

Wiley Consumer Protection Download (May 14, 2024)

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[Regulatory Announcements](#)

[Select 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 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

FTC and FCC Sign Memorandum of Understanding on Consumer Protection Issues. On April 30, the FTC and Federal Communications Commission (FCC) signed a new Memorandum of Understanding (MOU) outlining the agencies' cooperation on consumer protection matters. The MOU follows the FCC's decision to reclassify broadband Internet access service as a common carrier service, reinstating "open Internet" regulations for such providers (which we summarize [here](#)). The MOU recognizes the agencies' expertise in their respective jurisdictions, stating that the FTC will continue to have jurisdiction over

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FTC and Consumer Protection

Privacy, Cyber & Data Governance

Telecom, Media & Technology

non-common carrier activities carried out by entities providing common carrier services, and that the FCC order does not impact the FTC's jurisdiction over Voice Over Internet Providers.

CFPB Issues Report on Complex Pricing Structures. On **April 30**, the CFPB published a report entitled "Price Complexity in Laboratory Markets," based on laboratory experiments conducted with buyers and sellers interacting in simple markets. According to the CFPB, the experiments revealed that more complex pricing generally led to more detrimental outcomes for consumers. Specifically, scenarios with more complex pricing led to higher selling prices, consumer difficulty in comparing prices across sellers, and higher overall transaction prices. The report states that consumers face similar challenges with complex pricing when shopping for financial products and services including credit cards, checking and savings accounts, mortgages, and auto loans.

CFPB Releases Report on Health Savings Accounts. On **May 1**, the CFPB released a report focused on the costs and fees associated with Health Savings Accounts. A health savings account is a tax-advantaged account that generally comes with a high deductible health plan. Contributions to the account can be used for health care expenses or remain in the account to earn interest. In 2023, there were over 35 million health savings accounts that held more than \$116 billion, a 500% increase since 2013. According to the CFPB, the agency has received consumer reports regarding the high costs, lack of fund portability, and low-yield interest rates of these accounts. The Report specifically found that many providers typically offer low interest rates of less than 1% and charge a variety of unavoidable fees, including monthly maintenance fees, paper statement fees, and exit fees.

CFPB Issues Report on Credit Card Rewards Programs. On **May 9**, the CFPB issued a report focused on credit card rewards programs. According to the CFPB, the agency has received a growing number of consumer complaints regarding the administration of these programs. The report states that consumers have claimed that credit card issuers imposed vague or hidden conditions resulting in "bait and switch"-type offers and that companies devalued rewards by increasing the number of points or miles needed for redemption. It also states that consumers have described customer service issues or technical glitches that delayed redemption of rewards and, in some cases, rewards vanishing or expiring without notice from the company. CFPB Director Rohit Chopra stated: "The CFPB will be looking for ways to protect people's points, stop bait-and-switch scams, and promote a fair and competitive market for credit card rewards."

Select Enforcement Actions

FTC and DOJ Settle with Gamer Lifestyle Brand for Allegedly Deceptive Marketing Practices. On **April 26**, the U.S. Department of Justice, on behalf of the FTC, filed a complaint and stipulated order in the U.S. District Court for the Central District of California against a company that creates lifestyle products for gamers and its subsidiaries for alleged violations of the FTC Act and COVID-19 Consumer Protection Act. The DOJ and FTC allege that the defendants misrepresented the face masks they sold as being equivalent to N95 masks and able to provide the same level of protection from COVID-19, but never submitted the masks for the necessary testing to receive the N95 label. The defendants have agreed to a \$100,000 civil penalty and \$1.07 million in monetary relief in addition to injunctive relief.

FTC Settles with Home Water Treatment Financing Company for Allegedly Deceptive Marketing Practices.

On **May 1**, the FTC filed a complaint and stipulated order in the U.S. District Court for the Western District of Wisconsin against a household water treatment financing company alleging violations of the FTC Act. The FTC alleges that the company misled consumers to believe that introductory financing rates and terms would be permanent and failed to inform consumers that the agreements gave the company a security interest in the equipment installed in consumers' homes. The company agreed to refund \$20 million back to consumers and forgive a total of \$23.6 million in existing loans in addition to injunctive relief.

FTC Settles with Payment Processing Company and its Executives for Allegedly Processing Fraudulent Transactions.

On **May 1**, the FTC filed a complaint and stipulated order in the U.S. District Court for the Northern District of Georgia against a payment processing company and two senior executives for alleged violations of the FTC Act and Telemarketing Sales Rule. The FTC alleges that the defendants did not have appropriate safeguards in place to prevent consumers from processing fraudulent transactions. The defendants agreed to cease providing payment processing services to debt collection or debt relief companies in addition to injunctive relief and a \$10 million civil penalty.

FTC Finalizes Order Against Digital Marketing Platform Regarding Data Collection and Use. On **May 1**, the FTC finalized its order against a digital marketing platform settling allegations that the company failed to inform app users that location data was being used for targeted advertising purposes. The company agreed to a settlement that places restrictions on certain use of location data in addition to other injunctive relief.

