



Wall St. Reform Bill: Expansion of FTC Authority and Power

Background

Language buried within the Wall Street Reform and Consumer Protection Act (H.R. 4173) passed by the House would grant the Federal Trade Commission (FTC) the equivalent of extraordinary legislative powers – powers and authority stripped from the agency decades ago because of their rampant abuse. Because the FTC’s reach is so broad, Congress felt it necessary to ensure that the agency discussed and debated regulatory changes with as many stakeholders as possible before setting or changing rules.

Currently, the FTC must offer an advance notice of proposed rulemaking when an act or practice to be regulated has been determined to be “pervasive” and notify Congress 30 days in advance of the notice being published in the Federal Register. Interested parties have a legal right to present comments and to dispute each others’ comments, in an open hearing and afterwards, and then petition for judicial review. For the most part, the FTC currently can only target “knowing” or “reckless” assistance in committing unfair or deceptive acts or practices.

What the FTC expansion provisions of H.R. 4173 would do

- Authorize the FTC to issue rules quickly and with minimal public comment
- Require a court to determine that the FTC was arbitrary or capricious or abused its discretion before the court could overturn a rule -- an almost impossible standard for challenging a rule.
- Allow the FTC to target companies that may have aided or abetted violations – whether or not such companies knew or could reasonably have known or prevented such aiding or abetting.
- Let the FTC go straight to fines and penalties, unlike the current model where the FTC works with potential violators to bring them into compliance before turning to fines and penalties.

Status

- The Senate version of the Wall Street Reform bill doesn’t include these harmful provisions.
- The House and Senate are meeting in “conference” to work out differences between the two bills.

MRA’s Position

MRA urges Congress to reject the House language which would expand the FTC’s power and authority.

- No government agency has as wide a purview as the FTC. No government agency could possibly have the technical expertise to know the ins and outs of so many industries and professions, including survey and opinion research.
- FTC rulemaking authority is far too complicated to consider as a side issue in the financial regulatory reform bill. Any proposed changes to the FTC’s jurisdiction should be considered carefully at a later date. Financial reform demands action now – FTC rulemaking changes do not.
- The provisions in current law represent important and carefully considered consumer protection. The proposed changes are controversial and could disrupt the FTC’s consumer protection mission.
- While it is doing a good job regulating consumer fraud, the FTC needs more resources to enforce its rules against bad actors in the marketplace. It does not need expansive new authority in order to protect consumers.
- Case example: The FTC could almost unilaterally set a national legal standard for the makeup of a “representative” statistical sample, decide what constitutes “good” survey and opinion research, and levy fines and penalties on companies (and their “aiding” or “abetting” suppliers) accused of violating the FTC’s standards.