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# Self-Regulation and the Lead Generation Market

LeadsCon Las Vegas 2015
Mirage Resort & Casino
March 4, 2015

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Washington, DC

***In recent years there has been increasing attention given to Lead Generation Advertising and Marketing….***

# Laws and Regulations

- FTC Act Section 5 (UDAP)
- CFPA – UDAAP
- Telemarketing Sales Rule
- FTC and CFPB Guidance
- State UDAP Laws
- Specific Laws
  - Title IV/HEA
  - RESPA
  - TILA
  - State Laws re Mortgage, Lending, Insurance, etc.

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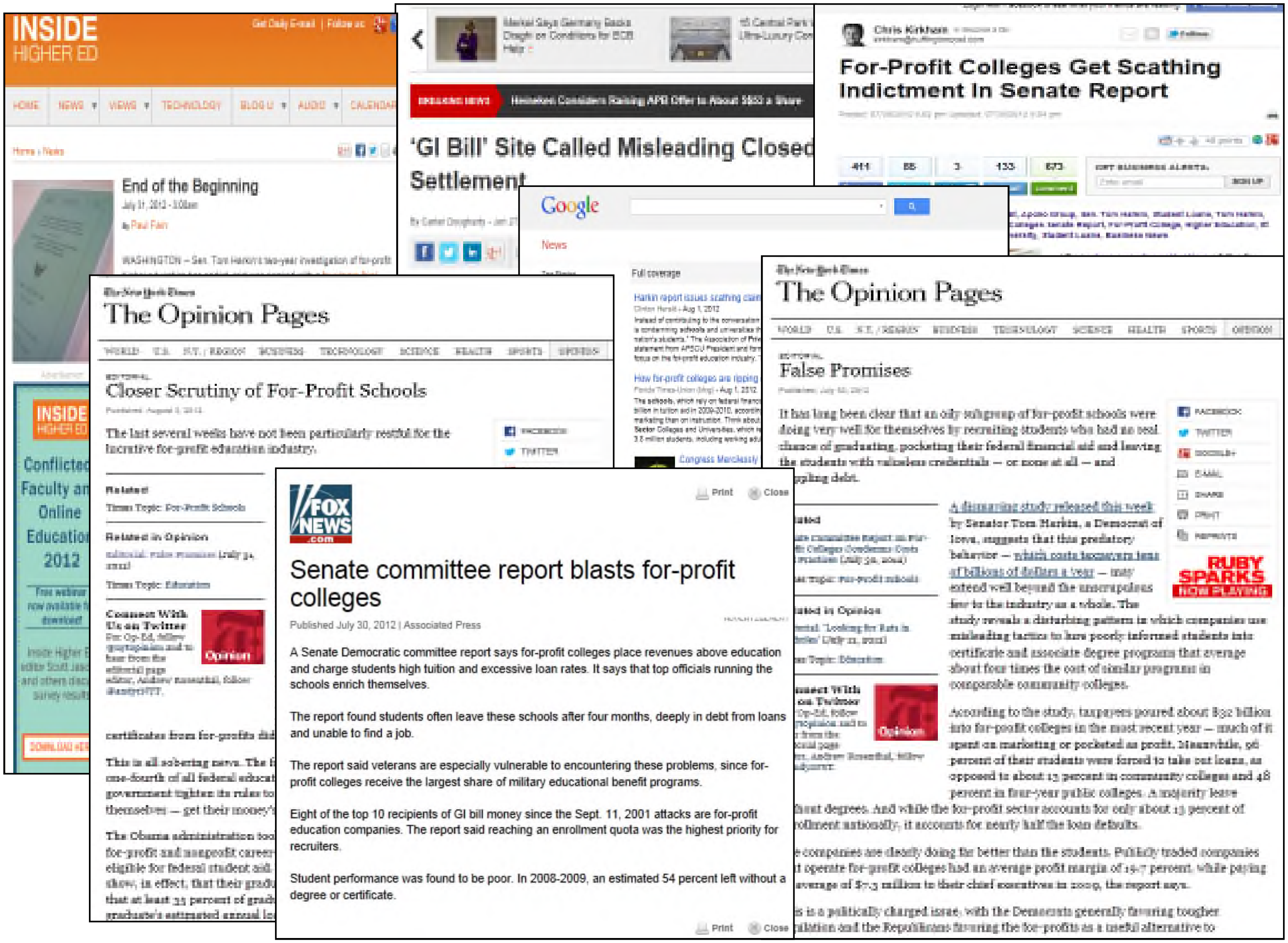
# Education…



