

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



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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**

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



Multi-Federal Agency and State Effort



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Jonathan L. Pompan

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February 21, 2012

New Federal Consumer Protection Working Group Takes Aim at Consumer Fraud

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.



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**

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			
<p>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:</p> <ul style="list-style-type: none"> ▪ 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. <p>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.</p> <p style="text-align: center;">The Problem</p> <p>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 <i>indirect</i> 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.</p>			
HOCR-3PPP000017			



OCP and Related Efforts

Department of Justice
United States Attorney Zane David Margas
Eastern District of Pennsylvania

FOR IMMEDIATE RELEASE CONTACT: PATTY HARTMAN
SATURDAY, NOVEMBER 19, 2011 201-861-8723
WWW.JUSTICE.GOV/USAOEPA

DEPARTMENT OF JUSTICE ANNOUNCES \$10 MILLION SETTLEMENT WITH DELAWARE BANK, ALLEGED OF CONSUMER FRAUD

PHILADELPHIA – First Bank of Delaware today was charged with, and settled, civil claims brought by the U.S. Department of Justice in connection with a scheme to defraud consumers through the Internet and other means. Under a settlement reached with First Bank of Delaware, the bank will pay a civil money penalty of \$10 million to the U.S. Treasury. The bank also will reimburse an account with \$100,000 to pay consumer claims arising from the alleged conduct. Today's settlement and related regulatory actions were announced by U.S. Attorney for the Eastern District of Pennsylvania Zane David Margas, Department of the Treasury Financial Crime Enforcement Network (FinCEN) Director Jennifer Shasky Calvery and the Federal Deposit Insurance Corporation (FDIC). The Department of Justice's allegations against the bank and the terms of the settlement are set forth in a civil complaint and a settlement agreement filed in the U.S. District Court for the Eastern District of Pennsylvania.

The Department of Justice alleges that from 2009 to 2011, First Bank of Delaware violated the Federal Securities Reform, Recovery and Enforcement Act (FSREAA) by engaging in widespread transactions on behalf of fraudulent merchants and causing money to be taken from the bank accounts of consumer victims. The government alleges that the bank knew – or had a blind eye to the fact – that consumer information for the withdrawals had been obtained by fraud.

"We are committed to protecting consumers from unscrupulous merchants who use Internet and advertising schemes to defraud them. Such merchants need government protection and banks to help them shape the credit consumer market. This settlement should serve as notice to the banking community that when banks allow themselves to be used to perpetrate these frauds, we will target our enforcement efforts accordingly to hold the banks accountable," stated U.S. Attorney Margas.

"To make matters worse, First Bank of Delaware entered into risky lines of business and chose to disregard its Bank Safety Act (BSA) responsibilities," said FinCEN Director Jennifer Shasky Calvery. "As a result of its

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PROTECTING AMERICAN CONSUMERS

ABOUT THE FTC NEWS & EVENTS ENFORCEMENT POLICY TIPS & ADVICE I WOULD LIKE TO...

News & Events - Press Releases - FTC Staff/Policy Comment on Proposed Fair Payment Methods Favored in Fraudulent Telemarketing Transactions

FTC Seeks Public Comment on Proposal to Ban Payment Methods Favored in Fraudulent Telemarketing Transactions

Nov 21, 2011

THE Administration's proposal to ban payment methods favored in fraudulent telemarketing transactions is a long-anticipated effort to protect consumers from deceptive marketing. The Federal Trade Commission today published a proposed rule designed to strengthen the telemarketing rules that protect consumers against bogus telephone sales pitches.

The Commission's Action of Prohibited Practices will prohibit the use of two payment methods favored by telemarketers and scammers: "pre-authorized" payments and "pre-authorized" payments.

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Consumer Financial Protection Bureau

February 3, 2014

Donald S. Clark
Secretary of the Commission
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20500

Re: Telemarketing Sales Rule, 16 C.F.R. Part 310, Project No. H412006

Dear Mr. Secretary:

The Consumer Financial Protection Bureau (the Bureau) is pleased to comment on the notice of proposed rulemaking by the Federal Trade Commission (the Commission) that was published in the Federal Register on July 9, 2013.¹ The Bureau shares the Commission's interest in protecting consumers from being harmed through the use of certain payment routing rules in telemarketing sales, while preserving appropriate access to payment devices for consumers who purchase items from legitimate telemarketers. This letter offers additional perspective on the portion of the Commission's proposal regarding remotely created checks (RCCs) and remotely created payment orders (RCPOs).

Once a telemarketer has obtained a consumer's checking account number, it can draw funds from the account in three ways: (1) by initiating an automated clearing house (ACH) transaction; (2) by creating an RCC; or (3) by creating an RCPO. To the extent that the Commission's proposal to prohibit telemarketers from using RCCs and RCPOs shifts telemarketing payments from the check-collection system into the ACH network, different rules and remedying mechanisms will apply to the payments, as described accurately and in detail in the Commission's proposal. The Bureau agrees with the Commission that RCCs and RCPOs pose greater risk to consumers in a telemarketing sales than ACH transactions, and therefore believes that the Commission's proposal to prohibit these methods of debiting a consumer's account in telemarketing sales will better protect consumers from potential harms.

