

# Client Alert

May 2, 2017

## CFPB Files Suit Challenging Tribal-Affiliated Lenders Using its UDAAP Authority

By Oliver I. Ireland, Sean Ruff, and Crystal N. Kaldjob

On April 27, 2017, the Consumer Financial Protection Bureau (“CFPB”) filed a complaint<sup>1</sup> in a federal district court in Illinois against four online tribal-affiliated lenders alleging that the lenders violated the Truth in Lending Act (“TILA”), and engaged in unfair, deceptive, or abusive acts or practices (“UDAAP”). The CFPB is seeking injunctive relief and damages against the online lenders.

According to the CFPB, despite claiming affiliation with a tribe and originating loans under the federal tribal laws, the lenders originated loans that violated state licensing and usury laws. In particular, the CFPB claims that the lenders originated, serviced, and collected on loans that consumers were not obligated to repay because the loans did not comply with state licensing or state usury laws, and thus were void (or voidable) under the laws of at least 16 states, including Illinois, Massachusetts, New York, and Ohio.

### “TRUE LENDER” ALLEGATIONS?

The complaint against the lenders is not the CFPB’s first challenge to tribal-affiliated lenders. In 2016, the CFPB challenged CashCall’s arrangement with Western Sky, a financial institution licensed by the Cheyenne River Sioux Tribe, making allegations similar to the allegations in the complaint against the four online lenders.<sup>2</sup> In the present case, the CFPB does not use the term “true lender” to challenge the arrangement, but instead the CFPB seeks to distinguish the lenders from the tribe. In doing so, the CFPB points to several aspects of the lenders’ relationship with the tribe, including:

- The lenders received funding from other companies that were not initially owned or incorporated by the tribe. According to the CFPB, although two companies unaffiliated with the tribe gave the lenders over \$25 million in 2013, the lenders distributed only approximately \$536,000 to the tribe, while paying the two companies over \$35 million in returns.
- Most of the operations of the lenders were conducted in places other than the tribal lands in California. The complaint notes that “[a]s of 2012,” the lenders “created no more than 15 jobs” on tribal lands. The CFPB also claims that the lenders had no storefronts on tribal lands to originate loans in person and “very few—if any” consumers applied for and signed loan agreements on tribal lands.

As in *CashCall*, the lending program involved high-cost, small-dollar installment loans (with annual percentage rates the CFPB said ranged between 440% and 950%).

<sup>1</sup> See *Consumer Financial Protection Bureau v. Golden Valley Lending, Inc., et al.*, No. 17-cv-3155 (N.D. Ill. Apr. 27, 2017), available at [http://files.consumerfinance.gov/f/documents/201704\\_cfpb\\_Golden-Valley\\_Silver-Cloud\\_Majestic-Lake\\_complaint.pdf](http://files.consumerfinance.gov/f/documents/201704_cfpb_Golden-Valley_Silver-Cloud_Majestic-Lake_complaint.pdf).

<sup>2</sup> See *Consumer Financial Protection Bureau v. CashCall, Inc. et al.*, No. CV 15-7522-JFW (RAOx) (C.D. Cal. Aug. 31, 2016).

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## UDAAP CLAIMS

This “true lender” challenge by the CFPB to the lenders’ relationship with the tribe serves as the basis for the CFPB’s claims that the lenders had engaged in UDAAP violations. For example, the CFPB alleges that the lenders misrepresented that consumers had an obligation to repay loans that in fact did not exist because the loans violated state licensing and usury laws, and thus were void or limited the consumers’ obligation to repay, and failed to disclose that they had no right to collect certain loan payments because the loans were void (or voidable) under state law. By claiming that the lenders engaged in UDAAP violations, the CFPB takes an expansive view of conduct that is considered to be unfair, deceptive, or abusive, and applies UDAAP standards to disputed issues of law.

## TILA CLAIMS

The CFPB also alleges that the lenders violated TILA, which requires that any time a finance charge is advertised, the creditor must also disclose the annual percentage rate (“APR”). According to the complaint, even though the lenders’ websites advertise the costs of installment loans and include a rate of finance charge, the websites failed to disclose the APR. Rather, the websites referred consumers in “fine print” to the loan agreement for “[c]omplete disclosure of APR, fees and payment terms.” The CFPB also alleged that the lenders violated TILA because the lenders failed to state the APR or describe the APR for a sample installment loan transaction when consumers orally inquired about the installment loans.

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