

Wiley Consumer Protection Download (March 8, 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

CFPB Releases New Report on the Impact of Medical Debt on Consumer Credit. On **March 1**, the CFPB released a report finding that nearly 43 million Americans have medical debt on their credit

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reports, and as of June 2021, that debt totals roughly \$88 billion. The report begins with a section describing the medical debt landscape, noting the significant impact medical debt is having on consumer credit, which has been particularly elevated due to the COVID-19 pandemic. The report summarizes key areas of concern in medical debt collections and reporting, noting the unique characteristics of medical debt, including that unlike many other consumer debts, people rarely plan to take on medical debt. According to the report, medical debt is the debt which is most frequently reported to consumer reporting companies and can impact consumers' ability to buy or rent a home, buy a car or car insurance, and find a job.

FTC Seeks Comment on Petition for Rulemaking to Expand Scope of Proceedings Covered by

Commissioner Recusal Process. On **March 3**, the FTC announced that it is seeking comment on a Petition for Rulemaking filed by NetChoice, Americans for Prosperity, Hispanic Leadership Fund, Innovation Economy Institute, Institute for Policy Innovation, James Madison Institute, National Taxpayers Union, R Street Institute, and Young Voices, asking the FTC to amend its rules to include a broader and more detailed recusal process that would apply to enforcement proceedings, along with adjudicative and rulemaking proceedings. The Petition asks the FTC to implement a requirement that a response to a recusal motion be filed within 10 days and require written statements if the Commissioner does not recuse. The Petition also requests that certain substantive standards be applied in considering any motion. Specifically, the Petition argues that recusal should be required if the Commissioner has a personal bias or prejudice against a party, has personal knowledge of non-public evidentiary facts forming the basis of the proceeding from a prior employment capacity, or in a prior employment capacity participated as counsel, adviser, or material witness concerning the proceeding or, in a prior government employment capacity expressed an opinion concerning the merits of the particular case in controversy. The FTC will review comments and determine whether to commence a rulemaking in this area. Comments are due **April 4**.

CFPB Issues Compliance Bulletin on Automobile Repossession Practices. On **February 28**, the CFPB issued a Compliance Bulletin regarding the "potential for violations" of the Dodd-Frank Wall Street Reform and Consumer Protection Act's (Dodd-Frank Act) prohibition on engaging in unfair, deceptive or abusive acts or practices in connection with the repossession of vehicles. In its Bulletin, the CFPB states that during its supervisory and enforcement proceedings, it has uncovered evidence of Dodd-Frank Act violations where: loan servicers repossessed vehicles despite borrowers making sufficient payments to stop repossession and/or having entered into a repayment plan; automobile loan servicers maintained inaccurate or incomplete records that led to failures to communicate cancelled repossession attempts; loan servicers maintained inaccurate borrower balance records leading to attempted repossessions; and loan servicers allegedly held personal property found in repossessed vehicles as collateral for fee payment. The Compliance Bulletin will take effect upon publication in the Federal Register.

FTC Transmits Annual Letter to CFPB on 2021 ECOA Activities. On **February 23**, FTC staff provided the CFPB with an annual summary of its activities regarding the Equal Credit Opportunity Act (ECOA). The FTC enforces ECOA and conducts consumer and business education related to non-banking entities. The summary describes the ECOA fair lending initiatives taken by the FTC in 2021 in the areas of enforcement, research and policy development, and consumer and business education. The FTC approved the summary by a vote of 4-0.

CFPB Previews Options to Combat Perceived Algorithmic Bias in Home Valuations. On **February 23**, the CFPB outlined a number of options it is considering to ensure that computer models used to determine home valuations (known as “automated valuation models”) do not introduce biases that would produce inaccurate home valuations. The Dodd-Frank Act requires the CFPB to “develop regulations for quality control standards for automated valuation models.” Specifically, the Dodd-Frank Act requires the CFPB, along with the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Federal Housing Finance Agency (collectively, the Agencies) to develop standards for automated valuation models that: “(1) ensure a high level of confidence in the estimates produced by automated valuation models; (2) protect against the manipulation of data; (3) seek to avoid conflicts of interest; (4) require random sample testing and reviews; and (5) account for any other such factor that the agencies determine to be appropriate.” The Agencies are developing a proposed rule to implement these standards, and the CFPB is conducting outreach to small entities that may be affected as part of its Small Business Regulatory Enforcement Fairness Act (SBREFA) process.

