NEW YORK STATE OF OPPORTUNITY. | Department of Financial Services

# Practising Law Institute

## State Regulatory Initiatives and Developments

**April 7, 2015**
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**Financial Frauds & Consumer Protection**

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## Creation of the New York State Department of Financial Services

- New Chapter 18-A of the Consolidated Laws of New York, entitled the Financial Services Law ("FSL")
  - Signed into law March 31, 2011 as part of Governor Cuomo's 2011-2012 State budget.
- Department of Financial Services ("DFS") opened on October 3, 2011.
  - Banking Law ("BL") and Insurance Law ("IL") and all regulations under BL and IL remain the same (except as amended by the FSL).
  - Merged the former Insurance Department and Banking Department.
  - Provides for single Superintendent of Financial Services.
  - Creates the Financial Frauds and Consumer Protection Division ("FFCPD").

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## Financial Frauds & Consumer Protection Division

FFCPD includes:

1. Criminal Investigation Unit (Banking Criminal and Insurance Frauds Bureaus)
2. New Civil Investigations Unit: attorneys focusing on major investigations and initiatives
3. Consumer Examination Unit: fair lending, consumer compliance, and CRA examinations; oversees Banking Development District program
4. Disciplinary unit: administrative enforcement proceedings against insurers and licensed insurance producers (*e.g.,* agents, brokers, adjusters, and bail bondsman)
5. Producer Investigations
6. Producer Licensing
7. Consumer Complaint Unit: to resolve complaints regarding insurance, banking, and additional financial products and services, and outreach
8. Holocaust Claims Processing Organization
9. New Student Protection Unit

## DFS and Financial Frauds Prevention Powers

The Superintendent of Financial Services and FFCPD may:

- Issue rules, orders and guidance related to financial products and services offered in New York;
- Undertake investigations based on reasonable suspicion of fraud or misconduct
  - including violations of FSL § 408, such as intentional fraud or intentional misrepresentation of a material fact with respect to a financial product or service;
- Move for an injunction in state court;
- Pursue administrative enforcement.



## "Gap" Authority

New authority to regulate and enforce rules against previously unregulated providers of financial products and services

FSL defines "financial product or service" as:

- Any financial product or service offered or provided by a person regulated or required to be regulated under BL or IL, or
- Any financial product or service offered or sold to consumers, except those:
  - Regulated under exclusive jurisdiction of a Federal agency,
  - Regulated for the purpose of consumer or investor protection by another New York State agency,
  - Where DFS rules would be preempted by Federal law.

Debt collection regulations are the first regulation issued under the Department's "gap" authority.



## Debt Collection Regulations

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## Authority Over Debt Collection

- Drafters of the Financial Services Law envisioned debt collection as an area for DFS to address by regulation and through authority granted to DFS to enforce state and federal Fair Debt Collection Practices Acts (FSL § 408(a)(1)(B)).
- The Financial Services Law expanded the Department's regulatory authority to financial products and services previously unsupervised by the predecessor departments (the Insurance and Banking Departments).
- DFS's first major initiative pursuant to this "gap-authority" was the August 2013 issuance of a proposed regulation of debt collectors.
- The Department collected comments on these regulations and engaged in the process of amending the rules and posting them for additional review and comment.
- DFS also began accepting and mediating consumer debt collection complaints.

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## Problematic Collection Activity

- The Department has received many complaints regarding debt collection practices, and debt collection abuse is often the most frequent financial complaint filed by consumers nationally and in New York. Some issues include:
  - Harassing calls to collect debts,
  - Contacting the incorrect person or for the incorrect amount of money.
- Another problem is collectors suing on debts that are beyond the statute of limitations. Indebted consumers rarely have counsel and generally don't understand their rights regarding expired debts, a reality that some bad actors may rely upon. In a 2013 FTC study of major debt buyers, 12% of debts reviewed nationally were more than six years old when purchased for collection.
- Finally, consumers also complain that after they agree to a payment plan, the plans are not honored after debts are sold to new creditors. The consumer starts making payments pursuant to an agreement only to have the debt collector change the settlement terms or sell the debt to a new collector who doesn't honor the terms.

