

Wiley Consumer Protection Download (July 20, 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 Emphasizes Flexibility for Creditors Using AI and Machine Learning for Adverse Action Notices. The CFPB published a Blog Post on **July 7** discussing potential regulatory obstacles to industry use of artificial intelligence (AI) and machine learning for credit underwriting. In the Blog Post, the CFPB acknowledged that industry

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may be slow to adopt AI due to fears that such models will not satisfy the adverse action notice requirements under the Equal Credit Opportunity Act (ECOA), which obligate creditors to provide consumers with the principal reasons for which they were denied credit. In an effort to encourage greater use of AI and machine learning, the CFPB noted that ECOA's implementing regulations provide flexibility that is compatible with AI algorithms. Moreover, the CFPB noted that there are safe harbors for creditors wishing to use AI.

CFPB Releases Spring Rulemaking Agenda with a Number of Actions Planned. The CFPB released its Spring 2020 Rulemaking Agenda on **June 30**, which included a number of proposed and final rules planned for the second half of this year, as well as early 2021. Among other actions, the CFPB plans to propose a couple of new rules under the Home Mortgage Disclosure Act (HDMA) that follow up on a May 2019 Advance Notice of Proposed Rulemaking and address the disclosure of HDMA information given consumer privacy concerns. Additionally, the CFPB plans to finalize a May 2019 Proposed Rule to revise Regulation F under the Fair Debt Collection Practices Act (FDCPA), which governs the activities of debt collectors. The Proposed Rule would address debt collection communications and prohibit harassment and misrepresentation.

FTC Announces "Made in the USA" Rulemaking. The Federal Trade Commission (FTC) announced a new Rulemaking on **June 22** 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. 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 Issues Updated COVID-19 Guidance on FCRA and the CARES Act. On June 16, the CFPB issued a Compliance Aid on the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) amendments to the Fair Credit Reporting Act (FCRA). The Compliance Aid updates a previous April 1 Statement that the CFPB provided on FCRA following the passage of the CARES Act. Some key aspects include the responsibilities that furnishers and consumer reporting agencies have under the CARES Act, what constitutes an "accommodation" under the CARES Act amendments, and the parameters for furnisher reports of consumer accounts.

Significant Enforcement Actions

CFPB Files Complaint Against Creditor for Discriminatory Lending Practices. On July 15, the CFPB filed a complaint against Townstone Financial, Inc. – a nonbank retail mortgage lender – in the U.S. District Court for the Northern District of Illinois, alleging that it engaged in discriminatory mortgage lending practices in violation of the Equal Credit Opportunity Act (ECOA) and the Consumer Financial Protection Act. Among other claims, the complaint alleges that Townstone made marketing statements during weekly radio and podcast shows that illegally discouraged African-American applicants from applying to the creditor for mortgage loans. Between 2014 and 2017, Townstone had almost no applications for properties in African-American neighborhoods in the Chicago Metro Area. This latest ECOA action comes on the heels of the Federal Trade Commission reaching a \$1.5 million settlement with an auto dealership for violations of ECOA in May.

FTC Approves Settlement Order Charging Williams-Sonoma With Violations of the Made in the USA

Standard. The FTC announced an approved Final Settlement Order with Williams-Sonoma, Inc. on July 16 for allegedly making false, misleading, or unsubstantiated assertions that certain of its products were made in the United States. The order obligates Williams-Sonoma to pay \$1 million to the FTC. The FTC's guide to complying with the Made in the USA Standard can be found [here](#).

CFPB Sues Student Loan Debt Relief Businesses for Taking Advance Fees in Violation of the TSR.

The CFPB filed a complaint in the U.S. District Court for the Central District of California against GST Factoring, Inc. and Champion Marketing Solutions, LLC, along with their owners and attorneys on **July 13**. The CFPB's complaint alleges that the parties violated the Telemarketing Sales Rule (TSR) through a nationwide student loan debt relief scheme that charged thousands of consumers \$11.8 million in upfront legal fees. As noted by the agency, the TSR makes it illegal to either solicit or receive any debt-relief service fees sold through telemarketing mediums prior to either the settlement or renegotiation of the debt.

FTC Takes Enforcement Action Against Vendor Falsely Promising "Next Day" Delivery of PPE.

On **July 8**, the FTC filed a complaint in the U.S. District Court for the Eastern District of New York against SuperGoodDeals.com, Inc. The FTC claims that the company falsely promised "next-day" delivery of personal protective equipment (PPE), and that some of the other products sold through the website were falsely labeled as "authentic" or certified.

CFPB Settles with Student Debt Relief Service for \$3.8 Million.

The CFPB announced a Settlement Agreement with Timemark, Inc. totaling \$3.8 million. The agreement would also bar Timemark and its owners and officers from providing debt-relief services. The CFPB had filed a complaint in the U.S. District Court for the Southern District of Florida against Timemark for charging illegal advance fees to consumers seeking student debt relief in violation of the Telemarketing Sales Rule.

CFPB Files Lawsuit Against My Loan Doctor LLC.

