

Wiley Consumer Protection Download (July 2, 2024)

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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 select 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 groundbreaking 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 Extends Compliance Deadlines for Small Business Lending

Rule. On **June 25**, the CFPB issued an interim final rule to extend compliance deadlines for the Small Business Lending Rule. The Small Business Lending Rule was first issued on March 30, 2023 to implement Section 1071 of the Dodd-Frank Act. Specifically, the rule requires "covered financial institutions" to compile and report to the CFPB data regarding certain business credit applications. Covered financial institutions include "any partnership, company, corporation, association, trust, estate, cooperative organization, or other entity that

Authors

Duane C. Pozza
Partner
202.719.4533
dpozza@wiley.law
Kimberly S. Alli
Associate
202.719.4730
kalli@wiley.law
Stephen J. Conley
Associate
202.719.4572
sconley@wiley.law
Lauren N. Lerman
Associate
202.719.4664
llerman@wiley.law

Practice Areas

Cyber and Privacy Investigations, Incidents
& Enforcement
FTC and Consumer Protection
Privacy, Cyber & Data Governance
Telecom, Media & Technology

engages in any financial activity, and that originated at least 100 covered originations in each of the two preceding calendar years.” The rule was subsequently challenged and stayed by a federal court in Texas on July 31, 2023, pending the U.S. Supreme Court’s decision regarding the CFPB’s funding structure in *CFPB v. CFSA*, which we covered here.

The interim final rule extends the applicable compliance dates by 290 days to account for the time that elapsed between the U.S. District Court for the Southern District of Texas’ first issuance of a stay last year and the Supreme Court’s decision in *CFPB v. CFSA* last month. As such, covered lenders with the highest volume of small business loans must begin collecting data by July 18, 2025, and must submit such data by June 1, 2026. Moderate and small volume covered lenders must begin collecting data by January 16, 2026 and October 18, 2026, respectively, and must submit data by June 1, 2027. Grace periods have also been updated to reflect these extensions.

FTC Refers TikTok Complaint to DOJ. On **June 18**, the FTC issued a statement regarding its referral of a complaint against TikTok and its parent company, Byte Dance Ltd., to the U.S. Department of Justice (DOJ). The FTC began its investigation into these companies in connection with its order compliance review of Musical.ly – TikTok’s predecessor – after reaching a 2019 settlement with the company for violations of the Children’s Online Privacy Protection Act (COPPA). After its investigation, the agency alleged that TikTok and Byte Dance Ltd. were violating or about to violate COPPA and the FTC Act, and referred the complaint to the DOJ for potential further action.

FTC Issues 2023 Annual Report on Refunds to Consumers. On **June 21**, the FTC released its annual report on refunds to consumers in 2023. According to the report, the FTC obtained more than \$324 million in refunds resulting from law enforcement actions. The report contains more information on how the FTC provides refunds, including how the Commission identifies who is eligible for a refund and how the money will be divided.

Select Enforcement Actions

FTC Sues Software Developer and Two Executives for Allegedly Making Subscription Services Difficult to Cancel. On **June 17**, the FTC filed a complaint in the U.S. District Court for the Northern District of California against a software developer, and two of its executives, for alleged violations of the FTC Act and Restore Online Shoppers’ Confidence Act. The FTC alleges that the company did not fully disclose to consumers the cost or method of canceling the monthly subscription for using the software. The FTC seeks monetary and injunctive relief.

CFPB Settles with Two Reverse Mortgage Servicers for Allegedly Failing to Provide Adequate Support to Consumers. On **June 18**, the CFPB issued consent orders against a reverse mortgage servicer and its subcontractor for alleged violations of the Consumer Financial Protection Act, the Real Estate Settlement Procedures Act, and Regulation X. The CFPB alleges that the companies misled consumers by failing to provide adequate staffing to provide the support promised, and caused consumers to lose out on home sales and incorrectly receive repayment letters. The defendants have agreed to cease all reverse mortgage

activities and will pay a total of \$11 million in redress and \$5 million in civil penalties.

FTC Settles with Three Individuals for Allegedly Sending Consumers False Winnings Letters. On **June 21**, the FTC filed three stipulated orders in the U.S. District Court for the Southern District of Florida against individuals who ran international sweepstakes. The FTC's 2015 complaint against the individuals alleged that they conducted a sweepstakes operation that sent consumers letters about winning large monetary prizes and requested a \$20-\$30 check from the consumers in order to deliver the prize money, but after the consumers sent the funds, the individuals allegedly failed to send the consumers the prize money. The individuals agreed to a permanent injunction, banning them from any involvement in any sweepstakes or other form of prize promotion.

