

Wiley Consumer Protection Download (January 4, 2021)

January 4, 2021

*Published January 4, 2021

Regulatory Announcements

Significant 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 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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Authors

Duane C. Pozza
Partner
202.719.4533
dpozza@wiley.law
Stephen J. Conley
Associate
202.719.4572
sconley@wiley.law

Practice Areas

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

Regulatory Announcements

FTC Data Shows That Gift Cards Remain Scammers' Preferred Payment Method. On December 21, the Federal Trade Commission (FTC) released a new data analysis showing that gift cards remain, since 2018, the most common form of payment when consumers report financial loss to scams. The most common scams involving gift cards as a payment method include government imposters, family imposters, business imposters, and fraudulent tech support schemes. Scammers in these schemes convince consumers that they must pay using gift cards. The FTC is beginning a new campaign to partner with retailers around the country to prevent consumers from being victimized. Information and tips for consumers can be found [here](#).

CFPB Issues Advisory Opinion Regarding ECOA's Application to Special Purpose Credit Programs. On December 22, the Consumer Financial Protection Bureau (CFPB) issued an Advisory Opinion to resolve regulatory uncertainty regarding Regulation B, which implements the Equal Credit Opportunity Act (ECOA), regarding special purpose credit programs (SPCPs). ECOA and Regulation B prohibit discrimination on certain bases in any aspect of a transaction, but specify that it is not discrimination for for-profit organizations to provide SPCPs to meet certain social needs. The CFPB's Advisory Opinion seeks to clarify the content that an organization must include in a written plan that administers a SPCP compliant with ECOA and Regulation B, and the type of research and data that may be appropriate to inform a determination that a SPCP is needed to benefit a certain class of persons.

CFPB Issues Compliance Assistance Sandbox Approval Orders to Two Entities. On December 30, the CFPB issued Compliance Assistance Sandbox (CAS) Approval Orders to Synchrony and PayActiv. CAS approval orders issued by the CFPB offer entities facing regulatory uncertainty a "safe harbor" from liability under certain specified legal provisions, subject to good faith compliance with the terms of the order. Synchrony obtained its CAS Approval Order for its plan to offer a "dual-feature credit card," which provides for secured use upon issuance, but permits customers meeting certain eligibility thresholds over time to obtain unsecured features. Synchrony's card is designed for consumers with limited or damaged credit histories as a method to establish a favorable credit history. The Order provides the company a safe harbor from liability under the Truth in Lending Act (TILA) and Regulation Z, to the extent its conduct conforms with the Order. PayActiv's CAS Approval Order, meanwhile, is related to some aspects of its earned wage access (EWA) products. These EWA products allow employees to access their earned but unpaid wages before payday. The Order confirms that the Payactiv EWA Program, under the circumstances described in its application, does not involve the offering or extension of "credit" as defined by Regulation Z.

Significant Enforcement Actions

CFPB Settles with Remittance Transfer Provider Over Violations of Remittance Transfer Rule. On December 21, the CFPB announced that it was settling with Envios de Valores La Nacional (La Nacional) over purported violations of the Electronic Fund Transfer Act (EFTA) and the Remittance Transfer Rule. The Remittance Transfer Rule, which implements the EFTA, requires providers to honor money transfer cancellation requests and to refund fees and taxes when funds are not available on time. The CFPB concluded that La Nacional violated

the Remittance Transfer Rule thousands of times since 2013. The CFPB's Consent Order requires La Nacional to adopt a compliance plan to ensure that its remittance transfer actions comply with applicable federal consumer financial laws.

CFPB Settles with Santander Over Alleged Auto Loan Credit Reporting Violations. On December 22, the CFPB issued a Consent Order against Santander Consumer USA Inc. (Santander) after the agency concluded that it violated the Fair Credit Reporting Act (FCRA). Specifically, the CFPB found that Santander provided erroneous consumer loan data to consumer reporting agencies (CRAs) in connection with nonprime auto leases and loans. The CFPB alleges that the information that Santander furnished to CRAs between 2016 and 2019 contained systemic errors that could have negatively impacted consumer credit scores in many instances. The CFPB's Consent Order requires that Santander take a number of steps to prevent future violations and imposes a \$4,750,000 civil penalty.

FTC Settles with Superglue Manufacturer for Making Misleading "Made in USA" Claims. On December 22, the FTC settled with Chemence, Inc. (Chemence) over charges that the company supplied pre-labeled and pre-packaged glues with deceptive "Made in USA" labels. The FTC's complaint alleges that Chemence also violated a 2016 settlement order with the agency. The Proposed Settlement requires Chemence to pay \$1.2 million to the FTC, which represents the highest monetary judgement ever for a Made in USA case.

CFPB Issues Consent Order Against Student Loan Provider and Servicer. On December 22, the CFPB released a Consent Order against Discover Bank, The Student Loan Corporation, and Discover Products, Inc. (collectively, Discover) after the agency concluded that Discover violated a prior agency consent order, the EFTA, and the Consumer Financial Protection Act of 2010 (CFPA). The agency alleged that Discover violated a 2015 order by misrepresenting the minimum loan payments consumers owed, the amount of interest consumers paid, and other material information, such as interest rates, payments, due dates, and the availability of rewards, and that it failed to provide full consumer redress under the order. Moreover, the CFPB concluded that Discover violated the EFTA and the CFPA by, among other things, withdrawing payments from more than 17,000 consumer accounts without valid authorization. The CFPB's Consent Order requires Discover to pay a \$25 million civil penalty.

Defendants Settle FTC Charges That They Participated in "Sanctuary Belize" Real Estate Scam. On December 29, the FTC announced settlements with ten individual and corporate defendants over charges that they participated in, benefitted from, or controlled the allegedly deceptive marketing of the "Sanctuary Belize" real estate development in southern Belize. Specifically, the FTC's complaint in the U.S. District Court for the District of Maryland alleges that the defendants deceived consumers regarding the amenities at the development, the amount of time that it would take for the project to be completed, and the ability to re-sell lots purchased. The defendants agreed to broad orders limiting their future business practices and requiring them to forfeit assets likely equal to more than \$500,000 in consumer redress.

CFPB Settles with Military Consumer Lender Over Violations of the CFPA, EFTA, and MLA. On December 30, the CFPB announced a settlement with Omni Financial of Nevada (Omni) for purported violations of the CFPA, EFTA, and Military Lending Act (MLA). Omni specializes in lending to consumers affiliated with the

military. The MLA provides protections for servicemembers and their dependents in connection with extensions of consumer credit, including prohibiting requirements that loans to servicemember borrowers be repaid by income allotment. The CFPB concluded that Omni repeatedly violated the MLA's prohibition on allotment requirements since October 2016. The CFPB also found that Omni violated the CFPA and EFTA by requiring consumers to authorize Omni to withdraw funds from their accounts as a condition for receiving credit. The CFPB's Consent Order requires Omni to pay a \$2.175 million civil penalty.

Upcoming Comment Deadlines and Events

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.

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](#).

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[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](#)

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