



Venable LLP, an *AmLaw* 100 firm, is headquartered in Washington, DC and has offices across the country.

Our nearly 600 attorneys practice in all areas of corporate and business law, complex litigation, intellectual property, and regulatory and government affairs. To learn more about Venable's capabilities, please see our complete list of services.

Venable attorneys produce periodic alerts and newsletters covering a variety of topics and practice areas. For your convenience, we have assembled below a collection of the latest alerts and newsletters from July 2011. To view the full text of an article, please click on the title of the piece.

Advertising News & Analysis - July 15, 2011

News:

- Companies Propose Self-Regulation for Food Advertising to Children
- Connecticut AG Launches Groupon Investigation

Analysis:

- Historic Change to Domain Name System Has Broad Implications for Brands

Advertising News & Analysis - July 22, 2011

News:

- President Obama Nominates Maureen Ohlhausen to the FTC
- FCC Proposes Rules to Stop "Mystery Fees" on Phone Bills
- Dot Com Disclosures Comments Due August 10th

Analysis:

- Federal Trade Commission Announces Proposed Biersdorf Settlement

Advertising News & Analysis - July 28, 2011

News:

- Airbrushing = false advertising? UK's Advertising Standards Authority says "Yes"
- FDA Provides Draft Guidance on Mobile Medical Apps

Analysis:

- Launch of CFPB has Implications for Marketers and Financial Institutions
- FTC Issues Mortgage Acts and Practices – Advertising Final Rule

Announcing Online Tool: *Venable CFPB Monitor*

Venable LLP is pleased to announce the launch of an online tool designed to offer clients and friends a comprehensive summary of current developments related to the primary provisions of the Consumer Protection Act and the enforcement activity of the Consumer Financial Protection Bureau.

The *Venable CFPB Monitor* provides links to regulatory initiatives by the CFPB with their corresponding statutory provisions. In addition, the *Monitor* includes other publically available reports and analysis to assist in examination of the CFPB's activities in a particular industry segment.

ASTM International Publishes Guide for Property Owners Seeking Superfund Liability Relief

In 2002, Congress passed the Small Business Liability Relief and Brownfields Revitalization Act, which, among other things, amended the Superfund statute (also known as "CERCLA") to carve out of the harsh liability scheme exceptions for certain new property owners that did not cause contamination found on their property. Congress was responding to developers' reluctance to acquire Brownfields properties because CERCLA made owners of contaminated properties fully liable under the "no fault" joint and several liability scheme even though contamination on the property may have been caused by prior owners or third parties. Congress' aim was to remove disincentives for restoring Brownfields sites to productive use by creating a pathway for new property owners to escape CERCLA liability if they satisfied certain conditions.

Brief Delay of the New Fee Disclosure Rules—What Plan Sponsors Need to Know and Do Now

Earlier this month, the Department of Labor (DOL) announced a brief delay of the effective dates for its new service provider and participant fee disclosure rules. Specifically, the service provider fee disclosure

rules will become effective as of April 1, 2012, and the participant fee disclosure rules will become effective as of May 31, 2012 for calendar year plans (later for certain non-calendar year plans).

CFPB Request for Comment: Identifying Non-Depository Companies for Direct Examination and Supervision

On June 29, 2011, the CFPB (through the auspices of the Treasury) published in the Federal Register one of its most significant notices to date. (76 Fed. Reg. 38059) Specifically, the CFPB has asked for public comment to identify "larger" non-depository providers of consumer financial products and services that will be supervised and examined directly by the CFPB. Among other things, the identification process will also include requiring specified entities to register with the CFPB, to provide regular reports of their activities, and to become subject to direct enforcement for violation of federal consumer laws by the CFPB.

CFPB Watch - July 2011

Recent Developments

- Launch of the CFPB
- Request for Comment on Defining Larger Participants Subject to CFPB Supervisory Authority
- CFPB Begins Supervision of Large Banks and Affiliates
- CFPB Releases Report on Credit Scores
- CFPB Structure Chart
- President Obama Nominates Richard Cordray as CFPB Director
- Venable's CFPB Task Force

A Collection of Venable's Credit Counseling and Debt Services Legal Articles and Presentations from the First Half of 2011

During the first half of 2011, there was a great deal of federal and state legal and regulatory activity touching on credit counseling and debt services. And, with the rollout of the new Consumer Financial Protection Bureau – which will regulate credit counseling agencies, debt settlement companies, and housing counseling providers – now well underway, there are no shortage of developments on the horizon.

