

FTC's Consumer Finance Pivot Brings Industry Pros And Cons

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The first nine months of the new Trump administration have dramatically affected the regulation and oversight of the consumer financial industry.

The [Consumer Financial Protection Bureau's](#) new leadership moved swiftly to curtail its enforcement and supervisory activities and is now poised to fire more than 90% of its staff, leaving a void that probably cannot be filled entirely by state attorneys general and other financial regulators.[1]

With these developments as a backdrop, Chris Mufarrige, director of the [Federal Trade Commission's](#) Bureau of Consumer Protection, recently indicated that the FTC will return to its "historically important role" in overseeing the consumer finance industry, emphasizing the FTC's jurisdiction to enforce laws relating to data privacy, including the Fair Credit Reporting Act and the Gramm- Leach-Bliley Act, and the FTC Act's prohibitions on unfair or deceptive business practices.

A Good Trade for the Industry

Many in the consumer finance industry will see the replacement of the CFPB with the FTC as a positive development.

The current leadership has taken every recent opportunity to portray the FTC as a so-called cop on the beat that will be tough but fair. In congressional testimony, Chairman Andrew Ferguson described the FTC as a law enforcement agency with a mandate "not to make the rules," but rather to investigate wrongdoing and bring enforcement actions.[2]

Similarly, Mufarrige said in a September interview with Bloomberg Law that companies should not expect the FTC to "create law" or to pursue novel theories or "ambiguous standards" that make compliance difficult for the industry.[3]

The FTC's current leadership will likely seek more accommodations with companies — and impose fewer unreasonable burdens — through the course of its investigations.

Mufarrige has indicated that the FTC may be willing to narrow the scope of civil investigative demands, which often seek production of documents and data, and narrative responses to interrogatories — if companies are transparent, indicating that the FTC wants to give such companies "a fair shake." [4]

He also said that the FTC will be willing to settle rather than litigate claims where companies respond to civil investigative demands in good faith.

As a practical matter, the FTC will not be able to scrutinize the consumer finance industry to the same extent the CFPB did under prior administrations, because the FTC simply does not have the same level of resources to address consumer finance issues.

In 2024, the CFPB spent more than \$750 million to pursue its mandate, limited to implementing and enforcing federal consumer financial law and ensuring access to consumer financial products and services.[5]

The FTC is required to do more with less. The FTC's 2024 budget was \$590 million, with a broader statutory mandate that includes protecting consumers from deceptive or unfair business practices, not only relating to consumer finance products, but also across the entire American economy.

In addition, a significant portion of the FTC's budget is allocated to antitrust enforcement.

Unlike the CFPB, the FTC lacks statutory authority to pursue abusive acts or practices and does not have direct jurisdiction over banks.

More crucially, the FTC cannot levy monetary penalties for first-time violations of the prohibition on unfair or deceptive acts or practices, and, in 2021, the U.S. Supreme Court severely limited the FTC's authority to recover monetary relief via civil litigation in *AMG Capital Management LLC v. FTC*.^[6]

While the FTC remains a formidable and active regulator, it lacks the CFPB's statutory authority to recover consumer redress and up to \$1 million per day in civil money penalties.^[7]

Risks of Aggressive FTC Enforcement

The FTC's focus on enforcing existing broad legal principles — rather than issuing new rules and regulations — will likely be greeted with relief by consumer finance companies that are fatigued from the previous administration's onslaught of regulatory proclamations.

However, there are risks to the FTC's focus on enforcement actions as the primary method of regulatory communication, and companies should be prepared to push back if they find themselves in the agency's crosshairs.

Ferguson and Commissioner Melissa Holyoak recently explained in a statement that individual enforcement actions are intended to "have a much wider effect than just on the direct subjects of those actions," because a "steady stream of enforcement actions against an unlawful practice provides the markets with transparency about what the agency believes the law requires."^[8]

The FTC's staff and leadership likely view this statement as uncontroversial, but it will recall for many members of the consumer finance industry concerns about so-called regulation by enforcement.

In this paradigm, government agencies use individual enforcement actions to establish, clarify or change the legal standards for an entire industry, and companies pore over the government's factual allegations to determine which business practices may trigger liability.

Over time, this approach can make it harder to implement clear compliance guidelines, and it can even expand the scope of forbidden practices when companies decide they would rather agree to a consent order — to avoid the expense of litigation, the uncertainty of a trial or the reputational risk of an enforcement action — than defend themselves, and by extension the industry, against government overreach.