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## Applicability of Debt Collection Regulations

- The regulation is intended to address the pre-litigation collection practices and not collection efforts during litigation.
- It applies to entities that are principally in the business of collecting debts, like third party debt collectors and debt buyers, but not businesses who simply collect on debts owed them.
- The rules also do not apply to debts which arise out of transactions wherein credit has been provided by a seller of goods or services directly to a consumer exclusively for the purpose of enabling that consumer to purchase such consumer goods or services directly from the seller.
- Some of the requirements only apply to the collection of charged-off debts. Charged-off debts are often sold to new creditors, which creates additional uncertainly and confusion for consumers.

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## Debt Collection Regulation Reforms

**Initial Disclosures**
The regulation requires greater disclosure and information to a consumer before collection activities can begin. Information includes:

- Consumer rights under the federal Fair Debt Collection Practices Act and state Exempt Income Protection Act,
- For charged-off debts, information identifying the original creditor and all interest and fees added since charge-off.

This information is especially important when debts are sold and resold to collectors the alleged debtor has never heard of.

**Substantiation of Debts**
Under the proposed rules, at anytime in the collection process that a consumer requests substantiation of the debt, debt collectors will need to provide documentation proving that the debt is valid, such as a copy of the signed contract if available, the final account statement, and a statement explaining the "chain-of-title" on the debt.

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## Debt Collection Regulation Reforms

**Statute of Limitations**

- If a debt collector tries to collect on a debt after the statute of limitations has expired, the collector will need to inform the alleged debtor, before a payment, that debt has expired and that suing on such a debt would violate the FDCPA. The disclosure also informs the alleged debtor that if sued, the debtor can invoke the statute of limitations as a defense.

**Debt Settlement Agreements**

- Consumers will receive written confirmation of any debt settlement agreement, and regular statements identifying payments that are made pursuant to the agreement.
- Consumers will also receive written confirmation and acknowledgement that the debt has been satisfied to stop consumers from being pursued for debts that they already paid off.

**Electronic Communication:**

- Consumers will also have the right to permit communication with collectors via their personal email.
- This should make collection efforts easier for collectors and alleged debtors and reduce harassing phone calls.

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## *LAWSKY v. CONDOR CAPITAL CORPORATION AND STEPHEN BARON*

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## Condor Capital Corporation

- Condor Capital Corporation ("Condor") is a subprime indirect auto lender based in Long Island.
- Condor is licensed as a sales finance company in New York. DFS is the domiciliary regulator, while Condor is also licensed in 30 other states.
- DFS examinations and an investigation revealed that Condor and its CEO Stephen Baron engaged in a longstanding scheme to steal millions of dollars from its vulnerable customers – among other unfair, abusive, and deceptive practices.
- On April 23, 2014, DFS filed a complaint and obtained a temporary restraining order in federal court against Condor and Baron. The complaint sought restitution for Condor's customers in all states where Condor operates, the appointment of a receiver, and other remedies. On May 13, 2014, the court issued a preliminary injunction and order appointing a receiver.



## Enforcement of Dodd-Frank

- The proceeding against Condor and Baron was the first legal action initiated by a state banking or financial services regulator under section 1042 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").
- That provision empowers state regulators to bring civil actions in federal court for violations of Dodd-Frank's consumer protection requirements, and obtain restitution for abused customers and other remedies provided for under that law. It reads:
  - "A State regulator may bring a civil action or other appropriate proceeding to enforce the provisions of this title or regulations issued under this title with respect to any entity that is State-chartered, incorporated, licensed, or otherwise authorized to do business under State law (except as provided in paragraph (2)), and to secure remedies under provisions of this title or remedies otherwise provided under other provisions of law with respect to such an entity."
  - Authorizes state regulators to pursue claims in federal court for unfair, deceptive and abusive practices by state regulated entities.



