

# BUCKLEY

## Federal Trade Commission Practice

The Federal Trade Commission (FTC) has for decades pursued cases involving allegations of deceptive, misleading, and illegal marketing, lending, servicing, and collection practices, relying on its independent investigative power and ability to bring enforcement actions and litigate cases. Our attorneys, which include former FTC lawyers, have extensive experience responding to civil investigative demands (CIDs), defending clients in enforcement actions, and litigating against the FTC. We defend companies in FTC investigations involving allegations of unfair or deceptive acts or practices (UDAP), unfair debt collection practices, deceptive marketing practices, illegal lending and credit reporting practices, unfair servicing practices, violations of consumer privacy rights, and failure to maintain security for sensitive consumer information — all of which are FTC priorities, and all in which we have comprehensive substantive and procedural knowledge. The FTC has expressly declared that policing fintech companies is also a priority. Like our firm's substantive depth in the financial services space, our firm's extensive Fintech practice, highly ranked by *Chambers*, is cross-collaborative with our FTC practice. We are deeply involved in helping companies bring emerging business models and technologies to market, and our representations across the fintech spectrum augment our extensive enforcement and litigation capabilities.

The FTC often works closely and conducts parallel investigations with other government entities, including State Attorneys General and the Consumer Financial Protection Bureau. We frequently represent companies in these matters and understand how to balance the competing demands of maximizing efficiency and minimizing costs while maintaining strategic goals.

Our representative enforcement and investigation matters before the FTC include:

- Numerous clients in response to CIDs involving mortgage lending, credit reporting, unsecured consumer lending, payment processing, privacy and security practices, auto financing programs, and consumer demand deposit accounts
- Multiple clients on compliance related to cryptocurrency issues and payment systems, and processing rules and regulations
- Nonbank lenders in extensive litigation with the FTC and parallel class actions alleging deceptive lending practices, resulting in a global nationwide settlement (a total of \$240 million in redress resolving FTC and consumer class actions)
- A payday loan/check-cashing management company in an enforcement action alleging violations of the Fair Credit Reporting Act (FCRA) Disposal

## Rule and the Gramm–Leach–Bliley Act (GLBA) Safeguards Rule

- The defendant in a settlement in which the FTC alleged unfair and deceptive trade practices, as well as violations of the Fair Debt Collection Practices Act (FDCPA), FCRA, and Truth in Lending Act (TILA) in connection with the servicing of residential mortgages
- The defendant in a settlement in which the FTC alleged unfair and deceptive trade practices regarding mortgage loan servicing and collections
- A clean energy administrator in connection with regulatory due diligence for a potential transaction with a competitor
- A client in litigation concerning the sale of a U.S. subsidiary
- A client in a settlement alleging violations of its “Made in the USA” advertising standards

Our FTC enforcement experience is enhanced our extensive regulatory and compliance experience, as well as our broader enforcement practice with multiple federal and state agencies, and allows us to provide practical, forward-thinking advice to companies seeking to develop internal controls that monitor compliance with laws, regulations, and guidance issued or enforced by the FTC. This advice covers a wide range of regulatory issues that fall under the FTC’s jurisdiction, including:

- The Children’s Online Privacy Protection Act (COPPA)
- The Consumer Leasing Act (CLA)
- The Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM)
- The Electronic Fund Transfers Act (EFTA), including best practices for obtaining appropriate authorization for payments, controls around payment processing, and EFTA’s prohibition on conditioning an extension of credit on enrollment in preauthorized fund transfers
- FDCPA
- FCRA’s Furnisher Rule and other obligations that are triggered in the context of pre-screening, loan origination, and information sharing among

affiliates

- The FTC's Endorsement Guides, including their applicability to online reviews, bloggers and social-media influencers
- GLBA's privacy requirements and cybersecurity guidance promulgated by the FTC
- The U.S./EU Privacy Shield
- The Telephone Consumer Protection Act (TCPA)
- The Telemarketing Sales Rule (TSR)
- TILA, including Regulation Z
- U.S. origin claims and "Made in the USA" standards

Some of our representative compliance matters include:

- Review, revision, and development of comprehensive privacy programs for both U.S.-based and international companies
- Development of multiple complaint-management programs to detect, address, and prevent consumer complaints, which are often the starting point for FTC investigations
- Assisted with reviews and redesigns of multiple advertising campaigns, including through print, electronic and social-media channels, and addressing the nuances of mobile-device disclosures
- Provided guidance concerning the engagement of influencers in brand marketing, a growing area of concern
- Assistance with compliance and disclosure protocols involving in-app game and mobile-phone purchases
- Assistance with understanding post-acquisition compliance obligations as the purchaser of an entity with an existing consent order and considerations in seeking modifications to same

