

Wiley Consumer Protection Download (December 13, 2021)

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Thank you for your interest in the Wiley Consumer Protection Download! This will be our last publication of 2021, with our bi-weekly newsletter returning in January 2022.

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

FTC to Vote on Government and Business Impersonation Fraud

ANPRM. On **December 9**, FTC Chair Lina Khan announced that the FTC will vote on an Advanced Notice of Proposed Rulemaking (ANPRM) at the agency's December 16 open meeting. According to the FTC's press release, the ANPRM is intended to address "rampant

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government and business impersonation fraud.” The FTC states that such scams “are a leading source of consumer complaints and the largest source of total reported consumer financial losses – and have gotten worse during the pandemic.”

CFPB Releases Supervisory Highlights Report on 2021 Violations. On **December 8**, the CFPB released a Supervisory Highlights report summarizing legal violations identified by the agency during the first half of 2021, including prior supervisory findings that led to enforcement actions in the first half of 2021. Among other violations, the report focused on (1) findings that mortgage servicers purportedly charged borrowers late fees and default-related fees, despite the Coronavirus Aid, Relief, and Economic Security Act’s prohibition on such charges; (2) alleged violations of the Equal Credit Opportunity Act by mortgage lenders against African American and borrowers who are women; and (3) payday lenders purportedly charging consumer bank accounts without authorization.

FTC Data Shows Recent Uptick in Gift Card Scams. On **December 8**, the FTC released data showing that consumers reported losing \$148 million in the first nine months of 2021 from scams in which gift cards were used as the form of payment. Specifically, 40,000 consumers reported being the victims of gift card scams during that time frame. Consumers reported losing \$116 million during the entirety of 2020, according to FTC data. The FTC notes that fraud most commonly occurs when scammers trick consumers into giving the scammer the number on the back of the gift card.

CFPB Issues Final Rule to Facilitate Transition from LIBOR. On **December 7**, the CFPB issued a Final Rule to facilitate the transition away from the London Inter-bank Offered Rate (LIBOR) index. The LIBOR index, set to expire in June 2023, is a standard financial index used by U.S. capital markets, and many financial instruments, including adjustable-rate mortgages, credit cards, student loans, reverse mortgages, and home equity lines of credit are tied to it. The Final Rule, which takes effect on April 1, 2022, requires creditors to choose an index comparable to LIBOR when changing the index of a variable rate loan.

CFPB Director Chopra Delivers Remarks at the December NAAG Meeting. On **December 7**, CFPB Director Rohit Chopra delivered remarks at the December meeting of the National Association of Attorneys General (NAAG). Director Chopra focused on crafting regulations to avoid the preemption of “stronger state laws that protect the public” in the field of consumer protection. He also noted that he directed the CFPB to explore ways that the agency could expand the remedies available to state attorneys general under the Consumer Financial Protection Act. Finally, Director Chopra highlighted a desire to coordinate with state attorneys general to stop repeat offenders from violating agency or court orders entered at the federal and state level.

CFPB Releases Research on Bank Overdraft Fees. On **December 1**, the CFPB released research (available [here](#) and [here](#)) finding that bank revenue from overdraft and non-sufficient funds (NSF) fees reached \$15.47 billion in 2019. The CFPB research concludes that overdraft and NSF fees make up two-thirds of bank revenue, which varied among institutions according to bank call reports. However, the research also found that overdraft and NSF fee revenues fell by 26.2% in 2020. The CFPB stated that, as a result of the research, it will be “enhancing its supervisory and enforcement scrutiny of banks that are heavily dependent on overdraft fees.”