CFPB Settles with Student Loan Servicer and Purchasers for Allegedly Failing to Appropriately Handle Borrower Requests.

On **May 6**, the CFPB filed a complaint and two stipulated orders in the U.S. District Court for the Middle District of Pennsylvania against a student loan servicer and 15 student loan purchasers for alleged violations of the Consumer Financial Protection Act. The CFPB alleges that the defendants did not promptly respond to borrower requests or accurately provide borrowers information about their loans, and incorrectly denied forbearance requests during COVID-19. The defendants have agreed to pay a total of \$3 million in redress and \$2.15 million in civil penalties, and resolve pending requests and outstanding errors.

Upcoming Comment Deadlines and Events

FTC to Host Webinar on Rule to Ban Non-Compete Clauses. The FTC will host an online compliance webinar on **May 14 at 11 a.m. EDT** to provide an overview of the FTC's final rule regarding non-compete agreements. The rule, which we summarize here, effectively bans the use and enforcement of non-compete agreements with limited exceptions and will require employers to notify workers that existing non-compete agreements are no longer enforceable. The final rule allows existing non-competes with senior executives to remain in force, while existing non-competes with other workers are not enforceable after the effective date. The rule goes into effect on September 4, 2024.

During the webinar, the FTC's Office of Policy Planning will provide an overview of the rule and information on how to comply with the rule after its effective date. A link to the webinar will be available on the day of the event via FTC.gov.

CFPB Seeks Comment on Additional Data Estimates for Staffing Requirements and Compliance Costs

Pertaining to Updated Supervisory Designation Procedures. On **April 16**, the CFPB issued a procedural rule to update how the agency designates a nonbank for supervision. The updated process will conform to a recent organizational change reassigning the duties of the Associate Director of the CFPB's Division of Supervision, Enforcement, and Fair Lending to the Director, and will streamline future designation proceedings. The procedural rule took effect upon publication in the Federal Register on April 23.

In conjunction with the publication of the procedural rule, the CFPB also released a request for public comment seeking "additional data on estimates of staffing requirements and costs for compliance with supervisory activities." Comments on this request are due May 23.

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.

More Analysis from Wiley

Webinar: What to Know About the Latest Privacy Developments

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

New White House Policy Previews Increased Cybersecurity Oversight and Regulation

Federal Trade Commission Issues Final Rule Banning Most Non-Competes: What You Should Know

New Report from NTIA Calls for More AI Regulation

White Paper on Telephone Consumer Protection Act Litigation Abuse

10 Things to Know About the APRA – the Latest Federal Privacy Law Effort

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

FCC's "Spring Cleaning" Initiative Signals More Robocall Enforcement Activity Ahead

Attorney: AI development will be shaped by OMB's next steps on procurement

EU Adopts World's First Comprehensive AI Regulation

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

7 Tips for Leveraging Artificial Intelligence While Managing Risks in Political Campaigns

DOJ Kicks Off Work to Regulate Foreign Access to Sensitive Personal Data Under New EO

State Privacy Law 2024: Major Enforcement and Compliance Activity Shows No Signs of Slowing Down

Start Here: Cyber Fundamentals for Public Policy Makers

NIST Cybersecurity Framework 2.0 Reveals Major Shifts in Federal Guidance

Federal Government Acts on Connected Vehicle Privacy and National Security Concerns

FCC Extends Regulatory Reach Over AI: Announces TCPA Restrictions Cover AI-Generated Voices in Outbound Calls

California Appeals Court Allows Immediate Enforcement of CPRA Regulations

DOJ Signals Tough Stance on Crimes Involving Misuse of Artificial Intelligence

5 questions for Duane Pozza (Politico)

Podcast: AI in 2024: What Comes Next?

AI Around the Globe: What to Know in 2024

Cybersecurity in 2024: Ten Top Issues to Consider

FCC Expands Privacy and Data Protection Work with States to Increase Investigations

AI Use is Promising Yet Risky for Government Subpoenas and CIDs

DOJ Must Help in Fighting Illegal Robocalls, Lawyers Say

CFPB Poised to Significantly Expand the Reach of the Fair Credit Reporting Act

FTC and HHS Caution Hospitals and Telehealth Providers on Tracking Tech

Podcast: The “Wild West” of AI Use in Campaigns

SEC Cyber Reporting Mandates: How to Request a National Security or Public Safety Delay

Podcast: What could AI regulation in the U.S. look like?

Podcast: AI Risk Management: A Discussion with NIST’s Elham Tabassi on the NIST AI Risk Management Framework

Generative AI Policies: Five Key Considerations for Companies to Weigh Before Using Generative AI Tools

U.S. State Privacy Law Guide

Wiley Promotes Megan Brown and Duane Pozza to Co-Chairs of Privacy, Cyber & Data Governance Practice

Legal 500 US Recognizes Wiley's Telecom, Media & Technology Practice as Tier 1. Read more [here](#).