

Wiley Consumer Protection Download (January 19, 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.

To listen to our recent webinar Federal Consumer Protection Priorities in 2021: Reading the Tea Leaves on demand, please click [here](#).

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Practice Areas

Cyber and Privacy Investigations, Incidents
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Regulatory Announcements

FTC Chairman Simons Announces His Resignation and the Departure of FTC Senior Staff. On January 19, Federal Trade Commission (FTC) Chairman Joseph J. Simons announced his resignation from the FTC, effective January 29, 2021. His resignation, which is consistent with the process followed during the previous change in Administrations, will give President-Elect Joe Biden an opportunity to nominate a replacement that would shift the balance of the agency. President-Elect Biden also will be able to designate a new Chair after the Inauguration. Before being sworn in as FTC Chairman in May 2018, Simons served as the Director of the FTC's Bureau of Competition between 2001 and 2003. Chairman Simons also announced the departure of other senior staff from the FTC, including Bureau of Consumer Protection Director Andrew Smith, Bureau of Competition Director Ian Conner, and Bureau of Economics Director Andrew Sweeting, among others appointed by the Chairman. Our recent analysis of likely priorities of a Biden-era FTC is [here](#).

President-Elect Biden Selects FTC Commissioner Rohit Chopra as Nominee for CFPB Director. On January 18, President-Elect Joe Biden announced that he will nominate FTC Commissioner Rohit Chopra as Consumer Financial Protection Bureau (CFPB) Director. Commissioner Chopra previously served as an Assistant Director of the CFPB, as well as the CFPB's Student Loan Ombudsman. He was confirmed as an FTC Commissioner in April 2018 and continues to serve in that role. The Biden transition press release touts his work, among other matters, to "increase scrutiny of dominant technology firms that pose risks to privacy, national security, and fair competition," and to "secure hundreds of millions of dollars in refunds for borrowers victimized by unlawful conduct by loan servicers, debt collectors, and for-profit college chains."

CFPB Signs MOU With NCUA. On January 14, the CFPB announced a Memorandum of Understanding (MOU) with the National Credit Union Administration (NCUA) to improve interagency coordination pertaining to the supervision of credit unions with over \$10 billion in assets. CFPB Director Kathy Kraninger issued a statement noting that the MOU "is an important step towards improving our existing framework and increasing opportunities for collaboration between our agencies." The MOU will allow the agencies to share supervisory information related to covered credit unions.

Supreme Court Hears Oral Arguments in *AMG Capital Management v. FTC*. On January 13, the Supreme Court heard oral arguments in *AMG Capital Management v. FTC*. In the case, the Supreme Court will decide whether the FTC can obtain monetary relief when suing in federal court under Section 13(b) of the FTC Act. Section 13(b) permits the FTC to seek and federal courts to grant permanent injunctions against acts or practices that violate the FTC Act. AMG Capital Management argues that the FTC cannot seek monetary relief under the text of Section 13(b), while the FTC argues that courts have historically held that this provision authorizes equitable monetary relief. As we discussed in July, the Supreme Court granted certiorari to consider the question, and the ultimate decision may significantly affect the FTC's enforcement authority. Our detailed analysis of the oral argument is [here](#).

CFPB Taskforce on Federal Consumer Financial Law Releases Report on Consumer Protection in the Financial Marketplace. On January 5, the CFPB's Taskforce on Federal Consumer Financial Law (Taskforce) released a report with suggestions on how to improve consumer protection in the financial marketplace (the

Report) (Volume I of the Report is available [here](#) and Volume II is available [here](#)). The Taskforce's Report cites five principles that provide the foundation for recommending systematic changes to the current legal and regulatory framework: (1) consumer protection; (2) information and education; (3) competition and innovation; (4) regulatory modernization and flexibility; and (5) inclusion and access. The Report makes 100 recommendations to the CFPB, Congress, and state and federal regulators.

COVID-19 Consumer Protection Act Signed Into Law. On **January 1**, President Donald Trump signed the COVID-19 Consumer Protection Act, which was packaged as part of the Consolidated Appropriations Act of 2021. The COVID-19 Consumer Protection Act (Act) allows the FTC to obtain civil penalties for coronavirus-related scams – in particular, deceptive statements related to the treatment, cure, prevention, mitigation, or diagnosis of COVID-19, and any government benefits associated with COVID-19. The Act provides the FTC with civil penalty enforcement capabilities for the duration of the COVID-19 public health emergency.

Significant Enforcement Actions

CFPB Files Suit Against Residential Mortgage Originator for Various Unlawful Mortgage Lending Practices. On **January 15**, the CFPB filed a complaint against 1st Alliance Lending, LLC (1st Alliance) in the U.S. District Court for the District of Connecticut. 1st Alliance was a mortgage originator from 2004 through September 2019. The CFPB's complaint alleges that 1st Alliance engaged in a number of unlawful mortgage lending practices in violation of the Truth in Lending Act, the Fair Credit Reporting Act, the Equal Credit Opportunity Act, the Mortgage Acts and Practices—Advertising Rule, and the Consumer Financial Protection Act of 2012. The CFPB's complaint seeks an injunction and damages, among other relief.

Woman's Fertility-Tracking Application Settles Allegations That It Misled Consumers Regarding Health Data Disclosure. On **January 13**, the FTC announced a proposed settlement with Flo Health, Inc. (Flo Health), the developer of a period and fertility-tracking application used by more than 100 million customers. Specifically, the FTC's complaint alleged that Flo Health promised to keep users' health data private and to only use it to provide application services to users. Flo Health, however, allegedly disclosed that health data to third parties providing marketing and analytics services to the application. As part of the proposed settlement, Flo Health must notify its affected users about the disclosure of their personal information and instruct any third party that received their information to delete it.

FTC Settles With Photo Application Developer Over Allegations That It Deceived Consumers Regarding Facial Recognition Technology. On **January 11**, the FTC announced a proposed settlement with Everalbum, Inc. (Everalbum) following allegations that the company deceived consumers about its use of facial recognition technology and its retention of photos and videos via its photo and video application "Ever." Specifically, the FTC's complaint alleges that Everalbum deceived consumers in relation to a feature in the "Ever" application in 2017 that used facial recognition technology to group users' photos by the faces of the people who appear in them. The FTC's proposed settlement with Everalbum requires the company to, among other things, delete models and algorithms that it developed by utilizing the photos and videos uploaded by its users. Our additional analysis of the settlement and the FTC's approach to facial recognition technology is [here](#).

FTC Proposes Settlement With Mobile Advertising Company Over In-Game Rewards. On **January 7**, the FTC announced a proposed settlement with Tapjoy, Inc. (Tapjoy) over allegations that it failed to provide in-game rewards to users. Tapjoy operates an advertising program that works with mobile gaming companies by promising in-game currency to users that complete advertising activities, such as signing up for free-trial offers. Specifically, the FTC complaint alleged that Tapjoy, which earns commissions from third-party advertisers, deceived consumers by failing to provide the in-game rewards that it promised in return for completing instructions associated with advertisements. The proposed settlement requires Tapjoy to, among other things, monitor its advertisers to guarantee that they are following through on their promised rewards.

Upcoming Comment Deadlines and Events

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

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

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

CFPB Publishes Final Rule on Debt Collection Practices

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

DHS Advisory Committee Issues Report on Biometrics

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

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

Robocall Update: New Call Authentication Order and Obligations, Explained

New IoT Cybersecurity Drafts From NIST Will Impact the Ecosystem

DHS and Cyber: What Should Companies Expect?

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