## Unfair, Deceptive and Abusive Practices

The complaint alleged, based upon DFS findings, that Condor engaged in unfair, deceptive and abusive acts and practices. In particular, the complaint alleged:

- Condor systematically hid from its customers the fact that they had refundable positive credit balances (i.e., money owed by Condor to a customer as a result of an overpayment of the customer's account).
- Rather than notifying customers of positive credit balances and promptly paying them refunds, Condor hid the existence of the positive credit balances and retained them for itself, and maintained a policy of refusing to refund them except when expressly requested by a customer.
- Condor filed false and misleading unclaimed property reports with the New York State Comptroller. The reports falsely represented Condor had no unclaimed property when in fact Condor knew of the existence of unrefunded and unclaimed positive credit balances.

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## Unfair, Deceptive and Abusive Practices

The complaint also alleged that:

- Condor endangered the security of its customers' personally identifiable information, placing them at serious risk of identity theft. DFS examiners found stacks of hundreds of hard-copy customer loan files lying around the common areas of Condor's offices and in an open, unlocked garage.
- Condor failed – despite repeated directives from DFS – to adopt basic policies, procedures, and controls to ensure that its information technology systems (and the customer data they contain) were secure.
- Mr. Baron caused Condor to adopt and to continue its policy of retaining positive credit balances belonging to its customers and endangering the safety and security of its customers' confidential personal and financial information.

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## Receiver's Reports to the Court

The Court's May 13 Order appointing the Receiver directed the Receiver to issue regular reports. The Receiver's reports found, among other things, that:

- In addition to the allegations in the Complaint, Condor charged improperly high interest rates in violation of the Truth in Lending Act. Condor calculated the interest it charged its customers based on a 360-day year and applied the resulting daily interest rate to its customers' loan accounts each of the 365 days during the year, which resulted in a difference in the APR in excess of the one-eighth of one percent tolerance permitted under TILA. Even more egregiously, after being informed that this practice violated TILA, Condor on multiple occasions attempted to add additional interest back to customers' accounts.

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## Receiver's Reports to the Court

- Condor's servicing system showed approximately $11 million in positive credit balances owed to customers, including approximately $1.7 million in positive credit balances, approximately $3.6 million resulting from Condor's violations of TILA and Reg Z, and approximately $5.7 million in balances reflected in consumer accounts classified as "Legal" (i.e., delinquent accounts subject to in-house collection and/or referred to outside counsel for legal proceedings). The Receiver further reported that some of the balances for "Legal" accounts may not actually be owed to consumers because of Condor's inaccurate records.
- DFS's allegations concerning Condor's lack of compliance procedures and internal controls were accurate.

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## Defendant's Challenges to the Preliminary Injunction

- Defendants twice moved to modify the preliminary injunction and remove the Receiver, on June 4, 2014 and July 23, 2014. The Court denied both motions.
- In a Decision and Order denying the July 23 motion, the Court found that DFS "easily met [its] burden" for the preliminary injunction and the appointment of the Receiver.
- The Court referred the matter to a magistrate judge for settlement discussions following the Defendants' second motion to modify the preliminary injunction.

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## Settlement with Condor and Baron

- On December 22, 2014, the Court entered a Final Consent Judgment against Condor and Stephen Baron.
- Condor admitted to violations of Dodd-Frank, TILA, Reg Z, and the New York Banking and Financial Services Law. Mr. Baron admitted to violating Dodd-Frank by providing substantial assistance to Condor's law violations.
- Condor paid a $3 million penalty and is making full restitution (an estimated $8-9 million) plus nine percent interest to all aggrieved customers nationwide.
- The settlement requires a sale of its remaining loans in a manner that ensures appropriate consumer protections. Thereafter, Condor will surrender its licenses in all states.

