

Wiley Consumer Protection Download (June 4, 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

Supreme Court Upholds CFPB Funding Structure as Constitutional.

On **May 16**, the U.S. Supreme Court held that Congress may allow the CFPB to draw money from the Federal Reserve System consistent with the Constitution's Appropriations Clause. The case, *Consumer Financial Protection Bureau v. Community Financial Services Association of America, Ltd.*, was brought by a group of trade associations that argued that the CFPB's funding mechanism is unconstitutional. Specifically, the trade associations argued that the funding mechanism established by the Dodd-Frank Wall Street Reform

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and Consumer Protection Act (Dodd-Frank Act) was not a valid appropriation by Congress. In a 7-2 decision, which we cover here, the Court found that “appropriations need only identify a source of public funds and authorize the expenditure of those funds for designated purposes to satisfy the Appropriations Clause.” The Court’s decision effectively upholds the CFPB’s funding structure and solidifies the Dodd-Frank Act’s funding mechanism for its broad financial-services regulations covering student loans, personal loans, credit cards, and more.

FTC Holds May 2024 Open Commission Meeting. On **May 23**, the FTC held a virtual Open Commission Meeting. During the meeting, the Commission heard staff presentations on: (1) the Trade Regulation on Impersonation of Government and Businesses; and (2) a Request for Information for Public Comment on Corporate Consolidation Through Serial Acquisitions and Roll-Up Strategies that was jointly issued with the U.S. Department of Justice (DOJ). After these presentations, the FTC’s Division of Marketing Practices provided an overview of the winners of the FTC’s Voice Cloning Challenge.

In their presentation on the Impersonation of Government and Businesses, FTC staff noted that the agency issued a Supplemental Notice of Proposed Rulemaking (SNPRM) which proposes to expand the Final Rule to cover the impersonation of individuals, and also proposes to extend liability under the Final Rule to any person or entity that knew or had reason to know that the goods and services provided would be used to commit impersonation fraud. In their presentation regarding Roll Up Strategies, FTC staff explained the Request for Information was specifically seeking information about companies making frequent acquisitions that may have gone undetected by regulators, and how serial acquisitions have impacted competition for products, services and labor, leading to changes in prices, quality, business practices and working conditions. During this presentation, Chair Lina M. Khan noted that the FTC’s first serial acquisition claim, which was filed against U.S. Anesthesiology Partners in September 2023, recently survived a motion to dismiss.

CFPB Issues Request for Information on Mortgage Closing Costs. On **May 30**, the CFPB issued a request for information into potential fees associated with increasing mortgage closing costs. According to the CFPB, the median total loan costs for home mortgages increased by over 36% from 2021 to 2023, and higher closing costs, credit report costs, and title insurance fees negatively impacted both homebuyers and lenders. The CFPB’s public inquiry seeks information about (1) which fees are subject to competition, (2) how fees are set up and who obtains the profit, and (3) how fees are changing and how they affect consumers. Comments are due within 60 days of the request for information being published in the Federal Register.

FTC Releases Data on Impersonation Scams. On **May 24**, the FTC released a data spotlight regarding consumer reports on impersonation scams, including the companies most frequently impersonated and the impersonation scams for which consumers lost the most money based on its complaint data. The data spotlight also suggests that cryptocurrency and bank transfers were the top methods used by investment scammers, along with payment apps and gift cards, based on the FTC’s data. The FTC recently finalized its new government and business impersonation rule (which we summarized here), which gives the agency authority to file federal court cases seeking redress for injured consumers and civil penalties against rule violators.

FTC Provides 2023 Annual Report to CFPB Regarding Enforcement Activities Under TILA, CLA, and EFTA.