The FTC's recent enforcement actions relating to product subscriptions and cancellation can illustrate some of these concerns.

In November 2024, the FTC finalized amendments to its "Rule Concerning Subscriptions and Other Negative Option Plans."^[9] The amended Negative Option Rule required companies to provide simple cancellation mechanisms "at least as easy to use as the mechanism the consumer used to consent" to any automatically renewing subscription or agreement.^[10]

On July 8, 2025, the U.S. Court of Appeals for the Eighth Circuit vacated the amended Negative Option Rule, holding in *Custom Communications Inc. v. FTC* that the FTC underestimated its economic effects.^[11]

In the wake of that decision, the FTC announced four enforcement actions in quick succession under its unfair or deceptive acts or practices authority and the Restore Online Shoppers' Confidence Act, or ROSCA, which imposes on transactions conducted on the internet similar requirements to obtain express informed consent and to provide simple mechanisms to cancel recurring charges.^[12]

Most importantly, ROSCA also provides statutory authority for the FTC to recover monetary relief.

On Aug. 12, the FTC announced a consent agreement in which the owners of Match.com and other online dating sites settled a pending FTC case by paying \$14 million to resolve a range of allegations, including that the companies made it difficult for consumers to cancel their subscriptions.^[13]

Just over a week later, on Aug. 20, the FTC filed suit against the operators of LA Fitness and other gym chains, alleging that "they make it exceedingly difficult for consumers to cancel their gym memberships."^[14]

On Sept. 15, the FTC sought judicial approval of a consent order in which Chegg Inc., an education technology provider, agreed to pay \$7.5 million to resolve allegations that its cancellation practices made it difficult, or "nearly impossible," for consumers to cancel recurring subscriptions.^[15]

Most recently, on Sept. 25, the FTC announced a midtrial settlement in which Amazon agreed to pay \$2.5 billion to settle allegations of deceptive subscription and cancellation practices.^[16]

These cases generally appear to be straightforward applications of ROSCA, but there are reasons to be concerned about two aspects of this enforcement blitz.

First, the FTC's consent orders provide almost no detail about why the companies' cancellation policies were unlawful or how they will be remedied.

For example, the Match.com consent agreement does not include any description of the company's offending business practices, and the injunction against future violations simply prohibits the company from "failing to provide simple mechanisms for a consumer to stop recurring charges."^[17]

The Amazon consent order — which secured "the second-highest restitution award ever obtained by FTC action"^[18] — includes similarly generic language.^[19]

These orders hardly fulfill Ferguson's promise of "transparency about what the agency believes the law requires." As a result, the industry is carefully parsing the complaints against these two companies, both of which highlight that their cancellation process required more than six clicks.^[20]

At this point, it is not possible to discern whether a six-click cancellation process constitutes a per se violation, or whether the FTC was primarily focused on other aspects of these companies' procedures.

Second, the FTC's desire to recover monetary redress for consumers may cause it to stretch its ROSCA authority.

For example, in the FTC's complaint against LA Fitness, the government alleges that some portion of the gym subscriptions were online sales without attempting to define that volume or how large a percentage it constitutes of the relevant contracts.

Gym memberships are often discussed as quintessential examples of difficult-to-cancel agreements, but it's less obvious that they are usually "effected on the Internet," as the FTC wrote, and therefore subject to ROSCA.

We will have to wait and see whether the FTC applies its ROSCA authority judiciously, or whether it is tempted to use ROSCA as a catchall citation for the monetary portion of all negative option settlements.

Conclusion

The exchange of an active FTC for a leashed CFPB will be welcomed by most in the consumer finance industry. The FTC's leadership has promised to narrowly interpret its statutory authorities, focus on cases of "'actual, concrete harms' to consumers," as Mufarrige said, and stay within the authority that Congress clearly delegated.^[21]

However, the industry must remain vigilant and be prepared to defend against the incremental expansion of the FTC's authority through a series of enforcement actions.

Robert Tilley and Lucy Morris are partners at Hudson Cook LLP.

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1. See Robert Tilley & Lucy Morris, Expect to Feel Aftershocks of Chopra's CFPB Shake-Up, Law360 (Feb. 18, 2025).

1. Testimony of Andrew Ferguson to the U.S. House of Representatives, Committee on Appropriations, Subcommittee on Financial Services and General Government (May 15, 2025), available here: https://www.ftc.gov/system/files/ftc_gov/pdf/FTC-Chairman-Andrew-N-Ferguson-FSGG-Testimony-05-15-2025.pdf.

