

Client Alert

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Leading on Leads? CFPB Takes Action Against Online Lead Aggregators

By Donald C. Lampe and Calvin D. Funk

I. ACTION V. ZERO PARALLEL

On September 6, 2017, the Consumer Financial Protection Bureau (CFPB or “the Bureau”) announced that it has taken action against an online lead aggregator. The allegations revolved around the company’s selling personal information of consumers who were interested in small-dollar or installment loans to online lenders. It was alleged that the loans ultimately offered to consumers were, or were likely to be, void in a consumer’s state of residence, meaning that the lender had no legal right to collect the loans. According to the CFPB’s consent order (“Consent Order”), the loans were void in whole or in part because of licensing requirements or interest rate limitations in the consumer’s state.

The CFPB alleged that the lead aggregator, Zero Parallel, LLC, received leads from lead generators, as well as from its own websites, and sold them to online small-dollar or installment lenders. In addition, the CFPB alleged that consumers who submitted their information on a lead generator’s webpage were immediately redirected to the webpage of a lender. According to the CFPB, consumers were unaware that their information was filtered through, or sold by, Zero Parallel during this automated process.

The CFPB alleged that Zero Parallel “aggregated” consumer leads through a number of channels, including from its own consumer-facing websites and from third-party lead generators. In this regard, the Consent Order defined the following terms:

- “Lead” is consumer personal information received, transmitted, or otherwise used in connection with a consumer financial product or service.
- “Lead Generators” are persons or entities that obtain Leads and transmit those Leads to “Lead Aggregators”; “Lead Generation” is the practice of acting as a Lead Generator.
- “Lead Aggregators” are persons or entities that obtain Leads and transmit those Leads to Lead Aggregators or other persons; “Lead Aggregation” is the practice of acting as a Lead Aggregator.

With respect to lead-oriented businesses, these terms are terms of art and not otherwise defined by federal law.¹ Nonetheless, the Bureau, relying on its authority to enforce violations of its unfair, deceptive, or abusive acts or practices (UDAAP) statute,² asserted its jurisdiction over these activities in this proceeding.

¹ Note that several state legislatures recently have enacted statutes to regulate “leads” and “lead generation.” (See, e.g., Conn. Pub. Act No. 17-38 (6/9/17; eff. 10/1/17); Vt. Act No. 22 (5/4/17; eff. 7/1/17).) These statutes define terms and regulate practices that are similar to, but not in every case the same as, the terms defined and practices alleged in the Zero Parallel consent order.

² 12 U.S.C. §§ 5536(a)(1)(B), 5531(d).

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In the proceeding, the Bureau alleged that Zero Parallel was a Lead Aggregator in that it was in the business of receiving Leads from Lead Generators and selling the Leads to small-dollar and installment lenders and to remarketing companies. Zero Parallel acted as a “servicer provider” to covered persons (lenders) subject to CFPB jurisdiction, as defined in the Dodd-Frank Act (12 U.S.C. § 5481(26)(A)). It was alleged that Zero Parallel accepted Leads from Lead Generators and from its own websites in every U.S. state save four (New York, West Virginia, Arkansas, and Vermont) and sold Leads in any state requested by a purchaser except for these four states.

According to the CFPB, the respondent Zero Parallel engaged in abusive acts and practices in violation of the Consumer Financial Protection Act (CFPA),³ as follows:

- The respondent knew the state of residence of the consumer for each lead it sold.
- The respondent regularly sold leads for consumers living in states in which the resulting loans were void due to state licensing requirements or interest rate limitations.
- The respondent knew in advance of sale the identity of each lead purchaser in its network.
- The respondent knew, or had reason to believe, that leads it sold were likely to result in loans that are not in compliance with the laws of the state in which the consumer resides.

The CFPB asserted that Zero Parallel’s sale of leads that resulted in, or were likely to result in, loans that were void in whole or in part because of licensing requirements or interest rate limitations in the consumer’s state of residence “takes unreasonable advantage of a lack of understanding on the part of the consumer of the material risks, costs, or conditions of” the loans, in violation of the CFPA’s “abusive” standard (per 12 U.S.C. § 5531(d)).

The consent order required Zero Parallel to pay a civil money penalty of \$100,000 to the CFPB and sets forth a series of actions that the company must take:

- Make reasonable efforts to ensure that leads conveyed to recipients do not result in loans to consumers that are void in whole or in part in the consumer’s state of residence based on licensing requirements or interest rate limitations;
- Obtain and keep information about end users of the company’s leads, including copies of licenses required by each state in which the recipient does business if the absence of the license would render a loan void in whole or in part under the laws of the state;
- Implement a process for reviewing loans resulting from leads the company has conveyed to reasonably ensure compliance with the consent order and federal and state privacy laws;
- Establish a policy prohibiting lenders to which the company directly or indirectly conveys leads from making consumer loans that are void in whole or in part based on licensing requirements or interest rate limitations in the consumer’s state of residence; and
- Refrain from conveying leads where the company knows or has reason to believe that the leads are likely to result in loans that are void in whole or in part based on licensing requirements or interest rate limitations in the consumer’s state of residence.

