

# Wiley Consumer Protection Download (October 12, 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 Issues Policy Statement on Early Termination of Consent Orders.** On **October 5**, the CFPB released a Policy Statement regarding applications for early termination of administrative consent orders. The Policy Statement provides guidance on how parties can successfully apply for dismissal of active consent orders. To obtain early termination, according to the Policy Statement, an applicant must demonstrate that it meets threshold criteria; has fully complied

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## Practice Areas

Cyber and Privacy Investigations, Incidents  
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with the terms of its active consent order; and has an appropriate compliance management system in place. Once submitted to the CFPB, the agency staff will review the application and make recommendations to the CFPB Director, who has ultimate authority to terminate any consent order.

**CFPB Releases FAQs on RESPA and Regulation X.** On **October 7**, the CFPB released a set of Frequently Asked Questions (FAQs) covering Section 8 of the Real Estate Settlement Procedures Act (RESPA) and Regulation X. Section 8 of RESPA prohibits certain actions related to federally-linked mortgage loans, including kickbacks for business referrals, and unearned fee arrangements such as when parties split charges made or received for settlement services. Regulation X, meanwhile, establishes when gifts and promotions related to federal mortgage loans are permissible under Section 8 of RESPA. The FAQs also cover the application of these provisions to marketing service agreements (MSAs), which are agreements where a person or entity enters into a contract to promote the services of another party in exchange for compensation. The FAQs outline the conditions under which MSAs are lawful or unlawful under RESPA Section 8.

## Significant Enforcement Actions

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**CFPB, FTC, and Law Enforcement Partners Announce Nationwide Law Enforcement Sweep on “Phantom” and Abuse Debt Collection Actors.** On **September 29**, the FTC, in conjunction with more than 50 federal and state law enforcement partners, announced a nationwide investigation and consumer protection outreach initiative to stop phantom debt collection and abusive and threatening collection practices. Phantom debt collection occurs when companies attempt to illegally collect debts that are not owed. The enforcement sweep, known as Operation Corrupt Collector, includes five recent FTC enforcement actions, two CFPB actions, and three criminal cases brought by the U.S. Department of Justice and U.S. Postal Inspection Service. The FTC filed two complaints against alleged phantom debt collectors in July – National Landmark Logistics, LLC and Absolute Financial Services, LLC. In both cases, the court entered temporary restraining orders against the companies which froze their assets. As we discussed in September, the CFPB, in conjunction with the New York Attorney General, filed suit against five companies for their use of illegal debt collection methods under the Fair Debt Collection Act. Moreover, the CFPB and the New York Attorney General announced a \$60 million judgement against a group of debt collectors that purchased and inflated millions of dollars’ worth of consumer debt in 2019.

**Third Circuit Holding Limits the FTC’s Power to Obtain Monetary Relief.** On **September 30**, the Third Circuit Court of Appeals issued an opinion in *FTC v. AbbVie et al.* holding that Section 13(b) of the Federal Trade Commission Act (the FTC Act) does not give the FTC authority to seek disgorgement as a remedy, a conclusion that would apply in both antitrust and consumer protection cases. Specifically, the Third Circuit held that Section 13(b) only provides the FTC with the power to “enjoin” violations, and that disgorgement does not constitute injunctive relief. With its decision, the Third Circuit joins the Seventh Circuit Court of Appeals in finding that Section 13(b) does not grant the FTC the authority to seek monetary relief. The Supreme Court will likely have final say on the matter, as it granted the FTC’s petition for writ of certiorari in the Seventh Circuit case in July 2020. Our more detailed analysis of the Third Circuit’s decision and potential limits on the FTC’s remedial authority is available [here](#).

## Upcoming Comment Deadlines and Events

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**CFPB Seeks Comment on CARD Act Rules.** Comments are due **October 27** on the CFPB's Request for Information (RFI) assessing the impact of the rules implementing the Credit Card Responsibility and Disclosure Act of 2009 (CARD Act Rules). Section 610 of the Regulatory Flexibility Act requires that the CFPB review certain rules, including the CARD Act Rules, within 10 years of their publication. Specifically, the CFPB is required to consider the impact of the rules on small businesses. The CFPB is also requesting input from the public on how the consumer credit card market has been impacted by the CARD Act Rules.

**FTC Hosts Virtual Green Lights & Red Flags Public Workshop.** On **October 29**, the FTC will host its annual "Green Lights & Red Flags: Rules of the Road for Business" public workshop. This workshop is focused on truth-in-advertising law, marketing on social media, data security law, and business-to-business fraud. The public workshop will provide insights from Ohio business leaders and experts in consumer protection law. Among other featured speakers, Director Andrew Smith of the FTC's Bureau of Consumer Protection will present remarks. An agenda of the event is available [here](#). Interested parties may register [here](#).

**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 Wall Street Reform and Consumer Protection 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."

## More Analysis from Wiley

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28 Wiley Attorneys Recognized Across 17 Practice Areas in 2021 Edition of *The Best Lawyers in America*®

Wiley Attorneys Named Law360 2020 'MVPs' for Government Contracts, International Trade, and Telecommunications

Third Circuit Sharply Limits FTC Authority to Obtain Monetary Relief as Supreme Court Prepares to Weigh In  
*Privacy in Focus* (September 2020)

Federal Privacy Law Efforts Move Forward in Congress

The Telephone Consumer Protection Act and the 2020 Election

Stakeholders Weigh In as the FTC Tackles Data Portability at Upcoming Workshop

Can AI Explain Itself? NIST Outlines Potential Approach to AI Explainability Standards

AI Technology Is in the Crosshairs of National Security Restrictions

Bipartisan Legislation Promises Scrutiny of Tech: IoT, AI, UAVs, Blockchain, and More

On Behalf of CTA, Wiley Files Reply Comments to NTIA's Petition for Rulemaking Involving Section 230

230 Petition Commenters Question FCC Authority, Argue NTIA Proposal Unconstitutional, Bad for Tech

Not Just CMMC: New DOD Rule Creates Two Cybersecurity Assessment Frameworks

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**Download Disclaimer:** Information is current as of October 12, 2020. 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.