



July 21, 2014

CFPB TARGETS PAYDAY AND ORDERS LENDER TO PAY FOR ALLEGED UDAAP VIOLATIONS, DEFINING ONE PRACTICE AS "ABUSIVE"

On July 10, 2014, the Consumer Financial Protection Bureau ("CFPB") reached a \$10 million settlement with a nonbank payday lender to resolve allegations that the lender engaged in unfair, deceptive and abusive practices when collecting payday loans. The \$10 million dollar settlement is comprised of a \$5 million penalty for the alleged violations and up to \$5 million in refunds to consumers. The allegations related exclusively to the lender's pre-March 2012 collection practices.

The Consent Order focused on activities the lender's in-house and third-party debt collectors allegedly engaged in that "created a sense of urgency" for delinquent borrowers, including:

- An excessive number of telephone calls to home, work and cell phone numbers;
- Disclosure of the existence of consumer debt to non-liaible third parties;
- Failure to cease collection activities at the workplace, after being told that calls were prohibited; and
- Continuing to call debtors who disclosed that they were represented by counsel.

The CFPB also alleged that the lender's back-end collections department misrepresented acts that third-party debt collectors would take after the lender transferred the account, including representing that the third-party debt collectors would tack on additional fees and report to national credit bureaus. Also, the CFPB alleged that the lender's in-house debt collectors made "threats of harm" regarding what borrowers would face when their accounts were transferred to third-party debt collectors. In support of this assertion, the CFPB cites two individual calls by in-house debt collectors, one collector stating that the third-party collector would "hassle the consumer" and the other that that third-party's actions were "unlimited." The CFPB also contended that the lender's in-house debt collectors incorrectly told borrowers they did not have authority to prevent the transfer of accounts to third-party collectors when in fact they did. Lastly, the CFPB alleged that the lender and some of its third-party debt

collectors falsely threatened borrowers with litigation or criminal prosecution, when the lender does not pursue those remedies for non-payment.

In the Consent Order, the CFPB generally characterized these actions as either unfair or deceptive. Additionally, the CFPB claimed that the lender's alleged creation of a "false sense of urgency" induced delinquent borrowers unable to pay off their existing loans to take out new loans with the lender. The CFPB characterized this creation of a "false sense of urgency" as an "abusive" practice in violation of the CFPB.

The lender reportedly cooperated fully with the CFPB throughout its examination, implementing recommended changes and responding to requests for information and documents. According to the lender's press release, the lender hired an outside expert to review a random, statistically significant sample of the company's collection calls. The review revealed that more than 96 percent of calls met relevant collection standards. Also according to the lender's press release, it has specific policies in place to prevent delinquent borrowers from acquiring new loans. For example, a borrower with a delinquent account cannot take out another loan with the lender until the previous loan is paid off. According to the outside review, company data from March 2011 through February 2012 revealed that 99.5 percent of customers with a loan in collections for more than 90 days did not take out a new loan with the lender within 2 days of paying off their existing loan, and 99.1 percent of customers did not take out a new loan within 14 days of paying off their existing loan.

The lender's press release detailed the ways in which it has improved its regulatory compliance since 2011, including:

- Implementing a compliance monitoring program and hiring legal compliance analysts outside of the collections department to monitor collection calls;
- Ceasing use of a specific third-party collection agency which was particularly concerning to the CFPB;
- Increasing the volume of collection call monitoring both inside and outside the collections department;
- Significantly changing the structure of the collections department, including increasing management supervision and compliance monitoring; and

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- Instituting a requirement that all lender employees take quarterly compliance training.

The CFPB'S Order, despite the lender's cooperation, compliance and improved internal practices, demonstrates the CFPB's specific targeting of the payday loan industry and continuing assault on the use of third party vendors, its low tolerance for any noncompliance and its willingness to tout past practices rather than applaud cooperation and current efforts. □

✧ *Mike Tomkies and Emily Barlage*