

Wiley Consumer Protection Download (October 29, 2024)

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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 select 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 groundbreaking 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 Releases Final Rule Implementing Section 1033 of the CFPA.

On **October 22**, the CFPB finalized a rule to implement Section 1033 of the Consumer Financial Protection Act (CFPA). Section 1033 of the CFPA generally requires consumer financial services providers to make information in the possession of the provider available to consumers, when the information concerns the financial product or service that the consumer obtained from the provider. The rule requires certain depository and non-depository financial institutions to make available to both consumers and authorized third parties

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Cyber and Privacy Investigations, Incidents
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certain data related to consumers' financial transactions and financial accounts; establishes privacy obligations for third parties accessing consumers' data; and provide standards for third-party data access. The rule also uses definitions for "financial institution" under Regulation E and "card issuer" under Regulation Z, which effectively opens both banks and non-banks that offer a variety of services to the rule's consumer data sharing requirements. The rule takes effect 60 days after publication in the Federal Register.

FTC Finalizes "Click-to-Cancel" Negative Option Rule. On **October 16**, the FTC adopted its "click-to-cancel" rule that regulates both sign-up and cancellation processes for subscriptions and other recurring charges. (We summarized the final rule here). The rule applies to sellers of services with "negative option" features, in which a customer's lack of affirmative action or silence is treated as acceptance or continuing acceptance of an offer. The rule requires covered sellers to make negative option cancellation methods as easy to complete as signup methods.

The rule also prohibits sellers of negative option programs from: (1) misrepresenting material facts in marketing goods or services with a negative option feature; (2) failing to clearly and conspicuously disclose certain material terms outlined in the rule prior to obtaining a customer's billing information; and (3) failing to obtain a consumer's express informed consent to the negative option feature before charging the consumer. Certain provisions of the rule are effective 60 days after publication in the Federal Register, with the remainder taking effect 180 days after publication.

CFPB Issues FCRA Consumer Financial Protection Circular on Employment Background Dossiers. On **October 24**, the CFPB issued a Consumer Financial Protection Circular concluding that employers may not use background dossiers and algorithmic scores that qualify as third-party consumer reports to make employment decisions without complying with the Fair Credit Reporting Act (FCRA). The CFPB refers to a background dossier as a report that is "obtained from third parties and used by employers to make hiring, promotion, reassignment, or retention decisions. . . ." The CFPB concludes that users of such dossiers must, consistent with the FCRA, obtain a worker's permission to procure a consumer report, provide notice to a worker before and upon taking an adverse action, and only use such dossiers for a permissible purpose under the FCRA. The circular further states that third parties furnishing these kinds of reports to employers are consumer reporting agencies under the FCRA, which requires them to "follow reasonable procedures to assure maximum possible accuracy," "disclose information in a worker's file to the worker upon request," and "investigate worker disputes alleging inaccuracies."

FTC Issues Annual Report on Actions to Protect Older Adults. On **October 18**, the FTC issued its annual report to Congress on its efforts to protect older adults from fraud and other scams. This latest report, titled *Protecting Older Consumers, 2023-2024, A Report of the Federal Trade Commission*, found that older adults reported losing a total of \$1.9 billion to fraud in 2023. However, the FTC estimates that the actual number could be as high as \$61.5 billion during that same time. The report also highlights several actions taken by the FTC-led Scams Against Older Adults Advisory Group, which was created in response to the Stop Senior Scams Act passed by Congress in 2022.

Select Enforcement Actions

CFPB and DOJ Settle With Mortgage Company for Allegedly Deceptive Marketing Practices. On **October 15**, the CFPB and Department of Justice (DOJ) filed a complaint and proposed order in the U.S. District Court for the Northern District of Alabama against a mortgage company for alleged violations of the Fair Housing Act, the Equal Credit Opportunity Act, and the CFPA. The CFPB alleges that the company did not market or offer its services equally to all individuals. The proposed order would require the company to pay a \$1.9 million civil penalty and put \$8 million towards more affordable loans and opening a new loan production office in an underrepresented area.

FTC Settles with Coffee Franchise and its Officers for Allegedly Misleading Business Practices. On **October 16**, the FTC filed a complaint and stipulated order in the U.S. District Court for the Southern District of Florida against a national coffee franchise and three of its officers for alleged violations of the FTC Act and the Franchise Rule. The FTC alleges that the defendants failed to disclose information to potential franchisees about the company, its executives, and the time needed to get the franchise set up. The defendants agreed to pay \$1.25 million in addition to injunctive relief.

