

Wiley Consumer Protection Download (October 17, 2023)

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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 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

FTC Releases NPRM on “Junk Fees” that Proposes New Rules

Regarding Fee Disclosures. On October 11, the FTC announced its release of the Trade Regulation Rule on Unfair or Deceptive Fees Notice of Proposed Rulemaking (NPRM). The NPRM broadly addresses two practices: (1) fee disclosures after a consumer sees an initial base price, and (2) “practices that misrepresent the nature and purpose of fees or charges.” The proposed rule would define both as unfair and deceptive practices, which would enable the FTC to seek civil penalties for violations. Among other things, the NPRM proposes

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to require businesses to disclose a “Total Price” in any offer, display, or advertisement that contains an amount a consumer must pay and do so more prominently than other pricing information. It also proposes a preemptive disclosure requirement which would require businesses to disclose, clearly and conspicuously and before the consumer consents to pay, the nature and purpose of any amount the consumer may pay that is excluded from the “Total Price,” including shipping charges, government charges, optional fees, voluntary gratuities, and invitations to tip. The FTC voted 3-0 to release this NPRM, and the comment period will begin 60 days after the NPRM is published in the federal register.

FTC Releases Data Spotlight of 2023 Social Media Scam Trends. On October 6, the FTC released a new Consumer Protection Data Spotlight, Social Media: a golden goose for scammers, which analyzes the most common type of scams conducted through social media. The spotlight summarizes data from January 2021 to June 2023 and notes that the collective amount of money consumers reported to have lost due to social media scams is higher than through any other contact method, with investment scams resulting in 53% of that loss. A majority of the money lost through investment scams was reportedly transferred to bad actors in cryptocurrency. The spotlight also highlights that 44% of reported scams were online shopping scams and the second highest number of scams were romance scams. The FTC recommends that consumers: (1) visit their privacy settings on social media sites and limit who can access their profile; (2) pause if a “friend” makes contact on social media asking for money; (3) do not rush into any social media friendship or romantic relationship; and (4) review a company before purchasing its products.

CFPB’s Recent Supervisory Highlights Focuses on Consumer Fees. On October 11, the CFPB released a special edition of its Supervisory Highlights focused on the Bureau’s efforts to stop certain fees being added to transactions such as bank account deposits, auto loan servicing, and remittances. The report also attributes \$140 million in consumer refunds to the CFPB’s enforcement efforts to stop “junk fees,” including fees charged for receiving paper banking statements, auto loan add-ons, and international remittances.

CFPB Issues Consumer Advisory on Information Requests to Large Banks and Credit Unions. On October 11, the CFPB issued a Consumer Advisory outlining that section 1034(c) of the Consumer Financial Protection Act (CFPA) requires large banks and credit unions to provide consumers their account information, and that this section prohibits covered financial institutions from charging fees or placing other obstacles in the way of consumers seeking account information. The Consumer Advisory outlines what conditions will be considered impediments to consumer requests for information and subject to CFPB enforcement actions.

CFPB and DOJ Release Joint Statement on ECOA’s Application to Noncitizen Borrowers. On October 12, the CFPB and the Department of Justice (DOJ) released a joint statement for financial institutions outlining that all credit applicants, including noncitizens, are protected by the Equal Credit Opportunity Act (ECOA) and Regulation B. The statement adds that although immigration status can be used as a factor to determine a credit applicant’s ability to repay, financial institutions cannot establish blanket policies to deny credit to immigrants.

Recent Enforcement Actions

FTC Wins Summary Judgment in Lawsuit Against Telemarketing Company for Violations of the Telemarketing Sales Rule. On **September 1**, a Northern District of Illinois judge granted the FTC's motion for summary judgement against Day Pacer, LLC and Edutrek, L.L.C. The FTC filed its complaint against the defendants in March 2019, alleging that the companies initiated millions of unsolicited calls to consumers on the Do Not Call Registry and assisted other telemarketers in similar efforts in violation of the Telemarketing Sales Rule (TSR). The court found that the defendants knowingly violated the TSR and that the FTC is entitled to injunctive and monetary relief, which will be considered further at an upcoming hearing.