The Consent Order is to terminate in five years.

³ *Id.*

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II. ACTION V. D. GASPARYAN

Separately, also on September 6, 2017, the CFPB submitted a proposed order (“Proposed Order”) to a federal district court that would resolve a pending CFPB lawsuit against the owner of Zero Parallel, Davit Gasparyan, for allegedly engaging in similarly illegal conduct at his prior company T3Leads (read our client alert [here](#)). The Proposed Order includes the same definitions regarding the lead business as those contained in the Consent Order. Part of the “Conduct Relief” in the Proposed Order includes a prohibition on knowingly or recklessly receiving Leads from Lead Generators whose consumer-facing content includes misleading, inaccurate, or false statements and generating Leads through any misleading, inaccurate, or false means, while requiring vetting of information received from Lead Generators. Additionally, the Proposed Order would prohibit Gasparyan (either directly or through any company, agent, or employee) from engaging in the same abusive practices alleged against Zero Parallel and require him to pay a \$250,000 civil money penalty to the CFPB.

III. TAKE HOME LESSONS: FEW OR MANY?

A. CFPB Construction of State Laws?

The Consent Order is another example of the CFPB’s construction of state laws, which raise questions about the agency’s expertise and jurisdiction.⁴ As a practical matter, it appears that the CFPB is willing to allege violations of its federal UDAAP statute based on actual or potential violations of state law. Some federal consumer financial protection laws, such as the Truth in Lending Act and Regulation Z promulgated thereunder and the Fair Debt Collection Act, tie state laws into federal law compliance responsibilities. But to take this approach under the broadly worded, subjective UDAAP statute raises basic scope-of-authority and related due process concerns. For example, it appeared from the Consent Order that Zero Parallel had a “knock-out” list of four states, presumably because of the very concerns raised by the CFPB in the proceeding. Will proceedings like this one boil down to dueling state law interpretations? This is particularly difficult under state law usury doctrines, as to which state laws are often unclear. Moreover, there is inconsistency among state laws on the issue of whether transactions are void or voidable due to state law usury or licensing violations.

B. Breadth of Proceedings as Precedent?

It is difficult to discern the breadth of actionable precedent from the Consent Order and the Proposed Order. Importantly, the Consent Order and the Proposed Order arose from the small-dollar credit and payday lending ecosystem, the latter being an area of consumer lending that the Bureau particularly abhors. Do the Consent Order and the Proposed Order represent an effort by the Bureau to hinder this line of business? As precedent, do they extend beyond payday lending or online small-dollar lending?

C. Consumer Notice?

Underlying the rationale of the Consent Order and the Proposed Order, particularly as to the abusive prong, is that consumers did not know the use to which their personal information would be put. This raises the question of whether the risk of allegedly “abusive” practices can be mitigated if the lead aggregator or the lead generator provides adequate notice to consumers at the point of acquisition of their information. The Consent Order did not include this in its business conduct directives, but the Proposed Order would require the individual defendant in the case to monitor the consumer-facing statements of lead generators.

⁴ See, e.g., *Consumer Financial Protection Bureau v. CashCall, Inc. et al.*, 2016 WL 4820635 (C.D. Cal. Aug. 31, 2016).

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D. What Must Service Providers Know?

Can it be said from a compliance perspective that every service provider to covered persons (such as creditors) is charged with full knowledge of the use to which their services will be put, and the legality under state law governing follow-on transactions? The Consent Order seemed to say so, at least in the context of acquisition and sale of leads in the lines of business (online small-dollar loans and payday loans) identified. But does this mean that every lead aggregator is required to inquire of, and document, the state licensing status of any recipient of consumer leads and the basic terms of follow-on transactions? In this regard, the Consent Order appears to apply to lead aggregators, which accumulate consumer information from a variety of lead generation sources, and not to lead generators that do not provide consumer information to lead aggregators.⁵ But is this what the Consent Order, taken together with the Proposed Order, really means? Again, the contours of compliance and risk management that can be derived from the Consent Order and the Proposed Order beyond their unique allegations are difficult to discern.

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⁵ Other federal enforcement actions have been taken against “lead generators” (read our client alert [here](#)).

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