Track: Regulatory Compliance Track

Panel Topics to be Covered Include:

- Evolution of the CFPB
- Role of state Attorneys General and the evolution of “mini CFPBs”
- Current predicament of the FDCPA
INTERSECT | PRESENTERS

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Speaker

Speaker

Speaker
CFPB Timeline: How We Got Here

1. CFPB
   a. How did we get here? Timeline of CFPB (Review of Ancient History)
      i. 7/2010 Dodd-Frank gives CFPB authority to adopt servicing rules
      ii. 1/2013 Adoption of the 2013 Servicing Rules which amended RESPA Regulation X and TILA Regulation Z
      iii. 7/2013 Amendments adopted
      iv. 10/2013 Interim Final Rule issued, which clarifies rules relating to successors-in-interest, consumers in bankruptcy and consumers who sent FDCPA “cease and desist” notifications
      v. 7/2016 2016 Amendments adopted (Bankruptcy Periodic Statements and Successor in Interest provisions didn’t take effect until 4/19/2018)
      vi. 6/2017 2017 Policy Guidance on Enforcement Priorities regarding Early Compliance
      vii. 10/2017 2017 Interim Rule adopted regarding timing of early intervention notices to Borrowers who sent FDCPA “cease and desist” notifications
      viii. 3/2018 2018 Amendments and 2018 FAQs issued (timing for servicers to transition to providing modified or unmodified periodic statements and coupon books to consumers in bankruptcy).
CFPB Timeline: Where are we now?

b. Where are we now?
   i. 1/2018 Court of Appeals for the District of Columbia Circuit rules against CFPB and vacates PHH’s fine for alleged RESPA violations
   ii. 2/2018 Mick Mulvaney is interim appointee to run the CFPB
      1. Strategic plan for years 2018 to 2022 unveiled which indicates that the bureau intends to act “with humility and moderation”.
      2. Mulvaney indicated he is “committed to fulfill the Bureau’s statutory responsibilities, but go no further”.
      3. CFPB stopped hiring, stopped collecting fines suspended rulemaking and ordered all active investigations reviewed.
      4. In June, Mulvaney fired the CFPB’s 25 member advisory board
CFPB Timeline: Continued

iii. 7/2018 CFPB loses FDCPA lawsuit against Weltman

1. Ohio federal district court found that the CFPB had failed to provide its FDCPA and CFPA claims by a preponderance of the evidence
2. CFPB's complaint alleged that the Weltman attorneys were not “meaningfully and substantially involved in the debt collection process both before and after the issuance of the demand letters”.
3. Court based its ruling on the following findings:
   a. **Demand letters** were on firm letterhead, accurately conveying the fact that Weltman was a law firm
   b. **Firm had a formal compliance program** and conducted routine audits.
   c. **Attorneys drafted the templates**, oversaw all departments and were responsible for the training and oversight of non-attorney staff.
   d. **Weltman collected debts** for the State of Ohio using similar demand letters approved by the Attorney General
CFPB: Where are we going?

TWO CRITICAL DIRECTIONS

State CFPBs

State AGs
State Response: CFPB Evolution

2. State-level response to the CFPB evolution
   a. Maryland Consumer Financial Protection Act of 2018
      i. Regulations took effect 10/1/2018
      ii. Significant increase to state regulation expanding the Maryland Consumer Protection Act to include “abusive practices” and to make modifications to consumer lending and monetary penalty provisions, among other changes.
      iii. Penalty for violations increased to $10,000 for initial violations and $25,000 for subsequent violations
      iv. Maryland Attorney General to investigate whether the Office of the Commissioner of Financial Regulation (OCFR) has the authority to regulate technology driven non-bank companies that compete with traditional methods in the delivery of financial services, nicknamed the “fintech firms”.
New Jersey: State-Level CFPB

b. New Jersey “state level CFPB”
   i. **NJ’s existing Division of Consumer Affairs** is designed to enforce laws that ensure the fairness and integrity of New Jersey's commercial and investment marketplaces and to assist consumers with complaints or questions about professionals, businesses, vendors or service providers.
   ii. **The Division includes the Office of Consumer Protection** with the purpose of enforcing the Consumer Fraud Act.
   iii. **530 Employees** of which nearly 150 are investigators

c. **Pennsylvania Consumer Financial Protection Bureau**
   i. **The goal** of the PA CFPB is to “better protect Pennsylvania consumers from financial scams”.
   ii. **Targeting mortgage lenders** and student loan servicers
State Attorney Generals

d. State Attorneys General
   i. States feel as though they have to step in where the government is stepping out
   ii. In February 2018 Mick Mulvaney commented to State Attorneys General “We're going to be relying on you folks a lot more. We're going to be looking to the state regulators and the states’ attorneys general for a lot more leadership when it comes to enforcement.”
   iii. In April 2018 sixteen state attorneys general submitted a letter responding to the CFPB’s Request for Information Regarding Bureau Civil Investigative Demands (CID) and Associated Processes. This letter highlights the differences of investigative powers between the CFPB and the states.

1. Attorneys urge the CFPB to keep issuing Civil Investigative Demands. The CFPB is empowered by Congress to investigate violations of any provision of Federal consumer financial law, specifically defined by the Dodd-Frank Act.
State Attorney Generals Cont.

2. **Type of information** sought depends on the investigator; CFPB can seek production of documents or tangible things, written reports or answers to questions or oral testimony. Virginia and Maryland are similar but New Mexico doesn’t permit oral testimony under oath.

3. **Standards for challenging** a CID differ between the CFPB and certain states. CFPB is authorized to issue CIDs when it “has reason to believe” that someone has information “relative to a violation”. New Mexico expands this to “probable violation”. New York adds a presumption that the Attorney General is acting in good faith.

iv. In September 2018 Attorney General Josh Stein (North Carolina) led a coalition of 14 attorneys general urging the CFPB to continue enforcing the Equal Credit Opportunity Act (ECOA) including the provision for disparate impact liability.

1. **Attorneys General** indicate their intent to uphold the law if the CFPB acts in a manner contrary to the law with respect to interpretation of the ECOA.

**CRITICAL QUESTION:** Is it too much or too little?
FDCPA: Key Cases

3. FDCPA
   a. Obduskey v. McCarthy & Holthus LLP
      i. Battle of the circuit courts
         1. 9th & 10th agree that a law firm hired to pursue a non-judicial foreclosure is not a debt collector because a non-judicial foreclosure proceeding does not automatically result in the right to collect a deficiency judgment. A non-judicial foreclosure proceeding is an enforcement of a security interest and the right to collect proceeds of a sale.
         2. 4th, 5th and 6th have held that the FDCPA does apply to non-judicial foreclosure proceedings because the underlying purpose of any foreclosure is to obtain payment on the underlying debt.

When can we expect a ruling?
What have we learned from the filed briefs so far?
Predictions for how the Supremes will rule.
Conclusion: Question & Answer Session with Panelists

What we covered in today’s Regulatory Compliance Track Session:

- Evolution of the CFPB
- Role of state Attorneys General and the evolution of “mini CFPBs”
- Current predicament of the FDCPA
BREAK TIME +

THANK YOU