

# Wiley Consumer Protection Download (December 7, 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.

**Please join us on Tuesday, December 8, 2020, for a webinar on Federal Consumer Protection Priorities in 2021: Reading the Tea Leaves. More information and RSVP can be found [here](#).**

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## Regulatory Announcements

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## Practice Areas

Cyber and Privacy Investigations, Incidents & Enforcement  
FTC and Consumer Protection

**CFPB Issues NAL to Facilitate the Use of AI for Loan Pricing and Underwriting.** On **November 30**, the Consumer Financial Protection Bureau (CFPB) issued a No Action Letter (NAL) to Upstart Network, Inc. (Upstart), pertaining to its artificial intelligence (AI) model for underwriting and pricing loan applicants for unsecured, closed-end loans. For the duration the letter is in effect, the agency will not make supervisory findings or bring a supervisory or enforcement action against the company under the Equal Credit Opportunity Act and Regulation B, or its unfair, deceptive, or abusive acts or practices authority (UDAAP), concerning any alleged discrimination arising from the company's use of the model as described in its application. NALs can provide enhanced regulatory certainty to entities that the CFPB will not bring a supervisory or enforcement action against them under certain facts and circumstances.

**CFPB Finalizes Advisory Opinions Policy, Announces Two New Advisory Opinions.** On **November 30**, the CFPB issued its final Advisory Opinions Policy (Policy) which allows entities seeking to comply with agency regulatory requirements to submit requests to the CFPB. The CFPB reviews submissions received, prioritizes requests for responses, and issues opinions with a description of the incoming request. Additionally, the CFPB may issue opinions on its own initiative. The CFPB also issued two advisory opinions on November 30. The first pertained to earned wage access products, which have recently emerged in the marketplace as a way for employees to meet short-term liquidity needs between paychecks. The second related to whether certain education loan products that refinance preexisting consumer educational loan debt meet the definition of "private education loan" under the Truth in Lending Act and Regulation Z.

**CFPB Ombudsman's Office Releases Annual Report.** On **December 3**, the CFPB Ombudsman's Office released its annual Report for 2020. The Report describes the CFPB Ombudsman's Office's engagement with consumers and industry stakeholders during the COVID-19 pandemic. Additionally, it shares information regarding individual inquiries received by the Ombudsman's Office, coupled with associated analysis and data. The 2020 Report also discusses common misconceptions that the CFPB's Ombudsman's Office hears about the CFPB's consumer complaint process, and includes discussions of (1) the CFPB's work on "[c]larifications around the CFPB's announcement and processes for small business lending discrimination complaints" and (2) "[i]nformation the CFPB provides during and at the conclusion of examinations."

**Director Kraninger Issues Remarks at Academic Research Council Meeting.** On **November 23**, Director Kathy Kraninger delivered remarks before the CFPB's Academic Research Council, which provides the CFPB with advice about what types of research the agency should conduct related to consumer financial products or services. Director Kraninger's speech focused on small business lending data and research, credit reporting accuracy, and alternative credit data use.

## Significant Enforcement Actions

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**CFPB Sues Online Lender for Violating the MLA.** On **December 4**, the CFPB filed a complaint against LendUp Loans, LLC (LendUp) in the U.S. District Court for the Northern District of California. LendUp is an online lender offering single-payment and installment loans for consumers. The CFPB's complaint alleges that LendUp violated the Military Lending Act (MLA) in making over 4,000 single-payment or installment loans to over 1,200 covered borrowers. Specifically, the CFPB alleges that LendUp violated the MLA by exceeding the

36% annual percentage rate and failed to make required legal disclosures. The CFPB is seeking damages, disgorgement, and civil penalties.

**FTC Settles with VoIP Provider Over Telemarketing Calls.** On December 3, the Federal Trade Commission (FTC) announced a settlement with Voice over Internet Protocol (VoIP) provider Alcazar Networks Inc. (Alcazar) for allegedly facilitating tens of millions of illegal telemarketing calls, including some from overseas and some that included spoofed ID numbers. Specifically, the FTC's complaint, which was filed in the U.S. District Court for the Middle District of Florida, alleged that Alcazar facilitated illegal robocalls in violation of the FTC's Telemarketing Sales Rule. Moreover, the FTC claimed that Alcazar continued to do so after learning that the robocallers were contacting numbers on the FTC's Do Not Call Registry. Additionally, the FTC alleged that Alcazar provided VoIP services to a company which fraudulently displayed "911" in the caller ID field and dialed calls impersonating the Social Security Administration. The settlement requires Alcazar to pay a \$105,562 monetary judgement and to develop customer screening procedures.

**CFPB Files Lawsuit Against Debt Settlement Company.** On December 1, the CFPB filed a complaint in the U.S. District Court for the District of Massachusetts against DMB Financial, LLC (DMB), which is a business that offers to renegotiate, settle, or alter the terms of unsecured debts owed by consumers. The CFPB alleges that DMB engaged in deceptive acts or practices in violation of the Telemarketing Sales Rule (TSR) and the Consumer Financial Protection Act of 2010 (CFPA) after it claimed that it successfully negotiated settlements of over \$1 billion in consumer debt for more than 30,000 consumers. The CFPB's complaint seeks an injunction, along with an imposition of civil monetary penalties.