1. Tonya Riley, Trump's Consumer Watchdog Seeks to Break with Biden-Era Policies, Bloomberg Law (Sept. 10, 2025).

1. Tonya Riley, Trump's Consumer Watchdog Seeks to Break with Biden-Era Policies, Bloomberg Law (Sept. 10, 2025).
1. 12 U.S.C. § 5511(a).
1. 593 U.S. 67 (2021).
2. 12 U.S.C. § 5565(c).
1. In the Matter of Gateway Servs. Inc., FTC File No. 2210170, Statement of Chairman Andrew N. Ferguson Joined by Commissioner Melissa Holyoak (Sept. 4, 2025), available at: https://www.ftc.gov/system/files/ftc_gov/pdf/gateway-ferguson-holyoak-statement-2025.09.04.pdf.
1. 16 C.F.R. Part 425, 89 FR 90476 (Nov. 15, 2024).
1. See 16 C.F.R. § 425.6(b).
2. 142 F.4th 1060 (8th Cir. 2025).
1. 15 U.S.C. § 8403.
2. FTC v. Match Group, Inc., Case No. 3:19-cv-02281, Proposed Consent Order, Dkt. No. 358-1 (N.D. Tex. Aug. 12, 2025); FTC Press Release, Match Group Agrees to Pay \$14 Million, Permanently Stop Deceptive Advertising, Cancellation, and Billing Practices to Resolve FTC Charges (Aug. 12, 2025), available here: https://www.ftc.gov/news-events/news/press-releases/2025/08/match-group-agrees-pay-14-million-permanently-stop-deceptive-advertising-cancellation-billing?utm_source=govdelivery.
1. FTC v. Fitness International, LLC, Case No. 8:25-cv-01841, Complaint, Dkt. No. 1 (C.D. Cal. Aug. 20, 2025); FTC Press Release, FTC Sues LA Fitness for Making it Difficult for Consumers to Cancel Gym Memberships (Aug. 20, 2025), available here: <https://www.ftc.gov/news-events/news/press-releases/2025/08/ftc-sues-la-fitness-making-it-difficult-consumers-cancel-gym-memberships>.
1. FTC v. Chegg, Inc., Case No. 5:25-cv-07827, Stipulated Consent Order, Dkt. No. 2-1 (N.D. Cal. Sept. 15, 2025); FTC Press Release, Ed Tech Provider Chegg to Pay \$7.5 Million to Settle FTC Allegations Concerning Unlawful Cancellation Practices (Sept. 15, 2025), available here: <https://www.ftc.gov/news-events/news/press-releases/2025/09/ed-tech-provider-chegg-pay-75-million-settle-ftc-allegations-concerning-unlawful-cancellation>.
1. FTC v. Amazon.com, Inc., Case No. 2:23-cv-00932, Stipulated Consent Order, Dkt. No 535 (W.D. Wash. Sept. 25, 2025); FTC Press Release, FTC Secures Historic \$2.5 Billion Settlement Against Amazon (Sept. 25, 2025), available here: <https://www.ftc.gov/news-events/news/press-releases/2025/09/ftc-secures-historic-25-billion-settlement-against-amazon>.
2. FTC v. Match Group, Inc., Case No. 3:19-cv-02281, Proposed Consent Order, Dkt. No. 358-1 (N.D. Tex. Aug. 12, 2025).
1. FTC Press Release, FTC Secures Historic \$2.5 Billion Settlement Against Amazon (Sept. 25, 2025), available here: <https://www.ftc.gov/news-events/news/press-releases/2025/09/ftc-secures-historic-25-billion-settlement-against-amazon>.
1. FTC v. Amazon.com, Inc., Case No. 2:23-cv-00932, Stipulated Consent Order, Dkt. No 535 (W.D. Wash. Sept. 25, 2025).
2. FTC v. Match Group, Inc., Case No. 3:19-cv-02281, Complaint, Dkt. No. 1, ¶ 57 (N.D. Tex. Sept. 25, 2019); FTC v. Amazon.com, Inc., Case No. 2:23-cv-00932, Amended Complaint, Dkt. No. 67, ¶ 128 (W.D. Wash. Sept. 20, 2023).
3. Cassandre Coyer, FTC Leaders to Prioritize Children's Privacy, US Data Security, Bloomberg Law (Apr. 23, 2025), available here: <https://news.bloomberglaw.com/us-law-week/ftc-leaders-to-prioritize-childrens-privacy-us-data-security>.

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410.684.3200

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