

Wiley Consumer Protection Download (May 8, 2023)

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Regulatory Announcements

Recent 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 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

CFPB, DOJ, EEOC, and FTC Release Joint Statement on AI. On April 25, CFPB Director Rohit Chopra, FTC Chair Lina Khan, Equal Employment Opportunity Commission (EEOC) Chair Charlotte A. Burrows, and Assistant Attorney General for the Department of Justice's (DOJ) Civil Rights Division Kristen Clarke, released a Joint Statement on enforcement efforts against discrimination and bias in artificial intelligence (AI). The Joint Statement asserts that "[a]lthough many of these tools offer the promise of advancement, their use also has the potential to perpetuate unlawful bias, automate unlawful

Authors

Duane C. Pozza

Partner

202.719.4533

dpozza@wiley.law

Stephen J. Conley

Associate

202.719.4572

sconley@wiley.law

Lauren N. Lerman

Associate

202.719.4664

llerman@wiley.law

Practice Areas

Cyber and Privacy Investigations, Incidents & Enforcement

FTC and Consumer Protection

Privacy, Cyber & Data Governance

Telecom, Media & Technology

discrimination, and produce other harmful outcomes.” The Joint Statement also notes that “existing [enforcement] legal authorities” given to each of the signing agencies apply to AI and new technologies. Finally, the Joint Statement notes that AI relies on “vast amounts of data” from a number of data sources, and that potential discrimination may come from a number of sources, including data and datasets; model opacity and limited model transparency; and design and use issues. The Joint Statement closes with a pledge from the agencies to (1) “resolve to monitor the development and use of automated systems and promote responsible innovation”; and (2) “vigorously use our collective authorities to protect individuals’ rights regardless of whether legal violations occur through traditional means or advanced technologies.”

FTC to Hold Virtual Panel Discussion on Cloud Computing. On **May 4**, the FTC announced that it will hold a virtual panel discussion with a “diverse set of experts” on cloud computing issues related to security, competition, and emerging technologies, on **May 11** at 1:00 P.M. EST. The FTC is currently seeking comment on a Request for Information (RFI) regarding the business practices of cloud computing providers, and the deadline to submit comments has been extended from May 22 to June 21.

CFPB Publishes Report on Specialty Medical Financial Products. On **May 4**, the CFPB published a report, titled *Medical Credit Cards and Financing Plans*, examining medical credit cards and medical installment loans, which consumers use to cover not just elective care, but also emergency room visits and regular checkups. Medical financing companies market these products to healthcare providers, and the products are offered by doctor’s offices and hospitals. The report assesses how “rising medical costs, the increasing financialization of healthcare, and the interaction of financial companies and healthcare providers may fundamentally alter the relationship between patient and doctor and result in patients losing leverage to negotiate their bills.”

CFPB Issues Proposed Rule to Establish Consumer Protections for PACE Loans. On **May 1**, the CFPB issued a Proposed Rule seeking comment on establishing certain consumer protections for residential Property Assessed Clean Energy (PACE) loans. PACE loans are often promoted to finance environmentally sustainable home improvements such as solar panels. The Proposed Rule comes five years after the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 was signed into law, which obligated the CFPB to promulgate repayment rules for PACE financing. If adopted, the Proposed Rule would require PACE creditors and companies to consider a borrower’s ability to repay when issuing a new PACE loan. Comments are due July 26 or 30 days after publication in the Federal Register, whichever is later.

CFPB Issues Advisory Opinion on Collection of Time-Barred Mortgages Under the FDCPA. On **April 26**, the CFPB issued an Advisory Opinion clarifying that debt collectors that bring or threaten to bring a state court foreclosure action to collect a time-barred mortgage debt may violate the Fair Debt Collection Practices Act (FDCPA) and Regulation F. According to the Advisory Opinion, Regulation F “prohibits a debt collector from suing or threatening to sue to collect a time-barred debt” and that this prohibition “is subject to a strict liability standard.” The Advisory Opinion also notes that “a broad range of non-foreclosure debt collection-related activity, such as communicating with consumers about defaulted mortgages,” may also be covered by this prohibition.

