

PUBLICATION

Update on the J.G. Wentworth CID Fight

September 20, 2016

Earlier this summer we wrote about the [challenge by J.G. Wentworth, LLC](#), to the CFPB's jurisdictional reach. Now, the U.S. Chamber of Commerce has asked that it be allowed to file an amicus brief in the case. The Chamber's briefing is supportive of the position of Wentworth and critical of the ever-expanding reach of the CFPB's jurisdiction.

The Chamber's brief attacks each of the bases asserted by the Bureaus in its pursuit against Wentworth. For example, in looking at UDAAP authority, which has quickly become the go-to basis for jurisdiction asserted by the CFPB, the Chamber notes that UDAAP authority requires a "connection with a transaction for a consumer financial product or service..." Here, the CID issued by the Bureau appeared to be focused on marketing statements generally made to consumers by Wentworth and not focused on instances where a consumer has actually engaged Wentworth and agreed to pay the company. The Chamber notes that this is an important distinction because marketing statements with regard to "consumer transactions" would be an exceedingly broad category – covering everything from home appliances to cars. If the word "transaction" does not have some meaning then the Bureau's attempt to use UDAAP authority to oversee marketing statements would be a massive enlargement of its jurisdictional reach.

The Chamber also looked at the Truth in Lending Act ("TILA") as a purported basis for CFPB jurisdiction and noted that TILA applies only to "extensions of credit." Pointing out that Wentworth does not extend credit, the Chamber argues that clearly TILA cannot be relied upon by the Bureau in this instance.

Finally, the Chamber asserts what many have been arguing for months (or even years) – the CFPB is continuing to seek to extend its jurisdiction beyond the scope set forth in the Dodd-Frank Act: "[A]llowing the CFPB to rely on its broad authority to issue CIDs and a virtually unlimited definition of the term 'financial advisory services' would grant the CFPB vast authority to burden companies outside its jurisdiction with expansive and intrusive investigatory demands." As a result, Chamber argues that enforcement of the CID would result in an expansion of the CFPB's authority far beyond the limits established by Congress in Dodd-Frank. Noting that Dodd-Frank specifically excluded certain businesses from the CFPB's authority except to the extent those businesses engage in offering consumer financial products and services, the Chamber argued that the limitations would be rendered meaningless under the approach advocated by the Bureau.

On September 8, 2016, Wentworth asked the District Court to set the matter for oral argument. We will continue to provide updates as the case proceeds.