

# Wiley Consumer Protection Download (September 28, 2020)

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Regulatory Announcements

Significant Enforcement Actions

Upcoming Comment Deadlines and Events

More Analysis from Wiley

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 Releases Outline of Considerations to Implement Section 1071 of the Dodd-Frank Act.** On **September 15**, the Consumer Financial Protection Bureau (CFPB) released its Outline of Proposals Under Consideration and Alternatives Considered for Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Section 1071 of the Dodd-Frank Act requires that financial institutions collect certain data on applications for credit by women-owned, minority-owned, and small businesses and report that data annually. The Outline details CFPB proposals to implement Section 1071 "along with the relevant law, the regulatory process, and an economic analysis of the potential impacts of the proposals on directly affected small entities." The CFPB is also convening a Small Business Advocacy Review Panel in October 2020 to examine any potential impacts that the rule proposals in the Outline could have on small businesses. Stakeholders are invited to provide feedback on the Outline via email here no later than **December 14**.

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## Practice Areas

FTC Regulation

**FTC Hosts Workshop on Data Portability.** The Federal Trade Commission (FTC) hosted *Data To Go: An FTC Workshop on Data Portability* on **September 22**. The goal of the agency's workshop was to "examine the potential benefits and challenges to consumers and competition raised by portability." The workshop, which we previewed here, included public and private sector experts who examined the various challenges and potential solutions to portability issues across different geographical regions and sectors of the economy. The workshop signals the first initiative in what could amount to further FTC data portability activity. During the workshop, Director Andrew Smith of the FTC's Bureau of Consumer Protection noted that the agency would be following the CFPB's Advance Notice of Proposed Rulemaking (ANPR) on Section 1033 of the Dodd-Frank Act. We discussed that upcoming ANPR here.

**CFPB Director Announces Committee Members for Several Agency Advisory Councils.** CFPB Director Kathleen L. Kraninger announced appointments to the Consumer Advisory Board (CAB), the Community Bank Advisory Council (CBAC), the Credit Union Advisory Council (CUAC), and the Academic Research Council (ARC). The expert members appointed to each of these committees will advise the CFPB on an array of consumer financial protection issues and new market considerations. The CAB is required to advise and consult with the CFPB Director on consumer financial issues pursuant to the Dodd-Frank Act. The CFPB created CBAC and CUAC to advise on financial protection issues pertaining to community banks and credit unions. ARC, meanwhile, was established to advise the CFPB on the agency's "strategic research planning process and research agenda." A full list of Director Kraninger's appointments is available here.

## Significant Enforcement Actions

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**FTC Settles with Company Falsely Claiming to be a PPP Lender.** On **September 25**, the FTC entered into a settlement with Ponte Investments, LLC (Ponte) following allegations that they misled small businesses to believe that they had an affiliation with the Small Business Administration (SBA). Specifically, Ponte used the name "SBA Loan Program" on its website and stated that they were a direct lender for the Paycheck Protection Program (PPP). The settlement prohibits Ponte and its owner from "(1) misrepresenting that they are authorized to accept or process applications for SBA loans and (2) misrepresenting that they are the SBA or are otherwise affiliated or associated with the SBA or the U.S. Government."

**CFPB Files Proposed Stipulated Judgement Against Trustees of Private Student Loan Borrower.** The CFPB filed a Proposed Stipulated Final Judgement against PEAKS Trust 2009-1, along with Deutsche Bank National Trust Company, Deutsche Bank Trust Company Delaware, and Deutsche Bank Trust Company Americas, in their capacity as trustees to PEAKS Trust 2009-1 (collectively, PEAKS) on **September 15**. The CFPB's complaint against PEAKS, which was filed in the U.S. District Court for the Southern District of Indiana, alleged that PEAKS assisted ITT Educational Services (ITT) in engaging in unfair acts and practices in violation of the Consumer Financial Protection Act of 2010 (CFPA). PEAKS was the owner and manager of the private loans for students at ITT Technical Institute. Specifically, the CFPB alleged that PEAKS knew or should have known that ITT's student loan borrowers did not comprehend the terms and conditions of their loans, could not afford them, or did not even know that they had them. If the court accepts the Stipulated Final Judgement, PEAKS would be obligated to stop collecting loans, discharge all outstanding loans, and request that consumer reporting agencies delete information regarding such loans.

**FTC Settles with Supplement Marketer Following Allegations That It Violated 2016 Court Order.** On **September 22**, the FTC announced that it agreed to a \$1.04 million settlement with Boston-based supplement marketer NutraClick LLC (NutraClick) after the agency alleged that NutraClick violated a 2016 federal court order from a prior FTC investigation involving violations of the Restore Online Shoppers' Confidence Act. According to the FTC complaint filed in the U.S. District Court for the Central District of California, the agency alleged that NutraClick violated the 2016 court order when it failed to "clearly and conspicuously disclose all material terms of their negative option sales offers." The \$1.04 million due under the settlement may be used to refund consumers billed by NutraClick.

**FTC Reaches Settlement with VoIP Service Provider for Allegedly Assisting in Credit Card Interest Rate Relief Scheme.** On **September 22**, the FTC and the State of Ohio announced that they reached a \$1.9 million settlement with Voice over Internet Protocol (VoIP) service provider Globex Telecom, Inc. (Globex). The complaint alleges that Globex provided Educare Centre Services (Educare)

with the ability to market Educare's credit card interest rate reductions through illegal robocalls to consumers. The settlement requires that Globex pay \$1.95 million and to abide by client screening and monitoring procedures that prevent the company from offering VoIP services to clients who pay with store value cards or cryptocurrency. The settlement with Globex concludes the FTC's first consumer protection case against a VoIP service provider.

