



FTC SETTLES “HIDDEN” UPFRONT FEE SUIT

In July 2021, the Federal Trade Commission (“FTC”) settled its lawsuit against an online marketplace loan provider. The FTC filed their initial complaint in 2018, alleging that the company engaged in unfair and deceptive acts or practices and violated the Gramm-Leach-Bliley Act (“GLBA”) in connection with its advertising, application process and automatic payment practices. *FTC v. LendingClub Corporation*, No. 18-02454 (N.D. filed Cal., Apr. 25, 2018); see our ALERT of May 21, 2018. The FTC complaint alleged that the company falsely promised consumers they would receive loans with “no hidden fees”, told applicants their loans were “on the way” when they knew those applicants would not receive a loan and initiated unauthorized withdrawals from consumers’ bank accounts.

The company agreed to settle the lawsuit for \$18 million. The settlement agreement bars the company from misrepresenting, expressly or by implication, the (i) existence or amount of any fees or charges, (ii) amount of funds that will be disbursed to customers’ accounts, (iii) status of credit applications and (iv) the time frames within which consumers will receive funds. The company must clearly and conspicuously disclose the dollar amount of any prepaid, up-front or origination fee or any other fee imposed as a mandatory condition for receiving credit, in close proximity to any representations regarding a specific loan amount made prior to accepting a loan application.

In a blog post following the settlement, the company underlined that while it never agreed with the FTC’s allegations, it was pleased to reach an agreement that resolved the agency’s concerns.

The FTC is currently in the process of returning more than \$10 million to customers who have previously complained to either the company or the FTC about hidden fees. Those refund payments must be accepted by February 16, 2022. Additional claims by customers who believe they may be eligible for a refund must be filed by February 16, 2022.

Disclosing material information in a way that consumers understand while also building a consumer-friendly application experience can be difficult. We can help by identifying options and recommending strategies that balance those considerations. □

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