

# Wiley Consumer Protection Download (August 31, 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 New Guide for Intermediaries Assisting Clients with EIPs.** The CFPB released a new guide to help intermediaries assisting individuals with assessing their Economic Impact Payments (EIPs) on **August 27**. The guide, titled, *Helping Consumers Claim the Economic Impact Payment: A guide for intermediary organizations*, provides instructions on how intermediary staff can (1) discuss an EIP with their clients; (2) determine if their clients need to take any action; and (3)

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## Practice Areas

Cyber and Privacy Investigations, Incidents  
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provide support to clients with what to expect and how to resolve standard issues. Many people were issued EIP payments earlier this year due to the ongoing coronavirus (COVID-19) pandemic. However, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) also required the CFPB to work with other federal agencies to help consumers who were not required to file a 2019 tax return because their income fell below the federal filing requirements.

**CFPB Releases Request for Information Regarding the CARD Act Rules.** On **August 25**, the CFPB issued a Request for Information (RFI) to assess the impact of the rules implementing the Credit Card Responsibility and Disclosure Act of 2009 (CARD Act Rules). Section 610 of the Regulatory Flexibility Act requires the CFPB to review certain rules, including the CARD Act Rules, within 10 years of their publication. Specifically, the CFPB is required to consider the impact of the rules on small businesses. The CFPB is also requesting input from the public on how the consumer credit card market has been impacted by the CARD Act Rules. Comments on the Request for Information are due 60 days after publication in the Federal Register.

**FTC Seeks Comment on Changes to FCRA.** The FTC is seeking comment on five different Notices of Proposed Rulemaking (NPRMs) that bring the Fair Credit Reporting Act (FCRA) in line with the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). These NPRMs clarify that the five FCRA rule changes would apply only to motor vehicle dealers. The NPRMs cover proposed changes to: (1) the Address Discrepancy Rule; (2) the Affiliate Marketing Rule; (3) the Furnisher Rule; (4) the Pre-Screen Opt-Out Notice Rule; and (5) the Risk-Based Pricing Rule. Comments on the NPRMs will be due 75 days after publication in the Federal Register.

**CFPB Issues Proposed Rule to Create a New Category of Qualified Mortgages (QMs).** The CFPB released a Notice of Proposed Rulemaking (NPRM) that would create a new type of seasoned QMs that are first-lien, fixed-rate covered transactions that have met specific performance requirements over a 36-month seasoning period. For a loan to qualify under this new definition, the creditor would also be required to verify a consumer's debt-to-income ratio or residual income at the time of origination. Seasoned QM loans would only be available for covered transactions with no more than two 30-day delinquencies. Comments are due 30 days after publication in the Federal Register.

## Significant Enforcement Actions

### **Former Uber Security Chief Criminally Charged for Actions in FTC Investigation of Data Security Breach.**

On **August 20**, the U.S. Department of Justice (DOJ) charged former Uber security chief Joseph Sullivan for allegedly attempting to conceal the unauthorized disclosure of email addresses and phone numbers of 57 million drivers and passengers from FTC investigators. The contact information was exposed during a 2016 hack, and the hackers emailed the company and demanded money. During 2016, the FTC was investigating Uber in connection with a previous data breach, and DOJ prosecutors allege that he sought to conceal information about the 2016 data breach from the FTC. The DOJ's charges were filed in the U.S. District Court in San Francisco.

**VA-Backed Mortgage Broker Enters into Consent Order with CFPB.** The CFPB released a Consent Order against Go Direct Lenders, Inc. (Go Direct) on **August 21**. Go Direct, a licensed mortgage broker in 11 states, provides loans guaranteed by the U.S. Department of Veteran's Affairs (VA). Following an investigation, CFPB concluded that Go Direct sent consumers hundreds of thousands of mailers containing false or misleading statements lacking the required disclosures under the Consumer Financial Protection Act, the Mortgages Acts and Practices – Advertising Rule, and Regulation Z. Specifically, the Consent Order states that Go Direct misrepresented the credit terms of the advertised mortgage, described a flexible rate mortgage as having a “fixed” rate, and falsely claimed that income documentation was not required to qualify for a loan. The CFPB's Consent Order requires Go Direct to pay a \$150,000 civil penalty. This action is part of a larger CFPB effort to crack down on Veteran's Affairs-guaranteed mortgage lenders.

**CFPB Issues Consent Order Against TD Bank.** On **August 20**, the CFPB issued a Consent Order against TD Bank, N.A. (TD Bank) after an investigation allegedly found that the bank's overdraft enrollment practices violated the Electronic Fund Transfer Act and Regulation E. Specifically, the Consent Order alleges that TD Bank charged consumers overdraft fees for both ATM transactions and one-time debit card charges without obtaining affirmative consent. Further, the CFPB concluded that TD Bank violated the Consumer Financial Protection Act's prohibition against deceptive acts or practices by making misleading claims regarding its Debit Card Advance overdraft service. The Consent Order requires TD Bank to pay \$97 million in restitution to consumers, along with a \$25 million monetary penalty.

### Upcoming Comment Deadlines and Events

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**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.” If promulgated, the OCC's proposals would impact banks under the CFPB's supervisory jurisdiction. 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](#).

**CFPB Solicits Input on Exemptions from Escrow Account Requirements for Mortgage Loans.** The CFPB is seeking comment on a Proposed Rule that would amend Regulation Z under the Truth in Lending Act (TILA). Specifically, the Proposed Rule would create an exemption for certain insured depository institutions and credit unions from the requirement to establish escrow accounts for some higher-priced mortgage loans. The CFPB is issuing the proposal pursuant to the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act, which required the CFPB to implement a new exception from TILA's escrow obligation for depository institutions and credit unions. Comments are due **September 21**.

**FTC Hosts Online Data Portability Workshop.** The FTC will host an online workshop on data portability on **September 22**. Data portability pertains to the ability of consumers to transport their data – including email, contacts, calendars, financial data, health information, friends, or social media content – from one platform to another or from a platform to themselves. Among other things, issues that the workshop will address include how data can be ported safely, whose responsibility it is to ensure the technical feasibility of portability, and how to treat data that involves multiple people. The workshop agenda will be posted here closer to the date of the event.

### [More Analysis from Wiley](#)

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28 Wiley Attorneys Recognized Across 17 Practice Areas in 2021 Edition of *The Best Lawyers in America® Privacy in Focus* (August 2020)

FTC Commissioners Weigh In on Prominent Topics at Oversight Hearing

CFPB and FTC Highlight Consumer Protection Priorities During the Coronavirus Pandemic in Separate Congressional Hearings

European Authorities Take Hard Line on EU-U.S. Data Transfers After Privacy Shield Decision, While FTC Still Plans to Enforce Privacy Shield Compliance

California Finalizes CCPA Regulations, Which Are Effective Immediately

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

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

Sixth Circuit Enters TCPA Autodialer Fray

President Trump Targets Chinese Social Media Apps TikTok and WeChat in New Executive Orders

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"

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