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# Pennsylvania Enters into a New Area of Consumer Protection Enforcement: What Financial Services Companies Must Do Now

By Joann Needleman / Oct 10, 2017

Since coming into office in January of this year, Pennsylvania Attorney General ("AG" or "General") Josh Shapiro has wasted no time in rebuilding an office that had been riddled with scandal and inefficiencies. One top priority for General Shapiro will be to enhance the Public Protection Division by creating a Consumer Financial Protection Unit (the "Unit"), which is devoted solely to investigating commercial and trade practices in the distribution, financing and furnishing of goods and services for the use of [Pennsylvania] consumers. Nicholas Smyth, one of the first hires to the federal Consumer Financial Protection Bureau ("CFPB" or "Bureau") will lead the Unit. Smyth is a seasoned consumer protection attorney and his experience and time at the Bureau will only complement the AG's office pursuit against companies who allegedly violate the Pennsylvania Unfair Trade Practices and Consumer Protection Law (UTPCPL), 73 P.S. § 201-1 *et seq.* as well as the federal Consumer Financial Protection Act (CFPA), 12 U.S.C §5531.

Prior to Smyth's arrival, AG Shapiro has brought actions and investigated companies who have compromised consumer's personal data and engaged in debt relief scams. AG Shapiro has also aligned himself with those Attorneys General who were supporters of the CFPB. Shapiro is now leading a national, multi-state investigation along with the Attorneys General of Connecticut and Illinois into the Equifax data breach. He has also joined 22 other Attorneys General in a multi-state letter opposing the U.S. Department of Education's rollback of student loan servicing reforms.

It is widely believed that the Trump Administration will attempt to pull back on federal regulations, especially as it relates to agencies like the CFPB and therefore states will fill in this void. Two recent actions filed by the AG further support this belief. On October 5, 2017, a lawsuit against the nation's largest servicer of federal and private student loans, Navient Corporation, and its subsidiary Navient Solutions, LLC, was filed for alleged widespread abuses in student loan origination and servicing. The CFPB has already sued Navient in the United States District Court for the Middle District of Pennsylvania, and it is no accident that AG Shapiro's action was brought in the same district. In fact, the same Judge has been signed to both cases. In the press release announcing the lawsuit, General Shapiro stated, "The more businesses like Navient put their bottom line ahead of the interests of their customers and consumers, the more vigilant we will be to protect Pennsylvanians and hold businesses like Navient accountable for their misconduct."

Over this past summer, the AG's office filed an amended complaint against certain Native American tribes who were purportedly providing usurious loans to Pennsylvania consumers over the internet. In addition to the named tribes, the amended complaint also asserts claims against a technology company, several servicers and debt collectors all whom it is alleged collectively engaged in unfair and deceptive acts.

For those Pennsylvania financial services entities that have been subject to CFPB jurisdiction, the actions by the General Shapiro should be strikingly familiar. The flamboyant press releases and expansive theories of the applicability of UTPCPL are pages out of the CFPB handbook. Now is the time for companies that provide any consumer financial product or service to seek counsel and guidance when reviewing their policies and procedures to ensure compliance with all state and federal consumer financial protection laws, especially unfair, deceptive and abusive acts or practices (UDAAP) which are not easily recognizable or understood. Much like the CFPB, the AG's office and the Unit will be looking at the complaints they receive and taking their cues from Attorneys' General elsewhere. Pennsylvania companies must also consider reporting bad actors within their respective industries. The CFPB has been quick to paint a broad brush against all participants of a particular industry as the result of the bad acts of a few. Like-minded companies must consider developing best practices and standards and articulate those to the Unit in order to easily identify the good from the bad players. Finally, industry participants must consider engagement and education. Many investigations and enforcement actions stem from a lack of understanding of certain aspects of a particular industry. Allowing consumer advocates to write the narrative for any industry makes defending industry conduct, even if it is appropriate and in compliance with the law, very difficult.

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