



NONBANK CONSUMER FINANCIAL PROTECTION ENFORCEMENT CANNOT BE LEFT TO THE FTC

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Minimal Federal Trade Commission (FTC) resources have been devoted to consumer financial protection:

- Consumer Protection is only one of five bureaus within the FTC, and the Financial Practices division is just one of seven divisions within that bureau. Antitrust and fair competition dominate the FTC. Consumer protection focuses on privacy and advertising. FTC consumer protection jurisdiction covers businesses engaged in all manner of commerce from cereal advertising to health advertising to telemarketing fraud and beyond.
- At last count, even after hiring new attorneys, financial practices had only 6% of FTC attorneys and 4% to 6% of the total workforce.

Until this month, not a single FTC Commissioner in at least a decade has had a consumer protection background.

- Julie Brill is the first, and is one of five commissioners. Virtually all others have come with antitrust experience.

The FTC has neglected consumer financial protection enforcement over the vast sweep of actors in its jurisdiction:

- Payday lenders: 4 cases ever.
- Debt collectors: 8 cases in last five years, despite nearly 500,000 complaints.
- Credit bureaus: not a single case in 15 years against a nationwide credit bureau over a core Fair Credit Reporting Act violation – accuracy or dispute resolution – despite widespread problems in those areas.
- Mortgage industry: in last five years, 1 broker case, 6 against lenders and advertisers, 2 against servicers.

The FTC does not have all the tools a regulator needs:

- A regulator needs three tools to be effective: rule-making authority, oversight/monitoring, and enforcement. The FTC, in effect, has only one of those tools: enforcement.
- Enforcement alone is inefficient and leads to a focus on quick headlines, not in-depth understanding of complex matters. Enforcement is backward-looking, time-consuming and confrontational, but it's the necessary stick. Supervision is more flexible, efficient, and cooperative, and permits better information exchange. Both are needed, working in tandem. An agency that lacks supervision tends to focus on investigations that will quickly result in an enforcement action.