

PUBLICATION

CFPB Demonstrates its Broad Scope

Authors: Dylan W. Howard, John G. Calender

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While it has only just begun its third year, the CFPB has already left its mark with a series of recent enforcement actions. Below are four examples of how the CFPB has wielded the broad scope of its mandate.

1. Most recently, the CFPB filed suit against debt-relief company Morgan Drexen, Inc. and its president and chief executive officer alleging that the company charged illegal upfront fees and made misrepresentations to potential customers about the benefit of its debt-relief services. The complaint, filed August 20, 2013, claimed that the conduct violated the Telemarketing Sales Rule Act and Dodd-Frank. According to the CFPB, more than 22,000 customers enrolled with Morgan Drexen, Inc. since 2010 and those consumers had been charged millions of dollars in upfront fees. In a preemptively filed suit, Morgan Drexen, Inc. also challenged the CFPB's authority on constitutional grounds. Both suits remain in their initial stages.
2. On July 23, 2013, the CFPB sued Castle and Cooke LLC, a Utah mortgage company, and two of its executive officers. The CFPB alleged that the company awarded larger bonuses to loan officers who led consumers to higher-interest mortgage programs, a practice banned in 2011. According to the lawsuit, the company did not have a written policy outlining its program. But the CFPB believes that it can demonstrate the existence of the policy through the company's payroll records. This suit is in its initial stages as well.
3. On June 14, 2013, the CFPB filed a Notice of Charges in an administrative action against 3D Resorts-Bluegrass, LLC for violations of the Interstate Land Sales Full Disclosure Act (ILSA). The CFPB alleges material misrepresentations in marketing materials related to a real estate development, and also alleges that the company failed to comply with ILSA registration and filing requirements. The CFPB contends that it is authorized under Dodd-Frank to seek penalties of up to \$1 million per day for knowing violations of ILSA as well as direct penalties under ILSA of \$1,000 per violation. 3D Resorts-Bluegrass, LLC responded to the Notice on July 1, 2013 and the parties are reportedly discussing settlement.
4. The CFPB again made its presence known on July 18, 2012 when it announced a record-setting settlement with Capital One Bank (U.S.A.), N.A. (Capital One). The CFPB alleged that the credit-card issuer deceptively marketed add-on products, failed to enact programs to prevent unfair and deceptive practices, and committed what the CFPB termed unfair billing practices. The \$210 million settlement includes \$150 million in refunds to affected customers, including approximately 2 million customers who enrolled in the add-on products, and \$60 million in penalties paid to the CFPB. The consent order also imposes ongoing substantial compliance obligations on Capital One. Capital One has further agreed to stop marketing any of the applicable add-on products until a compliance plan is submitted to and approved by the CFPB.

If anything, the CFPB has accelerated the pace and broadened the scope of its investigative and enforcement actions over the past six months, and has demonstrated a clear desire to aggressively regulate the industries it oversees. With a host of new regulations in force in January 2014, CFPB compliance should be a priority for all companies subject to its jurisdiction.