Below is a list of the best of the credit counseling and debt services-related legal articles and PowerPoint presentations published or delivered by our attorneys over the first half of the year. We have put together some very interesting, useful materials that should be of help to your organization as you tackle the always challenging array of legal issues facing credit counseling and debt services providers.

A Collection of Venable's Nonprofit Legal Articles and Presentations from the Second Quarter of 2011

As we have done previously (e.g., click [here](#) for our second quarter 2010 Alert, click [here](#) for our third and fourth quarter 2010 Alert, and click [here](#) for our first quarter 2011 Alert), Venable's Nonprofit Organizations Practice Group will share the best of the nonprofit legal articles and PowerPoint presentations (and, for our in-house seminars/webinars, recordings of presentations) published or delivered by our attorneys. Our group has put together some very interesting, useful materials that should be of help to your organization as you tackle the always-challenging array of legal issues facing nonprofits.

Consumer Financial Protection Bureau Opens for Business: The Implications for Debt Relief Service Providers and Housing Counseling Agencies

Today, the Consumer Financial Protection Bureau (the "CFPB" or the "Bureau") opens for business. One year ago, Congress passed and President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), including the Consumer Financial Protection Act, which created the CFPB. Now the CFPB will be "a cop on the beat" to enforce consumer financial protection laws, declare individual acts or practices to be "unfair, deceptive, or abusive," and regulate nonbank and bank providers of consumer financial products and services.

DC District Court Decision Suggests Stricter Pollution Control Standards For The Anacostia River May Be Forthcoming

The DC District Court's July 25, 2011 decision in *Anacostia Riverkeeper, Inc., et al. v. Lisa Jackson, et al.*, repeatedly lambasts the Environmental Protection Agency ("EPA") for its delay in implementing total maximum daily loads ("TMDLs") for the Anacostia River, but ultimately rejects the pollution control plan jointly submitted to EPA by the District of Columbia and Maryland, and approved by EPA in 2007, as arbitrary and capricious and inconsistent with the Federal Water Pollution Control Act of 1972 ("the Clean Water Act" or "CWA"). In rejecting the plan, which called for an 85% reduction in sediment/total suspended solids ("TSS") pollution, the District Court suggests even stricter standards may be required. Permit holders, water and sewer authorities, landowners, developers, and others who may be directly

affected by the implementation of a more stringent pollution control plan for the Anacostia River should monitor this situation closely and consider participating in the development of a revised plan.

DOJ & FTC Revise Premerger Filing Requirements

On July 7, 2011, the Department of Justice and the Federal Trade Commission adopted new rules for the Hart-Scott-Rodino ("HSR") premerger filing process. The new rules revise the Premerger Notification and Report Form, and are effective 30 days after publication in the Federal Register. The modifications to the premerger form are intended to update and streamline the premerger process, but they will have a significant impact on certain filers.

FCC Proposes Rules to Stop "Mystery Fees" on Phone Bills

The Federal Communications Commission ("FCC") has launched a rulemaking proceeding aimed at protecting consumers from "mystery fees" and so-called "cramming" practices, which is the placement of unauthorized charges on a customer's monthly telephone bill. For now, the FCC is merely soliciting comments on these proposals; however, given its finding that "cramming is a significant and ongoing problem that has affected consumers for over a decade," some regulatory action after public comments are received may be in the offing.

FDA's NDI Guidance Will Impact About 90% of the Dietary Supplement Industry

On July 1, 2011, the U.S. Food and Drug Administration ("FDA") published its long-awaited Draft Guidance on New Dietary Ingredient ("NDI") notifications for dietary supplements ("Draft Guidance"). The Draft Guidance can be found on FDA's website by clicking [here](#). The notice of availability of the Draft Guidance was published in the Federal Register on July 5, 2011. While comments on the guidance may be submitted to the agency at any time, to ensure consideration by the agency, comments should be submitted by October 3, 2011.

Impact of New SBA Size Standards and Legislation on Government Contractors

Over the past year, there has been a substantial increase in federal legislative and regulatory activity impacting small business contracting opportunities. For example, the SBA is engaged in long-awaited efforts to update the small business size standards. Additionally, recently introduced legislation contemplates the establishment of a Small Business Growth Pilot Program that, if enacted, will significantly increase opportunities for government contractors to qualify for small business set-asides.

