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Understanding Federal and State AG Financial Services Enforcement Trends and Preventing Future Lawsuits

Tuesday, May 5, 2015, 2–3 pm ET
Venable LLP, Washington, DC

Moderator

Jonathan L. Pompan, Partner and Co-Chair Consumer Financial Protection Bureau Task Force

Panelists

The Honorable Mark L. Pryor, Partner

Michael J. Bresnick, Partner and Chair of the Financial Services Investigations and Enforcement Practice

Jeffrey D. Knowles, Partner and Chair of the Government Division

Welcome to Today's Webinar

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Today’s Topics Include

- An insider's view of the Financial Fraud Enforcement Task Force Consumer Protection Working Group;
- Coordination and individual efforts by and among the DOJ, CFPB, FTC, banking agencies, and states;
- The practical impact of Operation Choke Point and similar initiatives;
- Compliance best practices and strategies to avoid and survive investigations; and
- Ways to minimize regulatory and enforcement overreach.

Our Panelists

Honorable Mark L. Pryor

Michael J. Bresnick

Jeffrey D. Knowles

Jonathan L. Pompan

Overview of Consumer Protection Working Group to Combat Consumer Fraud

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Consumer Protection Working Group Launches in 2012

JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Friday, February 10, 2012

Attorney General Eric Holder Launches Consumer Protection Working Group to Combat Consumer Fraud

The Consumer Protection Working Group, formed under President Barack Obama's Financial Fraud Enforcement Task Force (FFETF), convened its first meeting in Washington, D.C., today to address consumer fraud, which can financially cripple households and can cause extensive losses to our economy. The newly-created group will work across federal law enforcement and regulatory agencies, and with state and local partners, to strengthen efforts to address consumer-related fraud, including schemes targeting vulnerable populations, such as the unemployed, those in need of payday loans, and those suffering from the burden of high credit card and other debt. The new working group will also focus on scams that exploit prospective students, active-duty military personnel and veterans.

"The schemes we are combating are as diverse as the imaginations of those who perpetrate them, and as sophisticated as modern technology will permit. Thanks in large part to the leadership of the President's Financial Fraud Enforcement Task Force we are tackling financial fraud, in all its forms, head on," said Attorney General Eric Holder. "Through the extensive and coordinated partnership we start today, we will strengthen our collective efforts, enhance civil and criminal enforcement of consumer fraud and educate the public in an effort to prevent consumers from being victimized in the first place."

Attorney General Holder delivered remarks at today's meeting which was convened by FFETF Executive Director Michael Bresnick along with the working group's co-chairs: Assistant Attorney General for the Department of Justice's Civil Division Tony West, Assistant Attorney General for the Department of Justice's Criminal Division Lanny Breuer, U.S. Attorney for the Central District of California André Birotte and Director of the Bureau of Consumer Protection for the Federal Trade Commission (FTC) David Vladeck. Another co-chair, Director of Enforcement for the Consumer Financial Protection Bureau Kent Markus, was unable to attend the meeting.

"We know all too well how opportunistic fraudsters have adapted their schemes to take advantage of consumers facing financial hardships, using false promises of mortgage modification, debt relief, and job placement, to name a few. Since 2009, the FTC has brought over 90 cases to stop these scams," said Director of the Bureau of Consumer Protection for the FTC David Vladeck. "This partnership will only serve to enhance our collective efforts to protect consumers."

The Consumer Protection Working Group will address several areas of concern, including payday lending and other high-pressure telemarketing or Internet scams, business opportunity schemes, for-profit schools that engage in fraud or misrepresentation and fraudulent third party payment processors that facilitate payments on behalf of other fraudsters without the permission of the customer.