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## Payday Lending

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## DFS's Online Payday Lending Investigation

- Payday loans are short-term, small-dollar loans, typically structured as an advance on a consumer's next paycheck. Although marketed as designed for emergencies, payday loans often trap consumers in a cycle of high-interest debt.
- Most payday lending by non-bank lenders is illegal in New York. These loans violate New York's civil and criminal usury caps (16% and 25% respectively) by charging interest rates from over 100% to as high as 1,300%. Payday lending is illegal in 14 other states and D.C.
- Non-bank, out-of-state payday lenders have moved onto the Internet in an attempt to evade state usury laws like New York's.
- In 2010, 35% of all payday lending was done online, and by 2016 that number is expected to rise to 60%.

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## DFS's Online Payday Lending Investigation

- In early 2013, DFS began an investigation into online payday lending based on numerous consumer complaints.
- In March 2013, DFS sent surveys to approximately twenty state and nationally chartered banks to understand how payday loans flow through the Automated Clearing House ("ACH") electronic payments network.
- Survey results and subsequent discussions with financial institutions revealed that the ACH network lacks adequate safeguards to prevent usurious online lending into states with usury laws.

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## DFS Demands 55 Online Payday Lenders Cease Illegal Activity in NY

- In the course of the Department's investigation, DFS uncovered evidence that 35 online payday lenders were making illegal loans in New York, with interest rates ranging from 116% to 1,095%.
- On August 5, 2013, DFS mailed cease-and-desist letters to 35 of these lenders directing them to stop making and offering payday loans into New York.
  - The lenders included domestic lenders, lenders allegedly located outside the U.S., and lenders claiming an affiliation with federally recognized Native American tribes.
- On April 30, 2014 DFS issued cease-and-desist letters to 20 additional lenders.
- Most of the 55 payday lenders appear to have stopped making usurious loans in NY.

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## DFS Seeks Cooperation of Banks, Credit Unions, and NACHA

- Also on August 5, DFS mailed letters to 117 state and nationally chartered banks, state credit unions, and NACHA, the private association principally responsible for regulating the ACH network, seeking cooperation to stop illegal payday lending into NY.
  - On August 9, NACHA wrote a letter to certain Originating Depository Financial Institutions ("ODFIs") warning them that originating ACH debits to repay usurious loans made into New York may violate NACHA rules. NACHA demanded that these ODFIs terminate their relationships with lenders who were violating NACHA rules.
- DFS has met and continues to meet with financial institutions, NACHA, the ACH Operators (EPN and FedACH), and other key players to develop solutions to illegal lending into NY through the ACH network.

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## *The Otoe-Missouria Tribe of Indians v. New York State Department of Financial Services*

- On August 21, 2013, two federally recognized Native American tribes, their alleged wholly-owned loan corporations to which DFS had sent cease-and-desist letters, and the tribes' regulatory agencies sued DFS and Superintendent Lawsky in the U.S. District Court for the Southern District of New York.
- The complaint alleged that the state had violated the Indian Commerce Clause and infringed upon plaintiffs' sovereign rights, including by attempting to regulate the conduct of tribal businesses, and sought to permanently enjoin the State from interfering with plaintiffs' lending activities.

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## *The Otoe-Missouria Tribe of Indians v. New York State Department of Financial Services*

- On September 30, 2013, Judge Richard Sullivan denied plaintiffs' motion for a preliminary injunction. The Court's decision affirmed the state's authority to protect New York consumers from usurious online payday loans made in and to New York, including those made by tribal lenders from beyond the state's borders.
- The Court held that Plaintiffs failed to demonstrate a likelihood of success on the merits since the activity the Department was seeking to regulate - online payday lending in New York to New York consumers - was off-reservation activity taking place in New York.

