

# Wiley Consumer Protection Download (August 3, 2020)

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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 ground-breaking technologies. Please reach out if there are other topics you'd like to see us cover or for any additional information.

## Regulatory Announcements

### **CFPB Issues a Request for Information on ECOA and Regulation B.**

On July 28, the CFPB issued a Request for Information seeking public comment on methods to create a regulatory environment that expands access to credit and ensures protection from discrimination pursuant to the Equal Credit Opportunity Act (ECOA) and Regulation B. Specific areas of inquiry include: Should the Bureau provide additional clarity regarding its approach to disparate impact

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## Practice Areas

Cyber and Privacy Investigations, Incidents & Enforcement

FTC and Consumer Protection

analysis? How can the CFPB support efforts to meet the credit needs of small businesses, particularly those that are minority-owned and women-owned? Should the CFPB interpret ECOA to cover sexual orientation discrimination and gender identity discrimination in light of the latest Supreme Court precedent? Should the CFPB provide more guidance around AI and machine learning, including in adverse action notice requirements under ECOA? Comments on the CFPB's Request for Information are due 60 days after publication in the Federal Register

**CFPB to Issue ANPR on Consumer-Authorized Access to Financial Data.** On **July 24**, the CFPB announced plans to release an Advance Notice of Proposed Rulemaking (ANPR) later this year regarding consumer-authorized access to financial records. The ANPR will seek information from stakeholders on how the CFPB should implement the consumer financial data access provisions in Section 1033 of the Dodd-Frank Act. The ANPR will also seek comment regarding the scope of information that may be subject to protected access, along with information that might bear on other terms of access, including security, privacy, consumer control, and accountability for unauthorized access. Moreover, the ANPR will inquire into whether there is regulatory uncertainty regarding Section 1033's interaction with the Fair Credit Reporting Act that may impact the market to the detriment of consumers.

**At PrivacyCon, FTC Sheds Light on Future Enforcement Activities.** During the FTC's fifth annual PrivacyCon forum, Andrew Smith, Director of the Bureau of Consumer Protection, discussed FTC enforcement over the past year, but also described the agency's focus on continuing enforcement. Specifically, Director Smith explained that revolutionary technologies such as mobile health applications and the Internet of Things "present risks to privacy, security, and in at least one instance, equal opportunity." Our recap of this year's PrivacyCon event can be found [here](#).

**FTC Releases Consumer Report Focused on Auto Sales and Financing.** The FTC released a Staff Report and an accompanying FTC Bureau of Economics Report focused on the challenges consumers face when they are in the market for a new car on **July 30**. The Staff Report focuses on the obstacles that consumers have to navigate to obtain reliable financing information when buying a car. The FTC is particularly concerned with "add-on" costs such as extended warranties, service plans, credit insurance, GAP policies, and window etching because these charges are usually added right before a consumer buys a car, according to the Staff Report. These charges are also often included in financing. Participating consumers cited in the Staff Report recall being "overwhelmed" during the sales process. Interested parties in auto sales, finance, and leasing should watch this space for future FTC actions.

**CFPB Director Kraninger Testifies Before the House Committee on Financial Services.** The CFPB Director Kathleen L. Kraninger testified before the U.S. House Committee on Financial Services in a hearing titled, "Protecting Consumers During the Pandemic? An Examination of the Consumer Financial Protection Bureau" on **July 30**. In her testimony, Director Kraninger highlighted the ways that the CFPB is working to safeguard consumers during the pandemic. These included empowering consumers to protect their own interests through financial education initiatives; promulgating clear regulations that increase transparency and encourage compliance; utilizing the CFPB's supervisory authority to prevent rule violations; initiating enforcement actions against bad actors; and reforming the Dodd-Frank Act to award whistleblowers who report violations of

federal consumer financial laws. A recording of the full hearing is available [here](#).

**Director Kraninger Delivers CFPB's Semi-Annual Report to Congress.** On **July 29**, CFPB Director Kathleen L. Kraninger testified before the U.S. Senate Banking Committee as a part of the CFPB's Semi-Annual Report to Congress. Director Kraninger's testimony focused on the steps that the CFPB is taking to confront both racial inequality and the coronavirus (COVID-19) pandemic. On the first point, Director Kraninger highlighted the Equal Credit Opportunity Act Request for Information (discussed in more detail above) that the CFPB released this month focused on deterring and preventing credit discrimination. On the second point, Director Kraninger emphasized agency consumer education and outreach efforts, including over 70 blogs and videos focused on consumer financial products and services during the pandemic. Director Kraninger also noted the high number of pandemic-related consumer complaints that the CFPB is receiving. A recording of the full hearing is available [here](#).

