

PUBLICATION

CFPB Continues Expansive Approach to UDAAP Claims and Focus on Online Lending

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On April 27, the CFPB took action against four online lenders – Golden Valley Lending, Inc., Silver Cloud Financial, Inc., Mountain Summit Financial, Inc. and Majestic Lake Financial, Inc. for deceiving consumers by collecting debts they were not legally owed.

In the Complaint, the Bureau alleges that the lenders are owned by a California Indian tribe but that the employees of the lenders are located in a Kansas call-center. The Bureau's allegations focused on the choice of law provision in the online loan agreement providing that the loans were "made and accepted" on tribal lands and thus "governed" by tribal law. Such tribal laws were inconsistent with state laws applicable in the jurisdictions where the borrowers actually resided. The CFPB alleges that the four lenders could not legally collect on the debts because the loans were void under state laws governing interest rate caps or the licensing of lenders. The Complaint claims that efforts to collect the loans when they were void is "unfair, deceptive and abusive" as a matter of law. Further, there is a claim for violations of TILA with regard to the failure to properly disclose interest rates.

The enforcement action follows a decision by a Ninth Circuit of Appeals panel that tribal businesses have to comply with the demands of the CFPB in its civil investigation process. The ruling upheld a lower court decision that found tribal businesses are covered under Dodd-Frank and that Congress didn't exclude such businesses from being subject to investigation and enforcement actions by the CFPB. The CFPB has been critical of online payday lending operations by Indian tribes since the Bureau's inception.

This action is part of ongoing efforts by the CFPB to monitor and enforce online lending. The Bureau first began accepting formal complaints regarding online lending in March 2016.