

FTC targets rental housing industry: Aggressive approach could implicate other industries

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Amidst increased political messaging about affordability and housing prices, the Federal Trade Commission (FTC) has taken aggressive actions targeting the rental housing industry in recent months.

First, FTC Chairman Andrew Ferguson made a surprising announcement that the agency is launching a rulemaking on unfair or deceptive fees in the rental housing industry.

Then just a week later, the FTC's Bureau of Consumer Protection (BCP) sent warning letters to 13 property management software companies outlining price and fee disclosure practices that could violate laws the FTC enforces, including the Gramm-Leach-Bliley Act (GLBA), which primarily regulates financial institutions.

These actions represent a continued FTC focus on rental housing carrying over from the final two months of the last Administration, which included announcements of an industry study of investors in single family rental properties and two enforcement actions against rental housing firms. The continued focus on rental housing is not entirely surprising, since then-Commissioner Ferguson voted to approve those actions.

But the surprise is the specific tools Chairman Ferguson now seeks to employ in that industry. Both the rulemaking and the inclusion of GLBA in the warning letters mark two departures from traditional

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conservative FTC approaches, including some repeatedly espoused by Chairman Ferguson.

The common thread is that both trade regulations and GLBA authorize the FTC to obtain money to redress consumer harm and civil penalties up to \$53,088 per violation, whereas, following the Supreme Court's 2021 opinion in *AMG Capital Management v. FTC*, the FTC can no longer recover money through its traditional mechanism to address deceptive conduct, Section 5 of the FTC Act.

In addition to sending a message to the rental housing industry, these developments also provide insight into how the Chairman may apply the FTC's tools and authority to other enforcement priorities. As discussed below, it appears that – at least on certain issues – the current FTC may take a similarly aggressive approach to how it operated during the last Administration.

Ferguson announced 'increased vigilance' against unlawful conduct by rental and leasing firms.

Ferguson announced the rulemaking without a separate press release to publicize it. Instead, he included it within a statement accompanying the press release announcing a \$24 million settlement with Greystar, one of the nation's largest multi-family rental property managers.

The Dec. 2, 2025, settlement resolved a complaint the FTC filed in the waning days of the Biden Administration that alleged Greystar violated Section 5 of the FTC Act by omitting mandatory fees from its advertised prices and violated the GLBA, because its deceptive advertising constituted "false pretenses" that induced customers to provide financial account information. Among other things, the settlement requires Greystar to advertise the total price (including all mandatory fees) more prominently than any other representation about pricing and to clearly and conspicuously disclose the total price before accepting any initial payment or deposit.

In his statement accompanying the settlement, Ferguson wrote that to help address a "cost-of-living crisis triggered by the Biden Administration," he was directing FTC "staff to begin the process of proposing a rule to address unfair or deceptive fees in rental housing."

At this stage, there is not yet a formal Notice of Proposed Rulemaking or Advance Notice of Proposed Rulemaking. As a result, Chairman Ferguson's announcement did not include specific details of what the rule might cover. But the FTC's recent trade regulation prohibiting unfair or deceptive fees in the short-term lodging and live event ticketing industries provide some insight.

That rule, branded the "Junk Fees" rule by the previous administration, requires companies to advertise the "total price," including all mandatory fees, and prohibits "drip pricing," where additional fees are disclosed later in the sales process. It's likely that the FTC will consider adopting similar requirements for the rental housing industry rule.

Repeating Chairman Ferguson's messaging about the rulemaking, BCP's warning letters to property management software companies state that the "cost-of living crisis" makes unlawful practices in the rental housing market "especially harmful to consumers and markets." The letters also say software providers appear to be "limiting the ability of rental property managers and owners to accurately advertise the total

monthly rental price, inclusive of all mandatory fees," causing not only consumer harm but also harm to competition.

The rulemaking departs from Ferguson's prior statements on regulations and raises questions about the Administration's deregulatory agenda.

Chairman Ferguson has repeatedly criticized FTC rulemaking. For example, during the period between President Trump's re-election and his inauguration, then-commissioner Ferguson wrote that:

"The Commission under President Trump will focus primarily on our traditional role as a cop on the beat. We will vigorously and faithfully enforce the laws that Congress has passed, rather than writing them."

