PUBLICATION

CFPB is Busier than Ever – And Not Only with the Usual Suspects

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Despite the new administration's distaste for Dodd-Frank and the CFPB, 2017 has been quite an active year so far: as of May 1, there have been 21 enforcement actions initiated by the CFPB against various entities across the U.S. By comparison, the CFPB filed only 12 actions in the same period in 2016, and 17 in 2015. Many of this year's targets are mortgage servicers, student loan servicers and credit reporting companies, which is no surprise given the CFPB's priority of increasing fairness and transparency for mortgages, credit cards and student loans. Among these 21 enforcement actions so far are a few notable variations from the CFPB's regular targets.

In February, the CFPB announced an enforcement action arising out of a single mishap as opposed to a pattern and practice of inappropriate behavior. Mastercard and UniRush (the program manager for RushCard, the reloadable prepaid debit card co-founded by Russell Simmons) were the target of an enforcement action based upon an apparently botched platform transfer. According to the CFPB, UniRush picked MasterCard as its new payment processor in 2014, and the two companies spent months preparing to switch UniRush's processing platform, which ultimately occurred on October 10 – 12, 2015. The switch did not go well: there were several problems that resulted in many RushCard holders being unable to access their funds for days or, in some situations, weeks after the switch. Perhaps most notably, the CFPB specifically cited UniRush's lack of adequate customer service in the weeks and months following the switch as a "preventable failure" resulting in the enforcement action. Indeed, the onslaught of direct consumer complaints about the switch appears to be the impetus for the CFPB's interest in this mishap; it received 830 consumer complaints about RushCard after the switch, compared to a mere 147 complaints about prepaid cards from November 2014 to January 2015. This is a clear illustration of how the CFPB's grass-roots method for obtaining complaints from consumers has informed its enforcement actions. Consumer finance companies are wise to keep an eye on the consumer complaint database and monitor the complaints for recurring issues.

In another enforcement action, the CFPB is targeting three related entities and the entities' founder for allegedly scamming 9/11 heroes and NFL concussion victims out of settlement money. RD Legal Funding LLC, RD Legal Finance LLC, RD Legal Funding Partners LP, and Roni Dersovitz are being sued by the CFPB, who is alleging that they engaged in deceptive and abusive acts and practices in violation of the Consumer Financial Protection Act (CFPA, 12 U.S.C. § 5536). According to the CFPB, RD Legal offered advances to consumers entitled to payouts from victim compensation funds or legal settlements but, through "confusing contracts," many of the consumers ended up owing RD Legal more than twice what had been advanced. This action is another in a string of actions by the CFPB in which it is teaming up with a state attorney general to enforce the CFPA's broad prohibition against deceptive and abusive acts and practices.

Also notable is what appears to be the CFPB's renewed mission to crack down on debt collection law firms. Already in 2017, three debt collection firms – Oklahoma-based Works and Lentz, Inc. and Works and Lentz of Tulsa, Inc., and Ohio-based Weltman, Weinberg & Reis Co., L.P.A. – have been targeted by the CFPB for deceiving consumers with misleading calls and letters that gave the false impression that an attorney was involved in the consumer's affairs when, in fact, no attorneys had meaningfully reviewed the file. If this fact pattern sounds familiar to you, you probably recall that the CFPB filed a very similar enforcement action against Georgia-based law firm Frederick J. Hanna & Associates, P.C., in 2014, and that the Hanna firm lost a hard-fought battle to get the enforcement action dismissed in federal court. There, the Hanna firm filed a motion to dismiss the enforcement action in which it argued the "practice-of-law exclusion" found in the CFPA barred the CFPB's attempt to regulate the practice of law conducted by its lawyers. The Hanna firm lost its motion in July 2015 and ultimately entered into a consent order in January 2016.

In the year following the entry of the Hanna consent order, the CFPB took action against only one other debt collection law firm based on its purported failure to have attorneys meaningfully review lawsuits – Pressler & Pressler, LLP. Already in 2017, however, the CFPB has taken action against three firms for this same malfeasance. This signals the CFPB's renewed interest in using the CFPA to regulate what it has determined is misleading behavior exhibited by some debt collection attorneys.

Finally, in late April, the CFPB took action against four online lenders for "deceiving consumers by collecting debt they were not legally owed." California-based Golden Valley Lending, Inc., Silver Cloud Financial, Inc., Mountain Summit Financial, Inc. and Majestic Lake Financial, Inc., all online installment loan companies, have been named in a lawsuit filed by the CFPB in which the CFPB alleges the companies offered loans that were so high-cost that they violated licensing requirements and/or interest rates caps in at least 17 states. As a result, the companies are collecting money that the consumers do not legally owe and have violated the Truth in Lending Act (TILA, 15 U.S.C. § 1601 et seq.) and the CFPA. By filing the lawsuit, the CFPB is attempting to obtain an injunction barring the collection of these void loans, and it is also seeking monetary penalties and relief for the affected consumers.

If the first four months of 2017 are any indication, this is shaping up to be the CFPB's busiest year yet. As always, the Consumer Compliance attorneys at Baker Donelson will keep abreast of the CFPB's newest and most compelling actions.