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NEWSLETTER

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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

CFPB Issues No Action Letter to Facilitate Consumer Access to Loans. The Consumer Financial Protection Bureau (CFPB) issued a No-Action Letter to Bank of America, N.A. on **November 5** regarding small-dollar loan products. No-action letters provide enhanced transparency that the CFPB will not bring a supervisory or

Authors

Duane C. Pozza
Partner
202.719.4533
dpozza@wiley.law

Antonio J. Reynolds
Partner
202.719.4603
areynolds@wiley.law

Stephen J. Conley
Associate
202.719.4572
sconley@wiley.law

Practice Areas

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enforcement action against the subject of the letter when providing the services specified in the document. The CFPB indicated that it issued the No-Action Letter to increase competition in the small-dollar lending marketplace while also protecting critical safeguards for consumers.

CFPB Issues Final Rule to Implement the FDCPA. On **October 30**, the CFPB issued a Final Rule (Regulation F) which addresses how the Fair Debt Collection Practices Act of 1977 (FDCPA) applies to newer forms of communications, among other matters. The Final Rule restates and modernizes the FDCPA's prohibitions on harassment and abuse, false or misleading representations, and unfair practices by debt collectors when collecting consumer debt. Among other provisions, the Final Rule establishes a presumption regarding the number of calls that debt collectors may place each week, clarifies how consumers can set limits on debt collection communications to reflect their mediums of preference, and allows consumers to place a cease communications request to debt collectors who communicate using electronic methods. The CFPB plans to release a second debt collection final rule on consumer disclosures in December 2020.

Several Federal Agencies Seek Comment on Proposal to Use Supervisory Guidance for Regulated Institutions. The Federal Reserve Board, the CFPB, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency announced that they are seeking comment on a Proposed Rule that outlines and details the agencies' use of supervisory guidance for regulated institutions on **October 29**. Comments are due 60 days after publication in the Federal Register.

CFPB Issues Final Rule Revising the Disclosure of Records and Information Regulation. On **October 29**, the CFPB announced the issuance of a Final Rule amending its Disclosure of Records and Information Regulation. The Rule aims to "balance concerns regarding the Bureau's need to protect confidential personal, business, supervisory, and investigative information against the need to use and disclose certain information in the course of the Bureau's work or the work of other agencies with overlapping statutory or regulatory authority."

FTC Signs Updated MOU with Nigerian Consumer Protection and Criminal Enforcement Agencies. The Federal Trade Commission (FTC) announced that it signed an updated memorandum of understanding (MOU) with the Nigerian Federal Competition and Consumer Protection Commission and Economic and Financial Crimes Commission which reaffirms the authorities' ability and willingness to collaborate on consumer protection investigations on **October 30**. The updated MOU establishes a joint implementation committee to create joint training programs and workshops. These training programs and workshops will be used to provide assistance on specific investigations.

FTC Releases National Do Not Call Registry Data Book for FY 2020. On **October 27**, the FTC released the National Do Not Call Registry Data Book for Fiscal Year 2020. The National Do Not Call (DNC) Registry provides an option for consumers to opt out of receiving most legal telemarketing calls. The number of active registrations on the DNC Registry increased by two million during Fiscal Year (FY) 2020 (from October 1, 2019 to September 30, 2020), while the total number of consumer complaints decreased for the third straight year. According to the Registry Data Book for FY 2020, imposters were the topic of the robocalls reported by consumers the most, with over 423,000 complaints.

Significant Enforcement Actions

CFPB Takes Action Against Debt-Relief Company for Taking Advance Fees. On **November 5**, the CFPB filed a Complaint against Performance SLC, LLC (PSLC), a California debt-relief business focused on federal student loan debt. In the complaint filed in the U.S. District Court for the Central District of California, the CFPB alleges that PSLC violated the Telemarketing Sales Rule by charging illegal advance fees to student loan borrowers seeking consolidation, forgiveness, or repayment plans for federal student loans. Moreover, the CFPB's Complaint alleges that PSLC failed to make the required disclosures to certain consumers. The CFPB's Complaint seeks, among other relief, redress to consumers and civil penalties.

