004 consent order was issued by Pima County Superior Court. The collection letters cited by Arizona officials alleged that borrowers had committed a crime by writing checks for payday loans and included the claim that the merchant was an authorized agent of the Pima County Attorney's Office. One letter threatened the consumer with penalties including six months in jail, a $3,500 fine, twice the face amount of the check and attorney's fees.

In 2014, the National Consumer Law Center submitted a comprehensive comment letter in response to the Advanced Notice on behalf of a group of consumer advocates. It advocated holding first-party collectors to the same standard as third-party collectors because many engage in the same types of unfair and deceptive acts or practices.

> If the conduct is unfair or unconscionable for third-party collectors, it is just as unfair or unconscionable for first-party collectors, or creditors. There have been many, many determinations of unfairness or unconscionable activities by creditors under FTC law and in the state courts pursuant to state UDAP statutes. These are extensively discussed in Section 10.3.4 of our Fair Debt Collection manual. The problem is that not all states' [unfair and deceptive acts or practices] statutes

> prohibit unfair or unconscionable acts: a number are confined to deception. A CFPB rule would be an important step toward filling this gap.

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The final sub-point in this area focuses on the CFPB's efforts to provide colleges and universities with its insights on questions they should ask of potential financial partners with which the Chamber has taken issue.

In March 2015, the CFPB released a request for information on its Initiative on Safe Student Banking. The CFPB also developed a sample Scorecard that could be used by institutions of higher learning when considering a partnership with a third-party financial services provider. The CFPB also called on financial institutions to voluntarily disclose agreements with institutions of higher education to market products to students. While information about these arrangements is already required by the CARD Act to be disclosed when marketing credit cards and private student loans to students, the requirement is limited to credit cards and does not include prepaid and debit cards.

During its 2013 request of information on financial products marketed to students, the CFPB learned that more prepaid cards and deposit accounts with debit cards are being marketed through schools. It is unclear whether this is being done to avoid the CARD Act requirements, but the CFPB has indicated in it request for on Safe Student Banking a desire to ensure that these newly marketed products are safe and secure.

In 2014, the Government Accountability Office issued a report on college debit cards and noted that "increased transparency for college card agreements could help ensure that the terms are fair and reasonable for students and the agreements are free from conflicts of interest."

Despite the voluntary nature of the CFPB's request, the Chamber has objected to it. It claimed the CFPB has not identified "any legal authority supporting the action or factual record demonstrating its wisdom." The Chamber concluded the CFPB has "stretched beyond its area of its authority and expertise."

The absurdity of such a statement is obvious, given that the CFPB is intimately involved in consumer financial matters such as student banking. Its objection to a commonsense disclosure requirement that dovetails with existing requirements further reveals that it is motivated by an unwavering, underlying goal of obstructionism rather than commonsense pragmatism.

Point #5- The CFPB should recognize the authority and expertise of other agencies and avoid duplicative regulatory action.

The final current criticism of the CFPB by the Chamber relates to what the business group claims is an encroachment on another regulator's jurisdiction.

The Chamber sites an example of the CFPB settling an action against a subprime credit card marketer, originator and servicer for "(1) making false statements regarding certain fees charged consumers in connection with credit cards and (2) representing, expressly or impliedly, that certain security deposits consumers provided for certain credit cards would be 'FDIC insured.'"[8] While the respondent admitted the CFPB's jurisdiction over the matter, the Chamber contends it constituted regulatory overreach.

The Chamber argued that the CFPB should have limited the enforcement action to "areas of its clear statutory authority" and claimed that the CFPB went beyond its authority by including in its complaint activities that fell under the jurisdiction of another regulator.

The Chamber fails to recognize that financial markets are inter-related and that bad acts by financial services companies often violate multiple statutes and may be subject to action by myriad regulators. That one regulator chooses to act, while another refrains from action, is not necessarily an encroachment on jurisdiction. It is regulatory discretion.

Closing Thoughts

While it attempts to couch its comments on credit card regulation as motivated by a desire to ensure that consumers have access to credit, its unfailing pattern of recommending the route of least action reveals less noble motivations.

Any regulations or regulatory actions that seek to empower consumers or hold issuers more accountable are opposed. In essence, it seeks to limit the CFPB's authority to protect consumers and force the CFPB to adopt narrow definitions and remain uninformed of issuer activities.

Given its political clout, it is likely the Chamber will continue to support policymakers who would prefer a lighter regulatory touch, which means consumer advocates must continue to fight to oppose these efforts.

[8] *See*, In the Matter of Continental Finance Company, LLC