## Significant Enforcement Actions

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**FTC Alleges California Background Report Provider Misled Consumers to Think Its Reports on Individuals Might Contain Criminal Records.** On **July 27**, the U.S. Department of Justice filed a complaint on behalf of the FTC in the U.S. District Court for the Central District of California alleging that MyLife.com, Inc. (MyLife) falsely stated through its website that its background check service might contain criminal and sexual offender records on individuals even when they did not include such information. The FTC alleged that MyLife did this in an attempt to get consumers to sign up for premium subscriptions. Moreover, the FTC alleges that MyLife is a consumer reporting agency (CRA), and that the company violated the Fair Credit Reporting Act (FCRA) by failing to: (1) maintain reasonable guidelines for how its reports would be used; (2) ensure that report information was accurate; and (3) confirm that the report information was only sold for legally permissible purposes.

**CFPB Issues Consent Orders Against Mortgage Brokers.** The CFPB issued Consent Orders against Prime Choice Funding, Inc. (Prime Choice) and Sovereign Lending Group, Inc., (Sovereign Lending), which are licensed mortgage brokers, on **July 24**. After investigations, the CFPB found that Prime Choice and Sovereign Lending sent millions of false and misleading mailers to consumers. Among other things, the mailers misrepresented the credit terms for the VA-backed mortgages, described an adjustable rate mortgage as being "fixed" rate, and falsely claimed that each consumer was prequalified for the advertised mortgage in violation of the Consumer Financial Protection Act's (CFPA's) prohibition against deceptive acts and practices, the Mortgage Acts and Practices – Advertising Rule (MAP Rule), and Regulation Z. The Consent Order imposes a \$645,000 civil monetary penalty on Prime Choice and a \$460,000 penalty against Sovereign Lending.

**FTC Announces Settlement with Florida-Based Robocaller.** On **July 24**, the FTC announced a settlement with eleven companies and three individuals (the entities) after filing a complaint against the entities in the U.S. District Court for the Middle District of Florida for violations of the Telemarketing Sales Rule (TSR) and Federal Trade Commission Act (FTC Act). Specifically, the FTC's complaint alleges that the entities targeted financially distressed seniors with fictitious offers to reduce their credit card interest rates to zero for the life of the debt

owed on the cards. The FTC's Proposed Settlement Order imposes a judgement of \$13,881,865 against the companies and permanently bans them from engaging in the sale of debt relief products or services.

**FTC Wins Case Against Student Debt Relief Servicers for Violations of the FTC Act and the TSR.** On **July 17**, the U.S. District Court for the Central District of California ruled in favor of the FTC against a group of companies that charged up front fees to consumers for student debt relief services in violation of the TSR. Additionally, the court found that the companies violated the FTC Act when they falsely claimed that the consumers' loans would either be forgiven or substantially paid down using the consumers' monthly payments to the companies. The court's final order bans the companies from providing telemarketing and debt relief services and subjects them to a \$27.6 million judgement.

## Upcoming Comment Deadlines and Events

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**FTC Continues to Accept Comments on Workshop and Proposal to Amend Safeguards Rule.** The FTC held a Virtual Workshop to examine the Gramm-Leach-Bliley Act's Safeguards Rule on **July 13** (a summary of those proposed changes can be found [here](#) and our recap of the workshop is [here](#)). The FTC has proposed changes to the Safeguards Rule as part of its regulatory review process. Comments on the FTC's proposed changes are due **August 12**.

**CFPB Solicits Comment on Proposal to Amend Regulation F to the FDCPA.** Comments are due **August 4** (extended from May 4) on the CFPB's Supplemental Notice of Proposed Rulemaking (SNPRM) which solicits comment on certain proposed provisions of Regulation F to the Fair Debt Collection Practices Act (FDCPA). The proposal would require debt collectors to follow certain disclosure procedures when pursuing time-barred debts. The CFPB expects to issue this portion of Regulation F separate from issuing its broader debt collection rule in October.

**CFPB Seeks Comment on TILA Regulations.** The CFPB is seeking comment on its Proposed Rule amending Regulation Z which implements the Truth in Lending Act (TILA). These changes generally address the end of the London Inter-bank Offered Rate (LIBOR), which is set to sunset in 2021. The CFPB is proposing changes to open-end and closed-end provisions to provide examples of replacement indices for LIBOR indices that meet certain Regulation Z standards. The CFPB also is proposing to permit creditors for home equity lines of credit (HELOCs) and card issuers for credit card accounts to transition existing accounts that use a LIBOR index to a replacement index on or after March 15, 2021, if certain conditions are met. Comments on the Proposed Rule are due **August 4**.

