

Wiley Consumer Protection Download (April 12, 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

CFPB Proposes to Delay Effective Date of New Debt Collection Rules. On **April 7**, the Consumer Financial Protection Bureau (CFPB) issued a Notice of Proposed Rulemaking that would delay the effective date of two final rules issued under the Fair Debt Collection Practices Act (FDCPA) – the October 2020 Debt Collection Rule, which

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focuses on the use of communications related to debt collection; and the December 2020 Debt Collection Rule, which clarifies the disclosures that debt collectors must provide to consumers. The CFPB states that it wants to give parties more time to comply due to the ongoing COVID-19 pandemic. Comments will be due 30 days after publication in the Federal Register.

CFPB Issues Compliance Bulletin Advising Mortgage Servicers to Assist Homeowners. On **April 1**, the CFPB issued a Compliance Bulletin and warned mortgage servicers to “take all necessary steps now to prevent a wave of avoidable foreclosures this fall.” The CFPB noted that it will “closely monitor” how servicers engage with borrowers, respond to requests, and process loss mitigation applications. The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) provides borrowers with federally backed mortgages with access to forbearance, and private lenders have similar forbearance options. The CFPB notes that it will pay particular attention to, among other things, whether service providers are: being proactive, working with borrowers, addressing language access issues, fairly evaluating income, promptly handling inquiries, and preventing avoidable foreclosures.

CFPB Rescinds Seven Policy Statements Pertaining to Temporary Financial Institution Flexibilities. On **March 31**, the CFPB announced that it was rescinding seven policy statements issued last year that provide temporary flexibilities to financial institutions operating in consumer financial markets. The CFPB also rescinded its 2018 bulletin on supervisory communications and replaced it with a revised bulletin. The rescinded policy statements include the statements on Bureau Supervisory and Enforcement Response to COVID-19 Pandemic; Supervisory and Enforcement Practices Regarding Quarterly Reporting Under the Home Mortgage Disclosure Act; Supervisory and Enforcement Practices Regarding CFPB Information Collections for Credit Card and Prepaid Account Issuers; Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act and Regulation V in Light of the CARES Act; Supervisory and Enforcement Practices Regarding Certain Filing Requirements Under the Interstate Land Sales Full Disclosure Act (ILSA) and Regulation J; Supervisory and Enforcement Practices Regarding Regulation Z Billing Error Resolution Timeframes in Light of the COVID-19 Pandemic; and Supervisory and Enforcement Practices Regarding Electronic Credit Card Disclosures in Light of the COVID-19 Pandemic.

FTC Acting Chairwoman Slaughter and CFPB Acting Director Uejio Issue Joint Statement on Evictions Moratorium. On **March 29**, Federal Trade Commission (FTC) Acting Chairwoman Rebecca Kelly Slaughter and CFPB Acting Director Dave Uejio issued a joint statement pertaining to the national Centers for Disease Control (CDC) moratorium on evictions. While noting that there are reports of landlords evicting tenants despite government prohibitions on doing so, Acting Chairwoman Slaughter and Acting Director Uejio stated that “both agencies will be monitoring and investigating eviction practices, particularly by major multistate landlords, eviction management services, and private equity firms, to ensure that they are complying with the law.” The agency heads warned that evicting tenants in contravention of the moratorium may violate the FDCPA or the FTC Act. The FTC also published guidance for consumers who may have rights under the eviction moratorium.

Significant Enforcement Actions

CFPB Issues a Consent Order Against Debt Collector for Allegedly Making False Legal Threats to Consumers. On **April 6**, the CFPB issued a Consent Order against Yorba Capital Management, LLC (Yorba) for falsely threatening thousands of consumers with legal action in violation of the Consumer Financial Protection Act of 2010 and the FDCPA. The Consent Order permanently bars Yorba from the debt collection business, and orders restitution and penalties.

FTC Settles Charges with Fish Oil Supplement Marketers Allegedly Claiming That Their Products are Proven to Treat Liver Disease. On **April 1**, the FTC announced that it had settled charges that BASF SE and DIEM Labs deceptively marketed two dietary fish oil supplements as clinically proven to reduce liver fat in adults and children with non-alcoholic fatty liver disease. According to the agency's administrative complaint, BASF SE acted through its subsidiary, BASF Corp., to retain DIEM Labs for advertising and distributing the supplements in the United States. The FTC alleges that the companies marketed the two drugs – Hepaxa and Hepaxa PD – until mid-2020. The two companies will pay a total of more than \$416,000 as part of the FTC's settlement.

