

Wiley Consumer Protection Download (November 23, 2020)

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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.

Please join us on Tuesday, December 8, 2020, for a webinar on Federal Consumer Protection Priorities in 2021: Reading the Tea Leaves. More information and RSVP can be found [here](#).

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Regulatory Announcements

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FTC and Consumer Protection

CFPB Announces Compliance Resources for FDCPA Final Rule (Regulation F). On **November 13**, the Consumer Financial Protection Bureau (CFPB) announced the release of a resource guide that provides an overview of the CFPB Regulatory Implementation and Guidance team, and provides instructions to industry on how to find compliance aids related to the Fair Debt Collection Practices Act (FDCPA) Final Rule, which was released on October 30. The resource guide also provides a link to the CFPB's debt collection compliance aid resource webpage. Interested parties can sign up to receive email updates about the Final Rule [here](#). Additionally, we wrote a recap on the FDCPA Final Rule, which is available [here](#).

Agencies Finalize Dollar Thresholds in Regulations Z and M for Consumer Credit and Lease Transactions. On **November 18**, the Federal Reserve Board (Federal Reserve) and CFPB finalized the dollar thresholds under Regulation Z (Truth in Lending Act) and Regulation M (Consumer Leasing Act) that will determine exempt consumer credit and lease transactions. The thresholds are set in accordance with the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). The Federal Reserve and CFPB determined that protections under the Consumer Leasing Act and Truth in Lending Act will apply to credit transactions and consumer leases of \$58,300 or less in 2021. The notices explaining these decisions will be published in the Federal Register.

Agencies Announce Threshold for Smaller Loan Exemption from Higher-Priced Mortgage Loan Appraisal Requirements. On **November 18**, the CFPB, Federal Reserve, and the Office of the Comptroller of the Currency announced that the threshold for exempting loans from special appraisal requirements for higher-priced mortgages in 2021 will remain at \$27,200, as it was in 2020. The Dodd-Frank Act modified the Truth in Lending Act to include special appraisal requirements for higher-priced mortgage offers.

FTC Issues Agency Financial Report for FY 2020. On **November 16**, the Federal Trade Commission (FTC) issued its Fiscal Year (FY) 2020 Agency Financial Report. The FY 2020 Agency Financial Report describes the agency's review of its efforts to protect consumers and enhance competition. This report is being submitted to Congress and the Director of the Office of Management and Budget, as required by the Chief Financial Officers Act of 1990, the Government Management Reform Act of 1994, the Accountability of Tax Dollars Act of 2002, and the Annual Management Reports under the Government Corporations Control Act.

Significant Enforcement Actions

CFPB Issues Consent Order Against Florida Auto Loan Payment Program Provider. The CFPB issued a Consent Order against U.S. Equity Advantage, Inc. (USEA), a Florida-based auto loan payment program provider, on **November 20**. The CFPB's Consent Order concludes that USEA violated the Consumer Financial Protection Act (CFPA) by, among other things, not including a \$399 enrollment fee in the calculations presented to consumers. The CFPB found that over 100,000 consumers were subject to USEA's deceptive practices. The CFPB's Consent Order imposes a \$9,300,000 judgment on USEA.

CFPB Sues Debt Collection Company for Alleged TSR and CFPA Violations. On **November 20**, the CFPB filed a complaint against FDATR, Inc. (FDATR) in the U.S. District Court for the Northern District of Illinois alleging violations of the Telemarketing Sales Rule (TSR) and the CFPA. Specifically, the CFPB alleges that

FDATR, a company promising student loan debt relief and credit-repair services to consumers, used deceptive practices to attract consumers and misrepresented aspects of its purported debt relief services. For example, the agency alleges that FDATR stated that its services would reduce or eliminate student loan payments while improving consumer credit scores. The CFPB is seeking monetary relief, including civil penalties.

FTC Files Administrative Complaint Against Supplement Marketers. On **November 20**, the FTC filed an administrative complaint against supplement marketer Health Research Laboratories, LLC (HRL) and Whole Body Supplements (WBS) for making allegedly unsubstantiated claims that their supplements prevent or treat certain chronic diseases. The FTC had previously filed an unsuccessful contempt motion against the parties for violation of a stipulated order. The allegations will be tried in a formal proceeding before an administrative law judge.

