

Court Slams CFPB's Enforcement Strategy

By Yuka Hayashi



The Consumer Financial Protection Bureau building in Washington. A federal judge in North Dakota has handed the regulator a rare defeat over its core enforcement strategy prohibiting 'unfair, deceptive or abusive acts or practices.' FOR THE WALL STREET JOURNAL

The Consumer Financial Protection Bureau's core enforcement strategy received a blow recently when a federal court in North Dakota dismissed the agency's complaint against a payment-processing company and its executives.

The court took issue with the [CFPB's claims](#) that the company, Fargo-based Intercept Corp., violated a consumer-financial-protection law that prohibits "unfair, deceptive or abusive acts or practices," known as Udaap. The bureau said Intercept processed transactions for payday lenders, auto-title lenders and debt collectors while turning a "blind eye" to warning signs that some of those clients engaged in fraudulent or illegal activities.

In a rare defeat for the CFPB's enforcement team, the federal judge said in a strongly worded decision that the agency failed to provide "sufficient factual allegations" to back up its claims. "While the complaint need not contain factual details, it must contain more than an unadorned, the defendant-unlawfully-harmed-me accusation," Judge Ralph Erickson

wrote. He then granted Intercept's request to dismiss the CFPB's action.

A CFPB spokesman said the bureau is reviewing the ruling and declined to comment further. Intercept didn't respond to requests for comment.

The ruling is significant because many of the CFPB's enforcement actions are based on claims under this authority, a unique tool granted to the bureau by Congress when it passed the 2010 Dodd-Frank regulatory-overhaul law that created the consumer watchdog.

Joann Needleman, a lawyer for Clark Hill PLC who serves on the CFPB's advisory board, said the decision appeared to be the first one to analyze the standard necessary for the CFPB to claim violations of this particular category of consumer-protection regulation.

"The court's reasoning in Intercept suggests a higher pleading standard under Udaap, which may be a new factor to consider when mounting a possible defense to a CFPB claim," Ms. Needleman wrote in a memo advising companies on how to respond to the bureau's actions.

The CFPB has been beefing up its enforcement activities at a time when its ability to push through new regulations has been restrained by [escalating attacks](#) from Republicans.

Financial-industry officials and lawyers have complained that the CFPB's authority prohibiting "unfair, deceptive or abusive acts or practices" is too broad and could make its actions unpredictable. Repealing that authority is on the Republicans' hit list as they gear up to curb the CFPB's power.

"The CFPB's structure combined with its Unfair Deceptive Abusive Acts and Practices Authority allows it extremely broad authority to engage in nearly any policymaking desired, despite the absence of evidence of actual harm to consumers," Jim Nussle, president and chief executive of the Credit Union National Association wrote to members of Congress last week.

Lawyers say the North Dakota court's decision doesn't represent a final victory for Intercept or for critics of the CFPB's enforcement tool as the regulator could bolster its case by presenting more facts to support its claims.

The court declined to rule on the constitutionality of the CFPB as sought by Intercept, leaving the task to the federal appeals court in Washington which is now [debating the question](#) in a high-profile case, PHH Corp. et al v. CFPB.