

Wiley Consumer Protection Download (October 25, 2021)

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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 Orders to Collect Information on Business Practices of Large Technology Companies. On **October 21**, the CFPB issued several orders to collect information on the business practices of national technology companies operating payment systems in the United States. The CFPB states that the information will help the agency to better understand how the companies use payments data

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and manage data access. The agency issued the orders under its Consumer Financial Protection Act (CFPA) Section 1022(c)(4) authority, which gives the CFPB the ability to seek information from payments markets participants in order to monitor for risks to consumers and publish aggregated findings that are in the public interest. Initial orders were sent to Amazon, Apple, Facebook, Google, PayPal, and Square.

Rohit Chopra Sworn in as CFPB Director. On **October 12**, Rohit Chopra was sworn in as CFPB Director. The U.S. Senate voted to confirm Chopra as CFPB Director on September 30. He replaces former Acting Director Dave Uejio. Before becoming an FTC Commissioner in 2018, Chopra served as Special Adviser to the Secretary of Education, where he worked on the agency's efforts to improve student loan servicing. Prior to that, he served as Assistant Director of the CFPB where he oversaw the agency's policies on student loans. The Secretary of the Treasury also appointed him to serve as the CFPB's Student Loan Ombudsman. Chopra's departure from the FTC leaves the agency with four Commissioners. President Biden's recent nominee for a fifth FTC Commissioner – Alvaro Bedoya – is currently awaiting a confirmation hearing and vote in the Senate.

FTC Holds October Open Commission Meeting and Issues Staff Report on ISP Privacy Practices. On **October 21**, the FTC held an Open Meeting at which the agency voted 4-0 to approve a staff report on Internet service provider (ISP) data collection and use practices. The data from the report was derived from orders that the FTC issued under its Section 6(b) FTC Act authority to six ISPs and three advertising companies affiliated with three of the ISPs. The staff report concludes that some ISPs engage in practices such as combining data across product lines; combining personal, app usage, and web browsing data to target ads; placing consumers into demographic categories, including by race and sexual orientation; and sharing real-time location data with third parties, among other practices.

FTC Issues Notices to Over 700 Companies About Misleading Product Reviews and Endorsements. On **October 13**, the FTC sent a Notice of Penalty Offenses to over 700 national retailers, ad agencies, consumer product companies, and others across the United States regarding conduct in product testimonials and endorsements that it considers to be deceptive or unfair. As we explained in greater detail here, the notices do not suggest that the companies have engaged in any unlawful conduct, but warn the companies that misleading use of endorsements or testimonials could lead to large financial penalties. Specifically, the FTC states that the notices provide companies with actual notice of certain unlawful conduct, permitting the agency to bring enforcement action against companies that subsequently engage in such acts or under 15 U.S.C. § 45(m)(1)(B).

FTC Issues Annual Report to Congress on Protecting Older Adults. On **October 18**, the FTC announced that it had released its annual report to Congress on protecting older adults, with trends showing that fraud increased dramatically among adults age 60 and older in the second quarter of 2020. The most common type of fraud reported was online shopping scams. Moreover, consumers age 80 and older reported losing a median of \$1,300 to fraud, whereas those consumers in their sixties reported a median loss of \$449. Of all scam categories, older adults reported losing the most money to romance scams. The FTC voted 4-0 to issue the report.

FTC Issues Staff Report on the Impact of Fraud on Communities of Color. On **October 15**, the FTC announced that it had released a staff report on the agency's consumer protection priorities for consumers of color. The report concluded that when people reported losing money, those living in the majority Black and Latino communities stated that they paid for products and services using cash, cryptocurrency, money orders, and debit cards, which have few fraud protections. The research also found that people living in Black and Latino communities faced problems with car buying, banks and lenders, credit issues, and debt collection at higher rates than in majority White communities. The FTC voted 4-0-1 to issue the report, with Commissioner Chopra recorded as "not participating."

CFPB Names Deputy Director; Associate Director for Consumer Education & External Affairs; Chief of Staff; and Chief Technologist. On **October 13**, the CFPB announced that it had named individuals to a number of leadership positions – Deputy Director; Associate Director for Consumer Education & External Affairs; Chief of Staff; and Chief Technologist. Specifically, the CFPB named Zixta Q. Martinez as Deputy Director; Karen Andre as Associate Director for Consumer Education & External Affairs; Jan Singelmann as Chief of Staff; and Erie Meyer as Chief Technologist.

