

# Wiley Consumer Protection Download (August 7, 2023)

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Regulatory Announcements

Recent Enforcement Actions

Upcoming Comment Deadlines and Events

More Analysis from Wiley

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 Issues Summer 2023 Supervisory Highlights Report.** On **July 26**, the CFPB released a Supervisory Highlights report covering examination findings in the areas of auto origination, auto servicing, consumer reporting, debt collection, deposits, fair lending, information technology, mortgage origination, mortgage servicing, payday and small dollar lending, and remittances, that were completed from July 1, 2022, to March 31, 2023. Among other things, the Supervisory Highlights report concluded that some auto loan servicers allegedly charged fraudulent interest on inflated balances,

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FTC and Consumer Protection

Privacy, Cyber & Data Governance

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cancelled automatic payments without sufficient notice, and engaged in illegal collection practices after repossession. The report also concluded that some debt collectors continued collection attempts for work-related medical debt after receiving sufficient information to deem the debt uncollectible under state worker's compensation laws. It also concluded that some payday lenders allegedly placed language in loan agreements that impermissibly prohibited consumers from revoking consent to be contacted via call, text, or e-mail, regarding collection of an outstanding balance.

**U.S. Department of Education Issues Final Interpretation Regarding Preemption of State Laws by the Higher Education Act.** On **July 24**, the U.S. Department of Education published a final interpretation under the Higher Education Act (HEA) finding that "except in the limited and specific instances set forth in the HEA itself, State measures to engage in oversight, require actions of, or otherwise regulate the conduct of Federal student loan servicers are not expressly preempted by the HEA." Additionally, the final interpretation notes that "collaboration with the States can supply the means to ensure better oversight of these contractors and provide more protection for student loan borrowers."

## Recent Enforcement Actions

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**FTC and Arkansas Settle with Investment Program and its Owners Regarding Alleged Pyramid Scheme.** On **July 26**, the FTC and the State of Arkansas filed a stipulated order against Blessing in No Time (BINT) and its owners, LaShonda Moore and Marlon Moore, in the U.S. District Court for the Eastern District of Arkansas, settling allegations that BINT operated an illegal pyramid scheme – "Blessing Loom" – that defrauded thousands of consumers of tens of millions of dollars. In the complaint, filed June 16, 2021, the FTC and Arkansas alleged that BINT promised investors returns as high as 800% and required that members pay as much as \$62,700 to participate, yet the vast majority of participants lost all or most of the money they invested. The defendants have agreed to injunctive relief and will pay \$450,000, which will be used to refund affected consumers.

**CFPB Sues Auto-Loan Servicer for Allegedly Deceptive Loan Practices.** On **August 2**, the CFPB filed a complaint in the U.S. District Court for the Northern District of Georgia against USASF Servicing for allegedly engaging in loan servicing practices in violation of the Consumer Financial Protection Act. The CFPB alleges that USAF remotely disabled cars or repossessed vehicles of consumers not eligible for such actions, failed to provide customers the financial benefits from paying off their loans early, and double-billed approximately 34,000 consumers. The CFPB is requesting a permanent injunction in addition to both monetary relief and civil money penalties.

## Upcoming Comment Deadlines and Events

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**FTC Seeking Comment on Revisions to Health Breach Notification Rule.** Comments are due **August 8** on the FTC's Notice of Proposed Rulemaking to Amend the Health Breach Notification Rule (HBNR NPRM). Among other proposals, the HBNR NPRM proposes to update the HBNR in regard to the rule's coverage of mental health apps and other technologies that collect location and browsing history data. The HBNR NPRM also

proposes, among other things, that the definition of “breach of security” under the rule includes an unauthorized acquisition of identifiable health information that occurs as a result of a data security breach or an unauthorized disclosure, and therefore does not limit reportable incidents to “cybersecurity intrusions or nefarious behavior.”

**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.** On **July 25**, the FTC issued a 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. Comments on the SNPRM are due 60 days after publication in the Federal Register.

## More Analysis from Wiley

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Wiley Wins Four *Law360* 'Practice Group of the Year' Awards for 2022

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

*Legal 500 US* Recognizes Wiley's Telecom, Media & Technology Practice as Tier 1. Read more [here](#).

**Download Disclaimer:** Information is current as of August 7, 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.