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# Mortgage Lending…


FEDERAL TRADE COMMISSION
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ABOUT THE FTC | NEWS & EVENTS | ENFORCEMENT | POLICY | TIPS & ADVICE

News & Events » Press Releases » Mortgage Lead Generator Will Pay $500,000 to Settle FTC Charges That It Deceptively Advertised

Mortgage Lead Generator Will Pay $500,000 to Settle FTC Charges That It Deceptively Advertised Mortgage Refinancing

According to FTC, Defendant Fal…
Carried No Hidden Fees, and Wo…

FOR RELEASE
September 12, 2014

TAGS: Bureau of Consumer Protection | C…

An Internet-based operation that finds potenti… penalty to settle Federal Trade Commission c… could refinance their mortgages for free.

"An ad that says you can refinance your mortg… before you sign on the dotted line," said Jessic… generators need to understand that federal la… else."

The FTC charged that the Colorado-based In… designed and distributed the deceptive refinan… complaint, the company ran these ads on Go… consumers clicked on the ads, they were sent… ultimately passed on to providers of mortgage…

Delta Prime Refinance made deceptive and u… consumers could reduce their payments if they… would be, and how easy it would be for them t… claimed there were no hidden fees, and that t… claimed that fixed interest rates were available… were variable.

The complaint charges Delta Prime Refinance… and Practices Advertising Rule, or "MAP" Rule…

Under the terms of the settlement, in addition t… from:

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ABOUT THE FTC | NEWS & EVENTS | ENFORCEMENT | POLICY | TIPS & ADVICE

Mortgage Lead Generator will Pay $225,000 to Settle FTC Charges That It Deceptively Advertised Mortgage Rates

Offered Low-Interest-Rate Mortgages as "Fixed," when Rates Were Adjustable and Could Increase

FOR RELEASE
May 8, 2014

Low FHA Fixed Rates 2.25%
Low Rates. Free Quotes. No Hidden Costs!

Find Your Best Rate

cfpb Consumer Financial Protection Bureau

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HOME > NEWSROOM > CFPB ORDERS AMERISAVE TO PAY $19.3 MILLION FOR BAIT-AND

AUG 12 2014

CFPB Orders Amerisave To Pay $19.3 Million For Bait-And-Switch Mortgage

…rkert to Pay Additional $1.5 Million for Deceiving

…C. – Today, the Consumer Financial Protection Bureau (CFPB) …nerisave Mortgage Corporation, its affiliate, Novo Appraisal …y, and the owner of both companies, Patrick Markert, for …e bait-and-switch mortgage-lending scheme that harmed tens of …rs. The Bureau found that Amerisave lured consumers by …g interest rates, locked them in with costly up-front fees, failed to …tes, and then illegally overcharged them for affiliated "third- …isave and Novo will provide $14.8 million in refunds to harmed …$4.5 million penalty. Patrick Markert, as an individual, will pay an …n penalty.

…sumers in with deceptive advertising, trapped them with costly … illegally overcharged them for services from an undisclosed …Director Richard Cordray. "By the time consumers could have …sed low rates were too good to be true, they had already …dreds of dollars to Amerisave. Today's action puts an end to …able bait-and-switch scheme and holds Patrick Markert …e for his illegal actions."