FTC Chair Lina Khan Testifies Before U.S. House Appropriations Subcommittee on Financial Services and General Government. On **April 27**, FTC Chair Lina Khan testified before the U.S. House Appropriations Subcommittee on Financial Services and General Government to discuss its Fiscal Year (FY) 2024 budget request of \$590 million (the FTC's FY 2023 budget is \$430 million). During her testimony, Chair Khan noted that the agency is using its current funding to address matters such as data practices related to personal information; corporate mergers affecting various sectors of the economy; the integrity of supply chains; and the prices consumers pay for drugs. She argued in her testimony that the FTC needs additional resources because the agency "is not keeping pace with the demands" of its "expansive mission," asserting that the FTC's budget request would fund an additional 310 full-time employees.

Recent Enforcement Actions

FTC Settles with Debt Collection Company and Executives for Allegedly Deceptive Practices. On **April 26**, the U.S. District Court for the Eastern District of Pennsylvania approved the stipulated order filed by the FTC against International Credit Recovery, Inc. (ICR), and its executives Richard Diorio, Jr. and Cynthia Powell (Defendants). This order settles FTC allegations that the Defendants deceived consumers by sending consumers fake subscription and debt collection notices. The Defendants have agreed to a permanent injunction banning them from engaging in any further debt collection activities.

FTC Order Granted Against Three Individuals and Affiliate Companies for Allegedly Violating the Telemarketing Fraud and Abuse Act. On **April 28**, the U.S. District Court for the Middle District of Tennessee, entered the stipulated orders against Sean Austin, John Steven Huffman, John Preston Thompson, and their affiliated companies (Defendants). The order settles allegations that the Defendants called consumers and offered them a debt relief opportunity that did not exist in violation of the FTC Act and the Telemarketing Sales Rule. The Defendants agreed to pay a combined sum of \$17,486,080, in addition to injunctive relief.

FTC Issues Order to Show Cause to Meta for Alleged Privacy Violations. On **May 3**, the FTC voted 3-0 to issue an Order to Show Cause to Meta, the parent company of Facebook. The Order to Show Cause proposes changes to a 2020 consent order the FTC issued to Facebook for alleged privacy violations. The FTC asserts that Facebook violated the 2020 consent order and the Children's Online Privacy Protection Act Rule, and the FTC seeks to modify the 2020 consent order by adding facial recognition requirements, prohibiting the company from launching new products without an independent privacy assessor's approval, and limiting the use of data collected from users under 18. The company has 30 days to respond to this order.

Upcoming Comment Deadlines and Events

CFPB Releases RFI on Data Broker Business Practices. Comments on the CFPB's RFI seeking public comments on the business practices of data brokers are due **June 13**. Specifically, the RFI seeks information about the business models and data collection practices of a range of entities it defines as "data brokers," including the types of information that they collect, sell, and aggregate; the types of sources that they rely on to collect information; and the types of information that they receive from financial institutions, among other

questions.

FTC to Host a Workshop on “Recyclable” Claims. The FTC will host a workshop on **May 23** titled *Talking Trash at the FTC: Recyclable Claims and the Green Guides*. The workshop is part of its recently announced regulatory review of the Green Guides. The half-day hybrid event will cover topics including: the current state of recycling practices and advertisements, consumer perceptions of recycling-related claims, and whether the Green Guides need to be updated or revised to accommodate changes in recycling advertising. Comments related to the issues discussed at the workshop are due **June 13**.

FTC Releases RFI on Cloud Computing Industry. Comments are due **June 21** (extended from May 22) on an FTC Request for Information (RFI) seeking information regarding the business practices of cloud computing providers. The RFI outlines questions on both competition and data security issues in the cloud computing industry. The RFI also notes that FTC staff is interested in cloud computing with regards to specific industries, including healthcare, finance, transportation, e-commerce, and defense.