FTC Settles with Mobile Banking App That Allegedly Misled Users About Funds Accessibility and Interest Rates. On **March 29**, the FTC announced a settlement with mobile banking app provider Beam Financial Inc. (Beam) over allegations that the company falsely promised users that they would have "24/7" access to their funds and would earn high interest rates on their accounts. Specifically, in the FTC's November 2020 complaint, which was filed in the U.S. District Court for the Northern District of California, the FTC alleges that Beam promised that users could make transfers out of their accounts and would receive the requested funds within five business days. However, the FTC states that some users waited weeks or months before receiving money in violation of the FTC Act's prohibition on deceptive acts and practices. As a result of the settlement, Beam is banned from operating mobile banking apps and must issue full refunds, plus interest, to all of its customers. Moreover, Beam is prohibited from profiting off of any personal information that it derived from user accounts.

Upcoming Comment Deadlines and Events

CFPB Seeks Comment on Proposed Amendments to RESPA for Borrowers Affected by COVID-19. Comments are due **May 10** on a CFPB Proposed Rule that would amend Regulation X of the Real Estate Settlement Procedures Act (RESPA) by establishing a temporary COVID-19 emergency pre-foreclosure review period until December 31, 2021 for principal residences. RESPA requires residential real estate settlement providers to make certain disclosures about the mortgage and real estate settlement process. Moreover, the temporary amendments would allow mortgage servicers to make certain loan modifications available to borrowers experiencing a COVID-19-related hardship based on the evaluation of an incomplete application. The proposed effective date of the Regulation X rule changes is August 31.

CFPB Seeks Input on Financial Institutions' Use of AI. Comments are due **June 1** on a Request for Information released by the CFPB; the Board of Governors of the Federal Reserve System's Bureau of Consumer Financial Protection; the Federal Deposit Insurance Corporation; the National Credit Union Administration; and the Office of the Comptroller of the Currency. The five agencies are gathering information on financial institutions' use of artificial intelligence (AI) for fraud prevention, the personalization of services, credit underwriting, and a number of other operations. Among other things, the Request for Information seeks comment to understand the use of AI; appropriate governance and risk management controls over AI; and challenges in developing and managing AI.

FTC Requests Comments on Digital "Dark Patterns". Submissions are due **May 29** on the FTC's Request for Comments on "digital dark patterns," which is a term used to describe a range of potentially deceptive user interface designs on websites and applications. Specifically, the FTC is seeking comment on several topics that will be discussed at its April 29 event – Bringing Dark Patterns to Light: An FTC Workshop, which will examine the ways in which user interfaces can have the intentional or unintentional effect of obscuring, subverting, or impairing consumer autonomy or decision-making. The workshop will consider how dark patterns differ from sales tactics used by brick-and-mortar stores; whether some groups of consumers are unfairly targeted; and whether there are additional rules or standards needed to protect consumers.

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Wiley Achieves Perfect Score on Human Rights Campaign's 2021 'Best Places to Work for LGBTQ Equality' List

Wiley Among First Organizations to Join FCBA's New Diversity Pipeline Program

Supreme Court Argument Analysis: TransUnion LLC v. Ramirez

FTC Prepares to Expand Rulemaking, Including on Privacy and Data Use

FemTech: Biases and Data Privacy

Privacy in Focus: Key Commission on AI Recommends Privacy and Civil Liberties Protections in Domestic AI Uses

Privacy in Focus: Three Ways the SAFE TECH Act Would Amend Section 230

Acting Chairwoman Slaughter Forecasts FTC's Privacy Agenda

Virginia Enacts Comprehensive Privacy Legislation

California Attorney General Issues Further Revisions to CCPA Opt-Out Requirements

California Privacy Rights Act – What Does It Mean For You?

Tech Risk Assessments: Cloud Services Under the Microscope?

SCOTUS Provides TCPA Clarity by Rejecting Expansive Autodialer Definition

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