

Wiley Consumer Protection Download (September 14, 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.

Regulatory Announcements

CFPB Issues Report on the Impact of COVID-19 on Consumer Credit. The CFPB issued a Report on the impact of the coronavirus (COVID-19) pandemic on consumer credit. The Report, titled *The Early Effects of the COVID-19 Pandemic on Consumer Credit*, which was published on **August 31**, concluded that "consumers have not experienced significant increases in delinquency or other negative credit outcomes as reported in credit record data" due to the onset

Authors

Duane C. Pozza
Partner
202.719.4533
dpozza@wiley.law
Stephen J. Conley
Associate
202.719.4572
sconley@wiley.law

Practice Areas

Cyber and Privacy Investigations, Incidents
& Enforcement
FTC and Consumer Protection

of the pandemic. The CFPB's Report focused on mortgages, student loan accounts, automobile loan accounts, and credit card accounts during the period of March 2020 to August 2020. Data from the Report was collected from the CFPB's Consumer Credit Panel, which is a nationally representative sample of about five million credit records maintained by a nationwide consumer reporting agency.

Significant Enforcement Actions

CFPB Sues Largest U.S. Debt Collector and Buyer for Violating 2015 Consent Order. On **September 8**, the CFPB filed a complaint in the U.S. District Court for the Southern District of California against Encore Capital Group, Inc. (Encore Capital) and its subsidiaries, which together comprise the largest debt collecting and buying organization in the United States. Encore Capital's annual revenue exceeds \$1 billion and its net profits are more than \$75 million. Encore Capital and its subsidiaries are currently subject to a 2015 consent order which found them in violation of the Consumer Financial Protection Act (CFPA), Fair Debt Collection Practices Act (FDCPA), and Fair Credit Reporting Act (FCRA). The CFPB alleges that Encore Capital and its subsidiaries violated their 2015 consent order by, among other things, using law firms and company legal departments to engage in collection efforts without providing the disclosures required under the order and neglecting to provide consumers with loan documentation after it was requested. Additionally, the CFPB alleges that Encore Capital and its subsidiaries violated the CFPA and FDCPA by suing consumers to collect debts for which the statute of limitations had run. The CFPB is seeking disgorgement, civil penalties, and injunctive relief.

CFPB Files Suit Against Group of New York Debt Collection Agencies. On **September 8**, the CFPB, in partnership with the New York Attorney General (NYAG), filed suit in the U.S. District Court for the Western District of New York against a network of five debt collection agencies for allegedly using illegal collection methods. Specifically, the complaint alleges that JPL Recovery Solutions, LLC; Regency One Capital LLC; ROC Asset Solutions LLC d/b/a API Recovery Solutions; Check Security Associates LLC d/b/a Warner Location Services; and Keystone Recovery Group used "deceptive, harassing, and improper" means to pressure consumers to make payments in violation of both the FDCPA and the CFPA. The CFPB claims that the debt collection agencies, among other things: improperly threatened consumers with legal action; threatened to contact the consumers' employers regarding the outstanding debts; harassed consumers with "intimidating, belittling, or menacing" language; and excessively phoned consumers. The CFPB's complaint seeks disgorgement, civil penalties, and injunctive relief.

FTC Settles Charges Against Children's Online Learning Program for \$10 Million. On **September 2**, the Federal Trade Commission announced a \$10 million settlement with Age of Learning, Inc., which operates ABCmouse, after the FTC filed a complaint against Age of Learning in the U.S. District Court for the Central District of California on September 1, 2020. The FTC's complaint alleges that Age of Learning did not disclose critical membership terms while marketing ABCmouse to consumers. The FTC also charges that Age of Learning made misrepresentations about cancellations and did not disclose valuable information to consumers, thus depriving them of informed consent. The Proposed Settlement Order between Age of Learning and the FTC requires the company to pay \$10 million and prohibits it from making misrepresentations that would require consumers to take actions to avoid charges after free trials.

FTC Settles with Student Debt Relief Group Claiming to be Affiliated with Department of Education. The FTC announced that the Arete Financial Group and several related companies agreed to pay at least \$835,000 to settle allegations that they had charged illegal upfront fees and deceived consumers about student loan debt. In the FTC's November 2019 complaint, the agency alleged that Arete and other defendants "pretended to be affiliated with the Department of Education and deceptively promised loan forgiveness, consolidation, and repayment programs to reduce or eliminate monthly payments and principal balances." The FTC's consent order prohibits the defendants from offering student debt relief services and requires them to pay a monetary judgement of \$43.3 million. This sum is partially suspended due to the defendants' inability to pay.

Auto Dealer Group Closes Down Business Operations Under FTC Settlement. On **September 4**, the FTC announced that a group of auto dealers in Arizona and New Mexico that includes Tate's Auto Center of Winslow, Inc.; Tate's Automotive, Inc.; Tate Ford-Lincoln-Mercury, Inc. d/b/a Tate's Auto Center; and Tate's Auto Center of Gallup, Inc. must cease business operations as a result of a court-approved settlement in the U.S. District Court for the District of Arizona. The FTC claimed that the auto dealers falsified information on vehicle financing applications and misrepresented financial terms in vehicle advertisements. The auto dealers are currently in Chapter 7 bankruptcy, and the settlement includes a \$7 million monetary judgement. The court-approved judgement makes the FTC an unsecured creditor in the auto dealers' bankruptcy proceedings.