FTC Seeks Comment on Negative Option Rule NPRM. Comments are due **June 23** on the FTC’s Negative Option Rule NPRM. Negative option marketing refers to commercial transactions where sellers interpret a customer’s inaction to either reject or cancel an agreement as an acceptance of a product or service. The FTC’s current Negative Option Rule requires certain prenotification plan sellers to disclose their plan’s material terms clearly and conspicuously before consumers subscribe. Prenotification plans are those that provide periodic notices offering goods to participating consumers and subsequently send and charge for those goods if consumers take no action to decline the offers. The NPRM proposes to expand the Negative Option Rule to all forms of negative option marketing, including continuity plans, automatic renewals, and free trials in all media (e.g., telephone, Internet, traditional print media, and in-person transactions). The NPRM also would make a number of changes to the Negative Option Rule, including requiring negative option plan sellers to provide a one-click opt-out mechanism for current subscription customers; adding opt-in requirements for negative option plan sellers seeking to make new offers to customers; and implementing a requirement that negative option plan sellers must, on an annual basis, remind customers enrolled in subscription services involving anything other than physical goods about the current subscription before it is renewed.

More Analysis from Wiley

[Wiley Wins Four Law360 ‘Practice Group of the Year’ Awards for 2022](#)

[FTC Joins the Cloud Security Discussion](#)

[5 Takeaways From Recent CFPB, FTC Equal Credit Push](#)

[State Privacy Update: California Finalizes New CCPA Regulations and Iowa Becomes the Sixth State to Adopt Comprehensive Privacy Legislation](#)

State Privacy Update: A New Omnibus Privacy Law Passes in Iowa, Colorado Finalizes Privacy Rules

NTIA Seeks Comment on AI Accountability

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

FTC Proposes New Rule to Broadly Ban Non-Compete Agreements

FTC Requests Comment on Potential Revisions to Green Guides

At CES, FTC Commissioner Slaughter Discusses Agency Priorities and Tech Innovation

Webinar: Staying Ahead of State Privacy Laws: Tips and Best Practices for Building Compliant Strategies for Five Key States

Podcast: State Privacy Laws and Federal Government Contractors

California Moves Closer to Finalizing Updated CCPA Regulations and Launching a New Rulemaking for Cybersecurity Audits, Risk Assessments, and Automated Decisionmaking

CISA Seeks Comments on New Security Attestation for Software Procurements

NIST Releases AI Risk Management Framework, Expected to Be a Critical Tool for Trustworthy AI Deployment

New York Law Will Regulate Consumer Device Repair Options: What the Digital Fair Repair Act Means for the Consumer Electronics Industry

New Year, New State Privacy Laws: California and Virginia Laws Are Now Effective and More Requirements Are on Tap in 2023

PrivacyCon Illustrates the FTC's Focus on AI and Automated Decision Making Systems

FTC's PrivacyCon Highlights Risks and Opportunities For Children's Privacy

PrivacyCon 2022: FTC Hears from Researchers on Wide Range of Topics, Many of Which Overlap With Its Ongoing Privacy and Security Efforts

FTC Pushing Ahead Toward Major Privacy Regulation

FTC Hosts Event to Examine Children's Advertising in Digital Media

New Congressional Report Raises Possibility of False Claims Act Scrutiny for Fintech Companies Involved In PPP Loans

The Future of Web3 Depends on Careful Regulatory Approaches

California Age-Appropriate Design Code Act to Impose Significant New Requirements on Businesses Providing Online Services, Products, or Features

An Introduction to the California Age-Appropriate Design Code

West Virginia v. EPA and the Future of Tech Regulation

U.S. State Privacy Law Guide

Cyber Spotlight: Wiley Tackles White House's National Cybersecurity Strategy and Other Developments

Webinar: Transactional Due Diligence Related to Privacy and Cybersecurity

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

Duane Pozza Named a Cryptocurrency and Fintech 'Trailblazer' by The National Law Journal

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