

Wiley Consumer Protection Download (December 17, 2024)

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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 select 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.

Wiley has launched a new Trump Administration Resource Center and Resource Guide ahead of President-Elect Trump's second Administration beginning in January 2025. With Wiley's deep-rooted understanding of Washington and today's evolving regulatory landscape, the Resource Center and Resource Guide provide critical insights, actionable intelligence, practical solutions, and guidance across key industries to help businesses stay ahead of the curve and manage challenges in 2025 and beyond.

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Practice Areas

Cyber and Privacy Investigations, Incidents
& Enforcement
FTC Regulation
Privacy, Cyber & Data Governance
Telecom, Media & Technology

Regulatory Announcements

CFPB Issues Final Rule on Overdraft Fees. On **December 12**, the CFPB issued a final rule amending Regulations E and Z to remove exemptions for overdraft fees that exceed coverage of costs and losses under the Truth in Lending Act (TILA). The final rule will specifically require banks and credit unions with more than \$10 billion in assets to revise their policies to ensure their overdraft lending programs either: (1) cap overdraft fees at \$5, (2) cap overdraft fees at an amount that covers costs and losses, or (3) if extending a profit-generating overdraft loan, ensure that such loan complies with existing lending laws, including by giving consumers the choice to open the line of credit and disclosing the terms and applicable interest rates of the loan. The rule becomes effective on October 1, 2025.

CFPB Launches Rulemaking on Coerced Debt. On **December 9**, the CFPB issued an Advanced Notice of Proposed Rulemaking (ANPR) to address concerns related to information furnished to credit bureaus and other consumer reporting agencies involving coerced debt and identity theft. Coerced debt refers to situations in which people take out credit cards or loans under the threat of violence, physical violence, or manipulation from an abuser. Specifically, the ANPR seeks information on amending the definitions of “identity theft” and “identity theft report” in Regulation V to include information stemming from transactions that occurred without the consumer’s effective consent. The ANPR is a direct response to a petition for rulemaking from the National Consumer Law Center and the Center for Survivor Agency and Justice which highlighted how coerced debt may cause harm to domestic abuse survivors. Comments on the ANPR are due **March 7, 2025**.

CFPB Proposes Rule to Expand FCRA to Data Brokers and Other Entities. On **December 3**, the CFPB released a Notice of Proposed Rulemaking (NPRM) that would expand the scope of the Fair Credit Reporting Act (FCRA) to cover certain data sharing practices and companies not currently subject to the law, including but not limited to “data brokers” (we summarized the NPRM here). Specifically, the proposed rule would update the FCRA’s definitions of “consumer report” and “consumer reporting agency” to cover entities that sell data about a consumer’s credit history, credit score, debt payments, or income or financial tier “regardless of the purpose for which any specific communication of such information is used or expected to be used.” Additionally, the NPRM would consider a company providing consumer information for non-FCRA purposes to still be providing a “consumer report” if the information *actually is* used for an FCRA-covered purpose “regardless of whether there is evidence that the consumer reporting agency knew or expected that the information would be used for such a purpose.”

The NPRM also proposes to regulate the provision of “credit header information,” such as names, dates of birth, Social Security numbers, phone numbers, and email addresses, if the information was originally gathered for purposes of preparing a consumer report. As a result, consumer reporting agencies that gather and sell such information would be restricted to selling it for FCRA-related purposes, such as credit or employment, but not other purposes like general fraud prevention.

Among other things, the Proposed Rule also clarifies that a marketing purpose would not qualify as a “legitimate business need” to furnish a consumer report in connection with a consumer-initiated transaction. Further, the Proposed Rule would also add restrictions on the use of de-identified consumer report data and

implement new standards for obtaining consent when consumers direct the sharing of consumer reports. Comments on the NPRM are due **March 3, 2025**.

FTC Releases Data Spotlight on “Task Scams.” On **December 12**, the FTC released a data spotlight on a rising number of complaints regarding “task scams.” “Task scams” refer to online job scams that require consumers to repeat a set of tasks with the promise of payment. According to the FTC, consumers have complained of losses due to fake earnings and stolen deposits. The spotlight shows that overall reported losses on job scams tripled from 2020 to 2023 and reached more than \$220 million in the first half of 2024. The FTC reports that cryptocurrency losses to job scams rose from \$21 million in 2023 to \$41 million in the first half of 2024.

