

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

July 16, 2018

To: Subcommittee on Digital Commerce and Consumer Protection Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Hearing on “Oversight of the Federal Trade Commission”

On **Wednesday, July 18, 2018, at 9:15 a.m. in room 2123 of the Rayburn House Office Building**, the Subcommittee on Digital Commerce and Consumer Protection will hold a hearing titled “Oversight of the Federal Trade Commission.”

I. BACKGROUND

The stated mission of the Federal Trade Commission (FTC) is “working to protect consumers by preventing anticompetitive, deceptive, and unfair business practices, enhancing informed consumer choice and public understanding of the competitive process, and accomplishing this without unduly burdening legitimate business activity.”¹

The Commission upholds this mission through law enforcement, administrative adjudication, advocacy, data collection, education, and rulemaking.² Its primary consumer protection mandate stems from Section 5 of the FTC Act, which states that “unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.”³

¹ Federal Trade Commission, *About the Federal Trade Commission* (www.ftc.gov/about-ftc) (accessed June 28, 2018).

² Federal Trade Commission, *A Brief Overview of the Federal Trade Commission’s Investigative and Law Enforcement Authority* (July 2008) (ftc.gov/ogc/brfovrw.shtm).

³ 15 U.S.C. § 45(a)(1).

In addition to its general “unfair or deceptive acts or practices” authority under Section 5 of the FTC Act, the Commission enforces a variety of more specific laws related to its consumer protection mission, including the Children’s Online Privacy Protection Act of 1998 (COPPA), the Fair Credit Reporting Act (FCRA), and the Gramm-Leach-Bliley Act (GLB).⁴ In total, its enforcement and administrative responsibilities derive from more than 70 laws.⁵

II. LIMITATIONS ON FTC’S AUTHORITIES

Unlike many other agencies, the FTC’s general rulemaking authority is limited by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, which added steps to FTC’s rulemaking procedures, including the requirement that the FTC “show ‘substantial evidence’ in order to regulate ‘prevalent’ unfair and deceptive acts.”⁶ Since passage of that Act in 1975, the Commission has rarely issued regulations under its general rulemaking authority. Instead, the FTC has issued regulations on the occasions when Congress has granted the agency ad-hoc APA rulemaking authority for specific issues, such as with the COPPA or FCRA.

The FTC does not have authority to obtain civil penalties for initial violations for unfair or deceptive acts or practices.⁷ For a first violation, the FTC may only obtain an injunction and conditions, which is most often set forth in a consent decree.⁸ Once a consent decree becomes final, it has the force of law, and violations of a consent decree are then subject to civil penalties.⁹

III. WITNESSES

The following witnesses have been invited to testify:

Joseph J. Simons
Chairman
Federal Trade Commission

Maureen K. Ohlhausen
Commissioner
Federal Trade Commission

⁴ Federal Trade Commission, *Statutes Enforced or Administered by the Commission* (www.ftc.gov/enforcement/statutes) (accessed June 28, 2018).

⁵ *Id.*

⁶ Pub. L. No. 93-637 (1975).

⁷ *FTC Cracks Down on Zombie Cookies That Track Your Online Behavior Even After You Opt-Out*, Digital Vault (Apr. 29, 2017) (medium.com/digital-vault/ftc-cracks-down-on-zombie-cookies-that-track-your-online-behavior-even-after-you-opt-out-c9ffcce19c31).

⁸ *See* note 2.

⁹ *See* note 7.

Noah Joshua Phillips
Commissioner
Federal Trade Commission

Rohit Chopra
Commissioner
Federal Trade Commission

Rebecca Kelly Slaughter
Commissioner
Federal Trade Commission