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# Small Dollar Lending…

cfpb Consumer Financial Protection Bureau

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HOME > NEWSROOM > CFPB SUES ONLINE PAYDAY LENDER FOR CASH-GRAB SCAM

SEP 17 2014

## CFPB Sues Online Payday Lender for Cash-Grab Scam

***The Hydra Group Uses Phony Payday Loans to Illegally Access Consumer Bank Accounts***

WASHINGTON, D.C. – Today, the Consumer Financial Protection Bureau (CFPB) announced its action to halt the operations of an online payday lender, the Hydra Group, which it believes is running an illegal cash-grab scam. The lawsuit alleges that the Hydra Group uses information bought from online lead generators to access consumers' checking accounts to illegally deposit payday loans and withdraw fees without consent. The Hydra Group then uses falsified loan documents to claim that the consumers had agreed to the phony online payday loans. At the request of the CFPB, a U.S. District Court Judge has temporarily ordered a halt to the operation and frozen its assets. The lawsuit also seeks to return the ill-gotten gains to consumers and levy a fine on the company.

"The Hydra Group has been running a brazen and illegal cash-grab scam, taking money from consumers' bank accounts without their consent," said CFPB Director Richard Cordray. "The utter disregard for the law shown by the Hydra Group and the men controlling it is shocking, and we are taking decisive action to prevent any more consumers from being harmed."

**The complaint against the Hydra Group can be found at:** http://files.consumerfinance.gov/f/201409_cfpb_complaint_hydra-group.pdf

The CFPB's lawsuit names Richard F. Moseley, Sr., Richard F. Moseley, Jr., and

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ABOUT THE FTC NEWS & EVENTS ENFORCEMENT POLICY TIPS & ADVICE

News & Events » Press Releases » FTC Action Halts Payday Loan Scheme That Bilked Tens of Millions From Consumers By Trapping T… Authorized

## FTC Action Halts Payday Loan Scheme That Bilked Tens of Millions From Consumers By Trapping Them Into Supposed "Loans" They Never Authorized

FOR RELEASE

September 17, 2014

TAGS: Bureau of Consumer Protection | Consumer Protection | Credit and Loans | Debt Collection | Consumer Privacy

At the Federal Trade Commission's request, a U.S. district court in Missouri has temporarily halted an online payday lending scheme that allegedly bilked consumers out of tens of millions of dollars by trapping them into loans they never authorized and then using the supposed "loans" as a pretext to take money from their bank accounts.

The court imposed a temporary restraining order that appoints a receiver to take over the operation. The court order gives the FTC and the receiver immediate access to the companies' premises and documents, and freezes their assets.

"These defendants bought consumers' personal information, made unauthorized payday loans, and then helped themselves to consumers' bank accounts without their authorization," said Jessica Rich, Director of the FTC's Bureau of Consumer Protection. "This egregious misuse of consumers' financial information has caused significant injury, especially for consumers already struggling to make ends meet. The Federal Trade Commission will continue to use every enforcement tool to stop these unlawful and harmful practices."

Over one eleven-month period between 2012 and 2013, the defendants issued $28 million in payday "loans" to consumers, and, in return, extracted more than $46.5 million from their bank accounts, the FTC alleged.

In its complaint, the FTC alleges that Timothy Coppinger, Frampton (Ted) Rowland III, and a web of companies they owned or operated, used personal financial information bought from third-party lead generators or data brokers to make unauthorized deposits of between $200 and $300 into consumers' bank accounts. Often, the scheme targeted consumers who had previously submitted their personal financial information – including their bank account numbers –to a website that offered payday loans.

# What is Self-Regulation and how can it help?

# Self Regulation - Theory

- **Purposes:**

  1. **As a substitute for Government Intervention**
  2. **As a complement to Government Regulation**

- “**The best self-regulatory programs carry several hallmarks.**

  – First, they clearly **address the problems** they seek to remedy.

  – Second, they are **flexible** and able to adapt to new developments within the industry.

  – Third, they are **widely followed** by affected industry members.

  – Fourth, they are **visible and accessible** to the public.

  – Fifth, they are administered in a fashion that **avoids conflicts of interest** between the regulated firms, on the one hand, and the body doing the regulating, on the other hand.

  – Finally, they **objectively measure member performance and impose sanctions for noncompliance**.”

