

Wiley Consumer Protection Download (November 29, 2021)

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[Regulatory Announcements](#)

[Recent Enforcement Actions](#)

[Recent Congressional Hearings](#)

[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 ground-breaking technologies. Please reach out if there are other topics you'd like to see us cover or for any additional information.

Regulatory Announcements

FTC Adopts Policy Statement on Criminal Referrals and

Partnerships. On **November 18**, the FTC voted 4-0 to approve a new policy statement on its criminal referral program, including referrals in the corporate context. Although the agency's enforcement authority is limited to civil matters, the FTC coordinates with international, federal, state, and local law enforcement entities on potential criminal misconduct arising during competition and consumer protection investigations. The policy statement provides that: (1) the agency will

Authors

Duane C. Pozza

Partner

202.719.4533

dpozza@wiley.law

Stephen J. Conley

Associate

202.719.4572

sconley@wiley.law

Tawanna D. Lee

Consulting Counsel

202.719.4574

tdlee@wiley.law

Practice Areas

Cyber and Privacy Investigations, Incidents & Enforcement

FTC and Consumer Protection

"continue to support cross-agency efforts and refine best practices to ensure that criminal law violations are identified . . . and promptly referred to criminal enforcers"; (2) the FTC will convene regular meetings with law enforcement partners; and (3) the FTC will "also return to publicly reporting on its criminal referral efforts at regular intervals to strengthen public understanding of this important work and highlight criminal prosecutions."

FTC Chair Khan Announces New Personnel Appointments with a Focus on Artificial Intelligence (AI). On **November 19**, FTC Chair Lina Khan announced new personnel appointments in the FTC's Office of Policy Planning. According to the announcement, Olivier Sylvain will serve as Senior Advisor on Technology to Chair Khan; John Kwoka will serve as Chief Economist to Chair Khan; Meredith Whittaker will serve as Senior Advisor on Artificial Intelligence to Chair Khan; Amba Kak will serve as a Senior Advisor on Artificial Intelligence; and Sarah Myers West will serve as an Advisor on Artificial Intelligence. The appointments in the area of AI, in particular, reinforce the agency's focus on expanding its work on AI and algorithms.

FTC Nominee Alvaro Bedoya Testifies Before U.S. Senate. On **November 17**, Alvaro Bedoya, President Biden's nominee for FTC Commissioner, testified before the U.S. Senate Committee on Commerce, Science, & Transportation. Bedoya's testimony focused on his previous consumer protection and privacy work at Georgetown Law and as Chief Counsel of the U.S. Senate Judiciary Subcommittee on Privacy, Technology and the Law. Bedoya also noted a desire to work on fraud involving personal protective equipment, fake drug treatments, and competition issues – specifically those affecting small pharmacies. Additionally, Bedoya expressed a willingness to work on privacy regulations if confirmed.

CFPB Issues Ethics Guidance Associated with Engagement with Former Federal Employees. On **November 19**, the CFPB issued guidance to staff regarding CFPB-specific ethics rules concerning departing and former federal employees. The guidance comes in addition to existing Bureau-specific ethics rules adopted in 2012. Among other points, the guidance encourages current staff to report any potential disclosure of non-public or confidential Bureau information.

CFPB Issues Joint Statement with Federal and State Counterparts on Supervisory and Enforcement Practices Under the Mortgage Servicing Rules. On **November 10**, the Board of Governors of the Federal Reserve, the CFPB, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and a number of state financial regulators issued a Joint Statement regarding updated supervisory and enforcement practices under Regulation X of the mortgage servicing rules (Mortgage Servicing Rules) in response to the COVID-19 pandemic and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The Joint Statement follows the agencies' April 2020 Joint Statement, which announced that, until further notice, the regulators would not take either supervisory or enforcement action against mortgage servicers for failing to meet timing requirements under the Mortgage Servicing Rules, provided that they made good faith efforts to transmit required notices and took the related actions specified under those notices "within a reasonable period of time." The Joint Statement effectively rescinds the April 2020 Joint Statement, finding that "the temporary flexibility described in the April 2020 Joint Statement is no longer necessary."

FTC Do Not Call Registry Data Reveals Increased Consumer Complaints and DNC Registrations. On **November 23**, the FTC released its FY 2021 National Do Not Call Registry (DNC) Data Book. The agency's DNC Registry allows consumers to opt-in and add their phone numbers to not receive telemarketing calls. In FY 2021, almost 3 million people signed up with the DNC Registry, while the number of DNC Registry-related consumer complaints increased from four million to over five million between FY 2020 and FY 2021. Imposter robocalls represented the largest source of consumer complaints.

Recent Enforcement Actions

CFPB Sues Pawnshop Owners for Alleged Violations of the CFPB and MLA. On **November 12**, the CFPB filed suit against pawn lenders FirstCash and Cash America West in the United States District Court for the Northern District of Texas. Specifically, the CFPB alleged that the lenders made pawn loans to active-duty servicemembers and their dependents in violation the Military Lending Act (MLA), a 2013 Order directing the lenders to halt misconduct against military families, and the Consumer Financial Protection Act of 2010 (CFPA). The MLA implements protections in connection with extensions of consumer credit for active duty servicemembers and their dependents, including an interest rate cap, known as a Military Annual Percentage Rate (MAPR), a ban on forced arbitration, and certain mandatory loan disclosures. Among other things, the complaint alleges that between June 2017 and May 2021, FirstCash and Cash America West made over 3,600 pawn loans from four of its stores to more than 1,000 servicemembers and their families that violated prohibitions of the MLA by imposing a MAPR greater than the MLA's 36% cap; using loan agreements requiring arbitration in the case of a dispute; and failing to make required loan disclosures. The Bureau's complaint seeks redress for consumers, injunctive relief, and a civil money penalty.