The New Health Insurance Exchanges: Business Opportunities Abound, Don't Be Short-Changed

On July 11, 2011, at Frager's Hardware store on Capitol Hill, the Secretary of Health and Human Services announced the issuance of the first round of regulations on the new health insurance Exchanges created under the health care reform law. This is the first of multiple rounds of guidance about how the Exchanges will be structured, providing the first opportunity for companies – particularly information technology companies and companies that provide certain specialized support services such as call centers – to assess the business opportunities created by the Exchanges. As you read the newspaper and business news articles about the Exchanges – or delve into the new regulations – understanding what an Exchange is and the functions it must perform will begin to provide the context for assessing these business opportunities.

Patent Reform Bill Nearing Passage; Financial Services Sector to Be Impacted

After several years of consideration, comprehensive patent reform is nearing passage. Both the House and Senate have passed versions of the "America Invents Act," and as early as next week legislators will work to reconcile the two versions. Banks and other companies with an interest in preserving their freedom to operate in the financial services sector should act quickly if they would like to attempt to influence the language of the proposed legislation.

Proposed DFARS Rule Would Impose New Protection and Reporting Requirements on Defense Contractors

On June 29, 2011, the Department of Defense (DoD) proposed a rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to add a new subpart and contract clauses to require the safeguarding of unclassified DoD information and mandate the reporting of "cyber incidents." 76 Fed. Reg. 38089 (June 29, 2011). This rule addresses the safeguarding requirements specified in Executive Order 13556 (E.O. 13556 or the Order), Controlled Unclassified Information, dated November 4, 2011. The proposed rules have significant implications for DoD contractors possessing certain types of unclassified information in terms of safeguarding such information and reporting certain incidents as outlined below.

Stanford v. Roche: The Importance of Precise Contract Drafting

The Supreme Court's recent decision in *Stanford v. Roche* draws attention to the pitfalls of imprecise

contract language. The Supreme Court affirmed the ruling of the Court of Appeals for the Federal Circuit, which hung on the difference between competing assignment clauses, holding that Stanford University ("Stanford") did not possess exclusive rights to a technique for HIV testing developed by one of Stanford's research fellows.

Top Issues in Non-disclosure Agreements

A non-disclosure or confidentiality agreement is often the first binding agreement entered into in contemplation of an acquisition. This article focuses on some of the typical provisions found in a non-disclosure agreement in the context of an acquisition, which we refer to here as the "proposed transaction."

Generally, at the early stages of a proposed transaction, potential buyers desire specific information about the target company in order to evaluate the proposed transaction and to determine the value of such target company for purposes of making a bid. A non-disclosure agreement is essential to protect the target company's confidential and proprietary information and trade secrets from misuse subsequent to disclosure to a potential buyer. Set forth below is an overview describing each of the provisions that should be considered when entering into any non-disclosure agreement for a proposed transaction.

We would also like to highlight an upcoming Venable event that you may be interested in attending. Please click on the event title for additional information.

Nonprofit Executive Compensation: Avoiding the Treacherous Tax and Governance Pitfalls

Tuesday, August 23, 2011

12:00 p.m. - 2:00 p.m. EDT

Few issues facing nonprofit organizations these days are as prominent as executive compensation. In the last year the Internal Revenue Service has repeatedly stated in speeches, publications, and its 2011 annual work plan that executive compensation is area of keen focus with tax-exempt organizations. In addition to IRS scrutiny, with the public availability of the Form 990, nonprofits are subject to intense public and media scrutiny as well. Of even greater concern are the consequences of providing executives with excessive compensation or benefits, which can include revocation of tax-exempt status and substantial monetary penalties on the executives and insiders who receive (and approve) excess benefit transactions.

This distinguished panel of legal, tax and compensation experts will draw from their knowledge and extensive experience to explain private inurement and intermediate sanctions, the potential penalties for violations, and, most importantly, ways in which nonprofits can protect themselves from running afoul of these tax provisions. From compensation studies and surveys (including what works and what doesn't in different circumstances), to appropriate governance approval processes, to how compensation information is presented in annual financial statements and the Form 990, to the appropriate treatment of certain employee benefits as taxable income, this program will give you practical tips and suggestions to help keep your nonprofit — and its executives — out of hot water with the IRS and others.

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