

Wiley Consumer Protection Download (June 18, 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 Issues Circular Pertaining to the Use of Waiver Provisions in Consumer Contracts. On June 4, the CFPB issued a Consumer Financial Protection Circular finding that consumer contracts for financial products or services may violate the Consumer Financial Protection Act (CFPA) if they "include terms, including waiver provisions, in their consumer contracts that are rendered unlawful or unenforceable by federal or state law." The agency's press release further states that "companies may be liable even if the unenforceable terms are borrowed from form templates or widely available contracts."

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Practice Areas

Cyber and Privacy Investigations, Incidents & Enforcement

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

CFPB Finalizes Rule for Entities Seeking to Become Recognized Industry Standard-Setting Bodies Under Section 1033 of the CFPA. On **June 5**, the CFPB finalized a rule outlining the process to become a recognized industry standard-setting body that can issue standards to assist regulated entities in complying with the agency's proposed Personal Financial Data Rights Rule. If adopted, the Personal Financial Data Rights Rule, which implements Section 1033 of the CFPA, would require consumer financial services providers to make certain information in the possession of the provider available to consumers and authorized third parties when the information concerns the financial product or service that the consumer obtained from the provider. The proposed Personal Financial Data Rights Rule would also establish privacy obligations for third parties accessing consumers' data, provide standards for third-party data access, and promote industry standards for such access. Under the proposed Personal Financial Data Rights rule, conformance with industry standards established by CFPB-recognized bodies would constitute evidence of compliance with certain substantive provisions. The June 5 rule specifies that, in order to be recognized by the CFPB, standard setters must display the following attributes: openness, transparency, balanced decision-making, consensus, and due process. The June 5 rule also establishes a five-year recognition period, after which standard setters will have to apply for re-recognition, as well as a mechanism for the agency to revoke recognition.

CFPB Proposes Rule to Remove Medical Bills from Credit Reports. On **June 11**, the CFPB issued a 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. Comments are due on **August 12**.

CFPB Director Rohit Chopra Testifies Before Congress. On **June 12**, CFPB Director Rohit Chopra testified before the Senate Committee on Banking, Housing, and Urban Affairs. In his opening statement, Director Chopra discussed the CFPB's efforts in finalizing the proposed Personal Financial Data Rights Rule. He also discussed the agency's proposed rule to prohibit the inclusion of medical bills in credit scores and credit reports under Regulation V, as well as agency efforts focused on the credit card market. On **June 13**, Director Chopra then appeared before the House Financial Services Committee. In his opening statement, he reiterated the agency's initiatives on open banking and sensitive data, and advocated that Congress pass consumer data privacy legislation and legislation to accelerate open and decentralized banking.

FTC Releases Data Regarding Impersonation Scams. On **June 14**, the FTC reported that recent government impersonation scams are targeting consumers for cash payments. According to the FTC, consumers reported losing \$76 million to these scams in 2023, a 90% increase from the previous year. The FTC, along with the Department of Justice, Federal Bureau of Investigation, U.S. Postal Inspection Service, Internal Revenue Service, Social Security Administration, Customs and Border Protection, Department of Labor, Securities and Exchange Commission, Department of Health and Human Services, Department of Veterans Affairs, AmeriCorps, and the Federal Reserve Board, among others, are collaborating in an attempt to combat these

scams through consumer education and awareness initiatives.

FTC Issues Final Amendments to Amplifier Rule. On **June 5**, the FTC issued final amendments to the Rule Relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products, or "Amplifier Rule." The Amplifier Rule was first enacted in 1974 and regulates power-output-related claims for home entertainment amplifiers. The final rule requires uniform test conditions for amplifiers if sellers make certain claims about power output, further differentiates between power output disclosures that comply with the rule's test conditions and those that do not, and formalizes the agency's prior guidance on how the rule should be applied to multichannel amplifiers. The Commission unanimously approved the final rule.

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**.

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