

Wiley Consumer Protection Download (February 1, 2021)

February 1, 2021

*Published February 1, 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 Acting Director Discusses the Agency's Priorities. On **January 28**, Consumer Financial Protection Bureau (CFPB) Acting Director Dave Uejio, in a blog post, [discussed the agency's regulatory priorities](#). President Biden appointed Uejio as Acting Director on January 21 (Director Kraninger stepped down at the request of

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President Biden on January 20). In the blog post, Acting Director Uejio noted that his priorities for the agency are (1) economic relief for consumers facing economic hardships related to the COVID-19 pandemic and (2) racial equity. Acting Director Uejio noted that the CFPB can “immediately” focus “supervision and enforcement tools on overseeing the companies responsible for COVID relief,” and that he directed the agency’s Supervision, Enforcement, & Fair Lending Division to “expedite” COVID-19-related enforcement actions. As we noted in the January 19 Newsletter, President Biden has nominated FTC Commissioner Rohit Chopra as the next Director of the CFPB. Acting Director Uejio is expected to lead the CFPB until the Senate confirms Chopra.

President Biden Designates FTC Commissioner Rebecca Kelly Slaughter as Acting Chairwoman. On **January 21**, President Joe Biden named Federal Trade Commission (FTC) Commissioner Rebecca Kelly Slaughter as the Acting Chairwoman of the agency. She has served as an FTC Commissioner since May 2018, and before joining the agency, served as Chief Counsel to U.S. Senator Chuck Schumer (D-NY). In an FTC press release, Acting Chairwoman Slaughter stated that she is “deeply honored and grateful to lead an agency that is critical to helping the U.S. economy get back on its feet and function more fairly for all Americans.” She also announced interim leadership appointments, including: Reilly Dolan, Acting General Counsel; Daniel Kaufman, Acting Director of the Bureau of Consumer Protection; Maribeth Petrizzi, Acting Director of the Bureau of Competition; Michael G. Vita, Acting Director of the Bureau of Economics; and Sarah Mackey, Acting Director of the Office of Policy & Planning. Former FTC Chairman Joseph Simons departed the FTC on January 29, leaving the agency with four Commissioners for the time being.

CFPB Issues Final Rule to Implement the Economic Growth, Regulatory Relief, and Consumer Protection Act. On **January 19**, the CFPB issued a Final Rule implementing the Economic Growth, Regulatory Relief, and Consumer Protection (EGRRCPA). The Final Rule exempts some depository institutions and credit unions from the requirement that they establish escrow accounts for certain high-priced mortgage loans (HPMLs). Specifically, the rule exempts loans secured by a first lien on the principal dwelling of a borrower from the HPML escrow requirement if (1) the lending institution has assets of \$10 billion or less; (2) the institution and its affiliates originated 1,000 or fewer loans secured by a first lien on a principal dwelling during the preceding year; and (3) certain HPML escrow exemption criteria are met. The Final Rule will take effect upon publication in the Federal Register.

CFPB Publishes Final Rule on the Role of Supervisory Guidance. On **January 19**, the CFPB issued a Final Rule pertaining to the agency’s use of supervisory guidance for its supervised institutions. Supervisory guidance does not have the force or effect of law, and the CFPB does not take enforcement actions based on such guidance. Rather, supervisory guidance outlines regulatory expectations and priorities. The rule codifies the statement that the CFPB and its federal financial regulatory partners issued in September 2018, which clarified the distinctions between regulations and guidance.

FTC Publishes FY 2020 Performance Report. On **January 19**, the FTC published its FY 2020 Performance Report as mandated under the Government Performance and Results Modernization Act of 2010. The Performance Report, which was submitted to Congress, details the progress made by the agency in achieving the mission and goals established during the FY 2020-2021 Performance Plan. The FTC will submit its FY 2021-2022 Performance Plan and FY 2022 budget request to Congress later this year.

Significant Enforcement Actions

FTC Sues Companies Charging Consumers Thousands of Dollars to Open Credit Cards. On **January 29**, the FTC filed a complaint in the U.S. District Court for the District of Nevada against Seed Consulting, LLC (Seed) and Credit Navigator, LLC (Credit Navigator). The FTC's complaint alleges that Seed and Credit Navigator charged consumers between \$3,000 to \$4,000 to apply for credit cards in their names to pay for business and real estate investor training programs. Moreover, Seed allegedly inflated consumers' annual incomes on credit card applications by approximately \$100,000. The FTC's complaint alleges that Seed and Credit Navigator violated the FTC Act, the Telemarketing Sales Rule, the Credit Repair Organizations Act, and the Consumer Review Fairness Act (CRFA). The FTC alleges that Seed and Credit Navigator violated CRFA by offering unlawful form contracts that the consumers did not have the opportunity to negotiate or review. The FTC's proposed settlement would require the defendants to pay \$2.1 million, which would be distributed to victims of the scheme. Andrew Smith, the FTC's Bureau of Consumer Protection Director, highlighted this enforcement action in a blog post, noting that the FTC's enforcement action against Seed "is one of many cases" that the FTC has brought "alleging that a company can be liable for assisting and facilitating or otherwise participating with other companies in misconduct."

