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CFPB Continues to Take Action Against Consumer-related Entities, including Law Firms

In recent years, banks, mortgage companies and lenders have served as targets for the Consumer Finance Protection Bureau (CFPB). The bureau actively promulgated multiple rules, re-interpreted case law and revised regulations to force these institutions to change their behavior and structures. More recently, the CFPB also has targeted other segments of the financing world ranging from auto dealerships to student loans. The target list keeps growing.

On November 6, 2013, the CFPB began accepting complaints from borrowers encountering problems with payday loans, also known as cash advances or check loans. Now, consumers can submit payday loan complaints to the bureau about unexpected fees or interest, unauthorized or incorrect charges to their bank account, payments not being credited to their loan, problems contacting the lender, receiving a loan they did not apply for and not receiving money after they applied for a loan. Recently, the CFPB published an advanced notice of proposed rule-making for its proposed update to the Fair Debt Collection Practices Act. The 90-day comment period began on November 6, 2013. While the bureau noted that it has not yet decided the precise scope and nature of rule-making it may conduct concerning debt collection, the full 114-page advanced notice goes into detail about what the bureau is looking for during the comment period. The CFPB also announced that it would be releasing some 5,000 debt-collection complaints it has been receiving since July 2013.

The day following the November 6, 2013, announcement that the CFPB would regulate payday loans, the CFPB announced a proposed settlement with mortgage company Castle and Cook Mortgage, LLC for allegedly steering consumers into more expensive mortgages. The settlement is \$13 million, with \$9 million in restitution and \$4 million in civil penalties. Enforcement is occurring throughout the country in multiple industries.

While the CFPB has publically taken stands against these financial institutions, one of the most common targets of the bureau has largely not received the media attention that it likely deserves: the lawyers.

The bureau has filed six lawsuits, as many as it has filed against the banking industry, against lawyers. Its first enforcement action was against the Gordon Law Firm in Los Angeles in July 2012. In June 2013, U.S. District Judge Percy Anderson of the Central District of California ordered Gordon to pay \$11.4 million in damages. While the case is still on appeal, it is a jolting realization for the potential liability of lawyers who specialize in debt collection. In the words of CFPB Director Richard Cordray, "These wolves in sheep's clothing take money from consumers who are already struggling to pay their bills, falsely promising them help while really making their problems worse."

While the CFPB derives its power from the Dodd-Frank Act, it is interesting to note that the CFPB is taking these actions against lawyers despite the fact that Section 1027 of the act states that the agency

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“may not exercise any supervisory or enforcement authority with respect to an activity engaged in by an attorney as part of the practice of law.” In response to a challenge based on this limitation, a CFPB spokesman responded in an email that, “Nothing prevents the Bureau from exercising its authority with respect to a consumer financial product or service offered or that is provided outside of the scope of the attorney-client relationship.”

While the CFPB has netted hundreds of millions of dollars in fines and restitution from financial institutions such as JP Morgan, Chase Bank and Discovery, its actions against law firms and lawyers may have more of a deterring impact.

[Brownstein Hyatt Farber Schreck](#)'s CFPB Task Force is proactively assisting clients to be ahead of the oncoming bureau activities. We work with both federal and state regulating agencies to prevent and address the type of enforcement actions that the CFPB is taking across this country. Anything that touches finances and consumers, be it auto, be it student loans, be it mortgages, or be it even attorneys and debt collection services, is a possible target. The key is to be knowledgeable and proactive. Should you have any questions, please do not hesitate to contact one of our team members.

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