FTC Announces and Seeks Comment on Proposed Settlement with Zoom. On **November 9**, the FTC announced a proposed settlement with Zoom Communications, Inc. (Zoom). The Proposed Consent Agreement settles alleged violations of Section 5 of the FTC Act. The FTC's complaint against Zoom alleged that the company, among other things, had misled consumers since 2016 by stating that it offered "end-to-end 256-bit encryption" to protect users' communications, and that the company in fact offered a lower level of security. Comments are due **December 14** on the FTC's Proposed Consent Agreement.

FTC Sues Mobile Banking App for Misleading Statements Regarding Consumers' Access to Funds. On **November 18**, the FTC filed a complaint in the U.S. District Court for the Northern District of California against Beam Financial Inc. (Beam), a mobile banking application, alleging that it falsely promised users high interest (savings) rates and "24/7" access to account funds. Specifically, the FTC's complaint alleges that while Beam promised that consumers would receive requested funds from their accounts within three to five business days, some users waited months to receive their money. The FTC's complaint argues that these actions were deceptive in violation of Section 5 of the Federal Trade Commission Act (FTC Act).

FTC Sends Warning Letter to Financial Aid Prep Marketer. The FTC sent a warning letter to Frank Financial Aid (Frank), stating that the company could be misleading consumers about access to the Coronavirus Aid, Relief, and Economic Security (CARES) Act on **November 16**. According to the FTC, Frank, a financial aid prep marketer, claims that it gives students "everything you need" to apply for emergency funding available under the CARES Act. However, the FTC warned the company that the form letter provided to students may lack the information fields that a student needs to apply for CARES Act funding grants from their school. The FTC's letter also warns Frank about its offers of cash advances that can be repaid "when your financial aid comes in" without any interest or fees, alleging that the company's terms appear to require advance payments to be repaid in 61 days with a monthly fee. The warning letter instructs the company to take prompt action to address all deceptive or unlawful claims.

CFPB Issues Consent Order Against Telecommunications Debt Collector. On **November 12**, the CFPB issued a Consent Order against Afni, Inc. (Afni), a third-party debt collector based in Illinois specializing in telecommunications debt collection. Afni furnishes credit reporting information to consumer reporting agencies (CRAs) regarding the consumers that it is attempting to collect from. The CFPB alleges that Afni violated the

Fair Credit Reporting Act (FCRA) by, among other things, furnishing information to CRAs that it knew or had reason to know was inaccurate; failing to conduct investigations into disputes made by consumers; and failing to establish and maintain its policies and procedures regarding its furnishing of consumer information to CRAs. The Consent Order imposes a \$500,000 civil penalty.

FTC Sends Warning Letters to 20 Marketers Making Unsupported COVID-19 Claims. The FTC announced on **November 12** that it sent letters to 20 marketers nationwide, warning them to stop making unsupported claims that their products and therapies can either prevent or treat the coronavirus (COVID-19). This is the ninth round of warning efforts that the FTC has transmitted as part of its efforts to protect consumers from unsupported COVID-19 health marketing claims. Over the past year, the FTC has sent similar letters to more than 330 entities. Some of the warning letters target products and services that the FTC has previously sent warnings about (such as ozone therapy and supplements). Others dispute claims that more obscure products and therapies, such as bead bracelets, can prevent or treat COVID-19.

Upcoming Comment Deadlines and Events

FTC Seeks Comment on the Address Discrepancy Rule. Comments are due **November 30** on the FTC's Notice of Proposed Rulemaking (NPRM) detailing technical amendments to the Duties of Users of Consumer Reports Regarding Address Discrepancies Rule (Address Discrepancy Rule). The Address Discrepancy Rule was promulgated after Congress passed the Fair and Accurate Credit Transactions Act of 2003, which required a national consumer reporting agency to notify consumer report requesters of the existence of an address discrepancy when the reporting agency and the requester have different addresses for a consumer. The Address Discrepancy Rule obligates entities that use consumer reports to develop and deploy policies and procedures to enable the user of a consumer report to form a reasonable belief that the report relates to the consumer about whom the information was requested. The FTC is proposing to amend the Address Discrepancy Rule to accommodate the Dodd-Frank Act.

CFPB Requests Input on Changes to ECOA. Comments are due **December 1** (extended from October 2) on the CFPB's Request for Information (RFI) on potential changes to the Equal Credit Opportunity Act (ECOA). Specifically, the CFPB is requesting information "to identify opportunities to prevent credit discrimination, encourage responsible innovation, promote fair, equitable, and nondiscriminatory access to credit, address potential regulatory uncertainty, and develop viable solutions to regulatory compliance challenges."

