

Wiley Consumer Protection Download (June 21, 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

Lina Khan Sworn in as FTC Chair. On **June 15**, Lina Khan was sworn in as FTC Chairwoman, shortly after being confirmed as a Commissioner by the U.S. Senate by a 69-28 vote and being designated as Chair by President Biden. Chairwoman Khan was confirmed to a term that expires on September 25, 2024. Prior to her

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Cyber and Privacy Investigations, Incidents & Enforcement
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confirmation, Chairwoman Khan was an Associate Professor of Law at Columbia Law School and served as counsel to the U.S. House Judiciary Committee's Subcommittee on Antitrust, Commercial, and Administrative Law. She also previously served as legal adviser to FTC Commissioner Rohit Chopra, and legal director of the Open Markets Institute. With her confirmation, the FTC currently has a full slate of five Commissioners, though Commissioner Chopra's nomination to Director of the CFPB remains pending.

CFPB Releases Spring Rulemaking Agenda with Several Actions Planned. On **June 11**, the CFPB released its Spring 2021 Rulemaking Agenda, which includes a number of proposed and final rules planned for the second half of this year, as well as early 2022. Among other actions, the CFPB plans to issue a notice of proposed rulemaking on requiring financial institutions to make public certain data related to minority-owned, women-owned, and small business lending applications under Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) in September 2021. The CFPB convened a panel under the Small Business Regulatory Enforcement Fairness Act in October 2020 to examine the impacts of such a rulemaking. The report was completed in December 2020. Additionally, the CFPB is planning to issue a final rule on transitioning away from the London Inter-bank Offered Rate (LIBOR) index in January 2022. The LIBOR index is set to expire in June 2023. The LIBOR index is a standard financial index used by U.S. capital markets, and many financial instruments, including adjustable-rate mortgages, credit cards, student loans, reverse mortgages, and home equity lines of credit are tied to it. The CFPB issued a Proposed Rule on the transition in June 2020. The agency is also considering a rulemaking to implement Section 1033 of the Dodd-Frank Act to address the availability of financial account data provided in electronic form. The CFPB released an Advance Notice of Proposed Rulemaking in November 2020 concerning consumer data access. The agency is currently reviewing comments.

CFPB Issues Interpretive Rule on Authority to Resume Examinations of Financial Institution Practices Under the Military Lending Act. On **June 16**, the CFPB issued an Interpretive Rule explaining its basis for authority to examine supervised financial institutions for risks to active duty service members and their dependents under the Military Lending Act (MLA). Congress passed the MLA to protect military borrowers and their dependents by, among other things: limiting the annual percentage rate on many loans to a maximum of 36%; prohibiting lenders from requiring military borrowers to arbitrate disputes; prohibiting lenders from requiring military borrowers to waive their rights under state and federal law; and prohibiting lenders from charging military borrowers a penalty if they pay back all or part of their loan early. In 2018, the CFPB ended its MLA-related examinations, but current CFPB leadership has concluded that the Consumer Financial Protection Act and Truth in Lending Act give it the authority to resume examinations.

FTC Schedules Review of Business Opportunity Rule. On **June 14**, the FTC announced that it has scheduled its review of the Business Opportunity Rule. The rule requires business opportunity sellers to give prospective buyers the specific information that they need to help them evaluate a business opportunity, such as a work-at-home program. The agency is currently reviewing 23 of the 62 rules and guides under its jurisdiction.

Significant Enforcement Actions

FTC and Arkansas Sue “Blessing Loom” Operators for Allegedly Running an Illegal Pyramid Scheme. On **June 17**, the FTC announced that it filed a joint complaint with the state of Arkansas in the U.S. District Court for the Eastern District of Arkansas, alleging that the operators of Blessing in No Time (BINT) operated an illegal pyramid scheme – “Blessing Loom” – that defrauded thousands of consumers of tens of millions of dollars. Specifically, the complaint argues that BINT promised investors returns as high as 800% and required that members pay as much as \$62,700 to participate. The complaint alleges, however, that the vast majority of participants have lost money. The FTC and the state of Arkansas are seeking injunctive relief, as well as civil penalties.