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## The Otoe-Missouria Tribe of Indians v. New York State Department of Financial Services

- On October 4, 2013, plaintiffs filed notice of interlocutory appeal, seeking an expedited appeal to the U.S. Court of Appeals for the Second Circuit.
- Plaintiff-appellants asserted that the District Court erred in denying their preliminary injunction motion because the court failed to balance tribal, federal, and state interests in determining whether plaintiffs were likely to succeed on the merits.
- DFS argued that Plaintiffs were unlikely to succeed because DFS's actions were directed at off-reservation lending activities. Further, if the court applied a balancing test to the state, federal, and tribal interests, DFS's non-discriminatory enforcement of usury laws advanced a compelling state interest in alignment with federal objectives. New York State should be allowed to enforce its consumer protection laws to all businesses operating in New York, even if they are tribally-affiliated.





## The Otoe-Missouria Tribe of Indians v. New York State Department of Financial Services

- The CFPB filed an amicus brief refuting plaintiffs' position that the passage of the Consumer Protection Act and the creation of the CFPB indicated a federal interest in uniform consumer protection laws across the country.
  - The CFPB explained that the Act expressly preserved states' varying consumer protection laws and does not prevent states from enforcing their state's consumer protection laws.
- The Second Circuit heard oral argument on the appeal on December 5, 2013.





## The Otoe-Missouria Tribe of Indians v. New York State Department of Financial Services

- On October 1, 2014, the Second Circuit issued a decision affirming Judge Sullivan's denial of plaintiffs' motion for a preliminary injunction. The Second Circuit held that the district court had reasonably concluded that plaintiff-appellants had failed to establish a likelihood of success on the merits.
- While the Court recognized the complexities that the "hybrid" nature of electronic commerce adds to the inquiry as to whether the loan transactions occurred on or off of tribal land, the court stated that "[m]uch of the commercial activity at issue t[ook] place in New York."
- On November 2, 2014, Judge Sullivan so ordered Plaintiffs' notice to voluntarily dismiss the complaint without prejudice.

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## Lead Generator Subpoenas

In November 2013, DFS issued subpoenas to 16 payday loan "lead generators" suspected of deceptive or misleading marketing of illegal, online payday loans in New York.

- DFS suspected that these firms place consumers at risk by collecting and selling their personal information to illegal online payday lenders and others, including scam artists.
- DFS demanded a range of materials and testimony, including marketing materials, contracts for sales of consumer information and privacy policies.

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## Enforcement Against Lead Generators

- Through promises of easy access to quick cash, such companies entice consumers to provide their sensitive personal information such as bank account numbers, and sell that information to payday lenders operating unlawfully in New York and 14 other states.
- A Consent Order with Selling Source LLC is the first successful enforcement action imposing a penalty on a lead generation company for its conduct in marketing illegal payday loans to consumers.

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## Investigation of Selling Source, MoneyMutual, Partner Weekly, and Montel Williams as Celebrity Endorser

## Selling Source, LLC

- Selling Source, LLC is a Nevada-based limited liability company, which, among other business activities, operates a payday and other short-term lending lead generation business through a number of wholly-owned subsidiaries, principally MoneyMutual, LLC ("MoneyMutual") and its website moneymutual.com.
- MoneyMutual, LLC solicits consumers for its client network of payday lenders. Once a consumer enters personal and financial information on the MoneyMutual website, the company sells that information ("leads") to payday lenders and redirects the consumer to a lender's website, where a loan may be extended.
- Partner Weekly, LLC is a subsidiary of Selling Source that collects leads for short-term loans from Credit Loan, LLC, another Selling Source subsidiary, and others, and sells such leads to Selling Source's network of payday and other short-term lenders.
- Montel Williams is a public media personality and celebrity endorser residing in New York, New York and has endorsed Selling Source and its MoneyMutual brand since 2009.