FTC Releases Data Showing 2.8 Million Consumer Fraud Reports in 2021. On **February 22**, the FTC released data showing that consumers reported losses to the agency of over \$5.8 billion from consumer fraud, which represents a 70 percent increase from 2020. The top scams for which consumers reported losing money were related to prizes, sweepstakes, and lotteries; internet services; and business and job opportunities. Additionally, of the \$5.8 billion in losses, \$2.3 billion were due to imposter scams, which is up from \$1.2 billion in 2020.

Significant Enforcement Actions

FTC Sues Company Formerly Known as Weight Watchers for Alleged Illegal Collection of Children’s Sensitive Health Data. On **March 4**, the FTC announced that the Department of Justice (DOJ) filed suit on its behalf in the U.S. District Court for the Northern District of California against WW International, Inc., formerly known as Weight Watchers, and a subsidiary called Kurbo, Inc. (Kurbo), for allegedly violating the Children’s Online Privacy Protection Act (COPPA). The complaint alleges that among other violations, the Kurbo signup process encouraged younger users to falsely claim they were over the age of 13; failed to provide a mechanism to ensure that those who chose the parent signup option were in fact parents and not a child trying to bypass the age restriction; and retained children’s personal information indefinitely, only deleting it when requested by a parent, in violation of COPPA’s data retention rule. The settlement order requires WW International and Kurbo to delete personal information illegally collected from children under 13, destroy any algorithms derived from the data, and pay a \$1.5 million penalty.

FTC Charges Herbal Tea Company for Alleged False COVID-19 Treatment Claims. On **March 3**, the FTC announced that jointly with DOJ and the Food and Drug Administration (FDA), it filed suit against B4B Earth Tea LLC, B4B Corp., and its owner, Andrew Martin Sinclair for allegedly marketing deceptive ads claiming that its Earth Tea is clinically proven to treat, cure, and prevent COVID-19. The joint agency complaint alleges violations of the COVID-19 Consumer Protection Act, which prohibits deceptive acts or practices in connection with the novel coronavirus and the Federal Food, Drug, and Cosmetic Act. The complaint seeks permanent

injunctive, monetary, and other relief.

FTC Bans Ohio-based Company from the Debt Relief Business. On **February 28**, the FTC announced a settlement with Gino de Paz, Grace de Paz, and Shabana Khublal to resolve charges by the FTC and the Florida Office of the Attorney General that the trio allegedly engaged in deceptive and abusive practices in the course of selling their credit card interest rate reduction services to consumers throughout the United States, in violation of the FTC Act, the Telemarketing Sales Rule, and the Florida Deceptive and Unfair Trade Practices Act. The settlement requires the defendants to pay \$5.3 million, which was partially suspended due to an inability to pay, to resolve agency allegations. The settlement also permanently bans the defendants from advertising or selling debt relief products and services.

Upcoming Comment Deadlines and Events

The FTC's Consumer Protection Week. Between **March 6 and March 12**, the FTC is holding its annual National Consumer Protection Week. The FTC, along with federal, state, and local agencies, and consumer and national advocacy organizations, will provide information to consumers on how to avoid scams, prevent identity theft, and other consumer protection issues. Topics of interest during National Consumer Protection Week include college students and cryptocurrency scams, financial caregiving, and recovery from fraud. The agenda for the program is available [here](#).

More Analysis from Wiley

Congress and State Legislatures Proposing Youth-Focused Privacy Laws

California Privacy Enforcement Moves Forward With Rulemaking on Horizon

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

Data Transfers from the EU – Further Guidance Issued

Duane Pozza Discusses Emerging Regulatory Approach to Crypto and DeFi

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 March 8, 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.