

# Wiley Consumer Protection Download (October 3, 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.

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## Regulatory Announcements

**CFPB Releases Report Finding Violations of Federal Law by Student Loan Servicers and University-Owned Lenders.** On **September 29**, the CFPB released the *Supervisory Highlights Student Loan Servicing Special Edition* (Supervisory Highlights). The findings come after the agency announced earlier this year that it is examining the practices of colleges operating lending businesses. Specifically, the Supervisory Highlights concluded that: (1) school

## Authors

Duane C. Pozza  
Partner  
202.719.4533  
[dpozza@wiley.law](mailto:dpozza@wiley.law)  
Antonio J. Reynolds  
Partner  
202.719.4603  
[areynolds@wiley.law](mailto:areynolds@wiley.law)  
Stephen J. Conley  
Associate  
202.719.4572  
[sconley@wiley.law](mailto:sconley@wiley.law)  
Lauren N. Lerman  
Associate  
202.719.4664  
[llerman@wiley.law](mailto:llerman@wiley.law)

## Practice Areas

Cyber and Privacy Investigations, Incidents  
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Privacy, Cyber & Data Governance

policies of withholding student transcripts until students made loan payments are abusive under the Consumer Financial Protection Act (CFPA); (2) federal loan servicers allegedly improperly denied loan cancellation applications through Teacher Loan Forgiveness (TLF) or Public Service Loan Forgiveness (PSLF); and (3) servicers allegedly misrepresented borrower eligibility dates and required payments under TLF and PSLF.

### **Trade Associations Sue CFPB Over Its Recent Update to UDAAP Section of Supervisory Examination**

**Manual.** On **September 28**, the American Bankers Association, Consumer Bankers Association, Independent Bankers Association of Texas, Longview Chamber of Commerce, Texas Association of Business, Texas Bankers Association, and U.S. Chamber of Commerce filed a complaint against the CFPB in the U.S. District Court for the Eastern District of Texas. The trade associations allege that the CFPB's March 2022 update to its Supervisory Examination Manual on Unfair, Deceptive or Abusive Acts or Practices (UDAAP) to include discrimination and disparate impact as UDAAPs exceeds its congressional authority under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Specifically, the trade associations allege that: (1) "the CFPB cannot regulate discrimination under its UDAAP authority at all because Congress declined to give the CFPB authority to enforce anti-discrimination principles except in specific circumstances"; (2) the revised Manual is arbitrary and capricious; and (3) the revised Manual violates the Administrative Procedure Act because it did not go through the notice-and-comment rulemaking process.

**FTC Approves HISA Enforcement Rule Modification.** On **September 23**, the FTC issued an Order approving modifications to the Horseracing Integrity and Safety Authority's (HISA) Enforcement Rule, which enumerates certain actions forbidden as violations (such as failures to provide truthful responses to HISA questioning and the failure to cooperate with HISA during an investigation), and sets penalty amounts, enforcement mechanisms, appeal processes, and the investigatory powers of HISA. HISA, which was established following the implementation of the Horseracing Integrity and Safety Act of 2020, is charged with developing a horseracing anti-doping and medication control program and a racetrack safety program.

## Significant Enforcement Actions

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**FTC and California DFPI Sue Mortgage Relief Companies and Their Owners.** On **September 12**, the FTC and the California Department of Financial Protection and Innovation (DFPI) filed a complaint in the U.S. District Court for the Central District of California against four companies and the two individuals that own all four companies, Dominic Ahiga and Roger Dyer, alleging violations of the FTC Act, Mortgage Assistance Relief Services Rule, FTC Telemarketing Sales Rule, California Consumer Privacy Act, and California Consumer Financial Protection Law. The four companies, Home Matters USA, Academy Home Services, Atlantic Pacific Service Group, and Golden Home Services America, all operate as mortgage relief companies offering to negotiate with consumers' mortgage lenders to reduce outstanding loans for a fee. The complaint alleges that the four companies regularly misled consumers by claiming a track record of success in lowering mortgage interest rates and an ability to "beat the system"; cost consumers money and damaged their credit by instructing them not to pay their mortgage while using the companies' services; and cost consumers their homes because the companies required the consumers to sign "cease and desist" letters that required the mortgage lenders to only communicate with the companies, resulting in consumers missing their scheduled

payments. On September 14, the court granted the FTC's and DFPI's ex parte application for temporary restraining order to enjoin business operations and freeze the assets of all defendants.