FTC Brings First Enforcement Actions Under the BOTS Act. On **January 22**, the FTC announced a suit against Cartisim Corp. (Cartisim), Just In Time Tickets (Just In Time), and Concert Specials, Inc. (Concert Specials) for violations of the Better Online Ticket Sales (BOTS Act). The BOTS Act, which was enacted in 2016, permits the FTC to take enforcement actions against individuals and companies that use bots or other means to evade limits on online ticket purchases. The FTC alleges that Cartisim, Just In Time, and Concert Specials violated the BOTS Act in a number of ways by purchasing more than 150,000 tickets for popular events. Specifically, the parties allegedly used automated ticket-buying software to reserve tickets automatically; used software to conceal their IP addresses; and used hundreds of fake Ticketmaster accounts and credit cards to circumvent posted event ticket limits. The proposed orders include the following civil penalties: \$16 million against Concert Specials; \$11.2 million against Just In Time; and \$4.4 million against Cartisim. This is the FTC's first-ever enforcement action taken under its BOTS Act authority.

Federal District Court Finalizes Monetary Judgements Against "Sanctuary Belize" Ringleaders. On **January 21**, the U.S. District Court for the District of Maryland issued an order finalizing its September 2020 Memorandum Opinion requiring Andris Pukke, Peter Baker, and Luke Chadwick to pay monetary judgments to the FTC in connection with the allegedly deceptive sale of properties in Belize to U.S. consumers. As we discussed in our January 4, 2021 Newsletter, Pukke, Baker, and Chadwick allegedly deceived consumers through the marketing of the "Sanctuary Belize" real estate development in southern Belize. The monetary judgment requires Pukke and Baker to pay \$120.2 million to the FTC and obligates Chadwick to pay \$91.9 million. The agency plans to use the money to provide reimbursements to defrauded consumers.

CFPB Settles with Online Lender over Military Lending Act Violations. On **January 19**, the CFPB announced a proposed settlement with LendUp Loans, LLC (LendUp) over alleged violations of the Military Lending Act (MLA). The MLA implements safeguards for consumer credit to active-duty servicemembers and their dependents, who are defined as "covered borrowers." The protections for covered borrowers under the MLA

include a maximum allowable percentage rate of 36% and a prohibition on obligatory arbitration to resolve disputes. The CFPB's December 2020 complaint alleged that since October 2016, LendUp made over 4,000 loans to over 1,200 borrowers that violated the MLA. Moreover, the CFPB also alleges that LendUp violated the MLA by failing to disclose the maximum allowable percentage rate and requiring covered lenders to submit to arbitration. If the proposed settlement is entered by the U.S. District Court for the Northern District of California, LendUp will be required to pay a \$950,000 civil money penalty.

Upcoming Comment Deadlines and Events

FTC Launches Identity Theft Awareness Week. In a January 28 press release, the FTC announced **February 1-5** as Identity Theft Awareness Week. The agency will host a series of events to illustrate the steps that consumers can take to reduce the risk of identity theft and recover if such theft occurs. The scheduled events will include a webinar today, **February 1**, with the Identity Theft Resource Center and FTC experts discussing identity theft; and a Facebook Live discussion on **February 4** hosted by the AARP Fraud Watch Network, focused on coronavirus-related identity theft. A full list of events is available [here](#).

CFPB Seeks Comment on Consumer Access to Financial Records ANPR. Comments are due **February 4** on the CFPB's Advance Notice of Proposed Rulemaking (ANPR), which seeks comment on the implementation of Section 1033 of the Dodd-Frank Act. Section 1033 of the Dodd-Frank Act requires consumer financial services providers to make information in the possession of the provider available to consumers when the information concerns the financial product or service that the consumer obtained from the provider. The ANPR seeks comment on the proposed regulations to implement Section 1033 of the Dodd-Frank Act.

FTC Seeks Research Presentations for PrivacyCon 2021. The FTC issued a call for research presentations on a wide array of privacy and security issues as part of its sixth PrivacyCon, which will be held on **July 27, 2021**. The FTC is seeking research on issues such as the evolution of privacy and security risks; privacy and security issues related to working from home; the costs and benefits of privacy and security; the effectiveness of consumer privacy and security disclosures; algorithmic bias and fairness in algorithms; and privacy-enhancing technologies for consumers. Research presentations are due **April 9, 2021** and more information about submitting presentations can be found [here](#).

More Analysis from Wiley

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

Wiley Among First Organizations to Join FCBA's New Diversity Pipeline Program

Duane Pozza Weighs In on Whether FTC Priorities Will Change Under Biden Administration

Five Issues a Biden-Era FTC is Likely to Prioritize

Facial Recognition Tech and Biometrics Under Scrutiny at FTC

Supreme Court Argument Analysis: AMG Capital Management v. FTC

Key Cyber Takeaways from the Senate Hearing on Biden's Nominee for DHS Secretary

Key Tech Takeaways from Hearing on Biden's Nominee for Commerce Secretary

Privacy in Focus: Federal AI Efforts Will Be Greatly Boosted by 2021 NDAA

Privacy in Focus: 2021 Preview: How the Private Sector Will be Impacted by IoT Cybersecurity Work at NIST

Privacy in Focus: The EU Proposes New Regulations Targeting Big Tech

FTC 6(b) Orders Start a Broad Investigation of Privacy Practices and Technology Use by Nine Tech Companies

TCPA Update: FCC Imposes New Call Limits and Opt-Out Requirements

DHS Advisory Committee Issues Report on Biometrics

More Modifications to the CCPA Regulations Proposed as California Readies to Launch New CPRA Rulemaking Activity

FCC Clarifies That Government Contractors Must Obtain Prior Express Consent Under the TCPA

New IoT Cybersecurity Drafts From NIST Will Impact the Ecosystem

A Final Trump EO Would Regulate Cloud, Software and Remote Computing Services

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