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CFPB Zeroing in on the Creditor/Vendor Relationship

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On September 5, the Consumer Financial Protection Bureau entered into a consent order with Zero Parallel, LLC, a lead aggregator for online lenders. The CFPB alleged that Zero Parallel steered consumers toward lenders it knew were likely to make illegal or unlicensed loans that would be considered void under certain states' laws. In doing so, the CFPB indicated that Zero Parallel knew the consumer's state of residence for each lead it sold but still regularly sold leads for consumers located in states where the resulting loan would be considered void under the state's licensing requirements or interest rate limits. The CFPB further stated that Zero Parallel knew in advance the identity of each lead purchaser in its network and knew-or should have known-whether the purchaser was likely to abide by state usury limits and licensing requirements. According to the CFPB, this sale of leads that were likely to result in void loans under the laws of the consumers' states of residence constituted an abusive act under the Consumer Financial Protection Act.

Accordingly, the CFPB ordered Zero Parallel to engage in heightened vetting and recordkeeping to "ensure that [l]eads conveyed to recipients do not result in consumer loans that are void in whole or in part under the laws of the consumer's state of residence provided in the consumer's loan documents based on state-licensing requirements or interest-rate limits." For example, Zero Parallel must obtain and retain copies of its lead purchasers' state licenses, particularly in states where lending without a license would render a loan void. In addition, Zero Parallel must create and implement a process for reviewing loans resulting from the leads it conveyed in order to ensure that the loans comply with applicable state and federal law, including state and federal privacy laws. Keep in mind that Zero Parallel is not the creditor but is nonetheless being required to ensure the compliance of creditors to which it provides leads. Further, Zero Parallel must establish a policy that prohibits lenders to which it conveys leads from making consumer loans that are void under the laws of the consumer's state of residence and refrain from conveying leads where Zero Parallel knows or reasonably believes that the leads are likely to result in consumer loans that are void.

The CFPB also assessed a civil penalty of $100,000 against Zero Parallel and, under a separate consent order, an additional $250,000 penalty against its owner personally. Interestingly, Zero Parallel's owner entered into a consent order with the CFPB in 2015 related to his company, T3Leads. At that time, the CFPB alleged that T3Leads engaged in similar conduct to that of Zero Parallel in its lead aggregation business. Specifically, the CFPB alleged that T3Leads failed to properly vet lead buyers and sellers before providing them with consumers' personal information and steered consumers toward what the agency deemed "unfavorable loans" from lenders that violated state usury limits or licensing requirements.

Though dealers and sales finance companies may be tempted to believe that there are "zero parallels" (see what we did there?) between their use of lead aggregators and lead generators (or other service providers) and the use of such companies in the online lending space, there are some takeaways to consider that could impact your day-to-day business.

If you do business with lead generators or lead aggregators, you can expect heightened scrutiny from them regarding your business practices. In particular, those companies may require you to provide licensing information for certain states or may even ask for detailed information related to the financing ultimately provided to consumers referred to you through them. If you decide to provide consumers' personal information to lead generators or lead aggregators, you should be certain that the companies follow the appropriate recordkeeping and safeguarding requirements, as imposed by state and federal law. Alternatively, you may want to consider redacting consumers' personal information before providing details of financing transactions, if possible.

For those subject to the CFPB's examination or supervisory authority, you already should have heard about, or seen firsthand, the CFPB's increased interest in vendor management policies and procedures related to service providers. The Zero Parallel action suggests that such scrutiny is likely to continue and may even place heavy burdens on vendors to ensure that the creditors with which they work comply with the law. Accordingly, you should consider tightening your own policies and procedures related to selecting lead generators and lead aggregators (and other service providers) with which you do business. The CFPB clearly has an expectation that all of the parties involved in extending consumer credit have an intimate knowledge of how each other does business and further suggests that creditors must make reasonable efforts to disengage from any association with those the Bureau would identify as offering "unfavorable" transactions.

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