

Wiley Consumer Protection Download (May 10, 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

CFPB Releases Report Finding That Mortgage Complaints are at Highest Level in Three Years. On **May 4**, the CFPB released a report finding that overall mortgage complaints have risen to their highest level in nearly three years. The most common issue documented since January 2020 is "trouble during the payment process." The report

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noted more than 3,400 complaints in March 2021 alone. Common complaints included issues related to forbearance plans and repayment options available at the conclusion of those forbearance plans, confusion with mandatory account notices, and long delays in loans to address postponed payments. CFPB Director Dave Uejio stated that more borrowers are behind on their mortgage payments than at any point since the height of the Great Recession. The report comes a month after the CFPB proposed a temporary moratorium on new foreclosures through the end of the year. The report's findings may be a catalyst for further regulations designed to protect borrowers.

FTC Issues Report to Congress on "Repair Restrictions" Related To Consumer Products. On **May 6**, the FTC announced that it had submitted a report to Congress on device "repair restrictions," which the agency defines as "any practice that has the effect of limiting consumers' ability to repair products that they own." The report draws largely on responses to requests for public comment and research related to the FTC's July 2019 workshop "Nixing the Fix: A Workshop on Repair Restrictions." The FTC's report analyzes arguments made by "right to repair" advocates, manufacturers' and other stakeholders' arguments in response, and the relevant statutory framework, including the Magnuson-Moss Warranty Act and FTC Act. The report advocates for "ways to expand consumers' repair and maintenance options," and outlines additional steps the FTC might take.

FTC Acting Chairwoman Slaughter Appoints Associate General Counsel for Rulemaking. On **May 5**, FTC Acting Chairwoman Rebecca Kelly Slaughter appointed Austin King to be Associate General Counsel for Rulemaking. This appointment comes after Acting Chairwoman Slaughter announced the formation of the Rulemaking Group within the Office of the FTC's General Counsel. The Rulemaking Group is expected to explore new rulemakings to prohibit unfair or deceptive practices and unfair methods of competition. King has served as an attorney advisor to Acting Chairwoman Slaughter on consumer protection matters.

CFPB Delays General Qualified Mortgage Rule Mandatory Compliance Date. On **April 27**, the CFPB formally delayed the mandatory compliance date of the General Qualified Mortgage (QM) Final Rule from July 1, 2021 until October 1, 2022. The General QM 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. Following the announcement, Acting CFPB Director Dave Uejio noted that "[a]s the mortgage market navigates an uncertain and challenging time, extending the date by which lenders must comply with the CFPB's new General QM definition will help provide options and flexibility for both lenders and borrowers."

CFPB and FTC Send Notice Letters to Landlords Regarding COVID-19 Eviction Moratorium. On **May 3**, the CFPB and FTC sent joint notification letters to the nation's largest apartment landlords, which collectively own over 2 million apartment units, reminding them of their obligations under the Centers for Disease Control's (CDC's) eviction moratorium. The CDC moratorium, which was extended to June 30, 2021, prohibits evictions in certain circumstances to keep people in their homes during the pandemic. In the letter, the agencies urge landlords to ensure that they are complying with both the Fair Debt Collection Practices Act and the FTC Act.

FTC Asks Congress for Authority to Obtain Equitable Monetary Relief Following U.S. Supreme Court

Decision. On **April 27**, Acting Chairwoman Rebecca Kelly Slaughter testified before the U.S. House Energy and Commerce Subcommittee on behalf of the FTC. Acting Chairwoman Slaughter asked the Subcommittee to promulgate legislation that would allow the agency to obtain equitable monetary relief, in response to the Supreme Court's April 22 unanimous decision in *AMG Capital Management, LLC v. FTC*, finding that the agency lacks authority to recover money under Section 13(b) of the FTC Act. Acting Chairwoman Slaughter testified that "if Congress does not act promptly, the FTC will be far less effective in its ability to protect consumers and execute its law enforcement mission."

Significant Enforcement Actions

FTC Finalizes Settlement with Photo Application Developer Over Allegations That It Deceived Consumers

Regarding Facial Recognition Technology. On **May 7**, the FTC announced that it had finalized a settlement with Everalbum, Inc. (Everalbum) over allegations that the company deceived consumers about its use of facial recognition technology and its retention of photos and videos via its photo and video application "Ever." Specifically, the FTC's complaint alleges that Everalbum deceived consumers in relation to a feature in the "Ever" application in 2017 that used facial recognition technology to group users' photos by the faces of the people who appear in them. The settlement requires Everalbum to delete the photos and videos of Ever app users who deactivated their accounts.

Security and Monitoring Company Settles with FTC Over Claims That It Misused Consumer Credit Reports.

