

Wiley Consumer Protection Download (December 3, 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 Finalizes Rule to Define and Supervise Larger Participants in the Market for General-Use Digital Consumer Payment Apps. On **November 21**, the CFPB issued a Final Rule defining larger participants in the market for “general-use digital consumer payment applications.” The Consumer Financial Protection Act (CFPA) authorizes the CFPB to define larger participants in markets for consumer financial products or services, and to supervise larger nonbank entities subject to the law to assess compliance with federal consumer financial laws, obtain information about such entities’ activities and compliance systems and procedures, and detect and assess risks to consumers and consumer financial markets.

The Final Rule defines the general-use digital consumer payment app market to include entities that provide “funds transfer and payment wallet functionalities through digital applications for consumers’ general use in making payments to other persons for personal, family, or household purposes.” The Final Rule notes that this definition includes “digital wallets,” “payment apps,” “funds transfer apps,” “peer-to-peer payment apps,” “person-to-person payment apps,” “P2P apps,” and similar digital payment functionalities. The Final Rule’s test to determine whether a nonbank entity is a larger participant in the general-use digital consumer payment app market is that the entity must (1) facilitate an annual covered consumer payment transaction volume of at least 50 million transactions; and (2) not be a small business concern.

The Final Rule is effective 30 days after publication in the Federal Register.

FTC Finalizes Amendments to the TSR. On **November 27**, the FTC announced that it approved amendments to the Telemarketing Sales Rule (TSR) that extend its coverage to inbound telemarketing calls involving technical support services. The TSR previously covered certain inbound calls, such as calls that consumers make to telemarketers. The FTC voted 4-1 to approve the amendments, with Commissioner Ferguson voting no and issuing a dissenting statement. Commissioner Ferguson stated that he dissented from the rulemaking “not because it is bad policy, but because the time for rulemaking by the Biden-Harris FTC is over.”

The amendments to the TSR are effective 30 days after publication in the Federal Register.

FTC Holds November 2024 Open Commission Meeting. On **November 14**, the FTC held a virtual Open Commission Meeting to hear three staff presentations on: (1) The Protecting Older Consumers Report; (2) FTC Click-to-Cancel Rule; and (3) the FTC’s new online Merger Portal.

First, staff from the Bureau of Consumer Protection provided a presentation on the FTC’s latest report to Congress on protecting older adults. The presentation highlighted enforcement actions that the FTC brought this year involving tech-support services, cash advance scams, debt relief, and illegal robocalls, among other matters. It also highlighted that the FTC returned more than \$267 million to consumers of all ages affected by scams in fiscal year 2024.

Bureau of Consumer Protection staff also gave a presentation on the FTC’s new Click-to-Cancel Rule, which regulates both sign-up and cancellation processes for subscriptions and other recurring charges. (We summarized the final rule here). The presentation stated that the agency has received more than 80,000

complaints over the last four years from consumers about negative options.

Finally, Bureau of Competition staff gave a presentation on the agency's new online merger portal, which permits market participants, stakeholders, and the public to directly submit comments on proposed transactions that may be under review by the FTC.

CFPB Releases Annual Report of the Student Loan Ombudsman. On **November 15**, the CFPB released the annual report of the CFPB Student Loan Ombudsman, which detailed how "millions of student borrowers have received relief through new income-driven repayment plans, cancellation programs, and various adjustments and program automation processes." The Ombudsman's report also found that borrowers experienced a number of billing issues, however, including "inaccurate or late statements; errors with auto pay, including thousands of dollars incorrectly debited from accounts; and payments that were not properly applied to their balances." According to the report, borrowers also reported loan servicer customer service issues, including website access issues, long wait times for responses, and receiving allegedly inaccurate or misleading information.

FTC Releases National Do Not Call Registry Data Book for Fiscal Year 2024. On **November 15**, the FTC released the National Do Not Call Registry Data Book for Fiscal Year 2024 (Registry Data Book). The Registry Data Book demonstrates that consumer complaints about unwanted calls have continued to drop for a third straight year, with annual complaint volume down more than half since 2021. While the number of consumer complaints decreased for most topics, calls related to debt reduction saw an 85% increase from last year. Additionally, in FY 2024, more than 4.2 million people signed up with the Registry.

