

Wiley Consumer Protection Download (October 17, 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

FTC Announces Agenda for October 2022 Open Commission Meeting. On **October 13**, the FTC announced the agenda for its October 20, 2022 Open Commission Meeting. Specifically, the agency announced that it would consider three advance notices of proposed rulemaking (ANPRs): (1) an ANPR soliciting comment on what the FTC refers to as "junk fees" and "junk fee practices"; (2) an ANPR focused on the prevalence of "fake reviews and other endorsements," which

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the FTC states “can cheat consumers and honest businesses alike”; and (3) an ANPR to update the Funeral Industry Practices Rule, which “requires providers of funeral goods and services to give consumers itemized lists of funeral goods and services that not only state price and descriptions, but also contain specific disclosures.” Should the FTC vote to approve these items, they will be published in the Federal Register for public comment.

CFPB and Federal Reserve Board Announce Regulation M and Z Dollar Thresholds. On **October 13**, the CFPB and the Federal Reserve Board announced the dollar thresholds used to determine whether certain consumer credit and lease transactions are exempt from Regulations Z and M, respectively. The CFPB and Federal Reserve Board are required to annually adjust the thresholds based on the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). Based on an increase in the CPI-W, Regulations Z and M will apply to consumer credit transactions and leases of \$66,400 or less in 2023. Private education loans, along with loans secured by real property, are subject to Regulation Z regardless of the amount of the loan.

CFPB, Federal Reserve Board, and OCC Announce 2023 Threshold for Exempting Loans from Special Appraisal Requirements for Higher-Priced Mortgage Loans. On **October 13**, the CFPB, Federal Reserve Board, and the Office of the Comptroller of the Currency (OCC) announced that the 2023 threshold for exempting loans from special appraisal requirements for higher-priced mortgage loans under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) will increase from \$28,500 to \$31,000 on January 1, 2023. The Dodd-Frank Act added special appraisal requirements for higher-priced mortgage loans, such as that creditors obtain a written appraisal based on a physical visit inside of the home. The threshold amount, which was originally set at \$25,000 or less, is based on the CPI-W.

CFPB Publishes Report on Terms and Fees Associated with Banking Products for Students Endorsed by Colleges. On **October 13**, the CFPB published a report to Congress on terms and fees associated with banking products marketed to students in partnership with colleges. The agency’s review collected data from 11 account providers, including non-bank financial service providers, banks, and credit unions offering more than 650,000 student accounts in partnership with 462 higher education institutions during the 2020-2021 year. According to the CFPB, key findings include, among other things: (1) financial service providers and their partner schools appear to offer and promote more costly products to students than otherwise available in the marketplace; (2) students are directed to lists of account options that do not appear to meet Department of Education regulations which require that students be allowed to select the way that they receive financial aid from a neutral list; and (3) many agreements between financial institutions and colleges allegedly do not appear to be posted as clearly and conspicuously as required by Department of Education requirements.

FTC Chair Appoints New Chief Technology Officer and New Public Affairs Director. On **October 3**, FTC Chair Lina Khan announced the appointments of Stephanie Nguyen to serve as the agency’s Chief Technology Officer and Douglas Farrar to serve as the agency’s new Public Affairs Officer. Nguyen had been serving as the acting Chief Technology Officer since October 2021, while Farrar previously served as the Vice President for Communications and Strategy at the Carnegie Endowment for International Peace.

Significant Enforcement Actions

CFPB Fines Choice Money for Alleged Violation of the EFTA. On **October 4**, the CFPB filed a consent order and stipulation in its administrative action against the payment remittance provider, Choice Money Transfer (Choice Money). The CFPB alleged that Choice Money violated the Electronic Fund Transfer Act (EFTA) and its corresponding regulations by failing to provide consumers accurate information about payment transfers, not including all required information in and incorrectly formatting its disclosures, and improperly applying consumer consent requirements. Additionally, the CFPB alleged that Choice Money failed to provide refunds to consumers for delayed transfers in violation of the Remittance Rule. Choice Money agreed to implement new policies and procedures that comply with the EFTA and Regulation E in addition to paying a \$950,000 penalty.