## Factual Findings Generally

- Selling Source began advertising its MoneyMutual payday lending network to consumers in New York and across the nation in 2009 via television, radio, print, online advertisements, and direct-to-consumer mailings. From September 2009 through November 2013, Selling source collected and sold to its network of lenders more than 800,000 New York consumer leads.
- The lenders in Selling Source's network paid Selling Source a fee for every lead purchased and in turn Selling Source paid Montel Williams, its celebrity endorser, a fixed fee for every lead sold through the MoneyMutual brand. Mr. Williams's likeness and express endorsement feature prominently in MoneyMutual marketing including TV, radio, print and online ads. Selling Source and its MoneyMutual brand relied on Montel Williams's endorsement activity to successfully promote its services.





## Factual Findings Continued

Since 2009, Selling Source has generated millions of leads nationally. Selling Source and Mr. Williams thus facilitated the availability of payday loans to New York consumers by connecting them to Selling Source's network of lenders.

- The typical representative APR range for loans advertised on the MoneyMutual website is between 261% and 1304% for a 14-day loan. Lenders purchasing leads from Selling Source offered loans with interest rates within this range, which is sixteen to eighty-two times the legal limit in New York.
- Selling Source was capable of filtering the consumer information it received by the state of each consumer; however it continued to accept and subsequently sell leads from New York consumers to its payday lender network.
- Selling Source failed to adequately warn New Yorkers that the lenders to which it would connect them might offer them loans with rates that violate New York's usury laws.
- Many consumers who provided their information on the MoneyMutual website were bombarded with calls from scam artists who had gained access to this information.

## Misrepresentations with Respect to Financial Products or Services

- Selling Source advertised and referred New York consumers to lenders making loans purportedly suitable for emergency, one-time, affordable and efficient use when, in fact, those loans contained terms that often led consumers to roll over their debt and obtain additional high-interest loans to pay off their prior loans. Specifically, Selling Source:
  - advertised its MoneyMutual lead generation service to New Yorkers as a service to "help people who are in dire financial conditions," and stated that "MoneyMutual's online lending network is the only source you can trust for finding a short term cash loan quickly and easily."
  - advertised to New York consumers that MoneyMutual would connect them to lenders providing "emergency" financing that would allow them to "avoid late fees" and other charges when faced with situations of unexpected or extraordinary need.





## Misrepresentations with Respect to Financial Products or Services

- Used Montel Williams' reputation for trustworthy, sound judgment and advice to at times assure New York consumers that the lenders to whom it was selling leads to were legitimate and were acting lawfully because "Montel Williams has endorsed MoneyMutual and would not do so if it were not a legitimate company."

- Selling Source made these misrepresentations despite the fact that it received or became aware of numerous complaints from New York consumers struggling under the rates, fees, and repayment schedules demanded by MoneyMutual's network of lenders, many of which have received cease and desist letters from DFS.

- Selling Source targeted repeat loan clients ("Gold" customers) for additional revenue when they took out additional loans to pay off prior loans. Selling Source knew that at least 55% of MoneyMutual customers were repeat loan customers.





## Violations of New York Law

- New York Financial Services Law Section 408(a)(1)(A) provides that the Superintendent of Financial Services may levy a civil penalty upon a finding of:

  - "Any intentional fraud or intentional misrepresentation of a material fact with respect to a financial product or service involving any person offering to provide or providing financial products or services."

- The Department found that Selling Source violated New York Financial Services Law Section 408 by engaging in the representations previously discussed.

## Requirements of Consent Order

- On March 10, 2015 DFS entered into a Consent Order with Selling Source, its affiliated companies, and Montel Williams.
- Selling Source will pay a civil penalty of $2.1 million to the Department.
- Montel Williams has withdrawn his endorsement of MoneyMutual as to New Yorkers and will not endorse any payday or other short-term loan products or services that extend to New York consumers - whether through agreements with Selling Source or any other company - unless such product(s) comply with NY law.
- Selling Source and Montel Williams will not purchase, distribute, or promote any New York state-specific advertisements, endorsements, or other promotional materials for any financial service or product whose terms would violate any New York law, including the New York Banking, General Obligations, and Financial Services laws.