On **May 20**, the FTC submitted to the CFPB its 2023 annual report on FTC enforcement activities related to compliance with the Truth in Lending Act (TILA), Consumer Leasing Act (CLA), and Electronic Fund Transfer Act (EFTA). The report highlights the FTC's enforcement actions and initiatives under these laws and also highlights the Commission's Combating Auto Retail Scams (CARS) Rule (the effective date of which is currently on hold pending a legal challenge), its proposed Rule on Unfair or Deceptive Fees, and its proposed revisions to the Negative Option Rule.

FTC Releases Fiscal Year 2023 Annual Report. On **May 15**, the FTC released its FY 2023 annual report detailing the agency's work to enforce consumer protection and antitrust laws. The annual report specifically focused on the following consumer protection topics: advertising and marketing; consumer finance; privacy and data security; protecting minority and underserved communities; and protecting small businesses. From an antitrust standpoint, the report focused on competition in the following industries: health care and pharmaceuticals; digital markets; agriculture; energy; consumer goods and services; and labor.

FTC Chair Appears Before House Appropriations Subcommittee. On **May 15**, FTC Chair Khan testified before the House Appropriations Subcommittee on Financial Services and General Government to discuss the agency's 2025 budget request. For FY 2025, the agency has requested an increased budget of \$535 million. The increase would fund an increase in staff, mandatory pay increases, and inflationary non-pay expenses, as well as IT investments.

Select Enforcement Actions

FTC Finalizes Order Against Software Company for Allegedly Insufficient Data Safeguards. On **May 20**, the FTC finalized its order against a computer software company settling allegations that the company did not have sufficient data protection safeguards, including sufficient data encryption policies, in place to prevent a recent data breach that occurred, and allegations that the company made inaccurate statements in its breach notification. The company agreed to injunctive relief and to implement an information security program.

CFPB Sues Online Lending Platform for Allegedly Misrepresenting Loan Terms. On **May 17**, the CFPB filed a complaint in the U.S. District Court for the Central District of California against an online lending platform for alleged violations of the Consumer Financial Protection Act (CFPA) and the Fair Credit Reporting Act (FCRA). The CFPB alleges that the company misrepresented the cost of loans to consumers, collected loans without following the applicable state licensure and usury laws, and acted as a credit reporting company without taking necessary data collection precautions. The CFPB is seeking an injunction and monetary relief.

CFPB Settles with Student Loan Debt Relief Servicer for Allegedly Misrepresenting its Fees. On **May 20**, the CFPB issued a consent order and stipulation against a student loan debt relief servicer for alleged violations of the CFPA. The CFPB alleges that the company misrepresented to consumers that advance fees would be applied to outstanding loans and charged consumers certain fees regardless of the company's success at reducing loan payments or receiving loan forgiveness. The defendants have agreed to pay a \$400,000 fine and cease operations as a student loan debt relief servicer.

CFPB Sues Student Loan Servicer for Allegedly Misrepresenting Loan Statuses to Consumers. On **May 31**, the CFPB filed a complaint in the U.S. District Court for the Middle District of Pennsylvania against a student loan servicer for alleged violations of the CFPB and FCRA. The CFPB alleges that the company collected money from loans that were discharged during bankruptcy and misrepresented the status of those loans to both the consumers and credit agencies. The CFPB seeks injunctive and monetary relief. The CFPB previously settled with the student loan servicer and 15 student loan purchasers for alleged violations of the CFPB. In that matter, the defendants agreed to pay \$3 million in redress and \$2.15 million in civil penalties.

Upcoming Comment Deadlines and Events

FTC Seeks Comment on Amendments to the TSR. Comments are due **June 17, 2024** on the FTC's Notice of Proposed Rulemaking (NPRM) that proposes to amend the Telemarketing Sales Rule (TSR) to extend its coverage to inbound telemarketing calls involving technical support services. The TSR currently covers certain inbound calls, such as calls that consumers make to telemarketers. The NPRM would extend this coverage to technical support service calls.

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 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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Action Steps To Address New Restrictions On Outbound Data

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

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

Executive Order on Foreign Access to Sensitive Personal Data Will Increase U.S. Regulation of Cross-Border Data Transfers

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