

Wiley Consumer Protection Download (March 29, 2021)

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[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.

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Regulatory Announcements

Acting Chairwoman Slaughter Announces New Rulemaking Group in the FTC's Office of General Counsel. On March 25, Federal Trade Commission (FTC) Acting Chairwoman Rebecca Kelly Slaughter announced the establishment of a new rulemaking group within the agency's Office of General Counsel. According to the agency, the

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

new group will “allow the FTC to take a strategic and harmonized approach to rulemaking across its different authorities and mission areas.” The agency’s statement notes that this new office is particularly important in case the Supreme Court limits the agency’s ability to seek consumer redress under Section 13(b) of the FTC Act. Acting Chairwoman Slaughter stated that the FTC should “activate its unfair methods of competition rulemaking authority in our increasingly concentrated economy,” and in separate remarks on March 26 at the American Bar Association Antitrust Law Spring Meeting, she suggested that the agency may consider data-related rulemakings, which could encompass privacy, concerns about alleged manipulation on data platforms, and competition issues.

President Biden Nominates Lina Khan to Serve as FTC Commissioner. On March 22, the White House announced President Biden’s intent to nominate Lina Khan to serve as an FTC Commissioner. Khan is an associate professor of law at Columbia Law School focusing on antitrust law and infrastructure industries law, and also previously served as a legal advisor to Commissioner Chopra. Acting FTC Chairwoman Rebecca Kelly Slaughter released a statement congratulating Lina Khan on her nomination to the FTC.

FTC Advises Companies on CFPB’s Interpretive Rule on Sex Discrimination Under ECOA. On March 26, the FTC published a Blog Post discussing the agency’s enforcement of the Equal Credit Opportunity Act (ECOA), which prohibits creditors from denying credit on the basis of race, religion, national origin, sex, marital status, and age, among other criteria. In noting that the CFPB has the authority to interpret ECOA and its implementing regulations, the FTC highlighted the CFPB’s March 9, 2021 Interpretive Rule, which clarifies that ECOA prohibits credit discrimination based on an individual’s sexual orientation or gender identity. As we discussed in our March 15 Newsletter, this Interpretive Rule follows the Supreme Court’s decision last year in *Bostock v. Clayton County, Georgia* in which the Court held that the prohibition against sex discrimination in Title VII of the Civil Rights Act extends to both sexual orientation and gender identity discrimination. The FTC’s Blog Post advises that “[w]hen it comes to ECOA, it’s clear that discrimination against members of the LGBTQ+ community violates the law,” and that companies should “read the CFPB’s interpretive rule to make sure your policies are in accordance with those principles.”

CFPB Provides Annual Complaint Report to Congress, Highlighting More Than Half a Million Complaints Received. On March 24, the Consumer Financial Protection Bureau (CFPB) provided Congress with its 2020 Consumer Response Annual Report. The 2020 Consumer Response Annual Report details that the CFPB handled 542,300 complaints in 2020, which represents a 54% increase over the 352,400 complaints the agency managed in 2019. According to the 2020 Consumer Response Annual Report, credit and consumer reporting complaints accounted for more than 58% of total complaints. Additionally, beginning in April 2020, consumers began to submit more than 3,000 complaints mentioning coronavirus keywords almost every month.

CFPB Submits 2020 Report to Congress on the FDCPA. On March 22, the CFPB issued its 2020 Report to Congress on the Fair Debt Collection Practices Act (FDCPA). The 2020 Report notes that the CFPB engaged in four public enforcement actions arising from alleged FDCPA violations. Two of those four actions have been resolved, with a combined \$15.2 million in consumer redress and \$80,000 in civil money penalties. The 2020 Report also highlights a number of CFPB actions, including publishing content intended to help consumers financially navigate the coronavirus pandemic on debt collection, publishing debt collection information

regarding student loans during the pandemic, and publishing supervisory Prioritized Assessments pertaining to issues that raised the risk of harm during the pandemic.

Acting FTC Chairwoman Slaughter Testifies Before the U.S. House Judiciary Subcommittee on Antitrust, Commercial and Administrative Law. On March 18, Acting FTC Chairwoman Rebecca Kelly Slaughter testified before the U.S. House Judiciary Committee's Subcommittee on Antitrust, Commercial and Administrative Law. During her testimony, Acting Chairwoman Slaughter emphasized her goals to use existing FTC authority and rulemaking proceedings to take stronger enforcement actions. Acting Chairwoman Slaughter also welcomed legislative actions to update antitrust law, including clearer bright-line rules and shifting the burden of proof to the merging parties.

CFPB Asks Financial Institutions and Debt Collectors to Allow American Rescue Plan Payments to Reach Consumers. On March 17, CFPB Acting Director Dave Uejio requested that financial institutions and debt collectors permit American Rescue Plan stimulus payments to reach consumer bank accounts without being automatically used to cover existing obligations: "The [CFPB] is concerned that some of those desperately needed funds will not reach consumers, and will instead be intercepted by financial institutions or debt collectors to cover overdraft fees, past-due debts, or other liabilities." Acting Director Uejio noted that many financial institutions have already agreed to restore the full value of any stimulus payment funds that had been previously redirected.

