

Wiley Consumer Protection Download (October 26, 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 ANPR on Consumer Access to Financial Records. The Consumer Financial Protection Bureau (CFPB) released an Advance Notice of Proposed Rulemaking (ANPR) seeking information on consumer access to financial records on **October 22**. Specifically, the CFPB is requesting input on how it can most effectively draft rules to implement Section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). Section 1033 of

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the Dodd-Frank Act provides consumers with the right to access financial records, including information relating to financial transactions, charges, and usage data. Additionally, the CFPB seeks comment on the benefits and risks of consumer data access, competitive incentives, and consumer control and privacy measures, among other things. Comments on the ANPR are due 90 days after publication in the Federal Register.

FTC Launches New Fraud Reporting Website. On **October 22**, the Federal Trade Commission (FTC) announced the launch of its new website, ReportFraud.ftc.gov. The website provides consumers with “a streamlined and user-friendly way to submit reports to the FTC about scams, frauds, and bad business practices.” One new feature of the site allows consumers who file a report to receive a set of “next steps” from the agency with advice on what to do based on their report.

FTC Reports Dramatic Surge in Online Scams Originating on Social Media. The FTC announced on **October 21** that the agency is observing a reporting spike in online scams originating on social media. The uptick in scam reports began in the spring of 2020 at the height of the coronavirus (COVID-19) pandemic. Specifically, the FTC’s data demonstrates that the number of complaints has more than tripled over the past year. Online shopping scams linked to social media represented the most complaints from consumers. Consumers reported losing more than \$117 million to social media-linked scams in the first half of 2020. This is a large increase from 2019, when consumers reported \$134 million in losses from social media scams for the entire year.

FTC Issues Report to Congress on Protecting Older Americans. On **October 19**, the FTC issued its annual report to Congress on protecting adults over 60 years old from scams. The report, which is titled, Protecting Older Consumers 2019-2020: A Report of the Federal Trade Commission, included an analysis of consumer complaint data. While older Americans reported losing money to fraud on a less frequent basis than younger adults, older Americans experienced higher average dollar losses from fraudulent schemes. The most frequently reported type of fraud among older Americans were online shopping scams. However, older adults reported losing the most money to online romance scams. Additionally, the report details ongoing FTC enforcement efforts at the federal and state level and discusses fraud prevention education efforts.

CFPB Enforcement Activity Hits Highest Level Since 2015. From July through September 2020, the CFPB has brought 19 civil and administrative actions according to the agency’s tracker. That level of activity represents a 400% increase from the second quarter of 2020. Nearly half of the cases brought by the CFPB over the past quarter involved enforcements against mortgage companies marketing allegedly deceptive mailers to military servicemembers and veterans. Another focus of the agency’s recent enforcement sweep has been debt collection. The CFPB recently teamed up with the FTC in Operation Corrupt Collector, which is an investigatory sweep targeting the use of illegal threats and harassment tactics used by debt collectors. We discussed Operation Corrupt Collector in more detail here.

Significant Enforcement Actions

FTC Issues Final Consent Order Against Marketer of False COVID-19 Prevention or Treatment. On **October 19**, the FTC announced that it had approved a Final Administrative Consent Order against Whole Leaf Organics for its supplement called Thrive. The FTC's complaint, filed in the U.S. District Court for the Central District of California, alleges that Whole Leaf Organics has made unsubstantiated claims that Thrive can treat and prevent COVID-19, despite the fact that the product is comprised only of Vitamin C and herbal extracts. The Final Administrative Consent Order prohibits Whole Leaf Organics from making further unsubstantiated claims and requires the company to send written notices to customers and retailers explaining that taking Thrive cannot treat or prevent COVID-19.

Federal Court Grants FTC Injunctions Against Inmate Calling Plan Providers. On **October 16**, the FTC announced that the U.S. District Court for the Northern District of California issued a temporary restraining order against inmatecall.com and inmatecallsolutions.com. The FTC's complaint alleged that the companies advertised unlimited calling plans which were ultimately not provided. Moreover, the complaint states that the two operators named in the complaint targeted the family and friends of prisoners looking for cheaper options given the high per-minute cost of inmate calling services.

FTC Complaint Results in Shuttering of Atlanta Debt Collector. The FTC announced that the U.S. District Court for the Northern District of Georgia shut down Atlanta-based debt collector Critical Resolution Mediation LLC on **October 15**. The FTC complaint alleged that the debt collector's agents threatened consumers with imprisonment and attempted to collect debts that were not owed. Specifically, the complaint states that Critical Resolution Mediation's employees posed as police officers, lawyers, mediators, and even process servers when calling consumers. The case was brought as a part of Operation Corrupt Collector, which we discussed in our October 12 issue. In addition to threatening consumers with imprisonment, the defendant's agents also threatened wage garnishment, driver's license revocation, and credit score reductions in violation of both the Federal Trade Commission Act and the Fair Debt Collection Practices Act.

CFPB Issues Consent Order Against Nissan Motor Acceptance Corporation. The CFPB issued a Consent Order against Nissan Motor Acceptance Corporation (Nissan), which is an auto financing subsidiary of Nissan North America, Inc. that services auto leases and loans originated by worldwide Nissan and Infiniti dealerships, on **October 13**. A CFPB investigation found that Nissan wrongfully repossessed vehicles; maintained personal property stored in consumers' vehicles until they paid a fee; disallowed consumers electing to pay by phone to select options with significantly lower fees; and made a deceptive statement in its loan extension agreements that purported to limit consumers' bankruptcy protections. The CFPB argues that all of these acts violated the Consumer Financial Protection Act's prohibition on unfair and deceptive practices. The Consent Order requires Nissan to, among other things, provide up to \$1 million in cash redress to consumers victimized by wrongful repossessions and pay a civil monetary penalty of \$4 million.

Upcoming Comment Deadlines and Events

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 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 15** 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.

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Third Circuit Sharply Limits FTC Authority to Obtain Monetary Relief as Supreme Court Prepares to Weigh In

Justice Thomas Lays Blueprint for Supreme Court to Limit Section 230 In a Future Case

Privacy in Focus (October 2020)

California AG Proposes Additional Changes to CCPA Regulations; Seeks Comment

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

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

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

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