CFPB Sues High-Interest Loan Provider. The CFPB filed a Complaint against Driver Loan, LLC, (Driver Loan) a short term, high-interest loan provider in the U.S. District Court for the Southern District of Florida on **November 5**. The Complaint alleges that Driver Loan misrepresented the risks associated with the product that offered consumers and the annual percentage rate for extensions of credit in violation of the Consumer Financial Protection Act of 2010 (CFPA). Specifically, the CFPB's Complaint alleges that since 2017, Driver Loan purports to have offered short-term, high-interest personal loans totaling over $30 million, usually to drivers working for ride share companies. The Complaint requests, among other things, damages, redress to consumers, and the imposition of civil penalties.

FTC Files Complaint Against Website Operators Claiming to Sell Clorox and Lysol Products. The FTC filed a Complaint on **November 4** against 25 counterfeit websites that have offered to sell Clorox and Lysol products to customers, despite never delivering them. The Complaint, which was filed in the U.S. District Court for the Northern District of Ohio, alleges that none of the websites are owned by, affiliated with, or authorized by Clorox or Lysol manufacturers. Moreover, the Complaint alleges that none of the consumers ever received the products that they ordered. The FTC is seeking disgorgement of operator profits, along with an order permanently banning the operators' conduct.

CFPB Penalizes Loan Repayment Provider for Purported CFPA Violations. The CFPB issued a Consent Order against SMART Payment Plan, LLC (SMART), a loan payment program company for auto loans based in Austin, Texas, on **November 2**. SMART operates a loan payment program (the SMART Plan) which deducts payments from consumers' accounts every two weeks and then forwards the payments to the consumers' lenders on a monthly basis. A CFPB investigation determined that the SMART Plan's term disclosures contained misleading statements in violation of the Consumer Financial Protection Act of 2010's (CFPA) prohibition against deceptive acts or practices. The CFPB's Consent Order requires that SMART pay $7,500,000 in consumer redress, among other penalties stated.

CFPB Settles with National Bank Over Violations of the HMDA and CFPA. On **October 27**, the CFPB issued a Consent Order against Washington Federal Bank, N.A. (Washington Federal). Washington Federal is a federally insured, for-profit bank. After its investigation, the CFPB determined that Washington Federal had reported inaccurate data regarding its 2016 and 2017 mortgage transactions, which is a violation of the Home Mortgage Disclosure Act (HMDA), its implementing regulation, Regulation C, and the CFPA. Specifically, the Consent Order concluded that Washington Federal's inaccurate data included significant errors with sample error rates as high as 40%. The CFPB's Consent Order requires that Washington Federal pay a $200,000 civil penalty, among other conditions.

CFPB Issues Consent Order in Latest Action Against Mortgage Broker. The CFPB released a Consent Order against Low VA Rates, LLC (Low VA Rates) on **October 26**. Low VA Rates, a licensed mortgage broker in 48 states and the District of Columbia, provides loans guaranteed by the U.S. Department of Veteran's Affairs (VA). Following an investigation, the CFPB concluded that Low VA Rates sent hundreds of thousands of mailers containing false or misleading statements lacking the required disclosures under the Consumer Protection Act, the Mortgages Acts and Practices – Advertising Rule, and Regulation Z. Specifically, the Consent Order states that Low VA Rates misrepresented the credit terms of the advertised mortgage, described a flexible rate mortgage as having a "fixed" rate, and used misleading descriptions pertaining to the savings or financial benefits available to consumers. As we've explained here and here, this action is part of a larger CFPB effort to crack down on Veteran's Affairs-guaranteed mortgage lenders.