CFPB and IHS Issue Joint Letter Regarding Medical Billing and Debt Collection Practices. On **December 12**, the CFPB and the Indian Health Service (IHS) issued a letter reminding medical providers, suppliers, and billers of their responsibilities to IHS-approved purchased/referred care (PRC) program patients. Specifically, the letter reiterates that the Indian Health Care Improvement Act (IHCIA) prohibits providers and suppliers from holding approved PRC program patients liable for any costs or charges associated with the provision of health care services, including co-pays and deductibles. The letter also states that debt collectors may be strictly liable for violating the Fair Debt Collection Practices Act (FDCPA) when they attempt to collect improper bills from PRC patients or in violation of the Fair Credit Reporting Act (FCRA) when they furnish inaccurate information regarding improper bills.

Select Enforcement Actions

FTC Obtains Temporary Restraining Order and Asset Freeze Against Student Debt Relief Company for Alleged Violations Including the Impersonation Rule. On **November 18 and 22**, the FTC filed a complaint and motion for temporary restraining order and asset freeze, respectively, in the U.S. District Court for the District of Nevada against a student debt relief company, for alleged violations of the FTC Act, Telemarketing Sales Rule (TSR), Gramm-Leach-Bliley Act, and Impersonation Rule. The FTC alleges that the company misled consumers by promising debt relief that was not delivered and falsely claimed to be affiliated with the U.S. Department of Education. On December 6, the district court judge granted the FTC’s motion, freezing the company’s assets and temporarily halting its debt relief operations. The FTC ultimately seeks monetary and injunctive relief.

CFPB Settles with Student Debt Relief Company and Its Owners for Allegedly Deceptive Practices. On **December 3**, the CFPB filed a proposed stipulated order in the U.S. District Court for the Central District of California against a debt relief company and its owner for alleged violations of the Consumer Financial Protection Act (CFPA) and TSR. In its March 2021 complaint, the CFPB alleged that defendants allegedly charged consumers upfront fees for student debt relief services. The defendants agreed to pay a \$2K penalty in addition to dissolving the company and agreeing to injunctive relief.

FTC Settles with Data Broker for Allegedly Unfair Business Practices. On **December 3**, the FTC issued a complaint and consent order against a data broker for alleged violations of the FTC Act. The FTC alleges that the company collected, retained, and sold consumers' precise location data associated with "sensitive" locations without adequately verifying consumers' consent. Among other relief, the company agreed to establish policies and procedures regarding consumer consent and sensitive location data.

FTC Settles with Data Broker and Its Subsidiary for Allegedly Unfair Business Practices. On **December 3**, the FTC issued a complaint and consent order against another data broker and its subsidiary for alleged violations of the FTC Act. The FTC alleges that the companies collected, retained, and sold consumer precise location data associated with "sensitive" locations without adequately verifying consumers' consent. Among other relief, the company agreed to establish policies and procedures regarding consumer consent and sensitive location data.

FTC Settles with Building Services Contractor for Allegedly Unfair Business Practices. On **December 4**, the FTC issued a complaint and consent order against a building services contractor for alleged violations of the FTC Act. The FTC alleges that the company included no-hire agreements in its contracts with residential building owners and that the agreements extend after the termination of a building's contract. The company agreed to injunctive relief and to provide notice of the order to past and present employees.

CFPB Settles with Private Student Loan Servicer for Allegedly Deceptive Marketing and Lending Practices. On **December 5**, the CFPB filed a proposed stipulated order in the U.S. District Court for the Southern District of New York against a private student loan servicer and its largest shareholder for alleged violations of the CFPA and Truth in Lending Act (TILA). In October, the CFPB alleged that the defendants misrepresented the vetting process for vocational schools with which they partnered and did not adequately disclose the finance fees or annual percentage rates in marketing materials. The defendants agreed to pay a \$950K penalty in addition to injunctive relief.