FTC Settles with Beauty Product Marketer for Alleged Violations of ROSCA. On **October 10**, the FTC filed a stipulated order in the U.S. District Court for the District of Puerto Rico against Gopalkrishna Pai and eight companies he owned. The FTC filed its complaint against the defendants in February 2019 alleging that Pai and his companies violated the Restore Online Shoppers' Confidence Act (ROSCA) through offering consumers free trial skin products and automatically subscribing consumers who signed up for the trial to monthly purchases. The defendants agreed to a monetary judgement of \$34 million in addition to injunctive relief.

CFPB Sues Mortgage Lender for Allegedly False HMDA Reporting. On **October 10**, the CFPB filed a complaint against Freedom Mortgage Corporation in the U.S. District Court for the Southern District of Florida for alleged violations of the Home Mortgage Disclosure Act (HMDA) and a 2019 consent order with the CFPB. The CFPB alleges that Freedom Mortgage misreported demographic information about loan applications and originations in its 2020 HMDA report. Previously, the CFPB settled with Freedom Mortgage over similar allegations found its 2019 HMDA report. The CFPB is requesting injunctive and monetary relief.

FTC and CFPB Settle with Credit Reporting Agency for Allegedly Failing to Produce Accurate Reports. On **October 12**, the FTC and CFPB filed a complaint and stipulated order in the U.S. District Court for the District of Colorado against Trans Union LLC and one of its subsidiaries, TransUnion Rental Screening Solutions, Inc. (TURSS), for alleged violations of the Fair Credit Reporting Act (FCRA). The FTC and CFPB allege that TURSS failed to take appropriate measures to prevent listing the same eviction case multiple times as separate incidents and correctly depicting the nature of eviction cases included in the background screening reports provided to rental owners, employers, and other entities. The defendants have agreed to pay \$11 million in redress and a \$4 million civil penalty, and to establish procedures to ensure the accuracy of background screening reports.

FTC Settles with Cryptocurrency Company for Allegedly Deceptive Marketing Practices. On **October 12**, the FTC filed a complaint in the U.S. District Court for the Southern District of New York against Voyager Digital, its CEO Stephen Ehrlich, and an individual relief defendant, and a stipulated order with the company. Litigation will continue against the individuals. The FTC alleged that Voyager Digital, a now-bankrupt cryptocurrency company, misled consumers by falsely claiming that customer accounts were insured by the Federal Deposit Insurance Corporation (FDIC) and "safe" from collapse without sufficiently explaining that the cryptocurrency itself was not insured. The company has agreed to pay \$1.65 billion, which will be suspended

in the bankruptcy proceeding, in addition to injunctive relief that bans the company from handling consumer assets.

Upcoming Comment Deadlines and Events

DOJ and FTC Announce Additional Workshops on Draft Merger Guidelines. The U.S. Department of Justice (DOJ) (collectively, the Agencies) will hold workshops on the Agencies' draft update of the merger guidelines (Draft Guidelines) on October 5 at the Harvard Kennedy School and on **November 3** at the University of Chicago Law School.

FTC Issues Supplemental Proposed Amendments to Testing Methods Under the Amplifier Rule. Comments are due **October 20** on the FTC's Supplemental Notice of Proposed Rulemaking (SNPRM) proposing amendments to the agency's Amplifier Rule. The Amplifier Rule, formally known as the Rule Relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products, regulates power output claims for home entertainment amplifiers. The SNPRM proposes to amend the Amplifier Rule to, among other things, set standard test conditions for measuring amplifier power output; clarify which power output disclosures comply with the Amplifier Rule and which do not; and to revise language in the rule related to these proposed modifications.