And in a dissenting statement as a minority commissioner voting against an FTC regulation to prohibit unfair and deceptive fees in other industries, Chairman Ferguson wrote that regulations "hindered economic growth" and "increased costs to the American consumer."

To clarify why he now supports rulemaking on unfair or deceptive fees in the rental housing industry, Chairman Ferguson provided two separate explanations, which he included in his statement accompanying the Greystar settlement. First, that "the Commission's work on this case has revealed that the problem involving misleading pricing representations in America's rental markets is not limited to Greystar, and today's order will not fully resolve this problem." And second, that he has supported "promulgating rules for which Congress has undoubtedly given us authority and where such rules align with the agency's traditional role as a cop on the beat."

The warning letters explicitly endorse the broadest enforcement of the Gramm-Leach-Bliley Act to date.

The FTC Bureau of Consumer Protection's recent warning letters to property management software providers explicitly adopt the broadest interpretation of the Gramm-Leach-Bliley Act's pretexting rule to date. Although the GLBA primarily applies to financial institutions, the "Pretexting Rule," 15 U.S.C. § 6821(a), prohibits "any person" from making a "false, fictitious, or fraudulent statement or representation to a customer of a financial institution" for the purpose of obtaining "customer information of a financial institution."

The legislative history indicates the pretexting rule was intended to protect consumers from scammers impersonating financial institutions to gain access to consumers' accounts.

For many years following the enactment of the pretexting rule, the FTC enforced under this original, limited interpretation. During the Biden Administration, however, the FTC expanded its approach and began applying the pretexting rule to cases where defendants allegedly engaged in fraud to obtain money from consumers, even where the goal was not gaining improper access to consumer financial accounts.

Most of these cases involved allegations of outright fraud, where little to no consumer value was provided. This approach was approved in a 2023 opinion from the Southern District of New York, *FTC v. RCG Advances, LLC*, but the allegations in that case focused on deceptive merchant cash advances — a financial product seemingly closer to the scope of the GLBA.

The FTC's broadest application of this language came at the tail end of the Biden Administration in its case against Greystar and a similar case in which Invitation Homes resolved FTC allegations about deceptive advertising through a \$48 million settlement. These cases represent an even broader application of the GLBA pretexting rule into situations where customers received goods or services they paid for and outside the financial services industry.

But the FTC alleged that a deceptive failure to disclose all fees in the advertised price constituted a false or fraudulent statement to consumer for the purposes of obtaining their financial account information.

The recent warning letters to property management software companies mark the first explicit approval of this broad approach by a Republican FTC appointee. Previously, then-commissioner Ferguson voted to approve filing both the Greystar and Invitation Homes cases that applied this approach, but his statements in those cases and those of fellow Republican commissioner Melissa Holyoak did not address the issue.

The aggressive FTC rental housing actions represent a warning to that industry and others.

For companies in the rental housing industry, the message is clear: The FTC is making illegal practices in this area a top priority. The importance of this agenda is evident from the Chairman's willingness to launch a rulemaking despite previous rejection of the FTC as a regulatory body, as well as his explicit adoption of aggressive, Biden-era statutory interpretation. Moreover, additional enforcement actions are very possible; BCP typically seeks to maintain the credibility of warning letters as a deterrent tool through selected enforcement.

Two aspects of this aggressive approach warrant special attention for companies in other industries.

First, although he has frequently spoken against rulemaking, and rental housing may be a special issue, the Chairman's stated reasoning for why a rulemaking on unfair or deceptive fees in the rental housing industry is needed could arguably apply to many industries.

Second, the expansive application of the GLBA pretexting rule beyond the context of gaining improper access to financial accounts might be used in many other cases alleging deceptive advertising induced the purchase of goods or services.

It is difficult to predict what industries or types of practices may find themselves targeted for similarly aggressive scrutiny. But large technology companies and any business handling or processing children's data should be especially vigilant, as Chairman Ferguson has repeatedly emphasized these as priorities. His recent messaging about the "cost-of-living crisis" also merits attention for any company providing essential consumer goods and services.