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Understanding How the FTC Can Enforce Against Financial Institutions

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Laboring in the shadow of the Consumer Financial Protection Bureau ("CFPB") since 2011, the Federal Trade Commission ("FTC") has been an important component of Federal law enforcement efforts to ensure that the nation's financial institutions are complying with consumer financial protection laws.

While the CFPB is suffering at the hands of the new administration, in 2025 the FTC has continued to bring cases against financial institutions, including student loan debt relief companies, payment processors, debt collectors and cash advance companies. Most of these cases rely upon Section 5 of the FTC Act, which forbids unfair or deceptive acts or practices ("UDAP"), instead of alleging violations of the enumerated consumer financial services laws and their regulations that have specific requirements for financial institutions, including Regulation Z (implements the Truth In Lending Act) and Regulation E (implements the Electronic Fund Transfer Act).

News sources have begun to suggest that the FTC will increase its enforcement activities involving financial institutions, so it is a good time to recall what kinds of institutions the FTC may enforce against. Traditionally, the FTC's financial institutions authority has been described as "remainder jurisdiction" meaning that if the financial institution is not regulated at the Federal level by a bank regulator or the Securities Exchange Commission or the Commodity Futures Trading Commission, then the financial institution is regulated by the FTC. This means that licensed lenders, mortgage brokers, debt collectors and payments companies are all within the FTC's bailiwick. Although the FTC's cases so far this year have primarily utilized its Section 5 UDAP authority, the FTC does have the ability to enforce the enumerated consumer laws, as well. What the FTC may not do is "prescribe rules, issue guidelines or conduct" studies or issue reports involving the enumerated consumer laws.

What this means is that non-banks can still expect enforcement actions by the FTC, and perhaps moreso while the CFPB flounders. And in the meantime, at least as far as guidance from Federal regulators on financial consumer protection issues is concerned, we will have only guidance that the CFPB manages to put out.