

Wiley Consumer Protection Download (February 22, 2022)

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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.

In case you missed it, our webinar, *FTC's Revised Safeguards Rule: How To Navigate New Information Security Requirements*, is available on-demand.

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Regulatory Announcements

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Cyber and Privacy Investigations, Incidents
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FTC Regulation

CFPB Issues Compliance Bulletin Detailing Student Loan Servicer Obligations Regarding Borrower Eligibility and Benefits under the PSLF Waiver. On **February 18**, the CFPB issued a Compliance Bulletin recommending that student loan servicers take specific actions to ensure that they (1) do not misrepresent borrower eligibility for the Public Service Loan Forgiveness (PSLF) Waiver and (2) provide complete information regarding the program. The PSLF is a benefit program provided by Congress to Federal student loan borrowers, which allows them to earn loan forgiveness following 10 years of public service. On October 6, 2021, the Department of Education announced the PSLF Waiver, which alters the PSLF eligibility criteria for a limited period of time by, among other things, allows all payments by student borrowers to count toward the PSLF, regardless of loan program or payment plan. Borrowers must take certain affirmative actions by October 31, 2022, including filing PSLF forms, to be eligible for the PSLF Waiver. The Compliance Bulletin recommends that loan servicers take certain specific actions including: “improving training to make sure representatives effectively identify borrowers who may be pursuing PSLF, who have provided information suggesting that they may benefit from the PSLF Waiver, or who are expressing interest in PSLF or the PSLF Waiver; improving training to make sure representatives accurately describe PSLF and the PSLF Waiver, their benefits, the process for applying for PSLF, using the Waiver, and the need to act before the October 31, 2022, deadline, including for representatives that interact with borrowers of FFELP and Perkins loans; [and] monitoring representatives’ communications with borrowers about PSLF.” The Compliance Bulletin takes effect following its publication in the Federal Register.

FTC Holds February Open Commission Meeting. On **February 17**, the FTC held an Open Commission Meeting and voted to approve the publication of an Advance Notice of Proposed Rulemaking (ANPRM) regarding a potential rule to address purported deceptive or unfair marketing pertaining to earnings claims made by money-making ventures. The ANPRM states that the “use of such [misleading earnings] claims both deprives consumers of the ability to make informed decisions and unfairly advantages bad actors in the marketplace at the expense of honest businesses.” The ANPRM notes that these claims can arise in ventures such as coaching programs, multi-level marketing plans, franchise opportunities, chain referrals, and gig and e-commerce opportunities, among others. Comments on the ANPRM are due 60 days after publication in the Federal Register. During the meeting, the FTC also voted on whether to commence an FTC Act Section 6(b) study and send orders to pharmacy benefit managers (PBMs) to gather information on competition issues. The Commissioners’ vote tied at 2-2, meaning that the study will not go forward at this time, though it could still move forward at a later date.

CFPB Launches New Process for Public to Submit Petitions for Rulemaking. On **February 16**, the Consumer Financial Protection Bureau launched a new process to allow the public to submit directly to the agency petitions for rulemaking pursuant to Section 553(e) of the Administrative Procedure Act. According to the Press Release, the new process is designed to improve transparency and broaden access to the agency’s rulemaking process. Petitions will be posted on the CFPB’s website.

CFPB Issues Compliance Bulletin Reminding Companies That the EFTA Applies to Government Benefit Accounts. On **February 15**, the CFPB issued a Compliance Bulletin to clarify that the Electronic Fund Transfer Act (EFTA) applies to government benefit accounts. The EFTA prohibits individuals or entities from requiring

consumers to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of receipt of a government benefit. The Compliance Bulletin specifically notes that the EFTA prohibits prepaid card providers with exclusive government benefit contracts from requiring consumers to use a specific financial institution to receive government benefits. The CFPB's Compliance Bulletin takes effect upon publication in the Federal Register.

FTC Releases Data Showing That Consumers Lost Nearly \$550 Million to Romance Scams in 2021. On **February 10**, the FTC released new data showing that consumers reported losing \$547 million to romance scams in 2021. Consumer losses to romance scams were up approximately 80 percent as compared to 2020, according to the agency's data. Per the FTC, "[r]omance scammers draw people in using pictures stolen from around the internet, building false personas that seem just real enough to be true, but always having a reason never to meet in person. Eventually, the supposed suitor will ask for money from the unwitting consumer." Romance scams typically start on dating sites, dating apps, and social media platforms. The FTC's data found that consumers who paid romance scammers using cryptocurrency reported losing \$139 million in 2021, which is more than any other payment method reported.

