

Wiley Consumer Protection Download (August 21, 2023)

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Welcome to Wiley's update on recent developments and what's next in consumer protection at the Consumer Financial Protection Bureau (CFPB) and Federal Trade Commission (FTC). In this newsletter, we analyze recent regulatory announcements, recap key enforcement actions, and preview upcoming deadlines and events. We also include links to our articles, blogs, and webinars with more analysis in these areas. We understand that keeping on top of the rapidly evolving regulatory landscape is more important than ever for businesses seeking to offer new and groundbreaking technologies. Please reach out if there are other topics you'd like to see us cover or for any additional information.

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Regulatory Announcements

CFPB To Propose Rules That Could Expand FCRA Coverage to Certain Data Brokers and "Credit Header Data." On August 15,

CFPB Director Rohit Chopra announced during a White House Roundtable discussion that the agency is planning to propose new rules under the Fair Credit Reporting Act (FCRA). The proposals under consideration would: (1) define data brokers that sell certain kinds of consumer data—such as a consumer's payment history, income, or criminal records—as a consumer reporting agency covered by the FCRA; and (2) potentially expand the definition of a consumer report

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under the FCRA to cover “credit header data.” Credit header data includes information such as consumer name, address, or Social Security number. In his White House remarks, Director Chopra noted that the CFPB next month plans to release an outline of proposals and alternatives under review for Small Business Review Panel feedback, and then seek public comment on proposed rules in 2024.

Recent Enforcement Actions

FTC and DOJ Settle with Credit Bureau for Allegedly Failing to Inform Consumers of Email Marketing Opt-Out Rights. On **August 14**, the Department of Justice (DOJ), on behalf of the FTC, filed a complaint and stipulated order against Experian Consumer Services (ECS), also known as ConsumerInfo.com, Inc., in the U.S. District Court for the Central District of California. The FTC and DOJ alleged that the company sent marketing emails to consumers who had signed up for credit services without providing consumers a clear and conspicuous opt-out or unsubscribe option in violation of the CAN-SPAM Act. The company agreed to injunctive relief and a \$650,000 monetary penalty.

CFPB Settles with Mortgage Lender and Real Estate Brokerage for Alleged RESPA Violations. On **August 17**, the CFPB filed consent orders and stipulations against Freedom Mortgage Corporation, a nonbank mortgage loan originator, and Realty Connect, a real estate brokerage firm, for alleged violations of the Real Estate Settlement Procedures Act (RESPA) and its implementing regulation. The CFPB alleges that Freedom Mortgage entered into marketing services agreements and provided unlawful incentives to Realty Connect for referring its clients that needed mortgage loans to Freedom. Freedom Mortgage has agreed to pay a \$1.75 million civil penalty in addition to injunctive relief. Realty Connect will pay a \$200,000 civil penalty and has also agreed to injunctive relief.

Upcoming Comment Deadlines and Events

FTC to Host Workshop on Proposed Changes to the Funeral Rule. On **September 7**, the FTC will host a public workshop on the changes to its Funeral Rule proposed in its Advance Notice of Proposed Rulemaking. The workshop will cover a number of topics including, among other things, online or electronic disclosures of price information, the general price list required by the Funeral Rule, and whether funeral providers should be required to give out general price lists in languages other than English. The public can submit comments on the topics to be covered in the workshop until **October 10**. Instructions for filing comments will be published in the Federal Register.

CFPB, HHS, and Treasury Seek Comment on Medical Payment Products. Comments are due **September 11** on the RFI issued by the CFPB, HHS, and U.S. Department of Treasury seeking information about the prevalence of medical credit cards and installment loans that are offered to patients as a way to pay for medical care. The agencies specifically request information about the specialty medical payment market and associated data on interest fees and costs for medical credit products, patient experiences with medical credit cards and installment loans, issues with patient billing and collections, and any incentives that health care providers have to offer medical credit cards and installment loans.