Upcoming Comment Deadlines and Events

FTC Seeks Comment on the Address Discrepancy Rule. Comments are due **November 30** on the FTC's Notice of Proposed Rulemaking (NPRM) detailing technical amendments to the Duties of Users of Consumer Reports Regarding Address Discrepancies Rule (Address Discrepancy Rule). The Address Discrepancy Rule was promulgated after Congress passed the Fair and Accurate Credit Transactions Act of 2003, which required a national consumer reporting agency to notify consumer report requesters of the existence of an address discrepancy when the reporting agency and the requester have different addresses for a consumer. The Address Discrepancy Rule obligates entities that use consumer reports to develop and deploy policies and procedures to enable the user of a consumer report to form a reasonable belief that the report relates to the consumer about whom the information was requested. The FTC is proposing to amend the Address Discrepancy Rule to accommodate the Dodd-Frank Act.

CFPB Requests Input on Changes to ECOA. Comments are due **December 1** (extended from October 2) on the CFPB's Request for Information (RFI) on potential changes to the Equal Credit Opportunity Act (ECOA). Specifically, the CFPB is requesting information "to identify opportunities to prevent credit discrimination, encourage responsible innovation, promote fair, equitable, and nondiscriminatory access to credit, address potential regulatory uncertainty, and develop viable solutions to regulatory compliance challenges."

FTC Seeks Comment on Prescreen Opt-Out Notice Rule. Comments are due **December 7** on the FTC's review of the Prescreen Opt-Out Notice Rule as part of the agency's systematic review of its current guidelines and regulations. The Prescreen Opt-Out Notice Rule requires that persons using consumer reports to make unsolicited firm offers of credit or insurance must provide a conspicuous statement with any written offer that informs the consumer that information from their report was used in connection with the transaction. The person using the report must also notify the consumer that they have the right to prohibit consumer reporting information from being used in any transaction, and that they may opt-out via notification. The FTC is proposing to limit the Prescreen Opt-Out Notice Rule to motor vehicle dealers in accordance with the Dodd-Frank Act.

FTC Requests Input on the Affiliate Marketing Rule. Comments are due **December 7** on the FTC's review of the Affiliate Marketing Rule as a part of the agency's review of all rules and guides. Additionally, the FTC is proposing to amend the Affiliate Marketing Rule to correlate with changes made to the Fair Credit Reporting Act (FCRA) by the Dodd-Frank Act. The Affiliate Marketing Rule of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) gives consumers the right to restrict a person from using consumer information obtained by an affiliate to make solicitations to the customer. Specifically, if a person or entity receives consumer eligibility information from a business affiliate, the person or entity may not utilize that information to make solicitations unless the consumer is given an opt-out right to the use of such information. The FTC is proposing to amend the Affiliate Marketing Rule to limit its regulatory scope to motor vehicle dealers in accordance with the Dodd-Frank Act.

FTC Requests Comment on Furnishers Rule. Comments are due **December 14** on a Proposed Rule related to the FTC's Duties of Furnishers of Information to Consumer Reporting Agencies Rule (Furnisher Rule) as part of its review of all agency regulations and guides. The FTC is proposing to amend the Furnisher Rule to correlate it with changes made to FCRA by the Dodd-Frank Act. The Furnisher Rule requires that furnishers of consumer reports develop reasonable written policies and procedures pertaining to the accuracy of the information relating to consumers that they provide to a consumer reporting agency. The FTC's Proposed Rule would narrow the scope of the Furnisher Rule to entities set forth in the Dodd-Frank Act that are engaged in the sale and servicing of motor vehicles.

FTC Solicits Input on Risk-Based Pricing Rule. Comments are due **December 22** on the FTC's NPRM regarding the Duties of Creditors Regarding Risk-Based Pricing Rule (Risk-Based Pricing Rule) as part of its review of all agency regulations and guides. Risk-based pricing is the practice of modifying the price and other terms of credit offered or extended to a particular consumer to demonstrate the consumer's nonpayment risk. The Risk-Based Pricing Rule, which represents a provision of the Fair Credit Reporting Act, requires that a person provide a risk-based pricing notice to a consumer when a person uses a consumer report to extend credit and does so on terms that are materially less favorable than the most favorable terms available to a substantial portion of borrowers. Additionally, the FTC is proposing to amend the Risk-Based Pricing rule to correlate it to changes made to the FCRA by the Dodd-Frank Act.

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