CFPB Settles with More Brokers Over Deceptive Mailers Advertising VA-Guaranteed Mortgages. Between **September 1 and 2**, the CFPB announced three additional settlements with mortgage brokers – Service 1st Mortgage, Inc., Hypotec, Inc., and Accelerate Mortgage, LLC – following a number of investigations into these and similarly situated mortgage brokers regarding the use of deceptive mailers to advertise Veterans Affairs (VA)-guaranteed loans. The civil monetary payments under the consent orders range from \$50,000 to \$230,000. The complaints allege that the mortgage brokers sent mailers to consumers that contained false, misleading, or deceptive information in violation of the CFPB, the Mortgage Acts and Practices Advertising Rule, and Regulation Z. In August, the CFPB announced settlement agreements with similar mortgage brokers, including Sovereign Lending Group, Inc., Prime Choice Funding, Inc., and Go Direct Lenders, Inc.

Upcoming Comment Deadlines and Events

FTC Seeks Comment on "Made in the USA" Rulemaking. Comments are due **September 14** on the FTC's Notice of Proposed Rulemaking (NPRM) to codify "Made in the USA" product labeling requirements. This could allow the FTC to impose greater monetary penalties on companies that the agency finds in violation of the requirements. One of the critical issues in the Rulemaking will be the extent to which the finalized rule covers product marketing and advertising claims in conjunction with product labeling. Our summary of the Rulemaking and its implications can be found [here](#).

CFPB Holds Listening Session with Members of the Taskforce on Federal Consumer Financial Law. The CFPB will hold a Combined Advisory Committee Meeting via conference call on **September 15**. The Credit Union Advisory Council, Community Bank Advisory Council, and Consumer Advisory Board will provide recommendations to the CFPB's Taskforce on Federal Consumer Financial Law (Taskforce) to improve the

current status of federal consumer protection laws, regulations, and practices. These three committees are independent groups of stakeholders that provide insight to the Taskforce and other CFPB entities. The link to RSVP is available [here](#).

CFPB Solicits Input on Exemptions from Escrow Account Requirements for Mortgage Loans. The CFPB is seeking comment on a Proposed Rule that would amend Regulation Z under the Truth in Lending Act (TILA). Specifically, the Proposed Rule would create an exemption for certain insured depository institutions and credit unions from the requirement to establish escrow accounts for some higher-priced mortgage loans. The CFPB is issuing the proposal pursuant to the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act, which required the CFPB to implement a new exception from TILA's escrow obligation for depository institutions and credit unions. Comments are due **September 21**.

FTC Hosts Online Data Portability Workshop. The FTC will host an online workshop on data portability on **September 22**. Data portability pertains to the ability of consumers to transport their data – including email, contacts, calendars, financial data, health information, friends, or social media content – from one platform to another or from a platform to themselves. Among other things, issues that the workshop will address include how data can be ported safely, whose responsibility it is to ensure the technical feasibility of portability, and how to treat data that involves multiple people. The workshop agenda is now available [here](#). We've previewed some of the key stakeholder comments regarding privacy, data security, and competition issues with portability ahead of the workshop [here](#).

CFPB Issues Proposed Rule to Create a New Category of Qualified Mortgages (QMs). Comments are due **September 28** on the CFPB's Notice of Proposed Rulemaking (NPRM) that would create a new type of seasoned QMs that are first-lien, fixed-rate covered transactions that have met specific performance requirements over a 36-month seasoning period. For a loan to qualify under this new definition, the creditor would also be required to verify a consumer's debt-to-income ratio or residual income at the time of origination. Seasoned QM loans would only be available for covered transactions with no more than two 30-day delinquencies.

CFPB Seeks Comment on CARD Act Rules. Comments are due **October 27** on the CFPB's Request for Information (RFI) assessing the impact of the rules implementing the Credit Card Responsibility and Disclosure Act of 2009 (CARD Act Rules). Section 610 of the Regulatory Flexibility Act requires the CFPB to review certain rules, including the CARD Act Rules, within 10 years of their publication. Specifically, the CFPB is required to consider the impact of the rules on small businesses. The CFPB is also requesting input from the public on how the consumer credit card market has been impacted by the CARD Act Rules.

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California Legislature Sends Bill Creating a "Mini-CFPB" to Governor's Desk

Stakeholders Weigh In as the FTC Tackles Data Portability at Upcoming Workshop

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230 Petition Commenters Question FCC Authority, Argue NTIA Proposal Unconstitutional, Bad for Tech

Wiley Files Comments on Behalf of CTA Responding to NTIA's Petition for Rulemaking Involving Section 230

FTC Commissioners Weigh In on Prominent Topics at Oversight Hearing

CFPB and FTC Highlight Consumer Protection Priorities During the Coronavirus Pandemic in Separate Congressional Hearings

European Authorities Take Hard Line on EU-U.S. Data Transfers After Privacy Shield Decision, While FTC Still Plans to Enforce Privacy Shield Compliance

California Finalizes CCPA Regulations, Which Are Effective Immediately

FTC PrivacyCon 2020 Examines Health Apps and IoT

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Privacy in Focus (August 2020)

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