Significant Enforcement Actions

FTC Files Suit Against Auto Marketing Company for Alleged Deceptive Telemarketing Tactics. On **February 9**, the FTC announced that it filed suit against automobile marketing company, American Vehicle Protection Corp (AVP) and several related corporate and individual defendants in the United States District Court for the Southern District of Florida. Specifically, the FTC alleged that AVP illegally called consumers, many of whom were on the Do Not Call Registry; deceived consumers by misrepresenting that calls were made on behalf of the consumers' vehicle manufacturer; and made false claims about the applicability of "extended auto warranty" programs, all in violation of the FTC Act and the Telemarketing Sales Rule (TSR). The complaint seeks permanent injunctive, monetary, and other relief.

FTC Sues Burger Franchise Company for Allegedly Deceptive Conduct. On **February 8**, the FTC announced that the Department of Justice filed suit on its behalf in the U.S. District Court for the Central District of California against a burger chain, Burgerim, and its owner Oren Leoni for allegedly violating the FTC Act and the FTC's Franchise Rule. The complaint alleges that the company and its owner recruited more than 1,500 consumers, including veterans, to purchase franchises with false promises of refunds in the event that franchisees could not open the restaurant. Additionally, the FTC alleges Burgerim failed to make disclosures required by the Franchise Rule, which obligates franchisors to provide prospective franchisees with material information before they make the decision to purchase a franchise. The complaint seeks injunctive, monetary, and other relief including civil penalties.

Recent Congressional Hearings

Hearings to Examine the President's Working Group on Financial Markets Report on Stablecoins. On **February 15**, the U.S. Senate Banking, Housing, and Urban Affairs Committee held a hearing titled, "Hearings to Examine the President's Working Group on Financial Markets Report on Stablecoins." The witness list, opening statements, and a recording of the hearing are available [here](#).

Virtual Hearing - Digital Assets and the Future of Finance: The President's Working Group on Financial Markets' Report on Stablecoins. On **February 8**, the U.S. House Committee on Financial Services held a hearing titled, "Virtual Hearing - Digital Assets and the Future of Finance: The President's Working Group on Financial Markets' Report on Stablecoins." The witness list, opening statements, and a recording of the hearing are available [here](#).

Upcoming Comment Deadlines and Events

FTC Seeks Comment on Business and Government Impersonation Fraud. Comments are due **February 22** on an Advance Notice of Proposed Rulemaking (ANPRM) proposing a rule targeting business and government impersonation fraud, which we describe in greater detail [here](#). The ANPRM specifically targets business and government impersonation fraud committed via telephone calls, text messages, and other forms of communication.

More Analysis from Wiley

Webinar: FTC's Revised Safeguards Rule: How To Navigate New Information Security Requirements

'An Avalanche of Rulemakings' - The FTC Gears Up for an Active 2022

Steps to Take in 2022 To Prepare for New State Privacy Laws

The Top 5 Cyber Issues for 2022

Podcast: Ransomware, Geopolitical Tensions, and the Race to Regulate

2022 Cyber Watch List: A look at 2021 and What's to Come in the Year Ahead

Podcast: Why the FTC Matters for Fintech

White House Seeks to Develop AI Bill of Rights and Calls for Feedback on Use of Biometric Data

Podcast: Cyber in 2022: What Happened and What is Coming

Podcast: Artificial Intelligence Can Do Really Dumb Things With Personal Information

American Bar Association Webinar: Crypto at a Crossroads: Crypto and Privacy

FTC Releases Detailed Information Security Requirements and Proposes Breach Notification for Financial Institutions

Latest Changes at FTC Will Drive Federal Action on Privacy, Data Security, and AI

FTC Policy Statement Signals Increasing Scrutiny on the Protection of Sensitive Personal Health Information

AI Risk Management Framework Is Among Emerging Federal Initiatives on AI

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Download Disclaimer: Information is current as of February 22, 2022. This document is for informational purposes only and does not intend to be a comprehensive review of all proceedings and deadlines. Deadlines and dates are subject to change. Please contact us with any questions.