1 78 FR 42006 (July 9, 2013).

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Consumer Financial Protection Bureau

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CFPB Takes Action Against Mercador for Processing Illegal Debt-Settlement Fees

Payment Processor for Top 100 Debtors Sued for Illegal Debt-Settlement Fees

MERCADOR, S.C. – Today, the Consumer Financial Protection Bureau (CFPB) announced enforcement action against Unimarc LLC, a leading debt-settlement payment processor, for illegally taking fees to collect millions of dollars in illegal and unenforceable debt. The Bureau has also taken action to require a refund of the debt would cause Unimarc to file a lawsuit and sue. Leads belonging to half of debtors who pay a \$1,200 fee to Unimarc.

"Today we're taking enforcement action against Unimarc, a company that made it possible for debt-settlement companies to take fees from the government's debtors," said CFPB Director Richard Cordray. "By taking a refund of the debtors' fees to pay for the debt, we've made it possible for debtors to get their money back and avoid paying for debt-settlement services that don't work."

The CFPB alleges that Unimarc and its employees violated the Fair Debt Collection Practices Act by taking debt-settlement companies illegal consumer support fees. The rule prohibits debt-settlement companies from charging consumers such fees when settling out of their debts. The rule works to recover from the pool of spending money on consumer debt and to reduce the cost of debtors' fees. The rule also works to ensure that any fee reduction and debt relief is being left with the debtor.

According to the CFPB's complaint, Unimarc processed thousands of these illegal debt-settlement payments to its clients. In total, the CFPB alleges that Unimarc and its debt-settlement companies have collected millions of dollars in illegal fees to settle the debt. Unimarc's multiple sales to its clients have caused consumers to lose thousands of dollars in debt-settlement fees.

Unimarc's payment rules, which the debtors have signed to, would have prohibited debt-settlement companies from taking fees from debtors' accounts and from collecting fees from the CFPB and would be required to reimburse to the CFPB to settle these transactions. The debtors would also have to pay a civil money penalty of \$1,200.

In pursuing this enforcement action in a lawsuit filed in federal court, the CFPB has officially and effectively held consumers who were charged millions of dollars in illegal fees to sue the debt-settlement companies using Unimarc's services. The Bureau

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.

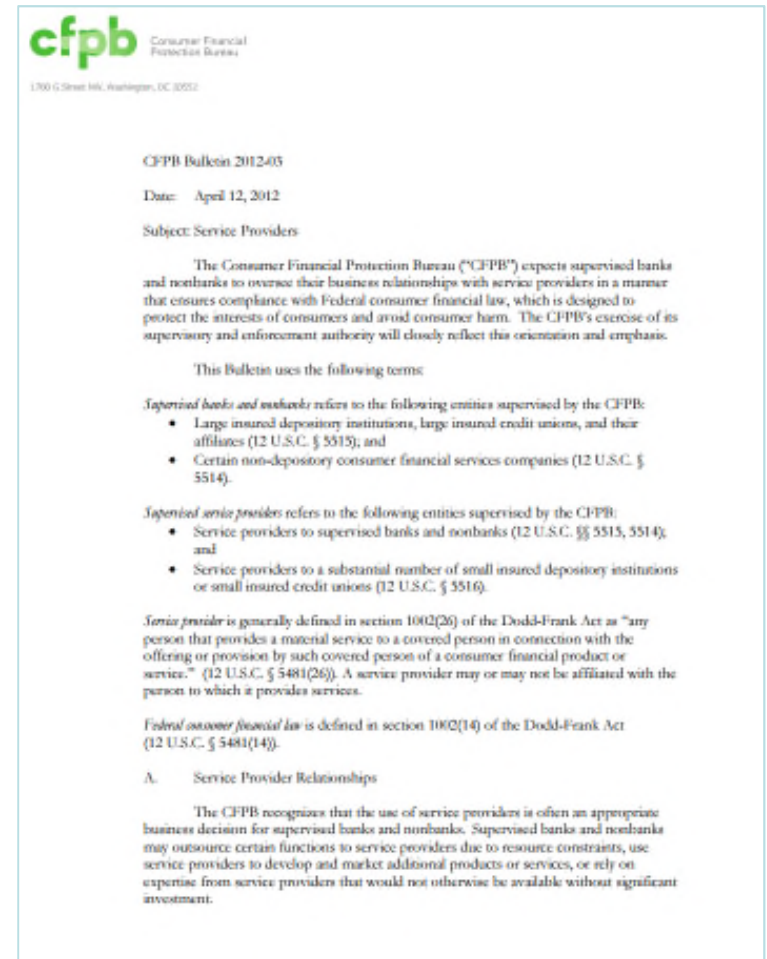


**Compliance best practices and
strategies to avoid and survive
investigations**

Service Provider Due Diligence

- Enhance:
 - Internal controls
 - Policies and procedures
 - Training and auditing

- Understand law and regulation of upstream and downstream relationships



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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