**CFPB Requests Feedback on Proposal to Extend the Temporary GSE QM Loan Definition.** Comments are due **August 10** on the CFPB's Proposed Rule to amend Regulation Z to replace the January 21, 2021 sunset date of the temporary government-sponsored enterprise (GSE) qualified mortgage (QM) with the effective date of the final amendments of the General QM loan definition. Specifically, temporary GSE QM loans are those that are eligible for purchase by either the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) which are currently under federal conservatorship by the Federal Housing Finance Agency (FHFA). The CFPB established this category of QMs as a temporary

system that is set to expire no later than January 21, 2021, or when Fannie Mae and Freddie Mac exit conservatorship. The CFPB is making this proposition in an attempt to ensure that affordable mortgage credit remains available to consumers that would be negatively impacted by the pending sunset date before the amendments to the General QM loan definition become effective.

**CFPB Solicits Input on Pilot Advisory Opinion Program.** Comments are due **August 21** on the CFPB's Proposed Rule seeking comment on its new advisory opinion (AO) program. The pilot AO program permits companies seeking clarity over uncertain regulations to submit requests for opinions. Among other things, the Proposed Rule is seeking comment on whether to allow trade associations to submit questions on behalf of its members without naming them. The CFPB will select topics based on program priorities and will publicize its responses. Requests for advisory opinions may be submitted via email [here](#).

**OCC Seeks Comment on Proposed True Lender Rule.** The Office of the Comptroller of the Currency (OCC) is soliciting comment on a Proposed Rule to determine when a national bank or federal savings association is the "true lender" in the context of a loan made in partnership between a bank and a third party. The Proposed Rule seeks to resolve uncertainty regarding the regulatory framework that applies to loans made pursuant to such partnerships by specifying that a bank making a loan is the "true lender" if "as of the date of origination, it (1) is named as the lender in the loan agreement or (2) funds the loan." Comments on the Proposed Rule are due **September 3**.

**CFPB Seeks Comment on Amendments to General QM Loan Definition.** Comments are due **September 8** on the CFPB's Proposed Rule on seeking modifications to the loan definition of General QMs under Regulation Z. For example, the CFPB proposes to eliminate the total monthly debt to total monthly income ratio (DTI ratio) of 43% and replace it with a price-based limit.

**FTC Seeks Comment on "Made in the USA" Rulemaking.** Comments are due **September 14** on the FTC's Notice of Proposed Rulemaking (NPRM) to codify "Made in the USA" product labeling requirements. This could allow the FTC to impose greater monetary penalties on companies that the agency finds in violation of the requirements. One of the critical issues in the Rulemaking will be the extent to which the finalized rule covers product marketing and advertising claims in conjunction with product labeling. Our summary of the Rulemaking and its implications can be found [here](#).

## More Analysis from Wiley

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[FTC PrivacyCon 2020 Examines Health Apps and IoT](#)

[New York DFS Takes First Enforcement Action Under Its Cybersecurity Regulation](#)

[NTIA Files Rulemaking Petition Seeking "Clarification" of Section 230, as Required by Recent Executive Order](#)

[Federal Court Says Data Breach Alone Is Insufficient To Establish Standing](#)

Private Sector Urges Government to Do Better on Supply Chain Information Sharing with Tech and Telecom

Cross-Border Data Transfer Mechanisms in Flux as Court of Justice for the European Union Invalidates Privacy Shield

FTC Authority Under Challenge at Supreme Court: What's At Stake

Supreme Court Rules That the Removal Standard for the CFPB Director is Unconstitutional

Supreme Court Decision in Liu v. SEC Will Put Even Greater Focus on FTC's Enforcement Authority

After Years of Uncertainty, the Supreme Court Will Address "Autodialer" Under the TCPA

Examining the Arguments Behind the TCPA Autodialer Circuit Split That the Supreme Court Will Consider Next Term

The Supreme Court Invalidates TCPA Robocall Exception, with Fireworks About Severability

FCC Robocall Action Adopts Key Safe Harbors and Seeks Input on TRACED Act Implementation

TCPA Update: New Declaratory Ruling Sheds Light on "Autodialer" Definition

FTC Examines Proposed Amendments to the GLBA Safeguards Rule in Full-Day Workshop

Tech, ICT and 5G will Stay Under Bipartisan Scrutiny in the Senate: Minority Report on Chinese "Digital Authoritarianism"

*Privacy in Focus* (July 2020)

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**Download Disclaimer:** Information is current as of August 3, 2020. 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.