At today's meeting, the Consumer Protection Working Group members set priorities and discussed taking collaborative steps to continue to seek out and prosecute consumer fraud as well as protect consumers from fraud before it happens through outreach and education. The new working group plans to establish a best-practices tool kit, legislative, regulatory and policy initiatives and an information sharing structure

Multi-Federal Agency and State Effort

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Articles

February 21, 2012

New Federal Consumer Protection Working Group Takes Aim at Consumer Fraud

AUTHORS

Jonathan L. Pompan

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A newly created Consumer Protection Working Group to combat consumer fraud will work across federal law enforcement and regulatory agencies, and with state and local partners. The Consumer Protection Working Group is the latest in a string of efforts undertaken by law enforcement agencies to protect vulnerable populations. Areas of focus include scams that target the unemployed, those in need of payday loans, and those suffering from the burden of high credit card and other debt, as well as exploiting prospective students, active-duty military personnel, and veterans.

The Consumer Protection Working Group is a new unit within the Financial Fraud Enforcement Task Force that was created in late 2009, and is led by the U.S. Department of Justice. The working group, announced by Attorney General Eric Holder on the heels of President Obama's State of the Union speech, held its first meeting on February 10, 2012.

Officials said the effort will be focused and will coordinate efforts among law enforcement and regulators. At the first meeting of the group, Attorney General Eric Holder said that the partnership "will strengthen our collective efforts, enhance civil and criminal enforcement of consumer fraud and educate the public in an effort to prevent consumers from being victimized in the first place."

According to the announcement, the Consumer Protection Working Group will "address several areas of concern, including payday lending and other high-pressure telemarketing or Internet scams, business opportunity schemes, for-profit schools that engage in fraud or misrepresentation, and fraudulent third-party payment processors that facilitate payments on behalf of other fraudsters without the permission of the customer." The Consumer Protection Working Group will likely follow the lead of the Federal Trade Commission ("FTC"), Consumer Financial Protection Bureau ("CFPB"), and several state attorneys general, which are aggressively investigating potential violations of consumer protection laws.

The new working group has set priorities and discussed taking collaborative steps to continue to seek out and prosecute consumer fraud as well as protect consumers from fraud before it happens through outreach and education. The new working group also plans to establish a best-practices toolkit; legislative, regulatory and policy initiatives; and an information-sharing structure.

Members of the Consumer Protection Working Group include representatives from the FTC, CFPB, Department of Treasury, FBI, Internal Revenue Service-Criminal Investigation, Federal Deposit Insurance Corporation, U.S. Secret Service, Financial Crimes Enforcement Network, Executive Office for U.S. Attorneys, Department of Education's Office of the Inspector General, U.S. Trustee Program, the National Association of Attorneys General, U.S. Postal Inspection Service, the Office of the Comptroller of the Currency, the Federal Reserve Board, and the National Credit Union Administration. The state attorneys general are represented on the working group by Attorney General Lisa Madigan from Illinois, Attorney General Greg Zoeller from Indiana, and Attorney General Roy Cooper from North Carolina.

The potential for investigations of companies and, perhaps several companies within multiple sectors, by the members of the working group adds a dimension to areas that have already been under heavy scrutiny. As a result, companies that work in areas that are related to financially distressed consumers should review existing relationships, staff training, compliance, and audit functions and programs. From advertising and marketing, fulfillment, and complaint resolution, all practices could be subject to review. In addition, sectors in the crosshairs of the working group should assess whether they need to improve messaging and the design of self-regulatory programs with strong enforcement mechanisms to help compliant companies distinguish themselves from those that are not in compliance with applicable laws. Finally, in light of the potential for lawsuits, companies that are under investigation will need to be prepared to defend themselves and their actions.

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Focus of the Consumer Protection Working Group

"The newly-created group will work across federal law enforcement and regulatory agencies, and with state and local partners, to strengthen efforts to address consumer-related fraud, including schemes targeting vulnerable populations, such as the unemployed, those in need of payday loans, and those suffering from the burden of high credit card and other debt. The new working group will also focus on scams that exploit prospective students, active-duty military personnel and veterans."

Consumer Protection Working Group

- **Enhance** civil and criminal enforcement of consumer fraud through increased information-sharing among law enforcement and member agencies (including use of FBI's LEO system, the FTC's Consumer Sentinel Network system, and others); training and coordination among state and federal law enforcement, including creation and dissemination of a "best practices" tool-kit for DOJ and state AG's offices; and identification of legislative, regulatory, and policy initiatives.