CFPB and Federal Reserve Announce Thresholds for Exempting Consumer Credit and Lease Transactions from Regulations M and Z. On **December 1**, the CFPB and the Federal Reserve Board (Federal Reserve) announced that Regulations Z and M will apply to consumer credit and lease transactions of \$61,000 or less in 2022. Private education loans and loans secured by real property (such as mortgages) remain subject to Regulation Z regardless of the amount of the loan. Regulation Z is the implementing regulation for the Truth in Lending Act, which requires lenders to make certain disclosures to consumers regarding borrowing costs. Regulation M, implements the Consumer Leasing Act, which requires lessors to make certain disclosures to lessees before entering into lease agreements.

Recent Congressional Hearings

Digital Assets and the Future of Finance: Understanding the Challenges and Benefits of Financial Innovation in the United States. On **December 8**, the U.S. House Committee on Financial Services held a hearing titled “Digital Assets and the Future of Finance: Understanding the Challenges and Benefits of Financial Innovation in the United States.” The witness list, opening statements, and a recording of the hearing are available [here](#).

Upcoming Comment Deadlines and Events

CFPB Solicits Input on Proposed Changes to ECOA Rules Under the Dodd-Frank Act. Comments are due **January 6, 2022** on a Proposed Rule to amend Regulation B of the Equal Credit Opportunity Act (ECOA) made pursuant to Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Specifically, the agency is proposing to require financial institutions covered by Section 1071 to collect and report to the CFPB certain data on applications for credit by small businesses. The CFPB’s Proposed Rule also addresses privacy interests; shielding demographic data from underwriters and other individuals; recordkeeping requirements; and enforcement provisions. The agency also seeks comment on effective and compliance dates.

FTC Seeks Comment on Proposal to Further Amend Safeguards Rule to Strengthen Information Security Protections for Financial Institutions. Comments are due **February 7, 2022** on a proposal in a supplemental notice of proposed rulemaking to add reporting of certain security incidents to the FTC by covered companies within 30 days of discovery. Specifically, the proposal would require financial institutions to report security events to the FTC where a determination has been made that consumer information has been misused, or is reasonably likely to be misused, in an event affecting at least 1,000 consumers.

FTC Revisions to Safeguards Rule Take Effect on January 10, 2022. The FTC’s revisions to the Safeguards Rule were published in the Federal Register on December 9. The Safeguards Rule requires financial institutions subject to the Gramm-Leach-Bliley Act (GLBA) to implement information security programs to protect consumer financial information. Covered companies include many online financial technology (fintech) companies, mortgage lenders, and companies otherwise involved in credit transactions, among others. Accordingly, by **January 10, 2022** and as we discussed in greater detail [here](#), the revised rule will require financial institutions

to, among other things, implement periodic risk assessments and modify their information security programs based in part on those risk assessments. More detailed requirements will go into effect on **December 9, 2022**.

More Analysis from Wiley

Privacy in Focus: White House Seeks to Develop AI Bill of Rights and Calls for Feedback on Use of Biometric Data

Privacy in Focus: CISA Publishes Cybersecurity Incident Response and Vulnerability Response Playbooks with Intent of Increasing Expectations for the Private Sector

California Set to Begin Potentially Far-Reaching Rulemaking on Privacy

American Bar Association Webinar: Crypto at a Crossroads: Crypto and Privacy

FTC Releases Detailed Information Security Requirements and Proposes Breach Notification for Financial Institutions

Duane Pozza Discusses FTC's Updated Safeguards Rule

Privacy in Focus: Data Transfers from the EU – Further Guidance Issued

FTC Broadly Issues Notices on Endorsements and Testimonials to National Advertisers, Signaling a New Enforcement Approach

Duane Pozza Discusses Emerging Regulatory Approach to Crypto and DeFi

Privacy in Focus: Latest Changes at FTC Will Drive Federal Action on Privacy, Data Security, and AI

Privacy in Focus: FTC Policy Statement Signals Increasing Scrutiny on the Protection of Sensitive Personal Health Information

Privacy in Focus: AI Risk Management Framework Is Among Emerging Federal Initiatives on AI

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Preview Disclaimer: Information is current as of December 13, 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.