**FTC and Four State Attorneys General File Complaint Against Allegedly Fraudulent Charity.** The FTC, New York, Virginia, Minnesota, and New Jersey filed a complaint against Gelvan Outreach Calling, Inc., Outsource 3000, Inc., and Production Consulting Corp. on **September 15**. The complaint alleges that the defendants falsely claimed to use consumer donations to help homeless veterans and retired and disabled law enforcement officers along with others in need. The complaint claims that as much as 90% of the money raised went to the defendants themselves as payments for their fundraising services, and that the defendants placed calls misrepresenting how charitable donations would be used and many of these calls violated consumer do-not-call requests. The settlement proposed by the FTC and the states permanently prohibits the defendants from participating in charity fundraising and requires them to pay a monetary judgement of \$56,023,481.

**FTC Settlement Requires Online Trading Academy to Offer Debt Forgiveness and Relinquish Cash and Assets.** The FTC announced on **September 15** that investment training company Online Trading Academy (OTA) will be required to offer debt forgiveness to thousands of consumers that purchased its "training programs" under a settlement. The FTC filed a complaint against OTA in February following claims by the company that anyone could learn to use its strategy and make significant money doing so. Specifically, the FTC alleged that the OTA had no evidence to substantiate its claim that consumers were likely to make a significant profit, and that the company's own surveys detailed the fact that users made little to no money. Moreover, OTA claimed that its instructors and salespeople were active and successful traders, but the FTC alleged that several OTA salespeople admitted that they did not make significant money investing. The settlement also includes a monetary judgement of \$362 million and requires OTA to pay \$10 million in money and assets to benefit injured consumers.

**CFPB Issues Consent Order Against Auto Loan Servicer.** On **September 21**, the CFPB issued a Consent Order against Lobel Financial Corporation (Lobel), an auto loan servicer in Anaheim, CA, for allegedly engaging in unfair practices related to its Loss Damage Waiver (LDW) product, in violation of the CFPA. Specifically, the CFPB's investigation determined that Lobel has charged customers LDW premiums on auto loans after they become 10-days delinquent but neglected to provide them with LDW coverage. Moreover, the CFPB found that Lobel charged customers LDW-related fees without disclosing these fees in the LDW contract. The CFPB's Consent Order requires Lobel to pay \$1,345,224 in consumer redress and a monetary penalty of \$100,000.

**CFPB Takes Action Against Another Mortgage Broker Over Deceptive Mailers Advertising VA-Guaranteed Mortgages.** On **September 14**, the CFPB issued a Consent Order against ClearPath Lending, Inc. (ClearPath), which is a licensed mortgage broker in 22 states, after a number of investigations into ClearPath and similarly situated mortgage brokers regarding the use of deceptive mailers to advertise Veterans Affairs (VA)-guaranteed loans. The Consent Order against ClearPath obligates it to pay a \$625,000 monetary penalty and implements oversight obligations to deter future violations. The CFPB concluded that ClearPath sent mailers to consumers that contained false, misleading, or deceptive information in violation of the CFPA, the Mortgage Acts and Practices Advertising Rule, and Regulation Z. In August, the CFPB announced settlement agreements with similar mortgage brokers, including Sovereign Lending Group, Inc., Prime Choice Funding, Inc., and Go Direct Lenders, Inc. Earlier this month, the CFPB announced additional settlements with Service 1st Mortgage, Inc., Hypotec, Inc., and Accelerate Mortgage, LLC.

## Upcoming Comment Deadlines and Events

**CFPB Issues Proposed Rule to Create a New Category of Qualified Mortgages (QMs).** Comments are due **October 1** (extended from September 28) on the CFPB's Notice of Proposed Rulemaking (NPRM) that would create a new type of seasoned QMs that are first-lien, fixed-rate covered transactions that have met specific performance requirements over a 36-month seasoning period. For a loan to qualify under this new definition, the creditor would also be required to verify a consumer's debt-to-income ratio or residual

income at the time of origination. Seasoned QM loans would only be available for covered transactions with no more than two 30-day delinquencies.

**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 the CFPB to 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 and 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](#).

## More Analysis from Wiley

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28 Wiley Attorneys Recognized Across 17 Practice Areas in 2021 Edition of *The Best Lawyers in America*®

*Privacy in Focus* (September 2020)

Federal Privacy Law Efforts Move Forward in Congress

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

Bipartisan Legislation Promises Scrutiny of Tech: IoT, AI, UAVs, Blockchain, and More

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

230 Petition Commenters Question FCC Authority, Argue NTIA Proposal Unconstitutional, Bad for Tech

Wiley Files Comments on Behalf of CTA Responding to NTIA's Petition for Rulemaking Involving Section 230

FTC Commissioners Weigh In on Prominent Topics at Oversight Hearing

CFPB and FTC Highlight Consumer Protection Priorities During the Coronavirus Pandemic in Separate Congressional Hearings

European Authorities Take Hard Line on EU-U.S. Data Transfers After Privacy Shield Decision, While FTC Still Plans to Enforce Privacy Shield Compliance

California Finalizes CCPA Regulations, Which Are Effective Immediately

Latest FCC Move Against Robocalls Would Increase Caller ID Authentication, Other Requirements

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