FTC Granted Favorable Order Against F & G International Group Holdings. On **October 11**, the U.S. District Court for the Southern District of Georgia granted the FTC's Motion for Summary Judgment and Permanent Injunction against F & G International Group Holdings, LLC, FG International, LLC, and their principal J. Glenn Davis (Defendants). The FTC alleged that the Defendants had harmed consumers by falsely claiming that the Defendants' paint products provided insulation value. Since the Defendants did not dispute the FTC's ability to obtain some type of injunctive relief and had stopped spreading the claim at issue, the Court decided that the FTC's motions should be granted as to past claims. The permanent injunction prevents the Defendants from engaging in the allegedly deceptive practice.

Upcoming Comment Deadlines and Events

FTC Holding Virtual Event on 'Stealth Advertising' Toward Children. On **October 19**, the FTC will host a virtual event "to examine how best to protect children from a growing array of manipulative marketing practices that make it difficult or impossible for children to distinguish ads from entertainment in digital media." The event will examine evolving practices, such as the "kid influencer" marketplace, and the techniques being used to advertise to children over the internet. In conjunction with the virtual event, the FTC is seeking public comment on how children are impacted by certain digital marketing and advertising messages. Comments are due **November 18**. The agenda for the event is available [here](#).

FTC Requests Comment on 'Commercial Surveillance' and Data Security ANPR. Comments are due **November 21** (extended from October 21) on the FTC's Trade Regulation Rule on Commercial Surveillance and Data Security ANPR (which we summarized in greater detail [here](#)). The wide-ranging ANPR seeks feedback on dozens of questions regarding consumer privacy, data security, and algorithmic uses, and discusses a number of potential regulatory approaches to what the agency calls "commercial surveillance." The agency defines "commercial surveillance" as the "collection, aggregation, analysis, retention, transfer, or monetization of consumer data and the direct derivatives of that information," and "data security" as "breach risk mitigation, data management and retention, data minimization, and breach notification and disclosure practices." The FTC issued the ANPR under its Section 5 FTC Act authority, which requires any eventual rule to be grounded in "unfair or deceptive acts or practices" as specified in the Act.

FTC Seeking Research Presentations for PrivacyCon 2022. Research presentations were due **July 29** for PrivacyCon 2022, which will take place virtually on **November 1**. As part of the event, the FTC is seeking empirical research and presentations on topics including: algorithmic bias; “commercial surveillance” including workplace monitoring and “biometric surveillance”; new remedies and approaches to improve privacy and security practices; and the privacy risks posed by emerging technologies for children and teens.

CFPB Seeks Comment on Methods to Spur New Mortgage Products. Comments are due **November 28** on the CFPB’s Request for Information seeking comment on “(1) ways to facilitate mortgage refinances for consumers who would benefit from refinancing, especially consumers with smaller loan balances; and (2) ways to reduce risks for consumers who experience disruptions in their financial situation that could interfere with their ability to remain current on their mortgage payments.” The Request for Information specifically seeks comment on new products and services, such as refinance programs that are targeted and streamlined, refinancing products such as automatic refinancing, and automatic mortgage forbearance and assistance with long-term loss mitigation.

FTC Seeks Comment on Business and Government Impersonation NPRM. Comments are due **December 16** on the FTC’s Government and Business Impersonation Fraud Advance Notice of Proposed Rulemaking (NPRM). The NPRM proposes a rule that would allow the FTC to obtain penalties against fraudsters impersonating companies, non-profit organizations, and government agencies.

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FTC Pushing Ahead Toward Major Privacy Regulation

Crypto and Web3 Under Consumer Protection Scrutiny

How the Supreme Court’s OT 2022 Term (So Far) Might Affect Tech

California AG Issues First Fine for CCPA Violations

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

The Private Sector Should Watch NIST’s Broad Work on Privacy and Cybersecurity Guidance

FTC Seeks Comment on Proposed Rule Prohibiting Impersonation Scams

FTC Highlights Scrutiny of Health and Geolocation Data

West Virginia v. EPA and the Future of Tech Regulation

FTC Uses Enforcement Proceeding to Send Message on Account Security Practices

California Privacy Protection Agency Releases Draft CPRA Regulations

Executive Order on EU-U.S. Data Sharing Signed

EU Institutions Reach Agreement on Landmark Regulations Targeting Big Tech

U.S. State Privacy Law Guide

Tech and Telecom Stakeholders at #MWC22 Discuss Industry Collaboration Against Rising Financial Fraud

Cybersecurity Top of Mind at #MWC22

Webinar: Transactional Due Diligence Related to Privacy and Cybersecurity

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

Podcast: Why the FTC Matters for Fintech

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