FTC Files Amended Complaint Against Small Business Financing Providers. On **June 14**, the FTC announced that it filed an amended complaint in the U.S. District Court for the Southern District of New York against merchant cash advance provider RCG Advances (RCG), along with other defendants, for allegedly making multiple unauthorized withdrawals from small business’ banks. The FTC’s amended complaint also alleges that RCG violated the Gramm-Leach-Bliley Act’s prohibition on using false or deceptive information to obtain a consumer’s bank account information. The FTC is asking the court to assess civil penalties against the defendants, and to require the defendants to return ill-gotten gains.

FTC Bars COVID-19 Treatment Plan Provider from Making Unsubstantiated Health Claims. On **June 14**, the FTC announced that the medical director of California-based Golden Sunrise Nutraceutical, Inc. (Golden Sunrise) agreed to settle charges that he partook in a deceptive advertisement campaign for a \$23,000 COVID-19 treatment plan. According to the FTC’s complaint, Golden Sunrise advertised its ImunStem, Aktiffvate, and AnterFeerons supplements on billboards, websites, and social media platforms, claiming that the products could eliminate COVID-19 symptoms in two to four days. The proposed order settling the complaint would prohibit the Golden Sunrise health director from making unsubstantiated health claims in the future, and would require him to pay a \$103,420 judgement to the FTC.

FTC Approves Final Administrative Consent Order Against Amazon for Allegedly Withholding Tips from Drivers. On **June 10**, the FTC announced that it approved an administrative consent order against Amazon for allegedly withholding tips from its Amazon Flex drivers. As we noted in our February 16 Newsletter, the FTC’s original complaint alleged that Amazon’s subsidiary, Amazon Logistics, purportedly featured advertisements that stated: “You will receive 100% of the tips you earn while delivering with Amazon Flex.” However, the complaint asserted that Amazon Logistics stopped paying drivers their full salaries plus tips in 2016. The administrative consent order requires that Amazon pay \$61.7 million to settle the charges, and prohibits the company from making changes to how drivers’ tips are used as compensation without first obtaining express informed consent.

FTC Reaches Agreement with Movie Subscription Service Over Consumer Data Security Allegations. On **June 7**, the FTC announced that it had reached an agreement with MoviePass, Inc. and its parent company Helios and Matheson Analytics, Inc. (collectively, MoviePass) to settle allegations that (1) the company blocked subscribers from using the service as advertised and (2) failed to secure subscriber personal data. The FTC’s complaint alleged that MoviePass blocked consumers from using its monthly \$9.95 service by, among other things, invalidating subscriber passwords while falsely claiming to have detected “suspicious

activity or potential fraud” on accounts. The complaint also asserts that MoviePass stored subscriber personal information in an unencrypted database, despite claims made in its privacy policy that the database was encrypted. Pursuant to the proposed order, MoviePass must implement a comprehensive security program.

Upcoming Comment Deadlines and Events

CFPB Seeks Input on Financial Institutions’ Use of AI. Comments are due **July 1** (extended from 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.

More Analysis from Wiley

Legal 500 US Recognizes 44 Wiley Lawyers Across Seven Practice Areas Nationally

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

Privacy in Focus: Colorado Legislature Passes Comprehensive Privacy Law: Five Things You Should Know About the Colorado Privacy Act

Privacy in Focus: Upcoming Webinar: China Data Protection Legislation in the Making: Implications Beyond China’s Borders

Duane Pozza Discusses FTC’s Focus on Rulemaking After Supreme Court’s AMG Decision

Key Takeaways from the AMG Capital Management v. FTC Decision

Supreme Court Curbs FTC Power to Seek Monetary Relief

FTC Outlines Approach to Discrimination in AI and Foreshadows Potential Enforcement

CCPA Compliance Reminder: Annual Privacy Policy Update

Virginia’s New Privacy Law: How to Navigate the New Privacy Framework

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

SCOTUS Provides TCPA Clarity by Rejecting Expansive Autodialer Definition

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