FTC Seeks Comment on Rulemaking Petition Proposing Revisions to Commissioner Disqualification and Recusal Rules. Comments are due **October 26** on the FTC's petition for rulemaking filed by the U.S. Chamber of Commerce that requests that the agency commence a rulemaking to amend its current Commissioner disqualification rules to (1) "formalize legal consultation with ethics experts in the FTC's Office of General Counsel," and (2) "enhance transparency and improve actual and perceived integrity of agency adjudications by requiring Commissioners, including the Commissioner whose disqualification is sought, to provide the public with a written statement outlining the reasons for declining any recusal decisions." The petition also requests that the Commissioner's written statement regarding the recusal petition be entered into the record for the FTC's final order resolving the recusal petition. Further, the petition recommends timing obligations regarding the Commissioner's written statement (within 14 days of receiving a disqualification petition) and regarding the FTC's determination on the disqualification petition (within 14 days following receipt of a non-recusing Commissioner's written determination).

FTC Seeks Research Presentations for PrivacyCon 2024. Research presentations for the FTC's annual PrivacyCon event are due **December 6** and may be submitted here. The FTC announced that PrivacyCon 2024 will be particularly focused on: automated systems and AI; health-related "surveillance;" children's and teen's privacy; deepfakes and voice clones; worker "surveillance;" and advertising practices. PrivacyCon 2024 will take place virtually on **March 6, 2024**, and the agenda will be posted here prior to the event. Members of the public wishing to attend the event may visit the FTC's website at www.ftc.gov to access the live webcast.

More Analysis from Wiley

CFPB Poised to Significantly Expand the Reach of the Fair Credit Reporting Act

FTC and HHS Caution Hospitals and Telehealth Providers on Tracking Tech

Podcast: The "Wild West" of AI Use In Campaigns

California Eyes New Privacy, Cyber, and AI Obligations

Cracks in the State Privacy Law Foundation: State Privacy Law Challenges See Success in District and State Courts

GAO Calls for Better Info-Sharing by ONCD and CISA After Cyberattacks; May be Inconsistent with New Mandates

DHS Calls for Critical Harmonization of Cyber Incident Reporting

Podcast: How to Fix the Cyber Incident Reporting Mess—DHS Weighs In

Biden Administration Looks at Harmonizing Cyber Regulations Amidst Flurry of New Activity

Coming Soon: New Cyber Labeling Program for IoT Devices

Podcast: The FTC Safeguards Rule: A Deep Dive into the Revisions Effective June 9, 2023

Webinar: How to Keep Up with the Influx of New State Privacy Laws and Regulations

Podcast: What could AI regulation in the US look like?

The FTC Is Targeting Crypto Too - With a Significant New Enforcement Action

California privacy law changes draw in more businesses

U.S. Fulfills Its Commitments to Implement the EU-U.S. Data Privacy Framework

Companies May Begin Submitting EU-U.S. Data Privacy Framework Certifications

European Commission Adopts EU-U.S. Data Privacy Framework Adequacy Decision

California AG Initiates CCPA Investigations, Despite Setback in Court

DOD Devotes Resources to Responsible Adoption of Generative AI

A New White House Project on Responsible AI Sends a Message to the Private Sector, Including Contractors

Podcast: AI: The Next Big Thing in Government Contracting

FCC Launches Privacy and Data Protection Task Force

Initial Takeaways on the FCC's New Privacy and Data Protection Task Force

FTC Issues Policy Statement on Biometric Information, Signaling a New Enforcement Priority

FTC Joins the Cloud Security Discussion

5 Takeaways From Recent CFPB, FTC Equal Credit Push

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

Generative AI Policies: Five Key Considerations for Companies to Weigh Before Using Generative AI Tools

Federal Legislators Are Taking AI Implementation and Oversight Seriously

NIST Announces Generative AI Working Group

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

U.S. State Privacy Law Guide

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