## Requirements of Consent Order

- In accordance with this, Selling Source will make every commercially reasonable effort to ensure that nationwide and regional advertising for financial products and/or services be excluded from New York. This includes removing New York postal codes, IP addresses, and phone numbers from its call and mailing lists and all its targeted advertising.
- Selling Source will no longer collect or sell the financial or personally identifiable information of any New York consumer for the purpose of offering, selling, selling leads for, or otherwise referring consumers to financial products or services unless those products or services comply with New York law.





## Requirements of Consent Order

- On MoneyMutual.com and any other website it owns or operates, Selling Source will require all consumers to enter a zip code before their information may be saved or stored and disable any website from accepting applications or storing information submitted by applicants who enter a New York zip code in relevant address fields of any webpage where a zip code is requested or required.
- All written advertisements, endorsements, and other promotional materials of Selling Source for payday or other short-term loans shall clearly and conspicuously state "This service is not available in New York or to New York borrowers due to interest rate limits under New York law." This language also will be included as a clear and conspicuous overlay to any recorded or spoken advertisements, including by Montel Williams.

## Ride-sharing Programs





## Sharing-Economy Consumer Protections

- The Department has been monitoring and meeting with companies involved in the "sharing-economy" to ensure that new products and services comply with applicable state laws and have adequate consumer protections.
- A major area of focus has been on products that include insurance coverage that may not comply with state laws or provide adequate coverage.
- In 2014, DFS settled with RelayRides, an online car-sharing service, for illegally selling an unapproved insurance policy, adjusting claims without a license and misrepresenting to users the impact to their personal insurance policy if they rented out their cars. RelayRides paid a $200,000 penalty and agreed to stop operating in the state until it is in compliance with state law. Their insurer, Hudson Insurance Co. paid a $250,000 penalty for selling an illegal insurance policy.





## Investigation into Lyft

- Lyft began offering a ride-share program in New York in April 2014, launching in Buffalo and Rochester.
  - Lyft recruited consumers to use their privately owned cars, to pick up and drive passengers for a fee through Lyft's online platform.
  - Participating drivers had non-commercial licenses and non-commercial insurance attached to their vehicles.
- DFS met with Lyft to learn about their program and expressed concern that drivers participating in their program would likely be in violation of their insurance policies by using their vehicles for commercial purposes, and that drivers may not have statutorily mandated insurance in place.

## Investigation into Lyft

- The lack of clear insurance in place put drivers and the public at risk in the event of an accident. It also created uncertainty in the insurance market by putting commercial risk into the private insurance market – potentially leading to higher insurance rates.
- Lyft attempted to provide a group insurance policy to cover drivers if their personal policies denied coverage, but such a policy was not permissible under New York law. Further the policy was not written by an approved insurer and was therefore not subject to consumer protections, including claims settlement regulations.
- After warnings that Lyft was violating the New York Insurance Law, Vehicle and Traffic Law, and municipal livery laws, and should cease operations, Lyft announced it would be expanding its services to New York City in July 2014.



## *New York v. Lyft*

- DFS and the New York Attorney General filed a lawsuit against Lyft in New York Supreme Court alleging violations of, among other laws, the Insurance Law, Financial Services Law, Executive Law, Business Corporation Law, General Business Law and Vehicle and Traffic Law.
- DFS and the Attorney General also filed a motion for a temporary restraining order and permanent injunction to prevent Lyft from continuing to violate the New York Insurance Law and state livery laws.
- The motion for a temporary restraining order was resolved when Lyft agreed to comply with New York law by stopping its operations upstate and only using licensed livery drivers in New York City. Resolution of the complaint is ongoing.
- As part of the resolution of the TRO, DFS also agreed to explore legislative solutions that would allow ride-share programs to operate legally in New York with adequate consumer protections.
  - Several bills from other interested parties have been introduced in the state legislature to legalize ride-share programs.