- **Prevent** fraud through public outreach and education, including articles, blogs, webinars, conferences, and media engagement.

- **Plan** and national operations targeting specific types of consumer fraud, similar to the Mortgage Fraud Working Group's current initiative focused on foreclosure rescue scams.

Coordination and individual efforts by and among the DOJ, CFPB, FTC, banking agencies, and states

Coordination by the CPWG

- Focused Singular Attention
  - Third Party Payment Processors
  - Other Areas
  - Overreach?

- Building Capacity
  - What's next?

- Strengthening Relationships

Individual Efforts by Other Agencies

- CFPB Focus on Debt Relief Services, Mortgage Assistance Relief Services, and related Vendors
- FTC Focus on Small Dollar Lenders, Debt Relief Services, Mortgage Assistance Relief Services, and related Vendors.
- FinCEN focus on BSA/AML and related compliance
- Agency Bulletins and Guidance on Third Party Relationship Risk and Specific Legal and Regulatory Topics

The practical impact of Operation Choke Point and similar initiatives

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What is Operation Choke Point?

Memorandum

Subject	**OPERATION CHOKE POINT**: A proposal to reduce dramatically mass market consumer fraud within 180 days	Date	November 5, 2012
To	Stuart F. Delery Acting Assistant Attorney General Civil Division	From	Joel M. Sweet Assistant United States Attorney

OPERATION CHOKE POINT

I propose that I be detailed to the Consumer Protection Branch to implement a strategy to attack Internet, telemarketing, mail, and other mass market fraud against consumers, by choking fraudsters' access to the banking system. This objective can be achieved promptly and efficiently through a proven strategy of incremental enforcement, which will:

- achieve results within months;
- provide prospective protection to the most vulnerable of victims;
- efficiently use resources;
- attract multi-agency support and cooperation (already pledged);
- promote a culture of compliance among banks regarding Bank Secrecy Act/Anti-Money Laundering obligations;
- provide groundwork for civil and criminal prosecutions against banks, payment processors, and fraudsters; and
- recover FIRREA penalties.

This proposal will substantially further the goals of the Consumer Protection Working Group of the Financial Fraud Enforcement Task Force, which has prioritized addressing third-party payment processor involvement in consumer fraud.

The Problem

Fraudulent merchants are able to take money from their victims' bank accounts only if they have a relationship with a bank, and thus access to the nation's banking system. Banks are reluctant to establish direct relationships with such merchants due to significant legal, financial, and reputational risks. To overcome this obstacle, fraudulent merchants create *indirect* relationships with banks through third-party payment processors. In many cases, these processors are unlicensed, unregulated, and owned or controlled by the fraudulent merchants. By using processors as conduits to gain access to the banking system, fraudulent merchants can evade and frustrate statutes and regulations designed to require banks to know their clients, and to prevent their clients from using the banking system to further criminal activity.

