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Jonathan L. Pompan

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December 19, 2013

CFPB Enforcement Uses UDAAP to Put Focus on State Law Compliance

The Consumer Financial Protection Bureau (“CFPB” or the “Bureau”) has put state law compliance front and center in a case filed in federal court against an online payday lender, related companies, and their principal for allegedly collecting on money they did not owe. According to the CFPB, the companies funded, purchased, serviced and collected online payday loans made by a tribally-affiliated lender (not sued by the CFPB). The defendants were charged with engaging in unfair, deceptive and abusive acts and practices (“UDAAP”) in seeking to collect loans that were purportedly void in whole or in part under state law. The CFPB does not have authority to enforce state usury rates or establish its own standard, so this approach has become one of the few ways that the CFPB can go after online small-dollar or payday lenders.

The CFPB seeks:

- Monetary relief, damages, and civil penalties: The CFPB wants the lender to refund consumers the money that they took from them where the loans were void or the consumer’s obligation was otherwise nullified. The Bureau’s complaint also seeks additional damages and civil penalties.
- No further violations of federal consumer laws: The Bureau wants the defendants to adhere to all federal consumer financial protection laws, including prohibitions on UDAAPs.

This is the CFPB’s first lawsuit against companies involved in online payday lending, and it advances an aggressive legal theory by asserting UDAAP violations as a result of alleged violations of state law. In addition, the Bureau is working closely with state Attorneys General and banking regulators. According to the press release announcing the lawsuit, many of these state officials are also filing their own lawsuits and announcing formal investigations; others are already in litigation. This type of allegation by a federal enforcer is rare, but not entirely novel. In our experience, we have seen enforcement staff at the Federal Trade Commission base allegations of deceptive conduct on alleged violations of state law compliance in some debt relief and loan modification cases. Notably, unlike the CFPB’s complaint against the payday lender, in the FTC examples that we are familiar with the alleged state law compliance violations were not the primary allegation that led to the enforcement action. Rather, the main issues were telemarketing (e.g., robocalling) or a perceived lack of claim substantiation for advertising and marketing.

Bottom line, the CFPB scrutinizes state law compliance, and may consider non-compliance as the basis for a deceptive activity, even in the absence of other perceived violations of federal consumer protection law. Accordingly, state law compliance cannot be ignored by nonbanks that fall under the scope of the CFPB. This includes requirements under such statutes as state money services business acts, debt adjusting laws, credit services organization acts, state usury and payday loan statutes and other laws that would often result in a void or voidable consumer agreement if there is non-compliance with the state law.

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For more information, please contact **Jonathan L. Pompan** at 202.344.4383 or jlpompan@Venable.com.

Jonathan L. Pompan, a partner in the Washington, DC office of Venable LLP, co-chairs the firm’s Consumer Financial Protection Bureau (“CFPB”) Task Force. His practice focuses on providing comprehensive legal advice and regulatory advocacy to a broad spectrum of clients, such as nonbank financial products and services providers, advertisers and marketers, and trade and professional associations, before the CFPB, the Federal Trade Commission, state Attorneys General, and regulatory agencies.