On **April 29**, the FTC announced that smart home and security monitoring company Vivint Smart Homes Inc. (Vivint) has agreed to pay \$20 million to settle FTC allegations related to helping unqualified consumers obtain financing for the company's products and services. The FTC's complaint alleges that Vivint violated the Fair Credit Reporting Act (FCRA) by improperly obtaining other consumers' credit reports to qualify potential customers for its smart home and security products. Moreover, the complaint alleges that Vivint violated the FTC's Red Flags Rule by failing to implement an identity theft prevention program, which is required of certain companies that use or obtain credit reports. The settlement requires Vivint to pay a \$15 million civil penalty and an additional \$5 million to compensate injured consumers.

FTC Directs 30 Marketers to Stop Making Claims That Their Products and Services Can Treat or Prevent

COVID-19. On **April 29**, the FTC announced that it sent warning letters to 30 marketers claiming that their products and services can treat or prevent COVID-19. Companies receiving warning letters had claimed that, for example, intravenous (IV) Vitamin C infusions, ozone therapy, peptide therapy, supplements, exercise therapy, iodine, and infrared saunas could treat or prevent COVID-19. The FTC's letters stated that the efficacy claims made by the marketers are unsubstantiated because there is currently no evidence that the claims are supported by science, and they therefore violate the FTC Act. The letters advise the marketers to cease making the claims and to notify the agency within 48 hours about the actions they have taken to address the FTC's concerns.

CFPB Sues Reverse Mortgage Lender for Allegedly Deceptive Advertising. On **April 27**, the CFPB took action against Nationwide Equities Corporation (Nationwide Equities), a reverse mortgage lender, for sending allegedly deceptive loan advertisements to hundreds of thousands older borrowers. A reverse mortgage allows homeowners who are 62 or older to access the equity that they have accumulated in their homes and defer loan payment until they pass away, sell, or move out. The consent order alleged that Nationwide Equities' advertisements violated the Mortgage Acts and Practices Advertising Rule (MAP Rule), the Truth in Lending Act (TILA), and the Consumer Financial Protection Act of 2010 (CFPA). The MAP Rule prohibits misleading claims in mortgage advertising, and TILA requires accurate disclosures of the terms and costs of consumer loans. The CFPB concluded that National Equities' advertisements and letters included hidden costs, hidden risks, false existing relationships, and false pre-approvals. The CFPB's consent order imposes a penalty of \$140,000.

Upcoming Comment Deadlines and Events

CFPB Seeks Comment on Proposed Amendments to RESPA for Borrowers Affected by COVID-19. Comments are due **May 10** on a CFPB Proposed Rule that would amend Regulation X of the Real Estate Settlement Procedures Act (RESPA) by establishing a temporary COVID-19 emergency pre-foreclosure review period until December 31, 2021 for principal residences. RESPA requires residential real estate settlement providers to make certain disclosures about the mortgage and real estate settlement process. Moreover, the temporary amendments would allow mortgage servicers to make certain loan modifications available to borrowers experiencing a COVID-19-related hardship based on the evaluation of an incomplete application. The proposed effective date of the Regulation X rule changes is August 31.

CFPB Proposes to Delay Effective Date of New Debt Collection Rules. Comments are due **May 19** on the CFPB's Notice of Proposed Rulemaking that would delay the effective date of two final rules issued under the Fair Debt Collection Practices Act (FDCPA) – the October 2020 Debt Collection Rule, which focuses on the use of communications related to debt collection; and the December 2020 Debt Collection Rule, which clarifies the disclosures that debt collectors must provide to consumers. The CFPB states that it wants to give parties more time to comply due to the ongoing COVID-19 pandemic. Comments will be due 30 days after publication in the Federal Register.

FTC Requests Comments on Digital "Dark Patterns". Submissions are due **May 29** on the FTC's Request for Comments on "digital dark patterns," which is a term used to describe a range of potentially deceptive user interface designs on websites and applications. Specifically, the FTC is seeking comment on several topics that were discussed at its April 29 event – Bringing Dark Patterns to Light: An FTC Workshop, which examined 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 considered 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.

CFPB Seeks Input on Financial Institutions' Use of AI. Comments are due **June 1** on a Request for Information released by the CFPB; the Board of Governors of the Federal Reserve System's Bureau of Consumer Financial Protection; the Federal Deposit Insurance Corporation; the National Credit Union Administration; and the Office of the Comptroller of the Currency. The five agencies are gathering information on financial institutions' use of artificial intelligence (AI) for fraud prevention, the personalization of services, credit underwriting, and a number of other operations. Among other things, the Request for Information seeks comment to understand the use of AI; appropriate governance and risk management controls over AI; and challenges in developing and managing AI.

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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

Supreme Court Curbs FTC Power to Seek Monetary Relief

FTC Outlines Approach to Discrimination in AI and Foreshadows Potential Enforcement

Privacy in Focus: FTC Prepares to Expand Rulemaking, Including on Privacy and Data Use

Virginia's New Privacy Law: How to Navigate the New Privacy Framework

Supreme Court Argument Analysis: TransUnion LLC v. Ramirez

FemTech: Biases and Data Privacy

Virginia Enacts Comprehensive Privacy Legislation

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

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

SCOTUS Provides TCPA Clarity by Rejecting Expansive Autodialer Definition

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