**FTC Stops Alleged "Debt Parking" Practices.** On November 30, the FTC announced a settlement with Midwest Recovery Systems (Midwest Recovery), a debt collection company, that prohibits it from allegedly engaging in "debt parking," which the agency describes as occurring when an actor places either bogus or highly questionable debts onto consumer credit reports to persuade them to pay outstanding debts. The FTC originally filed a complaint against Midwest Recovery in November in the U.S. District Court for the Eastern District of Missouri, which alleged that the company had collected more than \$24 million from consumers through debt parking. The complaint alleges that this action violates the Federal Trade Commission Act, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act (FCRA), and the FCRA's Furnisher Rule. The settlement also requires Midwest Recovery to contact credit reporting agencies to request that all debts reported be deleted from consumers' credit reports. Finally, the settlement also includes a monetary judgement of \$24.3 million.

## Upcoming Comment Deadlines and Events

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**FTC Seeks Comment on Prescreen Opt-Out Notice Rule.** Comments are due December 7 on the FTC's review of the Prescreen Opt-Out Notice Rule as part of the agency's systematic review of its current guidelines and regulations. The Prescreen Opt-Out Notice Rule requires that persons using consumer reports to make unsolicited firm offers of credit or insurance must provide a conspicuous statement with any written offer that informs the consumer that information from their report was used in connection with the transaction. The person using the report must also notify the consumer that they have the right to prohibit consumer reporting

information from being used in any transaction, and that they may opt-out via notification. The FTC is proposing to limit the Prescreen Opt-Out Notice Rule to motor vehicle dealers in accordance with the Dodd-Frank Act.

**FTC Requests Input on the Affiliate Marketing Rule.** Comments are due **December 7** on the FTC's review of the Affiliate Marketing Rule as a part of the agency's review of all rules and guides. Additionally, the FTC is proposing to amend the Affiliate Marketing Rule to correlate with changes made to FCRA by the Dodd-Frank Act. The Affiliate Marketing Rule of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) gives consumers the right to restrict a person from using consumer information obtained by an affiliate to make solicitations to the customer. Specifically, if a person or entity receives consumer eligibility information from a business affiliate, the person or entity may not utilize that information to make solicitations unless the consumer is given an opt-out right to the use of such information. The FTC is proposing to amend the Affiliate Marketing Rule to limit its regulatory scope to motor vehicle dealers in accordance with the Dodd-Frank Act.

**FTC Requests Comment on Furnishers Rule.** Comments are due **December 14** on a Proposed Rule related to the FTC's Duties of Furnishers of Information to Consumer Reporting Agencies Rule (Furnisher Rule) as part of its review of all agency regulations and guides. The FTC is proposing to amend the Furnisher Rule to correlate it with changes made to FCRA by the Dodd-Frank Act. The Furnisher Rule requires that furnishers of consumer reports develop reasonable written policies and procedures pertaining to the accuracy of the information relating to consumers that they provide to a consumer reporting agency. The FTC's Proposed Rule would narrow the scope of the Furnisher Rule to entities set forth in the Dodd-Frank Act that are engaged in the sale and servicing of motor vehicles.

**FTC Solicits Input on Risk-Based Pricing Rule.** Comments are due **December 22** on the FTC's Notice of Proposed Rulemaking (NPRM) regarding the Duties of Creditors Regarding Risk-Based Pricing Rule (Risk-Based Pricing Rule) as part of its review of all agency regulations and guides. Risk-based pricing is the practice of modifying the price and other terms of credit offered or extended to a particular consumer to demonstrate the consumer's nonpayment risk. The Risk-Based Pricing Rule, which represents a provision of FCRA, requires that a person provide a risk-based pricing notice to a consumer when a person uses a consumer report to extend credit and does so on terms that are materially less favorable than the most favorable terms available to a substantial portion of borrowers. Additionally, the FTC is proposing to amend the Risk-Based Pricing rule to correlate it to changes made to the FCRA by the Dodd-Frank Act.

**Agencies Seek Comment on the Role of Supervisory Guidance.** Comments are due **January 4** on an NPRM issued by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the CFPB (collectively, the Agencies) that would codify the 2018 Interagency Statement Clarifying the Role of Supervisory Guidance (the 2018 Statement). In codifying the 2018 Statement, the NPRM would confirm that the Agencies intend to respect the limits of administrative law in carrying out supervisory responsibilities. Accordingly, supervisory guidance does not create binding legal obligations for the public.

## More Analysis from Wiley

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Wiley Wins Three Law360 'Practice Group of the Year' Awards for 2020

Wiley Receives Diversity & Flexibility Alliance 'Tipping the Scales' Recognition

CFPB Publishes Final Rule on Debt Collection Practices

Webinar: Federal Consumer Protection Priorities in 2021: Reading the Tea Leaves

New Guidance on AI Regulations as Federal Agencies Plan Transition to a New Administration

*Privacy in Focus:* Safeguarding Health Information in the Apps Ecosystem: A Reminder from the California AG

*Privacy in Focus:* California Votes 'Yes' on the California Privacy Rights and Enforcement Act of 2020

*Privacy in Focus:* Massachusetts Ballot Initiative Raises Privacy and Data Security Concerns for Connected Devices

Third Circuit Sharply Limits FTC Authority to Obtain Monetary Relief as Supreme Court Prepares to Weigh In

California AG Proposes Additional Changes to CCPA Regulations; Seeks Comment

Robocall Update: New Call Authentication Order and Obligations, Explained

DHS and Cyber: What Should Companies Expect?

National Security Interest in Tech Continues: ODNI Seeks Info

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