FTC Obtains Temporary Restraining Order and Asset Freeze Against Student Debt Relief Company for Alleged Violations Including the New Impersonation Rule. On **June 24**, the FTC filed a complaint and motion for temporary restraining order and asset freeze in the U.S. District Court for the Central District of California against a student debt relief company for alleged violations of the FTC Act, Telemarketing Sales Rule, Gramm-Leach-Bliley Act, and Impersonation Rule. The FTC alleges that the company misled consumers by promising debt relief that was not delivered and falsely claimed to be affiliated with the Department of Education. On June 24, the district court judge granted the FTC's motion, freezing the company's assets and temporarily halting its debt relief operations. The FTC ultimately seeks monetary and injunctive relief.

CFPB Settles with Owners of Lending Business for Allegedly Avoiding Settlement Payments. On **June 25**, the CFPB filed a stipulated final judgment in the U.S. District Court of Kansas against two lending business owners, individually and as co-trustees of a revocable trust, for alleged violations of the Consumer Financial Protection Act and the Federal Debt Collection Procedures Act. The CFPB filed a complaint against the defendants in April 2023 alleging that the owners tried to hide money from the agency by transferring their assets into revocable trusts between 2013 and 2015, and have not made any payment to satisfy the outstanding judgment from a prior case that concluded that they were jointly and severally liable for more than \$38 million in restitution and \$12.5 million in civil penalties. The defendants agreed to immediately pay \$7 million toward the outstanding monetary judgment with the remainder suspended due to an inability to pay.

CFPB Settles with a Residential Mortgage Loan Company for Allegedly False HMDA Reporting. On **June 26**, the CFPB filed a stipulated final judgment in the U.S. District Court for the Southern District of Florida against a residential mortgage loan originator and servicer for alleged violations of the Home Mortgage Disclosure Act (HMDA) and Consumer Protection Financial Act. The CFPB filed its complaint against the company in October 2023, alleging that the company misreported demographic information about loan applications and originations in its 2020 HMDA report. Previously, the CFPB settled with the company over similar allegations found in its 2019 HMDA report. The company agreed to a \$3.5 million civil penalty in addition to injunctive relief.

FTC Finalizes Order Against Software Company for Allegedly Misleading Data Privacy Practices. On **June 26**, the FTC finalized its order against a software company and its subsidiaries for alleged violations of the FTC Act. The FTC alleged that the company shared consumer browsing data with third parties without properly disclosing these practices to consumers or sufficiently anonymizing the data. The FTC also alleged that the company's advertisements about its software's privacy protections were misleading. The company agreed to a \$16.5 million monetary penalty in addition to a ban on selling and disclosing browser data and deletion of its browsing data and derivative algorithms and models.

Upcoming Comment Deadlines and Events

CFPB Issues Interpretive Rule and Request for Comment on "Buy Now, Pay Later" Products. On **May 31**, the CFPB published an interpretive rule and request for comment in the Federal Register to address the applicability of Regulation Z, which implements the Truth in Lending Act (TILA), to "Buy Now, Pay Later" (BNPL) products and services. BNPL is a short-term financing option that allows customers to purchase items and pay for them over time in installments. The CFPB's interpretive rule states that BNPL lenders are "creditors" under Regulation Z because BNPL customer digital accounts are "credit cards" under the regulation. Accordingly, the interpretive rule concludes that BNPL lenders must comply with subpart B of Regulation Z, including provisions governing credit card dispute and refund rights.

The request seeks comment on the CFPB's interpretation, and comments are due **August 1**.

CFPB Seeks Comment on Proposed Rule to Remove Medical Bills from Credit Reports. Comments are due **August 12** on a CFPB proposed rule, "Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V)," to remove medical bill debt from consideration in credit reports and credit scores. Specifically, the proposed rule would remove the Regulation V exception that broadly permits lenders to obtain and use information regarding medical debt to make credit eligibility determinations. Additionally, the proposed rule would prohibit credit reporting agencies from including medical debt on credit reports and would prohibit lenders from taking medical devices as collateral for a loan or repossessing medical devices in the event of default.

More Analysis from Wiley

Key Takeaways from Our Conversation with Oregon and Texas Regulators About Privacy Enforcement

Podcast: Navigating State Privacy Laws: A Conversation with Oregon and Texas Regulators about Privacy Enforcement

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State "Right to Repair" Patchwork Grows as Electronic Device Manufacturers Face New Compliance Deadlines

Colorado Enacts Landmark AI Legislation

Darned if You Do, Darned if You Don't: Recent Lessons from the SEC On Cyber Reporting

Action Steps To Address New Restrictions On Outbound Data

New Federal Data Broker Law Will Restrict Certain Foreign Data Sales Effective June 23

New White House Policy Previews Increased Cybersecurity Oversight and Regulation

Federal Trade Commission Issues Final Rule Banning Most Non-Competes: What You Should Know

White Paper on Telephone Consumer Protection Act Litigation Abuse

Utah Adopts New AI Disclosure Law that Goes Into Effect on May 1, 2024

State Privacy Law 2024: Major Enforcement and Compliance Activity Shows No Signs of Slowing Down

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