FTC Bans Payment Processor from Debt Relief Processing. On **November 8**, the FTC announced that it obtained an order permanently banning a payment processor, Automatic Funds Transfer Services, Inc. (AFTS) and its owner, Eric Johnson, from processing debt relief and student loan payments. According to the complaint, ATFS allegedly processed at least \$31 million in consumer payments for a fraudulent student loan debt relief scheme in violation of the Federal Trade Commission Act and the Telemarketing Sales Rule. AFTS's purported violations include assisting and facilitating unlawful activity by at least one telemarketer. The order requires the company and its owner to surrender \$500,000 to the FTC for consumer redress and pay a monetary judgment of \$27,584,969, which is largely suspended due to an inability to pay.

Recent Congressional Hearings

Saule T. Omarova: Senate Confirmation Hearing. On **November 18**, the U.S. Senate Committee on Banking, Housing, and Urban Affairs held a confirmation hearing for Saule T. Omarova, President Biden's nominee for Comptroller of the Currency. Omarova's opening testimony, along with a recording of the hearing, can be found [here](#).

Alvaro Bedoya: Senate Confirmation Hearing. On **November 17**, the U.S. Senate Committee on Commerce, Science, and Transportation held a confirmation hearing for Alvaro Bedoya, President Biden's nominee for FTC Commissioner. Bedoya's opening testimony, along with a recording of the hearing, can be found [here](#).

Demystifying Crypto: Digital Assets and the Role of Government. On **November 17**, the Joint Economic Committee held a hearing titled "Demystifying Crypto: Digital Assets and the Role of Government." The witness list, opening statements, and a recording of the hearing are available [here](#).

Upcoming Comment Deadlines and Events

FTC Seeks Comment on Draft Strategic Plan for FY 2022-2026. Comments are due **November 30** on the FTC's Draft Strategic Plan for FY 2022-2026. The draft identifies three strategic goals – (1) to protect the public from unfair or deceptive acts or practices in the marketplace; (2) to promote an open and competitive marketplace for the benefit of the public; and (3) to advance the FTC's effectiveness and performance. The GPRA Modernization Act of 2010 requires federal government agencies to update their strategic plans every four years.

FTC Seeks Comment on Proposal to Further Amend Safeguards Rule to Strengthen Information Security Protections for Financial Institutions. Comments are due 60 days after publication in the *Federal Register* on a proposal in a supplemental notice of proposed rulemaking to add reporting of certain security incidents to the FTC by covered companies within 30 days of discovery. Specifically, the proposal would require financial institutions to report security events to the FTC where a determination has been made that consumer information has been misused, or is reasonably likely to be misused, in an event affecting at least 1,000 consumers.

CFPB Solicits Input on Proposed Changes to ECOA Rules Under the Dodd-Frank Act. Comments are due **January 6, 2022** on a Proposed Rule to amend Regulation B of the Equal Credit Opportunity Act (ECOA) made pursuant to Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Specifically, the agency is proposing to require financial institutions covered by Section 1071 to collect and report to the CFPB certain data on applications for credit by small businesses. The CFPB's Proposed Rule also addresses privacy interests; shielding demographic data from underwriters and other individuals; recordkeeping requirements; and enforcement provisions. The agency also seeks comment on effective and compliance dates.

CFPB Issues Request for Information Seeking Comment on Proposed Rules Implementing the HMDA. On **November 16**, the CFPB issued a Request for Information seeking comment on rules implementing the Home Mortgage Disclosure Act (HMDA). The agency plans to review regulatory changes made in 2015 to analyze their effectiveness. The HMDA was originally enacted in 1975 and requires lenders to report information pertaining to home loan applications, originated loans, and purchased loans. The HMDA changes finalized in 2015 increased the categories of borrower data that lenders were required to report. Comments on the Request for Information are due 60 days after publication in the *Federal Register*.

More Analysis from Wiley

FTC Releases Detailed Information Security Requirements and Proposes Breach Notification for Financial Institutions

Duane Pozza Discusses FTC's Updated Safeguards Rule

California Set to Begin Potentially Far-Reaching Rulemaking on Privacy

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

FTC Broadly Issues Notices on Endorsements and Testimonials to National Advertisers, Signaling a New Enforcement Approach

Duane Pozza Discusses Emerging Regulatory Approach to Crypto and DeFi

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

Privacy in Focus: FTC Policy Statement Signals Increasing Scrutiny on the Protection of Sensitive Personal Health Information

Privacy in Focus: AI Risk Management Framework Is Among Emerging Federal Initiatives on AI

The FTC's Public Meeting Forecasts an Active and Far-Reaching Agenda Under Chair Lina Khan

FTC Adopts Policy Statement on Consumer Device Repairs and Announces That Enforcement Approach Will Be a Priority

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Preview Disclaimer: Information is current as of November 29, 2021. 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.