(Speech by FTC Commissioner J. Thomas Rosch)

# What is a self-regulatory program?

- Self-regulatory programs can be **<u>voluntary programs</u>** that may complement existing government regulation or serve as the primary regulation in areas where no government regulation exists.

- Self-regulatory **<u>programs can address a broad spectrum of regulatory activities</u>**, including company and product certification, public education, development of industry standards and codes of conduct, and complaint resolution

- The Federal Trade Commission recognizes "the **<u>important role that effective self-regulation</u>** can play and has worked with many industry groups to develop sound self-regulatory initiatives."

# What lawmakers and regulators look for in self-regulation programs….

1. More **prompt, flexible, and responsive** than traditional statutes and regulations.
2. Process and outcomes are likely flexibly **adapted to the realities of the market**.
3. Compliance can be just as high, or higher, under a coordinated self-regulatory system as under government regulation, because the member firms participate in the construction of the system and will have "bought into" the regulatory process
   - **If sufficiently objective and transparent, it permits the public to judge the integrity of the program and participants**
4. The review system and increases **confidence in self-regulation**.
5. **Financial incentives** to ensure the success of industry self regulation.

# A spectrum of self-regulator programs…

| | |
|---|---|
| *Most Comprehensive* | 1. Mandatory SRO Based on Delegation of Statutory Authority<br>a. Regulates all aspects of a particular industry and has authority to issue binding rules and regulations.<br>b. Membership required by law and conditioned on compliance with SRO rules and regulations.<br>c. Stringent enforcement, including application of monetary penalties.<br>d. Ex. The Financial Industry Regulatory Authority ("FINRA") regulates all securities firms doing business in the United States. |
| | 2. Voluntary SRO with Binding Code of Conduct and Mechanism to Enforce Customer Complaints<br>a. Membership conditioned on compliance with Code of Conduct.<br>b. Enforcement of customer complaints through internal or external enforcement mechanism.<br>c. Ex. Electronic Retailer Association's Electronic Retailing Self-Regulation Program is enforced by the National Advertising Review Council (NARC).<br>d. Ex. Beer Institute refers advertising complaints to the third-party Code Compliance Review Board (CCRB).<br>e. Ex. Network Advertising Initiative refers unresolved customer complaints to its Board of Directors. |
| | 3. Voluntary SRO with Binding Code of Conduct but No Mechanism to Enforce Customer Complaints<br>a. Although membership is conditioned on compliance with Code of Conduct, the lack of a customer complaint enforcement mechanism limits SRO effectiveness.<br>b. Ex. Mobile Marketing Association (the MMA has indicated that it is working to set up an enforcement mechanism).<br>c. Ex. Alliance for Lifelong Learning. |
| *Least Comprehensive* | 4. Voluntary Trade Association that has developed Non-Binding Best Practices<br>a. Lack of formal SRO program but development of best practices to guide industry.<br>b. Ex. USTelecom Association has developed voluntary best practices to limit distribution of child pornography on the Internet. |

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# BBB/Advertising Self-Regulatory Council ASRC System Overview

- The self-regulatory system developed by ASRC supports advertiser compliance by focusing on three goals:
  - Provide a fast, flexible alternative to government regulation.
  - Maintain a level playing field for settling disputes among competing advertisers.
  - Increase public Trust in the credibility of advertising
- Examples:  NAD, ERSP, CARU, and others (www.asrcreviews.org)

# ASRC Example: Electronic Retailing Self Regulation Program (ERSP); 2004 – Present

- Types of Advertising:
  - Testimonials/Endorsements
  - Before and After Depictions
  - Weight Loss
  - Health and Safety
  - Establishment Claims
  - Disclosures
  - Social Media
  - Puffery
  - Demonstrations
  - New Areas

- Goals:
  - Improve/restore consumer confidence in electronic retailing
  - Provide a quick and efficient mechanism for reviewing direct response advertising campaigns
  - Demonstrate to the regulatory agencies, the direct response industry's commitment to strong self-regulation and compliance with legal requirements

# Some examples…

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