

Wiley Consumer Protection Download (October 11, 2021)

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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

Senate Confirms FTC Commissioner Chopra to CFPB Director. On **September 30**, the U.S. Senate voted 50-48 to confirm FTC Commissioner Rohit Chopra as Director of the CFPB. Chopra will shortly be sworn in as permanent CFPB Director, replacing Acting Director Dave Uejio, who has led the agency since January of this year. Chopra previously served as Assistant Director of the CFPB

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FTC and Consumer Protection

where he oversaw the agency's policies on student loans. His departure from the FTC will leave the agency with four Commissioners. President Biden's recent nominee for a fifth FTC Commissioner – Alvaro Bedoya – is currently awaiting a confirmation hearing and vote in the Senate.

FTC Chair Lina Khan Appoints Directors for FTC Bureaus of Consumer Protection and Competition. On **September 28**, FTC Chair Lina Khan announced the appointments of Holly Vedova as Director of the Bureau of Competition and Samuel Levine as Director of the Bureau of Consumer Protection. Both were previously serving as Acting Directors. Vedova originally joined the FTC in 1990 and most recently served as attorney advisor to Commissioner Rohit Chopra. She has also served as counsel to the Director of the Bureau of Competition. Levine also served previously as an attorney advisor to Commissioner Rohit Chopra. Before joining the FTC, Levine worked for the Illinois Attorney General. The Commissioners voted 5-0 to approve the appointments.

CFPB's Fifth Biennial Congressional Report on the Consumer Credit Card Market Demonstrates Decline in Growth. On **September 29**, the CFPB released its fifth biennial report to Congress on the consumer credit card market. Since the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and pursuant to the Credit Card Accountability Responsibility and Disclosure Act of 2009, the CFPB has submitted a report to Congress on the state of the credit card market every two years. The report concludes that the market's steady growth over the previous few years ended in 2020, as credit card debt fell from \$926 billion to \$825 billion. Additionally, the application volume for new credit cards decreased markedly from 2019 to 2020. However, digital engagement – through enrollment in online portals, mobile apps, e-statements, and electronic payment – is growing consistently across age demographics and platforms.

Significant Enforcement Actions

FTC Warns 70 For-Profit Higher Education Institutions About Potentially False Advertising Claims. On **October 6**, the FTC announced that it sent a Notice of Penalty Offenses to 70 for-profit higher education institutions. Each Notice outlines a number of practices that the FTC has previously found to be unfair or deceptive, such as claims about career outcomes and the ability of the institutions to help students obtain post-graduate employment. The cover letter for the Notice recommends that the recipients review the Notice for compliance, but does not necessarily identify specific practices by the recipients that the agency believes to be unlawful. The FTC has authority to seek civil penalties for certain violations under Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. § 45(m)(1)(B), which allows it to assess fines of up to \$43,792 per violation.

FTC Settles with Operators of MoviePass Following Allegations of Blocking Subscribers from Using Movie Service. On **October 5**, the FTC announced that it has given final approval of a settlement with MoviePass, and its CEO and parent company, as well as Matheson Analytics, Inc., and its CEO, for allegedly deceptively marketing its "one movie per day" service, then deploying tactics aimed at preventing subscribers from using the service as advertised. The complaint also alleged that MoviePass's operators left a database containing large amounts of subscribers' personal information unencrypted and exposed, leading to unauthorized access. The FTC Consent Order bars MoviePass's operators from misrepresenting their business and data security practices, requires the implementation of comprehensive information security programs, and imposes

reporting obligations.

The FTC and the Florida Attorney General Ban Operator of Magazines Sales Company that Targeted Prisoners and their Families. On **September 28**, the FTC and the Florida Office of Attorney General announced that they reached a settlement with Roy Snowden, the owner and operator of Inmate Magazine Service. The settlement imposes a ban on selling or marketing magazine subscriptions, and a monetary judgment of \$2.2 million, which is partially suspended based on an inability to pay. The settlement resolves allegations that Snowden violated the FTC's Mail, Internet, or Telephone Order Merchandise Rule, specifically by marketing magazine subscriptions to consumers serving prison sentences, offering to send the magazines within 120 days of their order. In many cases, however, the magazines purportedly never arrived or were delivered past the 120-day mark with no notification to the consumers about delayed shipment or the chance to cancel their orders.

Two Debt Collectors Banned from Debt Collection Pursuant to FTC Settlement. On **September 27**, the FTC announced that Critical Resolution Mediation LLC and Parliament Services LLC and their officers Brian Charles McKenzie and Tracy Dottrice Warren would be permanently banned from debt collection as part of a settlement over allegations that the defendants and their agents posed as police and attorneys to threaten consumers, and attempted to collect debts that the consumers did not actually owe. The settlement imposes a monetary judgment of more than \$3 million, which is partially suspended due to an inability to pay.

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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

Webinar: Shifting U.S. Privacy Regulation: New State Laws Complicate Compliance Efforts

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

California's New Privacy Agency Kicks Off the New CPRA Rulemaking Process

Implementing AI Governance: An International Perspective

Key Takeaways from the AMG Capital Management v. FTC Decision

Supreme Court Curbs FTC Power to Seek Monetary Relief

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Download Disclaimer: *Information is current as of October 11, 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.*