



September 19, 2024

TO: Members, Subcommittee on Innovation, Data, and Commerce
FROM: Committee Majority Staff
RE: Hearing titled “Federal Trade Commission Practices: A Discussion on Past Versus Present”

I. INTRODUCTION

The Subcommittee on Innovation, Data, and Commerce has scheduled a hearing on Thursday, September 19, 2024, at 10:30 a.m. (ET) in 2322 Rayburn House Office Building. The title of the hearing is “Federal Trade Commission Practices: A Discussion on Past Versus Present.”

II. WITNESSES

- Ms. Shane Tews, Non-Resident Senior Scholar, American Enterprise Institute
- Dr. J. Howard Beales III, Emeritus Professor of Strategic Management and Public Policy, George Washington School of Business
- Mr. Neil Chilson, Head of AI Policy, Abundance Institute
- Mr. John Davisson, Director of Litigation, Electronic Privacy Information Center

III. BACKGROUND

The Federal Trade Commission (“Commission” or “FTC”), is a five-member independent commission created in 1914, with Commissioners nominated by the President with advice and consent of the Senate for a seven-year term.¹ The FTC’s mission is to protect “the public from deceptive or unfair business practices and from unfair methods of competition through law enforcement, advocacy, research, and education.”² The Commission meets its mission by using the following authorities: investigative, law enforcement, advocacy, education, consumer programs, and rulemaking.³ The FTC uses these authorities within the Bureaus of Consumer Protection, Competition, and Economics, along with the office of the general counsel

¹ 15 U.S.C. § 41.

² Federal Trade Commission, *About the FTC*, <https://www.ftc.gov/about-ftc>.

³ *Id.*

and eight regional offices.⁴ The last time a successful effort was undertaken to reauthorize the FTC was in 1996.⁵

A. Overview of FTC Authorities and Limitations

The FTC’s activities are authorized by a variety of antitrust and consumer protection statutes related to a wide cross section of the economy.⁶ Section 5 of the *Federal Trade Commission Act*, provides the primary consumer protection mandates that derive from “unfair or deceptive acts or practices in or affecting commerce, [which] are hereby declared unlawful.”⁷ The Commission has used the *FTC Act* to investigate and prosecute activity related to privacy and data security, internet fraud, robocall scams, deceptive claims in advertising and marketing, consumer financial products, and fraudulent schemes against vulnerable populations and small businesses, among other things.⁸ The FTC also enforces specific laws related to its consumer protection mission, including the *Fair Credit Reporting Act* (FCRA),⁹ *Gramm-Leach-Bliley Act* (GLBA),¹⁰ and the *Children’s Online Privacy Protection Act of 1998* (COPPA).¹¹ In total, the Commission is responsible for enforcing and carrying out more than 80 laws.¹²

The FTC’s general rulemaking authority is guided by the 1975 *Magnuson-Moss Warranty-Federal Trade Commission Improvement Act* (Mag-Moss), which outlines the steps to their rulemaking procedures.¹³ These steps required the FTC to show, among other things, “substantial evidence in the rulemaking record: that practices are prevalent’ or ’widespread’ before a practice can be declared an unfair and deceptive act of practice.”¹⁴ Usually, the FTC issues regulations, when Congress has granted such authority, under the *Administrative Procedure Act* (APA) for specific issues.¹⁵

The Commission does not have authority to issue civil penalties for initial violations for most unfair or deceptive acts or practices.¹⁶ Initial violations usually allow the FTC to obtain injunctive relief and an order prohibiting the volitive conduct.¹⁷ The FTC can seek civil penalties only after the final order has been issued.¹⁸

⁴ *Id.*

⁵ 15 U.S.C. § 58.

⁶ Federal Trade Commission, *What the FTC Does*, <https://www.ftc.gov/news-events/media-resources/what-ftc-does>.

⁷ 15 U.S.C. § 45.

⁸ Federal Trade Commission, *FY 24 Budget Justification*, https://www.ftc.gov/system/files/ftc_gov/pdf/p859900fy24cbj.pdf

⁹ 15 U.S.C. § 1681 et seq.

¹⁰ Pub. Law 106-10 (1999) (codified as amended in scattered sections of 12 and 15 U.S.C.).

¹¹ 15 U.S.C. § 6501 et seq.

¹² Federal Trade Commission, *Legal Library*, <https://www.ftc.gov/legal-library/browse/statutes>.

¹³ 15 U.S.C. § 57a(b)-(c); (e).

¹⁴ 15 U.S.C. § 57a(b)-(c); (e).

¹⁵ See, e.g., Children’s Online Privacy Protection Rule, 16 C.F.R. Part 312.

¹⁶ Government Accountability Office, *Internet Privacy: Additional Federal Authority Could Enhance Consumer Protection and Provide Flexibility*, GAO-19-52 (Jan. 15, 2019), <https://www.gao.gov/products/gao-19-52>, at 10.

¹⁷ *Id.*

¹⁸ *Id.*

Jurisdiction of the Commission is limited to exclude certain companies, including common carriers, banks, and air carriers.¹⁹ The *FTC Act* applies only to corporations “organized to carry on business for its own profit or that of its members.”²⁰

B. Committee Oversight Hearings

- April 18, 2023: “Fiscal Year 2024 Federal Trade Commission Budget.” [Innovation, Data, and Commerce Subcommittee Hearing: “Fiscal Year 2024 Federal Trade Commission Budget” \(house.gov\)](#)
- July 9, 2024: “Fiscal Year 2025 Federal Trade Commission Budget.” [Innovation, Data, and Commerce Subcommittee Hearing: “The Fiscal Year 2025 Federal Trade Commission Budget” \(house.gov\)](#)

IV. STAFF CONTACTS

- Tim Kurth, Chief Counsel
- Teddy Tanzer, Senior Counsel
- Brannon Rains, Professional Staff Member
- Lacey Strahm, Professional Staff Member
- Alex Khlopin, Clerk

¹⁹ 15 U.S.C. § 45(a)(2).

²⁰ 15 U.S.C. § 44.