

Wiley Consumer Protection Download (May 16, 2022)

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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

Alvaro Bedoya Sworn in as FTC Commissioner Following Senate Confirmation.

On May 16, Alvaro Bedoya was sworn in as FTC Commissioner. The U.S. Senate confirmed Bedoya to the FTC's open Commissioner on May 11. Bedoya was initially nominated by President Biden on September 13, 2021 and was re-nominated on January 4, 2022 after a December 1, 2021 vote to send his

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FTC and Consumer Protection

Privacy, Cyber & Data Governance

nomination from the U.S. Senate Committee on Commerce, Science, and Transportation to the entire Senate was opposed by all Republicans on the Committee. FTC Chair Lina Khan issued a statement welcoming Bedoya: "Together with our talented and hard-working staff and my fellow Commissioners, I'm confident we can vigorously advance our mission and fully serve the American people." Bedoya is the founding director of the Center on Privacy & Technology at Georgetown Law, where he has been a visiting professor of law. Previously, Bedoya served as the first chief counsel to the U.S. Senate Judiciary Subcommittee on Privacy, Technology and the Law upon the subcommittee's creation in 2011.

FTC Announces May 19 Open Commission Meeting. On **May 12**, the FTC issued a Press Release announcing that the agency will hold a virtual Open Commission Meeting on May 19 at 1:00 P.M. ET. During the meeting, the FTC will consider a Policy Statement on Education Technology and the Children's Online Privacy Protection Act (COPPA) "that announces the agency's prioritization of the enforcement of COPPA as it applies to the use of education technology." COPPA imposes certain requirements on website and online services operators directed to children under 13 years of age, as well as operators of other websites or online services that have actual knowledge that they are collecting personal information from children under the age of 13. The FTC will also consider releasing a Request for Public Comment on proposed amendments to the Guides Concerning the Use of Endorsements and Testimonials in Advertising. The proposed amendments are intended, among other things, to "address fake reviews and the suppression of negative reviews."

CFPB Publishes Advisory Opinion on ECOA Coverage During the Lending Process. On **May 9**, the CFPB published an Advisory Opinion explaining that the Equal Credit Opportunity Act (ECOA) is applicable to the borrower-lender relationship during and after the application process. ECOA prohibits discrimination in lending decisions on the basis of race, color, religion, national origin, sex, marital status, age, or receipt of public assistance. The Advisory Opinion concludes that lenders are prohibited from discriminating against borrowers with existing credit through practices such as lowering account credit limits or adopting more aggressive collections practices with certain borrowers.

CFPB and FTC File Amicus Briefs in FCRA Lawsuits. On **May 5**, the CFPB and FTC filed an Amicus Brief in *Sessa v. Trans Union, LLC*, which is currently before the U.S. Circuit Court of Appeals for the Second Circuit. In *Sessa*, the plaintiff filed a lawsuit against Trans Union, LLC (TransUnion) for allegedly violating the Fair Credit Reporting Act (FCRA), alleging that the defendant provided consumer reports inaccurately stating that the residual value left on plaintiff's automobile lease was actually a balloon payment due under the contract, which the plaintiff contested. In proceedings below, the U.S. District Court for the Southern District of New York granted TransUnion's summary judgment motion, finding that the FCRA does not obligate TransUnion to resolve the plaintiff's legal challenge to the balloon payment obligation in the course of consumer reporting, because the obligation was reported to TransUnion by the automobile dealer. The Amicus Brief argues that the FCRA does not exempt consumer reporting agencies from resolving such legal challenges regarding information on a consumer report, and that the defendant therefore can be held liable for issuing inaccurate credit reports containing such challenged information.

The CFPB also filed an Amicus Brief in April in *Milgram v. JPMorgan Chase Bank, N.A. et al.* which is before the U.S. Court of Appeals for the Eleventh Circuit. There, the plaintiff sued JPMorgan Chase Bank for continuing to furnish negative information regarding the plaintiff's account after a state court found that the plaintiff was the victim of identity theft. The Amicus Brief argues that the bank had a duty to reasonably investigate the disputed information about whether the plaintiff was a victim of identity theft.

