



February 6, 2019

CFPB SETTLES MULTIPLE PAYDAY LENDER ACTIONS

Canadian and Maltese-Based Payday Settlement

On February 1, 2019, the Consumer Financial Protection Bureau (“CFPB”) filed a proposed settlement with a group of Canadian and Maltese-based payday lenders (the “Defendants”) for alleged deceptive and unfair marketing, lending and collection practices.

The amended complaint filed by the CFPB alleged that Defendants originate, service and collect payday loans in all fifty states. In some of these states those loans have no legal effect because they violate state usury cap and licensing requirements. The complaint alleged that the loans are generally short term (14 days), ranging from \$100 to \$1500, with finance charges between \$19.98 and \$26.98 per \$100 borrowed. The complaint concluded that Defendants’ loans were void in the following states, based on state licensing law, state usury law, or both: Arizona, Arkansas, Illinois, Indiana, Kentucky, Massachusetts, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio and Utah.

The complaint alleged that the Defendants’ loan practices resulted in six counts of violating the Consumer Financial Protection Act for unfair, deceptive or abusive acts or practices and three counts of violating the Credit Practices Rule. The alleged violations include (i) deception, unfairness and abusiveness relating to the collection of loan payments which consumers did not owe because the loans violated state licensing and/or usury laws that declared such amounts void, (ii) deception, unfairness and abusiveness for representing that the loan agreements were not subject to U.S. federal or state law, (iii) deception relating to consequences of non-payment, including allegedly representing to consumers that non-payment of deb would result in lawsuits, arrest, imprisonment or wage garnishment, and (iv) conditioning the extension of credit on an irrevocable wage assignment clause.

Under the terms of the proposed consent order, the Defendants are permanently barred from offering, originating, servicing or collecting any consumer loan issued to any consumer residing in the U.S.. The Defendants are also permanently barred from collecting on existing loans to U.S. consumers, including any efforts to assign,

sell or transfer such loans in an effort to collect on such loans.

U.S. Payday Lender Settlement

On February 5, 2019, the CFPB entered into a consent order with a payday retail lender for unauthorized charges, harassing collection calls and other violations resulting in a \$100,000 civil money penalty.

The consent order alleged that, among other things, the payday lender:

- Had inadequate manual processes to prevent unauthorized charges, which resulted in withdrawing funds from consumers’ accounts by initiating ACH debits after those consumers had paid off their payday loans.
- Failed to monitor, identify, correct and refund overpayments.
- Misrepresented that third party references on applications were collected for verification purposes when actually used to make marketing calls.
- Advertised unavailable services such as check cashing and telephone reconnections on store signage that likely influenced potential customers.
- Routinely called all third party application “references” if the consumer became delinquent on a loan, and that these calls generally were not made for the purpose of obtaining necessary information about the consumer’s locations or with the expectation that the payday lender would reach the consumer directly at the number called.
- Violated the Gramm-Leach-Bliley Act by providing privacy notices only when the consumer took out his or her first loan from the lender. If the consumer paid that loan in full and subsequently took out a new loan, the lender did not provide a new initial privacy notice. The CFPB asserted that because consumers who paid off a loan did not have any other ongoing customer relationship with the lender, the exception in Regulation P for “existing customers” did not apply to these former customers. Consequently, each time a consumer subsequently took out a new loan, the consumer should have received a new initial privacy notice.
- Violated Regulation Z because it did not accurately disclose the annual percentage rate of its products before consummation.

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New Proposed Payday Rule

The CFPB announced in October 2018 that it expected to issue proposed rules in January 2019 reconsidering the CFPB's rule regarding Payday, Vehicle Title and Certain High-Cost Installment Loans and addressing the rule's compliance date. This rule, which likely would relax regulations for payday lenders, may have been delayed as a result of the recent government shutdown but is expected to be issued soon.

We will continue to monitor further developments and provide updates. □

✧ *Michael Tomkies and Lindsay Valentine*