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May 14, 2014

Lessons from the FTC's Latest Lead Generation Enforcement Action

The Federal Trade Commission (FTC) recently announced a **settlement** of a lead generation enforcement action. The settlement reflects that the FTC remains focused on lead generation and, more specifically, mortgage advertising, even though it shares enforcement authority for nonbank mortgage advertising with the Consumer Financial Protection Bureau (CFPB). In addition, the settlement is an important reminder that lead generators and buyers need to review advertising and marketing for compliance with applicable laws and regulations.

The FTC's complaint alleged that the online lead generator operated websites that advertised low interest-rate loans as fixed-rate mortgages, when, in fact, they were adjustable-rate mortgages that could become more expensive for borrowers over time. The advertising also allegedly failed to include required disclosures, such as the annual percentage rate, amount of down payment, and repayment terms that figure into the advertised payment amounts and interest rate.

The complaint charged the lead generator with allegedly violating the FTC Act, the Mortgage Acts and Practices Advertising (MAP) Rule (also known as Regulation N), and the Truth in Lending Act and Regulation. The settlement imposes a \$225,000 civil penalty and forbids the lead generator from a) violating the law; b) misrepresenting the terms and conditions of any financial product or service, and term or condition of a mortgage credit product; and c) assisting others to misrepresent any material fact about a mortgage credit product. In addition, the settlement prohibits the disclosing, selling, or transferring of consumer data. The lead generator did not admit or deny any wrongdoing under the terms of the settlement.

In November 2012, the **CFPB and FTC jointly announced they began formal investigations** of six companies that may have violated federal law. At the time the CFPB said, "the actions stem from a joint 'sweep' – a review conducted by the CFPB and the FTC of about 800 randomly selected mortgage-related ads across the country – including ads for mortgage loans, refinancing, and reverse mortgages." The CFPB and FTC also issued warning letters to mortgage lenders and mortgage brokers advising them to "clean up potentially misleading advertisements, particularly those targeted toward veterans and older Americans."

Third-party marketers, including online lead generators, and mortgage lenders and brokers need to be prepared to respond to increased scrutiny.

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Below is a list of several relevant articles and presentations from our attorneys, which may be of assistance to your organization in this environment of enhanced scrutiny.

To view any of these articles, alerts, or presentations, please click on the title.

Preparing for a CFPB Examination or Investigation (Article)

CFPB Compliance Myths That Deserve Debunking (Article)

Are You Ready for the New Mortgage Landscape? (Article)

Advertising and Marketing Law Fundamentals for Consumer Financial Products and Services (Presentation)

The FTC's Revised .com Disclosures Guide: What Third Party Advertisers and Lead Generators Need to Know (Presentation)

What to Look for in 2014 – CFPB Regulatory Outlook (Recording and Presentation)

Consumer Financial Protection Bureau Investigations and FTC Coordination Tips and Techniques (Presentation)

Telemarketing, E-mail, and Text Message Marketing: Tips to Avoid Lawsuits (Presentation)

Understanding New Restrictions on Advertising GI Bill Benefits (Article)

CFPB and FTC Target Mortgage Advertising (Article)

New FTC Mortgage Assistance Rule Targets Lead Generators and Affiliate Marketers (Article)

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For more information, please contact **Jonathan L. Pompan** at 202.344.4383 or ; or **Suzanne F. Garwood** at 202.344.8046 or .

*Jonathan L. Pompan, a partner in the Washington, DC office of Venable LLP, co-chairs the firm's **Consumer Financial Protection Bureau Task Force**. His practice focuses on providing comprehensive legal advice and regulatory advocacy to a broad spectrum of clients, such as nonbank financial products and services providers, advertisers and marketers, and trade and professional associations, before the CFPB, the Federal Trade Commission, state Attorneys General, and regulatory agencies.*

*Suzanne Fay Garwood, a partner in the Washington, DC office of Venable LLP, co-chairs the firm's **Consumer Financial Protection Bureau Task Force**. Ms. Garwood focuses her practice on state and federal law relating to consumer credit and financial services. She has assisted mortgage lenders, installment lenders, and banks and thrifts with issues arising under federal and states laws, including the Truth in Lending Act, Real Estate Settlement Procedures Act, Equal Credit Opportunity Act and state anti-predatory lending and fair lending laws. Ms. Garwood represents clients from all aspects of the financial services industry – from credit counselors to mortgage lenders and credit card issuers. She represents the interests of those clients before Congress, the Consumer Financial Protection Bureau and other federal banking agencies.*