FTC Seeks Comment on Amendments to Premerger Notification Rules and Premerger Notification and Report Form and Instructions. Comments are due **September 27** (extended from August 28) on the FTC's NPRM proposing to amend the premerger notification rules that implement the Hart-Scott-Rodino Antitrust Improvements Act, and the Premerger Notification and Report Form and Instructions. If adopted, the FTC's NPRM proposals would substantially expand the amount of information that covered entities must submit to the agency about potential transactions.

FTC Solicits Comment on NPRM Proposing to Classify Certain Consumer Review and Testimonial Practices as Unfair or Deceptive. Comments are due **September 29** on an NPRM that, if adopted, would classify certain consumer review and testimonial practices as unfair or deceptive practices under Section 5 of the FTC Act. Advertising practices that the NPRM proposes to classify as "unfair" or "deceptive" include (1) selling or obtaining "fake" consumer reviews; (2) repurposing consumer reviews or "review hijacking;" (3) purchasing positive or negative reviews; (4) permitting insider reviews and testimonials without adequate disclosure; (5) representing that company-controlled review websites or entities are independent; (6) review suppression; and (7) misuse of fake social media influence indicators.

FTC Issues Supplemental Proposed Amendments to Testing Methods Under the Amplifier Rule. Comments are due **October 20** on the FTC's Supplemental Notice of Proposed Rulemaking (SNPRM) proposing amendments to the agency's Amplifier Rule. The Amplifier Rule, formally known as the Rule Relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products, regulates power output claims for home entertainment amplifiers. The SNPRM proposes to amend the Amplifier Rule to, among other things, set standard test conditions for measuring amplifier power output; clarify which power output disclosures comply with the Amplifier Rule and which do not; and to revise language in the rule related to these proposed modifications.

More Analysis from Wiley

FTC and HHS Caution Hospitals and Telehealth Providers on Tracking Tech

Biden Administration Looks at Harmonizing Cyber Regulations Amidst Flurry of New Activity

Coming Soon: New Cyber Labeling Program for IoT Devices

Podcast: The FTC Safeguards Rule: A Deep Dive into the Revisions Effective June 9, 2023

Webinar: How to Keep Up with the Influx of New State Privacy Laws and Regulations

Podcast: What could AI regulation in the US look like?

The FTC Is Targeting Crypto Too - With a Significant New Enforcement Action

California privacy law changes draw in more businesses

U.S. Fulfills Its Commitments to Implement the EU-U.S. Data Privacy Framework

Companies May Begin Submitting EU-U.S. Data Privacy Framework Certifications

European Commission Adopts EU-U.S. Data Privacy Framework Adequacy Decision

California AG Initiates CCPA Investigations, Despite Setback in Court

A New White House Project on Responsible AI Sends a Message to the Private Sector, Including Contractors

Podcast: AI: The Next Big Thing in Government Contracting

FCC Launches Privacy and Data Protection Task Force

Initial Takeaways on the FCC's New Privacy and Data Protection Task Force

FTC Issues Policy Statement on Biometric Information, Signaling a New Enforcement Priority

FTC Joins the Cloud Security Discussion

5 Takeaways From Recent CFPB, FTC Equal Credit Push

Podcast: AI Risk Management: A Discussion with NIST's Elham Tabassi on the NIST AI Risk Management Framework

Generative AI Policies: Five Key Considerations for Companies to Weigh Before Using Generative AI Tools

Federal Legislators Are Taking AI Implementation and Oversight Seriously

NIST Announces Generative AI Working Group

Webinar: Staying Ahead of State Privacy Laws: Tips and Best Practices for Building Compliant Strategies for Five Key States

Podcast: State Privacy Laws and Federal Government Contractors

Duane Pozza Named a Cryptocurrency and Fintech 'Trailblazer' by *The National Law Journal*

U.S. State Privacy Law Guide

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Download Disclaimer: Information is current as of August 21, 2023. This document is for informational purposes only and does not intend to be a comprehensive review of all proceedings and deadlines. Deadlines and dates are subject to change. Please contact us with any questions.