On July 6, the CFPB filed a complaint against My Loan Doctor LLC and its founder Edgar Radjabli in the U.S. District Court for the Southern District of New York. The complaint alleges that Loan Doctor made a number of false and misleading marketing representations while advertising its "Healthcare Finance (HCF) Savings CD Account," in violation of the Consumer Financial Protection Act prohibits such deceptive acts or practices. The CFPB is seeking an injunction and civil monetary penalties.

FTC Finalizes Settlement with Miniclip, S.A. Over COPPA Violations.

On July 6, the FTC approved a Final Settlement with digital game maker Miniclip, S.A. over complaint allegations that it deceived consumers regarding its membership through a program designed to ensure that companies adhere to the Children's Online Privacy Protection Act (COPPA). The FTC's complaint alleged that Miniclip falsely claimed that it was a member of the Children's Advertising Review Unit's COPPA safe harbor program, despite the fact that its membership was terminated in 2015. The settlement subjects Miniclip to compliance and recordkeeping requirements.

Upcoming Comment Deadlines and Events

FTC Holds Workshop to Examine the Safeguards Rule, Seeks Additional Comments. The FTC held a Virtual Workshop to examine the Gramm-Leach-Bliley Act's Safeguards Rule on **July 13** (a summary of those proposed changes can be found here and our recap of the workshop is here). The FTC has proposed changes to the Safeguards Rule as part of its regulatory review process. Comments on the FTC's proposed changes are due **August 12**.

FTC Holds Fifth Annual PrivacyCon. The FTC will host PrivacyCon 2020 on **July 21**. The virtual event will commence with opening remarks from Bureau of Consumer Protection Director Andrew Smith. Major topics covered this year include health apps, bias in algorithms, the Internet of Things, specific technologies such as cameras and smart speakers, and international privacy. The agenda for PrivacyCon 2020 is available here.

CFPB, OCC Host Office Hours on Virtual Innovation. On **July 29-30**, the CFPB is hosting joint office hours on virtual innovation that will give participants the opportunity to discuss issues related to consumer protection and practical regulation. The office hours are part of the American Consumer Financial Innovation Network, which was launched to foster coordination between federal and state regulators on issues such as consumer access, competition, and financial inclusion. More information is available here.

CFPB Solicits Comment on Proposal to Amend Regulation F to the FDCPA. Comments are due **August 4** (extended from May 4) on the CFPB's Supplemental Notice of Proposed Rulemaking (SNPRM) which solicits comment on certain proposed provisions of Regulation F to the FDCPA. The proposal would require debt collectors to follow certain disclosure procedures when pursuing time-barred debts. The CFPB expects to issue this portion of Regulation F separate from issuing its broader debt collection rule in October (see above).

CFPB Seeks Comment on TILA Regulations. The CFPB is seeking comment on its Proposed Rule amending Regulation Z which implements the Truth in Lending Act (TILA). These changes generally address the end of the London Inter-bank Offered Rate (LIBOR), which is set to sunset in 2021. The CFPB is proposing changes to open-end and closed-end provisions to provide examples of replacement indices for LIBOR indices that meet certain Regulation Z standards. The CFPB also is proposing to permit creditors for home equity lines of credit (HELOCs) and card issuers for credit card accounts to transition existing accounts that use a LIBOR index to a replacement index on or after March 15, 2021, if certain conditions are met. Comments on the Proposed Rule are due August 4.

CFPB Solicits Input on Pilot Advisory Opinion Program. Comments are due **August 21** on the CFPB's Proposed Rule seeking comment on its new advisory opinion (AO) program. The pilot AO program permits companies seeking clarity over uncertain regulations to submit requests for opinions. Among other things, the Proposed Rule is seeking comment on whether to allow trade associations to submit questions on behalf of its members without naming them. The CFPB will select topics based on program priorities and will publicize its responses. Requests for advisory opinions may be submitted via email here.

More Analysis from Wiley

FTC Authority Under Challenge at Supreme Court: What's At Stake

Cross-Border Data Transfer Mechanisms in Flux as Court of Justice for the European Union Invalidates Privacy Shield

Supreme Court Rules That the Removal Standard for the CFPB Director is Unconstitutional

Supreme Court Decision in Liu v. SEC Will Put Even Greater Focus on FTC's Enforcement Authority

After Years of Uncertainty, the Supreme Court Will Address "Autodialer" Under the TCPA

Examining the Arguments Behind the TCPA Autodialer Circuit Split That the Supreme Court Will Consider Next Term

The Supreme Court Invalidates TCPA Robocall Exception, with Fireworks About Severability

TCPA Update: New Declaratory Ruling Sheds Light on "Autodialer" Definition

FTC Examines Proposed Amendments to the GLBA Safeguards Rule in Full-Day Workshop

California Attorney General Releases Final Text of CCPA Regulations, Starting the Clock for Companies to Come into Compliance

Justice Department Proposes Reform of Online Liability Shield – Section 230 of the Communications Decency Act

How Will the FTC Respond to Pressures to Regulate Social Media?

Get the Facts About the New EO: CDT Files Suit Challenging President's Social Media Executive Order

That Didn't Take Long – Calls for Expedited and New Regulation of Tech from the Solarium Commission

Privacy in Focus (June 2020)

Legal 500 US Recognizes Wiley's Telecom, Media & Technology Practice as Tier 1. Read more here.

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