CFPB Issues Supervisory Highlights Report. On **May 2**, the CFPB released its Supervisory Highlights report for the second half of 2021. The Supervisory Highlights report "summarizes existing legal requirements and violations identified in the course of the [CFPB's] exercise of supervisory and enforcement authority." Among other violations, the report concluded that some auto servicers violated the Consumer Financial Protection Act of 2010 (CFPA) by allegedly misleading consumers about the amounts of their final loan payments after standard payments were deferred due to financial difficulties largely resulting from the COVID-19 pandemic. The Supervisory Highlights report also found that certain consumer reporting companies purportedly failed to conduct a reasonable investigation under the FCRA in response to consumer credit report disputes.

Significant Enforcement Actions

CFPB Bans Payment Processing and Account Maintenance Service Provider for Allegedly Unlawful Student Loan Practices. On **May 11**, the CFPB issued an order against RAM Payment, LLC (RAM Payment) and Account Management Systems, LLC (AMS) and AMS's co-founders, Gregory Winters and Stephen Chaya for alleged violations of the Telemarketing Sales Rule (TSR) and the CFPA's prohibition on unfair and deceptive practices. The CFPB alleged that the respondents substantially assisted student-loan and traditional debt-relief companies in requesting or accepting advance fees for debt-relief services, misrepresented their payment-processing actions to consumers before disbursing fees to student-loan debt-relief companies, and unfairly disbursed unearned fees for student-loan debt-relief services after consumers had unenrolled from or canceled the services. The CFPB consent order bans AMS and its owners from the debt relief payment processing and account maintenance industry, and, among other things, prohibits RAM Payment from providing services to both student loan debt relief service providers and debt relief service providers receiving funding from or owned by an affiliated company. The order also requires respondents to pay \$8,676,180 in consumer redress in addition to a \$3 million civil money penalty.

FTC Fines Utah-based Apparel Company for Alleged False Labeling of Imported Apparel as American. On **April 13**, the FTC announced that it has filed suit against apparel company Lions Not Sheep Products, LLC, (Lions Not Sheep Products) and its owner Sean Whalen, for alleged violations of the Made in USA Labeling Rule. The Commission voted 4-0 to issue the complaint and accept the consent order. The complaint alleges that the company labeled its clothing and accessories imported from China and other countries with false Made in America labels and heavily marketed its products through social media channels with claims including "Made in the USA," "Made in America," "Are your products USA Made?" and "100% AMERICAN MADE." The proposed order includes prohibitions against misleading product labeling and a judgment of \$211,335.

FTC Obtains Preliminary Injunctive Relief Against Credit Repair Operators. On **May 6**, the FTC announced that it took action against The Credit Game and its owners, Michael and Valerie Rando, for alleged violations of the Federal Trade Commission Act (FTC Act), the Credit Repair Organizations Act (CROA), the Business Opportunity Rule, the Telemarketing Sales Rule (TSR), and the COVID-19 Consumer Protection Act (CCPA). The Commission voted 4-0 to file the complaint and request for temporary restraining order. The complaint was filed in the U.S. District Court for the Middle District of Florida. The complaint alleges that the company unlawfully charged consumers for credit repair services, told consumers to spend or otherwise “invest” their COVID-19 governmental benefits on the company’s unlawful services, and encouraged consumers to file false identity theft reports, among other allegations. The FTC sought a temporary restraining order (TRO) and the appointment of a receiver with an asset freeze. The court issued a TRO doing so on May 3, 2022.

FTC Settles with Internet Service Provider to Resolve Allegations it Misled Consumers about Internet Speeds. On **May 5**, the FTC announced that it reached a settlement with digital subscriber line (DSL) Internet service provider Frontier Communications (Frontier). As we previously reported, the FTC and law several state enforcement agencies sued Frontier for allegedly providing Internet services to consumers for lower speeds than promised and charging consumers for expensive and higher-speed services than those provided. Among other things the proposed order in the settlement requires Frontier to substantiate its Internet speed claims at a customer-by-customer level for new and complaining customers; ensure that it can provide the Internet speeds it advertises before signing up, upgrading, or billing new customers; prohibits Frontier from signing up new DSL Internet service customers in areas where the high number of users sharing the same networking equipment causes congestion resulting in slower Internet service; and requires the company to notify existing customers who are receiving DSL Internet service at speeds lower than was advertised and allow those customers to change or cancel their service at no charge. Frontier is also required to pay \$8.5 million in civil penalties and \$250,000 in consumer redress for California customers in addition to being required to deploy fiber-optic internet service, which is generally much faster than DSL, to 60,000 residential locations in California over four years.

