

Wiley Consumer Protection Download (August 3, 2021)

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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.

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Regulatory Announcements

CFPB Confirms Effective Date of November 30, 2021 for FDCPA

Final Rules. On July 30, the CFPB announced that two final rules issued under the Fair Debt Collection Practices Act will take effect on November 30, 2021. The two rules at issue are the October 2020 Debt Collection Rule, which focuses on the use of communications related

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to debt collection; and the December 2020 Debt Collection Rule, which clarifies the disclosures that debt collectors must provide to consumers. The CFPB previously issued a proposal in April 2021 that would have extended the effective dates to January 29, 2022 to give parties more time to comply as a result of the COVID-19 pandemic. The CFPB has now determined that such an extension is unnecessary.

CFPB and FHFA Publish Data Detailing Consumer Experiences in Obtaining a Mortgage. On **July 29**, the CFPB and the Federal Housing Finance Agency (FHFA) published updated data on loan levels collected through the National Survey of Mortgage Originations (NSMO). These surveys collect input from borrowers regarding their experiences during the mortgage application process, their perceptions about the market for mortgages, and future expectations. The newly released data includes information through 2019, which provides an indication of borrowers' outlooks on the mortgage market directly before the onset of the COVID-19 pandemic. Among other things, the data demonstrates that the percent of survey respondents unconcerned about qualifying for a mortgage during the application process increased slightly from 2018 to 2019 (from 48 to 51%).

FTC Testifies Before House Energy and Commerce Subcommittee on Legislation. On **July 28**, FTC Chair Lina Khan and Commissioners Noah Phillips, Rohit Chopra, Rebecca Slaughter, and Christine Wilson testified before the House Energy and Commerce Subcommittee on Consumer Protection and Commerce regarding legislation to strengthen the agency's authority to obtain monetary relief in federal court, among other matters. Chair Khan and the other Commissioners testified that the Supreme Court's *AMG decision*, which we covered here, weakens the agency's ability to prevent anticompetitive conduct and certain corporate mergers, among other things. The FTC Commissioners stated that the agency requires additional resources to address these issues through enforcement proceedings.

CFPB Finds That Consumer Credit Applications Have Rebounded to Pre-Pandemic Levels. On **July 27**, the CFPB published an issue brief demonstrating that consumer applications for auto loans, new mortgages and revolving credit cards had returned to pre-pandemic levels by May 2021. Specifically, the CFPB noted a particularly pronounced increase in credit applications from borrowers with lower credit scores in connection with federal stimulus payments. The issue brief found for example that auto loan inquiries fell 52% by the end of March 2020, but had returned to pre-pandemic levels by January 2021.

FTC Holds July 21 Open Commission Meeting. On **July 21**, the FTC held its second Open Commission Meeting under Chair Lina Khan. At the meeting, the FTC voted unanimously to retain the FTC Care Labeling Rule, which requires manufacturers and clothing importers to attach labels with care instructions for garments that specify directions for dry cleaning, washing, bleaching, drying, and ironing clothing. Additionally, the agency voted 3-2 to rescind a 1995 policy statement. The policy statement had removed a requirement that companies subject to a merger order obtain prior approval or notify the agency before a merger. In reversing the 1995 statement, the FTC implemented a new practice that permits the use of prior approval and prior notice provisions for merger agreements on a case-by-case basis. Finally, the FTC voted 5-0 to release a policy statement announcing plans to increase enforcement against certain repair restrictions that the agency views as unlawful, which we covered here. The FTC released the policy statement after submitting a report to Congress on repair restrictions in May 2021.

Significant Enforcement Actions

FTC Withdraws Third Circuit Appeal After Supreme Court Decision. On **July 30**, the FTC announced that it withdrew its case against AbbVie for allegedly utilizing sham litigation to obtain a monopoly in the pharmaceutical market. The complaint against AbbVie and its partner Besins Healthcare Inc., which was filed in 2014, alleged that the companies denied patient access to lower-cost alternatives to AndroGel by filing baseless patent infringement lawsuits. The Third Circuit affirmed the district court's finding of liability for AbbVie on the FTC's claims, but reversed a \$493.7 million monetary judgement against AbbVie. In the Supreme Court's *AMG Decision*, however (which we discussed here), the court held that the FTC is not entitled to disgorgement under Section 13(b) of the FTC Act. The FTC's vote to withdraw the complaint was 4-0, with Commissioner Wilson not participating.

FTC Settles with Auto Dealership Following Alleged Scheme to Falsify Consumer Information on Financing Applications. On **July 29**, the FTC announced an settlement with the owner and manager of Tate's Auto Center (Tate's) for \$450,000, to resolve allegations that Tate's auto dealerships falsified consumer income and down payment information, and violated the Truth in Lending Act (TILA) and Consumer Leasing Act (CLA). The FTC's original complaint was filed in August 2018, and the agency previously reached a settlement with the dealerships.

Upcoming Comment Deadlines and Events

Federal Reserve Board, FDIC, and OCC Seek Comment on Third Party Risk Management Principles.

Comments are due **September 17** on proposed interagency guidance issued by the Board of Governors of the Federal Reserve (the Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC). The proposed interagency guidance is focused on risk management practices for banking organizations to consider when developing risk management strategies for third party relationships. The Board, FDIC, and OCC intend for the proposed interagency guidance to take "into account the level of risk, complexity, and size of the banking organization and the nature of the third-party relationship." If adopted, the proposed guidance would replace each agency's existing guidance and would be directed to all banking organizations regulated by the agencies.

More Analysis from Wiley

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The FTC's Public Meeting Forecasts an Active and Far-Reaching Agenda Under Chair Lina Khan

Implementing AI Governance: An International Perspective

FTC Adopts Policy Statement on Consumer Device Repairs and Announces That Enforcement Approach Will Be a Priority

Biden Administration Signals Tech and Telecom Priorities in EO on Competition

Under New FTC Rule, "Made in USA" Violators Will Face Monetary Penalties

Duane Pozza Discusses Colorado Privacy Law's Potential Impact on Compliance

Privacy in Focus: All Data Is Not HIPAA Data – Healthcare Covered Entities Should Pay Close Attention to State Privacy Laws Regulating the Health IoT Ecosystem

Privacy in Focus: U.S. Supreme Court Clarifies Circuit Split – Privacy Suits Require Concrete Harm for Article III Standing

Duane Pozza Discusses FTC's Focus on Rulemaking After Supreme Court's AMG Decision

Key Takeaways from the AMG Capital Management v. FTC Decision

Supreme Court Curbs FTC Power to Seek Monetary Relief

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Virginia's New Privacy Law: How to Navigate the New Privacy Framework

California Privacy Rights Act – What Does It Mean For You?

Download Disclaimer: Information is current as of August 3, 2021. 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.