



ALERTS

Advertisers On Notice: CFPB Says Targeted Web Ads Must Comply With Consumer Financial Protection Act

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Highlights

Digital advertisers providing material services to financial firms may be liable for violations of Consumer Financial Protection Act

Targeted digital advertising and behavioral marketing subject to CFPB oversight and regulation

The new CFPB rule designates certain digital advertisers as regulated service providers

The Consumer Financial Protection Bureau (CFPB) issued an [interpretive rule](#) earlier this month defining when digital marketing and advertising firms must comply with federal consumer financial protection laws for activities promoting financial institutions' services.

Under the new rule, digital marketers can be held liable by the CFPB and other consumer protection enforcers for consumer financial protection violations as service providers to financial services companies and institutions.

A CFPB [press release accompanying the rule](#) warned digital marketers

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Mark T. Kindelin

Partner
Chicago

P 312-214-8317
F 312-759-5646
mark.kindelin@btlaw.com



Thomas M. Maxwell

Partner
Indianapolis

P 317-231-7796
F 317-231-7433
thomas.maxwell@btlaw.com



Katerina (Katie) Mills

Counsel
Los Angeles

P 310-284-3830
F 310-284-3894
Katie.Mills@btlaw.com

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that they may be deemed service providers and must comply with federal consumer finance protections. Tech firms that reach consumers using behavioral targeting and personalization regarding financial products may be liable for violations of applicable federal consumer protection rules and regulations if they are involved in the identification or selection of prospective customers or the placement of content to affect consumer behavior.

The new rule highlights the CFPB's interest in novel and behavioral technology applicable to consumer financial services. Digital advertising and marketing providers must consider taking steps to ensure that advertising services provided to financial services companies and institutions – specifically advertising for consumer financial products – are designed to comply with the Consumer Financial Protection Act (CFPA) and applicable CFPB regulations.

Additionally, when an advertising firm is materially involved in the strategy, design, and deployment of content strategy and placement, that firm may be designated as a service provider under the new rule and may not be covered by applicable time and space exceptions.

Under the new rule, digital marketers acting as service providers for financial services companies and institutions can be held liable by the CFPB and other law enforcers for committing unfair, deceptive, or abusive acts or practices as well as other consumer financial protection violations. Depending on how advertising practices are designed and implemented on behalf of financial institutions, behavioral marketing and advertising could subject advertising and marketing firms to legal liability under the CFPA.

The CFPB noted that digital marketing providers offer tools that enable financial institutions to use sophisticated analytic techniques, machine learning, and advanced algorithms to process large amounts of personal data to deliver highly targeted advertisements. In essence, modern advertising technology allows financial firms to use consumer behavioral analytics to identify, connect, and induce interaction with potential customers.

The new interpretive rule defines:

- **Digital marketers providing material services to financial firms:** Digital marketing providers are typically materially involved in the development of content strategy when they identify or select prospective customers or select or place content in order to encourage consumer engagement with advertising.
- **The CFPB, individual states, and other consumer protection enforcers can sue digital marketers to stop violations of consumer financial protection law:** Digital marketers are liable for unfair, deceptive, and abusive acts and practices under the CFPA) when they act as service providers.

CFPB Director Rohit Chopra commented, “When Big Tech firms use sophisticated behavioral targeting techniques to market financial products, they must adhere to federal consumer financial protection laws. Federal and state law enforcers can and should hold these firms accountable if

they break the law."

To obtain more information, please contact the Barnes & Thornburg attorney with whom you work or Mark Kindelin at 312-214-8317 or Mark.Kindelin@btlaw.com, Thomas Maxwell at 317-231-7796 or Thomas.Maxwell@btlaw.com, Michael Cavallaro at 612-367-8767 or MCavallaro@btlaw.com or Katie Mills at 310-284-3820 or Katie.Mills@btlaw.com.

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