FTC and New York AG Win Judgment Against a Supplement Manufacturer for Misleading Marketing. On **December 6**, a Southern District of New York judge issued an order clarifying and affirming the injunctive relief granted in a memorandum and judgment issued on November 18 after a jury trial. In the January 2017 complaint, the FTC and New York Attorney General alleged that the defendants claimed in marketing materials that one of their supplements could improve memory loss and other cognitive benefits in violation of the FTC Act and New York General Business Law §§ 349 and 350. The jury found that these statements made by the defendants to market their products were not supported by competent and reliable scientific evidence.

CFPB Settles with Student Loan Debt Collector for Allegedly Deceptive Business Practices. On **December 9**, the CFPB issued a consent order and stipulation against a student loan debt collector for alleged violations of the CFPA and the Fair Debt Collection Practices Act. The CFPB alleges that the company delayed rehabilitation process for borrowers requesting it, which cost consumers additional charges and delayed benefits of loan rehabilitation. The company agreed to pay a \$700K penalty and to cease serving or collecting student loan debt.

FTC Sends Warning Letters to 21 Healthcare Plan Marketers. On **December 10**, the FTC announced that it sent 21 warning letters to companies that market or generate sales leads warning them about misrepresenting the benefits and costs of healthcare plans, or otherwise making false claims about the offers or incentives consumers will receive for enrolling in a plan.

Upcoming Comment Deadlines and Events

FTC to Hold a Virtual Workshop to Assess Predatory Pricing and Its Impact on Consumers, Competition, and Innovation. The FTC will hold a virtual workshop on **December 18, 2024** titled “Competition Snuffed Out: How Predatory Pricing Harms Competition, Consumers, and Innovation.” The virtual workshop will feature speakers with experience on “how predatory pricing has impacted competition and consumers. Economists, academics, and antitrust litigators will discuss predatory pricing caselaw and economic scholarship.” Topics to be discussed include: (1) how predatory pricing harms competition, consumers, and innovation; (2) what a successful predatory pricing case would need; (3) the impact of recent U.S. Supreme Court decisions; (4) how predatory pricing can maximize profits to gain or entrench market power; and (5) whether the legal doctrine needs to change to match modern-day realities.

FTC to Hold Virtual Workshop to Examine the Impact of Digital Platform Design Features on Kids and Teens. The FTC will hold a virtual workshop on **February 25, 2025** to “examine the use of design features on digital platforms aimed at keeping kids, including teens, online longer and coming back more frequently.” The workshop, titled “Attention Economy: Monopolizing Kids’ Time Online,” will feature researchers, technologists, child development and legal experts, consumer advocates, and industry professionals. According to the FTC, topics discussed will include: (1) how certain website design features may result in more engagement or time spent on digital platforms, and what relevant scientific research exists on the topic; (2) the physical and psychological impacts of the design features on children and teens; and (3) potentially beneficial measures or design considerations that might be effective, feasible, and consistent with current legal practice.

More Analysis from Wiley

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CFPB Proposes to Expand Reach of Fair Credit Reporting Act to “Data Brokers” and Beyond

FTC Adopts Final “Click-to-Cancel” Rule with Requirements for Recurring Subscriptions

FCC Announces Administrators for IoT Cybersecurity Labeling Program

FCC to Scrutinize Customer Service Practices Across Communications Industry

Updates on Cybersecurity Requirements for Government Contractors

Dissenting Commissioners Criticize SEC's Latest Cybersecurity Disclosure Cases

DOJ and CISA Propose New National Security Program to Regulate Foreign Access to Sensitive Data

Texas AG Brings SCOPE Act Enforcement Action Against TikTok - Just One Month After Law Took Effect

FCC Proposes New Rules for AI-Generated Calls and Texts

Key Takeaways from Our Conversation with Oregon and Texas Regulators About Privacy Enforcement

Podcast: Navigating State Privacy Laws: A Conversation with Oregon and Texas Regulators about Privacy Enforcement

Litigation Grows Around Website Technologies, With Focus on Sensitive Data

Athletes, Arenas, and Cyberattacks: The Evolving Landscape of Cybersecurity in Sports

State "Right to Repair" Patchwork Grows as Electronic Device Manufacturers Face New Compliance Deadlines

Colorado Enacts Landmark AI Legislation

Darned if You Do, Darned if You Don't: Recent Lessons from the SEC On Cyber Reporting

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