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OCP and Related Efforts

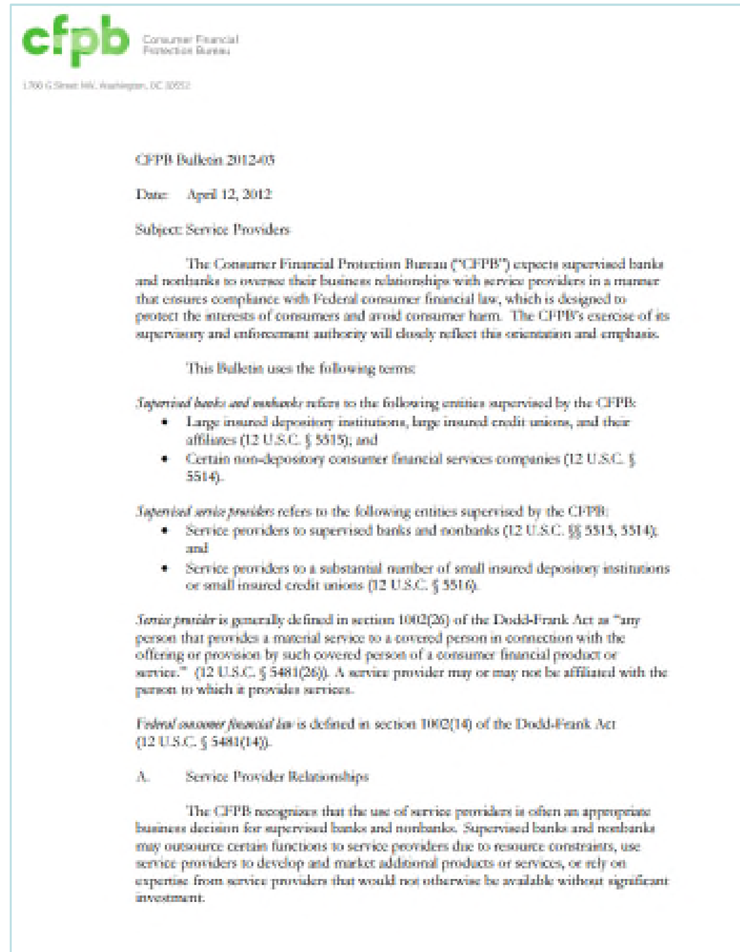
Statutory and Regulatory Overreach?

- Concerns with Operation Choke Point and Related Efforts
  - statutory authority.
- Focus on Industries deemed “high risk”?
  - Factual Basis
- Indiscriminate termination of relationships with legal and legitimate merchants across a variety of business lines.

Compliance best practices and strategies to avoid and survive investigations

Service Provider Due Diligence

- Enhance:
  - Internal controls
  - Policies and procedures
  - Training and auditing
- Understand law and regulation of upstream and downstream relationships



Consumer Financial Protection Bureau

1700 G Street NW, Washington, DC 20552

CFPB Bulletin 2012-03

Date: April 12, 2012

Subject: Service Providers

The Consumer Financial Protection Bureau ("CFPB") expects supervised banks and nonbanks to oversee their business relationships with service providers in a manner that ensures compliance with Federal consumer financial law, which is designed to protect the interests of consumers and avoid consumer harm. The CFPB's exercise of its supervisory and enforcement authority will closely reflect this orientation and emphasis.

This Bulletin uses the following terms:

Supervised banks and nonbanks refers to the following entities supervised by the CFPB:

- Large insured depository institutions, large insured credit unions, and their affiliates (12 U.S.C. § 5515); and
- Certain non-depository consumer financial services companies (12 U.S.C. § 5514).

Supervised service providers refers to the following entities supervised by the CFPB:

- Service providers to supervised banks and nonbanks (12 U.S.C. §§ 5515, 5514); and
- Service providers to a substantial number of small insured depository institutions or small insured credit unions (12 U.S.C. § 5516).

Service provider is generally defined in section 1002(26) of the Dodd-Frank Act as "any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service." (12 U.S.C. § 5481(26)). A service provider may or may not be affiliated with the person to which it provides services.

Federal consumer financial law is defined in section 1002(14) of the Dodd-Frank Act (12 U.S.C. § 5481(14)).

A. Service Provider Relationships

The CFPB recognizes that the use of service providers is often an appropriate business decision for supervised banks and nonbanks. Supervised banks and nonbanks may outsource certain functions to service providers due to resource constraints, use service providers to develop and market additional products or services, or rely on expertise from service providers that would not otherwise be available without significant investment.

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Surviving Investigations and Enforcements Actions

- Force Fact Driven Analysis
- Don’t ignore procedure
- High Touch v. Litigation Posture
- Understand the landscape and where its headed.
  - Is there a rulemaking
  - Parallel investigations
- Consider enhancements to CMS and practices

Ways to minimize regulatory and enforcement overreach

Legal and Regulatory Landscape is Evolving

- Legislative Changes
  - Statutory
  - Structural (e.g., CFPB reform)
- Rulemaking
  - CFPB Small Dollar Loans
  - CFPB Debt Collection
- Education
  - Do policymakers understand your sector and specific business, product, and service?

Observations and Q & A

Standby for today's CLE code

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