Significant Enforcement Actions

CFPB and DOJ Sue Jackson, MS-Headquartered Bank for Alleged Redlining. On **October 22**, the CFPB and the U.S. Department of Justice (DOJ), in cooperation with the Office of the Comptroller of the Currency (OCC), filed a complaint and proposed consent order in the U.S. District Court for the Western District of Tennessee against Trustmark National Bank (Trustmark). The joint complaint alleges that Trustmark discriminated against Black and Hispanic neighborhoods by deliberately not marketing, offering, or originating home loans to consumers in majority-Black and Hispanic neighborhoods in the Memphis area, in violation of the Fair Housing Act (FHA). The CFPB and DOJ also allege that Trustmark discouraged consumers residing in or seeking credit for properties located in these neighborhoods from applying for credit in violation of the Equal Credit Opportunity Act (ECOA), Regulation B, and the CFPA. The proposed order, if entered by the court, would require Trustmark to invest \$3.85 million in a loan subsidy program that would offer loans on a more affordable basis than otherwise available from Trustmark to qualified applicants for credit secured by properties in majority Black and Hispanic neighborhoods in the Memphis area; open a new loan production office in a majority Black and Hispanic neighborhood in the Memphis area; fund targeted advertising to generate applications for credit from qualified consumers in majority Black and Hispanic neighborhoods in the Memphis area; and take other remedial steps to improve its fair lending compliance and serve the credit needs of majority Black and Hispanic neighborhoods in the Memphis area. The order would also require Trustmark to pay a civil money penalty of \$5 million.

FTC Files Complaint Against Funder and Servicer of Online Trading Academy Payment Plans. On **October 21**, the FTC announced a settlement agreement with Universal Guardian Acceptance, LLC (UGA) and Universal Account Servicing, LLC (UAS)—payment plan funders and servicers for Online Training Academy (OTA)—to resolve allegations that the companies facilitated consumers' payments to OTA when they knew or should have known that OTA was deceiving consumers. In February 2020, the FTC settled a suit against OTA, wherein

it alleged that OTA had misled consumers to enroll in OTA investment trainings with the promise that purchasers were likely to generate significant income. Under the terms of the settlement agreement with OTA, the company was required to offer debt forgiveness to consumers who owed OTA money on their retail installment contracts. According to the FTC's complaint against UGA and UAS, the companies allegedly ignored red flags that OTA was engaged in deception, including consumer complaints, a high cancellation rate, and the fact that the vast majority of purchasers were not timely paying off their debt. The proposed settlement requires UGA to offer debt forgiveness to OTA purchasers whose debt is held by UGA and obligates both companies to develop screening, monitoring, and consumer complaint investigation programs.

CFPB Sues Prison Financial Services Provider Based on Debit Card Practices. On **October 19**, the CFPB filed a complaint against JPay, LLC (JPay), a financial services provider that contracts to provide services to incarcerated and formerly incarcerated individuals, for allegedly charging consumers fees to access their own money on prepaid debit cards. The consent order alleged that JPay's practices violated the Electronic Fund Transfer Act (EFTA) and its implementing Regulation E, and the CFPA. The EFTA and Regulation E prohibit certain companies and government benefits entities from conditioning the receipt of a government benefit on opening an account with a particular financial institution. Specifically, JPay purportedly violated EFTA and Regulation E by requiring consumers to establish an account with the financial institution that issued the JPay debit release card as a condition of receiving a government benefit. The complaint also alleges that JPay's violations of EFTA and Regulation E constituted violations of the CFPA because JPay imposed fees on consumers who were required to get a JPay debit release card to access the money owed to them; charged unauthorized fees; and misrepresented fees of some JPay debit release cards. The CFPB's consent order, among other conditions, requires the company to pay \$4 million for consumer redress and imposes a \$2 million civil money penalty.

FTC Settles with Marketer of Prison Calling Services. On **October 15**, the FTC announced that it reached a settlement with Marc and Courtney Grisham and their companies – Disruption Theory LLC and Emergent Technologies LLC – doing business as inmatecall.com and inmatecallsolutions.com. The settlement resolves allegations of false advertising. Specifically, the FTC alleges that the companies advertised and marketed unlimited minutes calling plans that were never provided and posed as companies authorized to provide calling services to prisons to bolster the credibility of their false claims. Under the terms of the settlement, Marc Grisham is prohibited from making similar claims in the future and is subject to consumer notice obligations. A federal court issued a default judgment against Courtney Grisham and the company defendants, permanently banning them from offering inmate calling services.

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FTC Broadly Issues Notices on Endorsements and Testimonials to National Advertisers, Signaling a New Enforcement Approach

Privacy in Focus: Latest Changes at FTC Will Drive Federal Action on Privacy, Data Security, and AI

Privacy in Focus: FTC Policy Statement Signals Increasing Scrutiny on the Protection of Sensitive Personal Health Information

Privacy in Focus: AI Risk Management Framework Is Among Emerging Federal Initiatives on AI

Fintech Noir: From Tulsa to Now: Dismantling Systemic Racism in Our Financial Systems

Webinar: Shifting U.S. Privacy Regulation: New State Laws Complicate Compliance Efforts

The FTC's Public Meeting Forecasts an Active and Far-Reaching Agenda Under Chair Lina Khan

FTC Adopts Policy Statement on Consumer Device Repairs and Announces That Enforcement Approach Will Be a Priority

'McMorris Factors' Create Obstacles For Data Breach Plaintiffs

Key Takeaways from the AMG Capital Management v. FTC Decision

Supreme Court Curbs FTC Power to Seek Monetary Relief

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