FTC Releases Agency Financial Report for Fiscal Year 2024. On **November 15**, the FTC released its Fiscal Year 2024 Agency Financial Report. The Report, which is required by the Office of Management and Budget (OMB), includes the agency's audited financial statements and the Office of the Inspector General's assessment of the FTC's accomplishments and opportunities for performance improvements. According to the Report, the audit "did not identify any material weaknesses or instances of non-compliance with internal controls, financial systems, or laws and regulations." OMB also identified four management and performance challenges for the FTC: (1) addressing challenges to FTC litigation; (2) successfully managing merger transactions; (3) combating sophisticated scams and enhancing the public's awareness of them; and (4) securing information systems and networks from destruction, data loss, compromise, or other disruptions.

CFPB Releases Report on Federal and State Privacy Protections for Consumer Financial Data. On **November 12**, the CFPB released a report concluding that current federal and state consumer privacy laws do not adequately protect consumer financial information. The report found that consumer financial information and financial institutions subject to the Gramm-Leach-Bliley Act (GLBA) and the Fair Credit Reporting Act (FCRA) are exempt from many state privacy laws. The report further recommended that state legislators "consider the importance of ensuring that their citizens are protected in instances where federal law currently has gaps or may be ineffective."

CFPB Releases Initial Results of Student Loan Borrower Survey. On **November 13**, the CFPB released the first results from its Student Loan Borrower Survey, which found that “nearly 61% of borrowers who received debt relief reported positive life changes.” Moreover, the CFPB found that in 2022, the median household income for borrowers that received debt relief was between \$50,000 and \$65,000. Additionally, the results found that “nearly 42% of federal student loan borrowers have only ever used the standard repayment plan, with many unaware of alternative options that could help lower their payments.”

FTC Releases Staff Paper on Smart Product Software Updates. On **November 26**, the FTC announced the release of a staff paper finding that approximately 89% of smart products surveyed by the agency allegedly failed to disclose on their websites how long the products would receive software updates. According to the paper, the study surveyed products ranging from hearing aids to security cameras to door locks. The paper also noted that the failure to inform prospective product purchasers about the duration of software updates for products sold with written warranties may violate the Magnuson-Moss Warranty Act.

CFPB Pilot Study Finds Racial Disparity in Small Business Lending Markets. On **November 13**, the CFPB released a pilot study finding that Black entrepreneurs received less encouragement to apply for loans than White participants from bank branches in Fairfax County, VA and 25 branches in Nassau County, New York – lenders expressed interest in 40% of White participants, compared to just 23% of Black participants. Lenders were more likely to suggest alternative credit products to Black entrepreneurs, such as personal credit cards and home equity loans.

Select Enforcement Actions

FTC Sues Small Business Loan Servicer and Its CEO for Allegedly Deceptive Marketing Practices. On **November 4**, the FTC filed a complaint in the U.S. District Court for the Central District of California against a small business loan servicer and its CEO for alleged violations of the FTC Act, Telemarketing and Consumer Fraud and Abuse Prevention Act, Telemarketing Sales Rule, and Consumer Review Fairness Act. The FTC alleges that the defendants misled consumers by promising to provide loans to their small businesses and instead applying for numerous credit cards in the name of the small business owners and charging for that service regardless of whether the applications were accepted. The FTC also alleges that the company posted fake positive reviews on their website and contractually prohibited customers from posting negative reviews online. The FTC seeks monetary and injunctive relief.

CFPB Settles with Prison Communications Service Provider for Allegedly Deceptive Practices. On **November 14**, the CFPB issued a consent order and stipulation against a prison communications service provider for alleged violations of the Consumer Financial Protection Act. The CFPB alleges that the company blocked consumers from sending and receiving money transfers after a chargeback was filed, failed to disclose the full fee schedule for money transfers, and withdrew funds from accounts that were inactive for 90 or 180 days without notifying the consumers of this policy. The company agreed to return \$2 million to consumers who are awaiting refunds and pay a \$1 million civil penalty in addition to injunctive relief.

FTC Settles with Security Screening Company for Allegedly Misleading Marketing. On **November 26**, the FTC filed a complaint and stipulated order in the U.S. District Court for the District of Massachusetts against a security screening company for alleged violations of the FTC Act. The FTC alleges that the company overstated their security system's accuracy and ability to use AI to detect weapons and reduce false alarm rates without requiring people to remove items from pockets or bags.

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

74 Wiley Attorneys Recognized in 2025 Edition of The Best Lawyers in America

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

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

#MWC24 Highlights Collaborative Efforts to Stop Illegal Robocalls and Messages

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

White Paper on Telephone Consumer Protection Act Litigation Abuse

Federal Government Acts on Connected Vehicle Privacy and National Security Concerns

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