

Wiley Consumer Protection Download (July 6, 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

FTC Holds First Open Commission Meeting Under Chairwoman Lina Khan, Passing a Number of Measures Related to Rulemaking, Investigations, and Enforcement. On **July 1**, the FTC held a virtual open Commission meeting, its first of what is expected to be a series of monthly meetings under Chair Khan, which included a period of

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Practice Areas

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time for members of the public to address the agency. At the meeting, the agency voted to, among other things, finalize the Made in the USA Rule, which, as we covered here, codifies the ability of the agency to seek monetary penalties for Made in the USA Rule violations; modify the agency's internal procedures for conducting rulemaking regarding unfair or deceptive practices under FTC Act Section 18 (known as "Magnusson-Moss" rulemaking); and approve a series of resolutions regarding investigatory procedures by agency staff into specific conduct or industries, focusing on investigations of repeat offenders, technology companies and digital platforms, harms against workers and small businesses, and healthcare businesses such as pharmaceutical companies, pharmacy benefits managers, and hospitals. The FTC also voted to repeal its 2015 Statement of Enforcement Principles regarding "Unfair Methods of Competition" enforcement under Section 5 of the FTC Act. The vote on each proposal was 3-2.

CFPB Releases Consumer Complaint Bulletin Highlighting Difficulties During the COVID-19 Pandemic. On **July 1**, the CFPB released a consumer complaint bulletin covering several areas of concern related to consumer relief provided in response to the COVID-19 pandemic, including the eviction moratorium by the Centers for Disease Control. The bulletin highlighted consumer complaints about, among other issues, eviction debt collection practices, overdraft fees from financial institutions following Economic Impact Payment disbursements, and lengthy delays for student loan borrowers seeking to obtain information about their account status.

CFPB Cautions Landlords and Consumer Reporting Agencies to Report Rental Information Accurately. On **July 1**, the CFPB released an enforcement compliance bulletin to remind landlords, consumer reporting agencies, and others of obligations to accurately report rental and eviction information. The agency noted that it intends to closely examine whether landlords and property management companies are furnishing accurate information to consumer reporting agencies. Moreover, the CFPB stated that it will pay particularly close attention to (1) the treatment of payments made by tenants with government program disbursements; and (2) the imposition of fees or penalties prohibited by the Coronavirus Aid, Relief, and Economic Security Act.

FFIEC Issues New Guidance on Financial Institutions' Information Technology, Infrastructure, and Operations. On **June 30**, the Federal Financial Institutions Examination Council (FFIEC) issued a new guidance booklet titled "Architecture, Infrastructure, and Operations." The FFIEC booklet may have implications for financial institutions' cybersecurity compliance, as it provides financial institution examiners, such as the CFPB, with guidance to evaluate the risk profile of a company's information technology infrastructure and operations. Specifically, the booklet acknowledges the changing technological landscape and increasing need for security in architectural design, infrastructure implementation, and operation of information technology. The complete FFIEC Information Technology Examination Handbook is available [here](#).

CFPB Finalizes Amendments to Federal Mortgage Servicing Regulations. On **June 28**, the CFPB finalized amendments to the agency's mortgage servicing regulations. The CFPB's new rules establish temporary safeguards designed to ensure that borrowers have more time to explore options prior to a potential foreclosure, including through new loan options and home sales. The rules also allow servicers to offer streamlined loan modifications and require them to communicate certain loan options to borrowers. The rules

exclude small loan servicers and will take effect on August 31, 2021.

Significant Enforcement Actions

FTC Settles with Business Opportunity Company That Allegedly Promised Large Earnings. On **July 2**, the FTC announced a settlement with Digital Income System, Inc. (DIS) over allegations that the company told consumers that they could earn commissions from the sale of memberships in their work-from-home programs. For example, DIS's website stated that, "Consumers will earn between \$500 and \$12,500 per sale." DIS allegedly charged consumers between \$1,000 and \$25,000 for memberships, which gave consumers access to their own websites where they could earn commissions from the sale of memberships to other consumers. The FTC's settlement requires that DIS pay a \$3.6 million judgment, which was partially suspended due to an inability to pay.

Online Coloring Book App Settles Allegations with FTC That It Unlawfully Collected Children's Information. On **June 30**, the U.S. Department of Justice (DOJ), on behalf of the FTC, filed a complaint against Kuuhuub Inc. (Kuuhuub) for violating the Children's Online Privacy Protection Act Rule (COPPA Rule). COPPA requires that websites and applications provide notice to parents and obtain verifiable consent from parents before collecting personal information from children if a component of the website or app is directed at children under the age of 13. Kuuhuub operates the Recolor coloring book app, which allows users to digitally color on their mobile devices. Although the app is advertised as being a coloring book for adults, the DOJ, through the FTC, alleges that a portion of the coloring book was directed at children through a category titled, "Kids." Under the settlement, Kuuhuub is required to delete all the personal information it collected from children unless it obtained parental consent. The settlement also requires Kuuhuub to offer paid subscribers of the Recolor app a refund if they were under the age of 18 when they registered.

FTC Charges PPP Marketer with Falsely Promising Quick Delivery of Facemasks. On **June 30**, the FTC filed a complaint against Frank Romero (d/b/a Trend Deploy) in the U.S. District Court for the Middle District of Florida for allegedly advertising the availability and rapid delivery of N-95 facemasks, even though he allegedly had no basis to make such promises. Romero allegedly failed to notify consumers of delayed shipments, failed to offer cancellations and refunds as required by the FTC's Mail Order Rule, and failed to honor refund requests so that consumers can buy offered products elsewhere. The agency is seeking monetary relief and civil penalties.

CFPB Issues Proposed Order Against Debt Relief and Credit Repair Services Company for Allegedly Deceptive Practices. On **June 29**, the CFPB filed a proposed order against Burlington Financial Group and its owners and executives, Richard Burnham, Katherine Burnham, and Sang Yi (collectively, Burlington) for allegedly deceiving consumers into hiring the company to either lower or eliminate credit card debts. According to the joint complaint filed by the CFPB and the Attorney General for the State of Georgia, Burlington used telemarketing to solicit elderly and low income consumers with promises that the company would eliminate credit card debts and improve credit scores. The joint complaint argues that Burlington violated both the Consumer Financial Protection Act and the Telemarketing Sales Rule through deceptive marketing. If entered by the court, the proposed order would ban Burlington from doing business in Georgia

and would also require the company to pay a \$150,001 civil penalty.

FTC Finalizes Order Against Women's Fertility Tracking App That Allegedly Misled Users Regarding Health Data Disclosure. On **June 22**, the FTC finalized a settlement that requires Flo Health Inc. (Flo Health) to obtain the affirmative consent of users of the company's fertility tracking application before sharing their personal health information with third parties and to obtain an independent review of privacy practices. As we noted in our January 19 Newsletter, 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.

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