Significant Enforcement Actions

CFPB Sues Student Debt Relief Company for Alleged Violations of the TSR. On March 16, the CFPB filed a complaint against Student Loan Pro in the U.S. District Court for the Central District of California. In its complaint, the CFPB alleges that Student Loan Pro violated the Telemarketing Sales Rule (TSR) for purportedly charging consumers more than \$3.5 million in upfront fees for student debt relief services. The CFPB asserts that Student Loan Pro's advance fees ran as high as \$795. The TSR prohibits sellers or telemarketers from requesting or receiving advance fees for any debt relief service before negotiating consumer debts, and before a consumer has made at least one payment on a renegotiated debt. The agency is seeking injunctive relief, consumer redress, and civil monetary penalties against Student Loan Pro.

FTC Obtains Court Order Banning Work-From-Home Advertiser from Selling Business Opportunities Using Robocalls. On March 16, the FTC announced that it had permanently banned Randon Morris and the companies that he controlled from selling or promoting business opportunities and from using robocalling capabilities. The FTC alleged that Morris and his companies initiated millions of robocalls to promote work-from-home opportunities for consumers concerned about working outside of their homes due to COVID-19. Morris and his companies allegedly sold consumers work-from-home programs that falsely promised that they could earn hundreds of dollars per day. The U.S. District Court for the District of Utah approved the FTC's stipulated final order, which included a monetary judgement of \$2 million that was partially suspended due to an inability to pay.

Two Debt Collectors Banned from Debt Collection Pursuant to FTC Settlement. On **March 15**, the FTC announced that National Landmark Logistics and Absolute Financial Services would be permanently banned from debt collection as part of settlements resolving charges that they allegedly threatened consumers with legal action to collect debts that did not exist. As part of the FTC's Operation Corrupt Caller sweep, the FTC accused National Landmark Logistics and Absolute Financial Services of using illegal robocalls to leave messages for consumers threatening outcomes including lawsuits and arrests. The National Landmark Logistics settlement includes a \$16,418,306 monetary judgement, which is partially suspended due to an inability to pay. The Absolute Financial Services settlement, meanwhile, includes a monetary judgement of \$11,281,993, which is also partially suspended due to an inability to pay.

Company Settles FTC Charges That It Deceptively Advertised TV Antennas as a Way to Get Over One Hundred Premium Channels. On **March 15**, the FTC announced that it settled charges with Wellco, Inc. (Wellco) that it violated the FTC Act by making deceptive performance claims for their over-the-air television antennas and related signal amplifiers, using deceptive consumer endorsements, and misrepresenting that some of their webpages were objective news reports regarding the antennas. Specifically, the FTC's complaint alleges that Wellco told consumers that they could stop paying for their cable and satellite television subscriptions and still receive all of their favorite channels; a large number of users receive more than 100 channels in HD; and they enable consumers to receive more channels than most other TV antennas on the market. The FTC Consent Order imposes a \$31.82 million judgement against Wellco.

Upcoming Comment Deadlines and Events

CFPB Proposes to Delay General QM Rule Mandatory Compliance Date. Comments on the CFPB's Notice of Proposed Rulemaking (NPRM) to delay the General Qualified Mortgage (QM) Final Rule's mandatory compliance deadline are due **April 5**. As noted in the March 1 Newsletter, the CFPB is proposing to delay the July 1, 2021 deadline to give lenders more time to either make QM loans based on a debt-to-income ratio or to sell qualifying loans to Fannie Mae or Freddie Mac. The Final Rule amends the General QM loan definition in Regulation Z, including by removing the definition's limit of a 43% DTI ratio (total monthly debt to total monthly income) and replacing it with price-based thresholds. The NPRM would delay the mandatory compliance deadline until October 1, 2022.

FTC to Hold Virtual Workshop on Digital "Dark Patterns". The FTC will hold a virtual workshop on **April 29** to evaluate digital "dark patterns," which is a term used to describe a range of potentially deceptive user interface designs on websites and applications. The event, titled Bringing Dark Patterns to Light: An FTC Workshop, will examine the ways in which user interfaces can have the intentional or unintentional effect of obscuring, subverting, or impairing consumer autonomy or decision-making. The workshop will examine how dark patterns differ from sales tactics used by brick-and-mortar stores; whether some groups of consumers are unfairly targeted; and whether there are additional rules or standards needed to protect consumers. Moreover, the FTC is seeking research, discussion topic recommendations, and panelist requests ahead of the workshop, which may be submitted here by **March 15**. The FTC will also be posting a request for comments on dark patterns, which will be due **June 29**.

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**. 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](#).

More Analysis from Wiley

Wiley Achieves Perfect Score on Human Rights Campaign's 2021 'Best Places to Work for LGBTQ Equality' List

Wiley Among First Organizations to Join FCBA's New Diversity Pipeline Program

Duane Pozza Weighs In on Whether FTC Priorities Will Change Under Biden Administration

FemTech: Biases and Data Privacy

Privacy in Focus: Key Commission on AI Recommends Privacy and Civil Liberties Protections in Domestic AI Uses

Privacy in Focus: Three Ways the SAFE TECH Act Would Amend Section 230

Acting Chairwoman Slaughter Forecasts FTC's Privacy Agenda

Virginia Enacts Comprehensive Privacy Legislation

California Attorney General Issues Further Revisions to CCPA Opt-Out Requirements

Supreme Court Argument Analysis: AMG Capital Management v. FTC

California Privacy Rights Act – What Does It Mean For You?

Tech Risk Assessments: Cloud Services Under the Microscope?

Key Cyber Takeaways from the Senate Hearing on Biden's Nominee for DHS Secretary

Key Tech Takeaways from Hearing on Biden's Nominee for Commerce Secretary

TCPA Update: FCC Imposes New Call Limits and Opt-Out Requirements

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