**CFPB Fines Bank \$50 Million for Illegal Overdraft Fees.** On **September 28**, the CFPB ordered Regions Bank to pay \$141 million in redress and a \$50 million civil money penalty for allegedly charging its customers overdraft fees from August 2018 to July 2021 in violation of the Consumer Financial Protection Act (CFPA). The CFPB complaint concerns an alleged Regions policy that allowed a delay between when consumers made purchases with their debit cards and when the bank paid merchants. The CFPB asserts that this policy was intentionally implemented by Regions to collect overdraft fees from consumers who were unable to predict when the charge on their debit card would go through. The order also prohibits Regions from charging authorized-positive overdraft fees and from violating the CFPA. Seven years ago, the CFPB filed a similar action against Regions for misrepresenting its overdraft policies to its customers, ordering the company to pay \$49 million to consumers and a \$7.5 million civil money penalty.

**CFPB Sues Online Lender for Violating the MLA's Interest Rate Cap.** On **September 29**, the CFPB filed a complaint against MoneyLion, an online lending platform, for allegedly charging service members loan interest rates in excess of the Military Lending Act's (MLA) statutory rate cap. MoneyLion offers its customers a monthly subscription membership that gives them access to low annual percentage rate loans. The CFPB alleges that, unknown to customers during registration, these memberships cannot be canceled until the loans are entirely paid off. According to the CFPB's complaint, MoneyLion's monthly subscription costs, when combined with loan interest rate charges, exceeded the MLA's 36% interest rate cap on the annual percentage rate applicable to credit extended to service members and their dependents. The Bureau's complaint seeks redress for consumers, disgorgement of ill-gotten gains, injunctive relief, and a civil money penalty.

## Upcoming Comment Deadlines and Events

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**FTC Holding Virtual Event on 'Stealth Advertising' Toward Children.** On **October 19**, the FTC will host a virtual event "to examine how best to protect children from a growing array of manipulative marketing practices that make it difficult or impossible for children to distinguish ads from entertainment in digital media." The event will examine evolving practices, such as the "kid influencer" marketplace, and the techniques being used to advertise to children over the internet. In conjunction with the virtual event, the FTC is seeking public comment on how children are impacted by certain digital marketing and advertising messages. Comments are due **November 18**. The agenda for the event is available [here](#).

**FTC Requests Comment on 'Commercial Surveillance' and Data Security ANPR.** Comments are due **October 21** on the FTC's Trade Regulation Rule on Commercial Surveillance and Data Security ANPR (which we summarized in greater detail [here](#)). The wide-ranging ANPR seeks feedback on dozens of questions regarding consumer privacy, data security, and algorithmic uses, and discusses a number of potential regulatory approaches to what the agency calls "commercial surveillance." The agency defines "commercial surveillance" as the "collection, aggregation, analysis, retention, transfer, or monetization of consumer data and the direct derivatives of that information," and "data security" as "breach risk mitigation, data

management and retention, data minimization, and breach notification and disclosure practices.” The FTC issued the ANPR under its Section 5 FTC Act authority, which requires any eventual rule to be grounded in “unfair or deceptive acts or practices” as specified in the Act.

**FTC Seeking Research Presentations for PrivacyCon 2022.** Research presentations were due **July 29** for PrivacyCon 2022, which will take place virtually on **November 1**. As part of the event, the FTC is seeking empirical research and presentations on topics including: algorithmic bias; “commercial surveillance” including workplace monitoring and “biometric surveillance”; new remedies and approaches to improve privacy and security practices; and the privacy risks posed by emerging technologies for children and teens.

**CFPB Seeks Comment on Methods to Spur New Mortgage Products.** Comments are due **November 28** on the CFPB’s Request for Information seeking comment on “(1) ways to facilitate mortgage refinances for consumers who would benefit from refinancing, especially consumers with smaller loan balances; and (2) ways to reduce risks for consumers who experience disruptions in their financial situation that could interfere with their ability to remain current on their mortgage payments.” The Request for Information specifically seeks comment on new products and services, such as refinance programs that are targeted and streamlined, refinancing products such as automatic refinancing, and automatic mortgage forbearance and assistance with long-term loss mitigation.

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An Introduction to the California Age-Appropriate Design Code

The Private Sector Should Watch NIST’s Broad Work on Privacy and Cybersecurity Guidance

CFPB Addresses Data Security Expectations for Financial Institutions

FTC Seeks Comment on Proposed Rule Prohibiting Impersonation Scams

FTC Seeks Comment on Updating Endorsement Guides on Digital Advertising

New York State Department of Financial Services Proposes Updates to Cybersecurity Regulation

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