CFPB Issues Consent Order Against Bank of America for Alleged Unlawful Garnishment of Out-of-State Accounts. On **May 4**, the CFPB finalized an enforcement action against Bank of America for alleged violations of CFPB’s prohibition on unfair and deceptive practices. The CFPB investigation alleged that that Bank of America unlawfully froze customer accounts, charged garnishment fees, garnished funds, and sent payments to creditors based on out-of-state garnishment court orders that should have been processed under the laws and protections of the states where the consumers lived. The CFPB further alleged that Bank of America unlawfully inserted language into customer contracts that purported to limit customers’ rights to challenge garnishments. The CFPB consent order requires the company to refund or cancel imposed fees from certain garnishments, review and reform its system for processing garnishments, and pay a \$10 million civil penalty.

Recent Congressional Hearings

Keeping Up with the Codes – Using AI for Effective RegTech. On **May 13** the U.S. House Committee on Financial Service's Task Force on Artificial Intelligence held a hearing titled, "Keeping Up with the Codes – Using AI for Effective RegTech." The witness list, opening statements, and a recording of the hearing are available [here](#).

Upcoming Comment Deadlines and Events

CFPB Seeking Comment on Agency's Supervisory Authority Over Nonbank Companies, Including Fintechs.

Comments are due **May 31** on a CFPB Procedural Rule to implement the agency's announcement that it is invoking its supervisory authority over certain nonbank financial companies. As explained in the Procedural Rule, Section 1091 of the CFPB provides that the CFPB may supervise a nonbank entity that the agency "has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity for such covered person to respond . . . is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services." The invocation of this nonbank supervisory authority is not focused on any specific financial products and services offered to consumers and may potentially encompass many financial technology (fintech) companies. While the Procedural Rule took effect on April 29, the CFPB "welcomes comments on this rule" and the agency "may make further amendments if it receives comments warranting changes."

More Analysis from Wiley

Webinar: Privacy and Security in Transactional Due Diligence

FTC Takes Action Against Company for Collecting Children's Personal Information Without Parental Permission

Lawmakers Continue to Scrutinize Algorithm Use Directed at Youth

Webinar: Preparing for New State Privacy Frameworks

NIST Seeks Feedback on Draft AI Risk Management Framework in Connection with Extensive Stakeholder Workshop

Utah to Add Fourth Omnibus Privacy Law to the Growing State Patchwork

Federal Efforts Introduced to Protect Non-HIPAA Health Data

Webinar: FTC's Revised Safeguards Rule: How To Navigate New Information Security Requirements

Podcast: Mandatory Cyber Incident Reporting: Pros, Cons, and Next Steps

'An Avalanche of Rulemakings' – The FTC Gears Up for an Active 2022

EU and U.S. Reach Agreement in Principle on New Data Privacy Framework for EU-U.S. Data Transfers

Steps to Take in 2022 To Prepare for New State Privacy Laws

The Top 5 Cyber Issues for 2022

Podcast: Ransomware, Geopolitical Tensions, and the Race to Regulate

2022 Cyber Watch List: A look at 2021 and What's to Come in the Year Ahead

Podcast: Why the FTC Matters for Fintech

White House Seeks to Develop AI Bill of Rights and Calls for Feedback on Use of Biometric Data

Podcast: Cyber in 2022: What Happened and What is Coming

Podcast: Artificial Intelligence Can Do Really Dumb Things With Personal Information

American Bar Association Webinar: Crypto at a Crossroads: Crypto and Privacy

Data Transfers from the EU – Further Guidance Issued

Duane Pozza Discusses Emerging Regulatory Approach to Crypto and DeFi

Latest Changes at FTC Will Drive Federal Action on Privacy, Data Security, and AI

FTC Policy Statement Signals Increasing Scrutiny on the Protection of Sensitive Personal Health Information

AI Risk Management Framework Is Among Emerging Federal Initiatives on AI

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Download Disclaimer: Information is current as of May 16, 2022. This document is for informational purposes only and does not intend to be a comprehensive review of all proceedings and deadlines. Deadlines and dates are subject to change. Please contact us with any questions.