

COVID-19 and Federal Enforcement: The Song Remains the Same

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The COVID-19 pandemic may have halted many aspects of daily life, but the wheels of justice at your friendly federal regulators continue to turn. In the months since the crisis, a number of enforcement actions by both the Consumer Financial Protection Bureau and Federal Trade Commission suggest that consumer regulators have become more determined, not less, during the crisis.

Fraud as Lynchpin of Federal Enforcement

Many of the agencies' actions have a heavy theme in fraud: products or services to which consumers did not agree or that are illegal and void in their entirety. This emphasis echoes CFPB Director Kraninger's recent public statements that the Bureau will take aggressive positions to stamp out fraud.[1] Recent activity has proven those statements to be accurate.

For example, the CFPB joined with the Office of the Attorney General for South Carolina and Arkansas to sue an operation that purchased servicemembers' future pension and disability payments for a lump sum, alleging that the transactions were usurious and deceptive offers of credit and an unlawful assignment of federal servicemember benefits.[2]

In a joint action with the Massachusetts Attorney General, the CFPB filed suit against Commonwealth Equity Group in connection with its offering of student loan debt relief services.[3] Similar to other recent enforcement actions regarding this business model, the joint action takes issue with the collection of upfront fees and the promise of allegedly unrealistic results. The CFPB similarly took action against a mortgage lender in connection with its alleged scheme to obtain consumer reports based on false pretenses so that its associated debt relief partners could sell their products and services.[4]

Finally, the CFPB penalized a national bank for allegedly enrolling consumers in unauthorized services and opening unauthorized accounts.[5] Driven by the bank's incentive program to cross-sell products, employees had allegedly enrolled consumers in products and services without their knowledge, a claim that is nearly identical to the Bureau's major case against one of the nation's largest banks for the same practices in 2017.

Not to be outdone, the FTC has continued its aggressive pursuit of alleged fraud in the consumer finance market, taking action against fraudulent payment processing practices,[6] unauthorized electronic payments from bank accounts,[7] online sales schemes[8], and shipping and refund practices.[9] Interestingly, however, the FTC has not yet used its enforcement tools to seek emergency relief against actors who allegedly make false statements or offer fraudulent products in connection with COVID-19 relief, opting instead to send only warning letters.[10]

Traditional Actions Continue

Not all actions have been aimed at fraudulent practices, however. Small dollar lenders continue to be a favorite target of CFPB enforcement. The Bureau took action against a storefront lender for violations of the Consumer Financial Protection Act, Fair Credit Reporting Act, and Truth in Lending Act in a case arising out of a supervisory examination.[11] Likewise, the Bureau settled its longstanding lawsuit against an online service provider to tribal loans over allegations that the loans were void under state licensing and usury laws.[12] Director Kraninger further denied a bid to set aside Civil Investigative Demands in an ongoing investigation directed at tribal lending.[13]

The CFPB has also taken action to enforce the Real Estate Settlement Procedures Act and its mortgage servicing rules by issuing a consent order against a mortgage servicer that allegedly pursued foreclosure against borrowers who were already pursuing loss mitigation options. This process, known as "dual tracking," is one that the CFPB and federal banking regulators have taken issue with for years.[14] The Bureau's action here could be telling for the COVID-19 crisis, however, indicating that it may generally prefer servicers to work with borrowers through loss mitigation over pursuing foreclosure options.

Conclusion

Federal regulators are not using the global pandemic to slow the steady use of enforcement tools to protect the public. No doubt, the new reality will present opportunities and spur innovation in the consumer credit market. Federal and state regulators will be there to vigilantly ensure that consumers are protected from undue harm in the process, and the first months of the COVID-19 crisis have confirmed that.

[1] <https://www.americanbanker.com/news/led-by-trump-appointee-cfpb-is-back-in-the-enforcement-business>

[2] <https://www.consumerfinance.gov/about-us/newsroom/cfpb-south-carolina-arkansas-file-suit-against-brokers-of-high-interest-credit-offers/>

[3] <https://www.consumerfinance.gov/about-us/newsroom/cfpb-commonwealth-massachusetts-file-suit-against-credit-repair-telemarketers/>

[4] <https://www.consumerfinance.gov/about-us/newsroom/cfpb-settles-monster-loans-thomas-chou-sean-cowell-and-related-companies/>

[5] <https://www.consumerfinance.gov/about-us/newsroom/cfpb-files-suit-against-fifth-third-for-allegedly-opening-unauthorized-accounts-enrolling-consumers-in-unauthorized-products/>

[6] <https://www.ftc.gov/enforcement/cases-proceedings/162-3180/first-data-merchant-services-llc>

[7] <https://www.ftc.gov/enforcement/cases-proceedings/192-3208/lead-express-ftc-v-harvest-moon-financial>

[8] <https://www.ftc.gov/news-events/press-releases/2018/12/defendants-sellers-playbook-get-rich-scheme-settle-ftc-minnesota>

[9] <https://www.ftc.gov/enforcement/cases-proceedings/182-3031/fashion-nova-inc>

[10] <https://www.ftc.gov/news-events/press-releases/2020/05/ftc-sba-warn-operator-sbacom-lead-generator-lendio-stop>

<https://www.ftc.gov/news-events/blogs/business-blog/2020/04/new-ftc-warning-letters-cite-unsupported-coronavirus-related>

[11] <https://www.consumerfinance.gov/about-us/newsroom/cfpb-settles-short-term-lender-unfair-deceptive-acts-and-practices/>

[12] <https://www.consumerfinance.gov/about-us/newsroom/cfpb-settles-lawsuit-against-think-finance-entities/>

[13] <https://www.consumerfinance.gov/policy-compliance/enforcement/petitions/hpul-entities/>

[14] <https://www.consumerfinance.gov/policy-compliance/enforcement/actions/specialized-loan-servicing-llc/>

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