CFPB and Colorado Attorney General to Hold Joint, Virtual Office Hours. The CFPB and the Office of the Colorado Attorney General have announced joint, virtual office hours as part of the American Consumer Financial Innovation Network (ACFIN). Launched in 2019, ACFIN is a network of federal and state regulators working to facilitate consumer-beneficial innovation through coordination with the private sector. The office hours, which will take place on **December 2**, are geared towards providing innovators with the opportunity to discuss issues such as financial technology and new products and services with officials from both the CFPB and Colorado. Parties interested in requesting a meeting can do so here. Meeting requests are due **November 23**.

FTC Seeks Comment on Prescreen Opt-Out Notice Rule. Comments are due **December 7** on the FTC's review of the Prescreen Opt-Out Notice Rule as part of the agency's systematic review of its current guidelines and regulations. The Prescreen Opt-Out Notice Rule requires that persons using consumer reports to make unsolicited firm offers of credit or insurance must provide a conspicuous statement with any written offer that informs the consumer that information from their report was used in connection with the transaction. The person using the report must also notify the consumer that they have the right to prohibit consumer reporting information from being used in any transaction, and that they may opt-out via notification. The FTC is proposing to limit the Prescreen Opt-Out Notice Rule to motor vehicle dealers in accordance with the Dodd-Frank Act.

FTC Requests Input on the Affiliate Marketing Rule. Comments are due **December 7** on the FTC's review of the Affiliate Marketing Rule as a part of the agency's review of all rules and guides. Additionally, the FTC is proposing to amend the Affiliate Marketing Rule to correlate with changes made to FCRA by the Dodd-Frank Act. The Affiliate Marketing Rule of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) gives consumers the right to restrict a person from using consumer information obtained by an affiliate to make solicitations to the customer. Specifically, if a person or entity receives consumer eligibility information from a business affiliate, the person or entity may not utilize that information to make solicitations unless the consumer is given an opt-out right to the use of such information. The FTC is proposing to amend the Affiliate Marketing Rule to limit its regulatory scope to motor vehicle dealers in accordance with the Dodd-Frank Act.

FTC Requests Comment on Furnishers Rule. Comments are due **December 14** on a Proposed Rule related to the FTC's Duties of Furnishers of Information to Consumer Reporting Agencies Rule (Furnisher Rule) as part of its review of all agency regulations and guides. The FTC is proposing to amend the Furnisher Rule to correlate it with changes made to FCRA by the Dodd-Frank Act. The Furnisher Rule requires that furnishers of consumer reports develop reasonable written policies and procedures pertaining to the accuracy of the information relating to consumers that they provide to a consumer reporting agency. The FTC's Proposed Rule would narrow the scope of the Furnisher Rule to entities set forth in the Dodd-Frank Act that are engaged in the sale and servicing of motor vehicles.

FTC Solicits Input on Risk-Based Pricing Rule. Comments are due **December 22** on the FTC's NPRM regarding the Duties of Creditors Regarding Risk-Based Pricing Rule (Risk-Based Pricing Rule) as part of its review of all agency regulations and guides. Risk-based pricing is the practice of modifying the price and other terms of credit offered or extended to a particular consumer to demonstrate the consumer's nonpayment risk. The Risk-Based Pricing Rule, which represents a provision of FCRA, requires that a person provide a risk-based pricing notice to a consumer when a person uses a consumer report to extend credit and does so on terms that are materially less favorable than the most favorable terms available to a substantial portion of borrowers. Additionally, the FTC is proposing to amend the Risk-Based Pricing rule to correlate it to changes made to the FCRA by the Dodd-Frank Act.

More Analysis from Wiley

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CFPB Publishes Final Rule on Debt Collection Practices

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Privacy in Focus: Safeguarding Health Information in the Apps Ecosystem: A Reminder from the California AG

Privacy in Focus: California Votes 'Yes' on the California Privacy Rights and Enforcement Act of 2020

Privacy in Focus: Massachusetts Ballot Initiative Raises Privacy and Data Security Concerns for Connected Devices

Third Circuit Sharply Limits FTC Authority to Obtain Monetary Relief as Supreme Court Prepares to Weigh In

Justice Thomas Lays Blueprint for Supreme Court to Limit Section 230 In a Future Case

California AG Proposes Additional Changes to CCPA Regulations; Seeks Comment

Federal Privacy Law Efforts Move Forward in Congress

The Telephone Consumer Protection Act and the 2020 Election

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Download Disclaimer: Information is current as of November 23, 2020. 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.