CFPB Sues Private Student Loan Servicer for Allegedly Deceptive Marketing and Lending Practices. On **October 17**, the CFPB filed a complaint in the U.S. District Court for the Southern District of New York against a private student loan servicer and its largest shareholder for alleged violations of the CFPA and Truth in Lending Act (TILA). The CFPB alleged that the defendants misrepresented the vetting process for vocational schools with which it partnered and did not adequately disclose the finance fees or annual percentage rates in marketing materials. The CFPB seeks injunctive and monetary relief.

Upcoming Comment Deadlines and Events

CFPB Seeks Comment on Revisions to Remittance Transfer Rule. Comments are due **November 4** on the CFPB's proposed rule seeking comment on amendments to the agency's Remittance Transfer Rule. The Electronic Fund Transfer Act and Regulation E require remittance companies to provide senders a disclosure at the time of payment, including a receipt and contact information for both state regulators and the CFPB. If adopted, the proposed rule would amend certain Regulation E disclosures to clarify that consumers should contact their remittance company for issues specific to their money transfer.

FTC Seeks Comment on Petition Asking for Clarification of Amplifier Rule. Comments are due **November 8** on a Petition asking the FTC to either: (a) clarify its application of the amended Trade Regulation Rule Relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products (the "Amplifier Rule"); or (b) revise the amended Amplifier Rule to apply only prospectively to products designed, tested, and manufactured on or after the August 12, 2024 effective date. The FTC issued final amendments to the Amplifier Rule on June 5, 2024. The Amplifier Rule regulates power-output-related claims for home entertainment amplifiers.

FTC to Hold Virtual Workshop to Examine the Impact of Digital Platform Design Features on Kids and Teens. The FTC will hold a virtual workshop on **February 25, 2025** to “examine the use of design features on digital platforms aimed at keeping kids, including teens, online longer and coming back more frequently.” The workshop, titled “Attention Economy: Monopolizing Kids’ Time Online,” will feature researchers, technologists, child development and legal experts, consumer advocates, and industry professionals. According to the FTC, topics discussed will include: (1) how certain website design features may result in more engagement or time spent on digital platforms, and what relevant scientific research exists on the topic; (2) the physical and psychological impacts of the design features on children and teens; and (3) potentially beneficial measures or design considerations that might be effective, feasible, and consistent with current legal practice. Individuals interested in participating as panelists, or individuals with relevant information to provide, may contact the FTC AttentionEconomy@ftc.gov by **November 15**.

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FTC Adopts Final “Click-to-Cancel” Rule with Requirements for Recurring Subscriptions

FCC to Scrutinize Customer Service Practices Across Communications Industry

DOJ and CISA Propose New National Security Program to Regulate Foreign Access to Sensitive Data

Texas AG Brings SCOPE Act Enforcement Action Against TikTok – Just One Month After Law Took Effect

OMB Requirements for AI Acquisition Will Impact Government Contractors

#MWC24 Highlights Collaborative Efforts to Stop Illegal Robocalls and Messages

FCC Proposes New Rules for AI-Generated Calls and Texts

Key Takeaways from Our Conversation with Oregon and Texas Regulators About Privacy Enforcement

Podcast: Navigating State Privacy Laws: A Conversation with Oregon and Texas Regulators about Privacy Enforcement

Litigation Grows Around Website Technologies, With Focus on Sensitive Data

CYBER UPDATE: White House Seeks Regulatory Harmonization While Exploring a Pilot for Reciprocity Amid Proliferation of Regulations

Athletes, Arenas, and Cyberattacks: The Evolving Landscape of Cybersecurity in Sports

State “Right to Repair” Patchwork Grows as Electronic Device Manufacturers Face New Compliance Deadlines

Colorado Enacts Landmark AI Legislation

Darned if You Do, Darned if You Don't: Recent Lessons from the SEC On Cyber Reporting

Action Steps To Address New Restrictions On Outbound Data

New Federal Data Broker Law Will Restrict Certain Foreign Data Sales Effective June 23

White Paper on Telephone Consumer Protection Act Litigation Abuse

Federal Government Acts on Connected Vehicle Privacy and National Security Concerns

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