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Consumer Protection Enforcement: FTC, DOJ, and State AGs at the Crossroads

GIBSON DUNN

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The former FTC Chief of Staff in the first Trump administration with almost a decade of unique experience working in both the FTC's Bureau of Consumer Protection and Bureau of Competition, Svetlana focuses on reactive and proactive engagement with the FTC and other agencies.



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Drawing on her depth of experience and record of success, Deb focuses part of her practice on strategic counseling. She leads critical representations, both high profile and highly confidential, involving a wide variety of industries, economic sectors, regulatory bodies, law enforcement agencies, global jurisdictions and all types of proceedings.

Agenda

- 01 Introduction**
- 02 FTC**
- 03 DOJ and Other Federal Agencies**
- 04 State Attorneys General**
- 05 Cross-Regulator Enforcement Trends**
- 06 Closing & Questions**

Introduction

01

Federal Enforcement Overview

There has been an overall reduction in federal enforcement. Restructuring, staff reductions, and streamlining of enforcement priorities are shaping agency action.

- **Federal Trade Commission (FTC):**
Commissioners fired, reductions in staff
- **Consumer Product Safety Commission (CPSC):**
Commissioners fired, agency elimination proposed
- **Consumer Financial Protection Bureau (CFPB):**
Agency largely shuttered in February 2025
- **Food and Drug Administration (FDA):**
Orders and initiatives aimed at reforming agency and streamlining regulations.
- **Department of Justice (DOJ):**
Headcount reduction, de-emphasis on corporate and regulatory enforcement, and restructuring of the Consumer Protection Branch

Continued Enforcement Activity

For products and services of concern to the Administration, federal enforcement action has been quick, aggressive, and process-loose.

- Agencies are willing to **stretch legal authorities** to take regulatory and enforcement actions
- Embrace of **podium policymaking** to shift consumer and industry behavior; and
- Use of reports to **promote findings supportive of policy positions**

States and civil litigants are seeking to fill the regulatory and enforcement gap.

- Enacting laws and pursuing litigation related to allegedly harmful or deceptive consumer products and services
- Advancing investigations and litigation alleging consumer deception and privacy violations

FTC

03

Mission and Structure

- The FTC enforces a wide variety of domestic laws & regulations to **protect consumers by preventing anticompetitive, deceptive, and unfair business practices.**
- The FTC typically has 5 commissioners—though **currently there are only two**, which is **sufficient** for a quorum.



Andrew N. Ferguson
(R) - Chair



Mark Meador (R)

- Despite **significant staff cuts, broad investigations and enforcement continue**
- The Supreme Court is currently considering the **future of FTC independence** in *Slaughter v. Trump*

Enforcement Trends: What's Constant and What's Emerging

The FTC continues to rigorously enforce consumer protection laws:

Continued FTC Focus Areas

- Concrete consumer harms
- Order violations
- Enforcement priorities: (1) affordability issues; (2) labor and small business harms; (3) children's privacy/age gating/online harms; (4) subscriptions; (5) reviews and testimonials

Emerging Areas

- ESG-collusion claims
- Content moderation
- Regulatory reform
- Return to agency norms

Focus Shifting Away From

- Speculative harms
- Broad unfairness theories
- AI regulation

DOJ and Other Federal Agencies

02



DOJ Reforms and Restructuring

There has been a significant reduction in DOJ headcount and de-emphasis on corporate and regulatory enforcement.

- Reduction in force; almost the entire budget is dedicated to violent and drug crime and immigration

September 2025: [Restructuring of DOJ's Consumer Protection Branch](#)

- Civil attorneys and work rebranded as Civil Division's Enforcement and Affirmative Litigation Branch
- Criminal prosecutors and authorities merged with Criminal Division's Fraud Section – new health/safety and consumer fraud units created

May 2025: [Executive Order – Fighting Overcriminalization in Federal Regulations](#)

- Seeks to prevent “abuse and weaponization” of criminal regulatory offenses against “unwitting individuals” who lack the “privileges [of] large corporations”
- “Criminal enforcement of criminal regulatory offenses is disfavored” and “should focus on matters where a putative defendant is alleged to have known his conduct was unlawful”

Agency Priorities: Consumer Fraud

- Combating fraud schemes, **especially those affecting vulnerable Americans**, remains a priority
 - Reflects increasing consumer fraud exposure
 - **Transnational fraud** schemes will be a focus
- Corporate investigations will **focus on fraud facilitation**
 - Knowingly allowing (including through willful blindness) fraudsters to use offered goods or services to advance a criminal scheme
- **Particular risk areas**
 - Scam advertisements
 - Consumer data sales
 - Money transmission
 - Volume sales of easily resold goods
 - Communications services
 - Consumer complaint management services
 - AI-powered video or audio tools

Agency Priorities: FDA-Regulated Products



- **Recalled products**
 - FDA and DOJ will continue to investigate high-profile product recalls associated with significant consumer harm, especially processed foods and medical devices
- **Chinese manufactured products**
 - Vaping products, dietary supplements, cosmetics
 - Liability theories: FDCA, Customs, "Made in America"
- **MAHA-related actions**
 - Investigations parallel to consumer class actions based on adulteration and consumer deception theories
 - Announcements and findings supportive of policies
 - Industry pressure efforts
- **Compounded drugs**
 - Particular concern regarding telemarketed drugs
- **DTC prescription drug marketing**
 - Warning letters issued
- **AI-enabled medical devices**
 - Focus on marketing claims, misuse or loss of consumer data, and consumer harm
- **Regulator deception and failures to report**

Agency Priorities: Harmful Products



- CPSC announced a **record number of recalls** in 2025
 - Most recalls related to products from China
 - “The evidence is overwhelming that China is a leading source of low-quality and unsafe products entering U.S. homes, particularly through e-commerce platforms.” – *CPSC Chairman Feldman*
- CPSC and DOJ focused on **seeking civil penalties**
 - DOJ’s Enforcement and Affirmative Litigation Branch recently filed contested civil penalty action
- **Particular risk areas**
 - Sports and recreational equipment
 - Home appliances
 - Electronics
 - Toys

State Attorneys General

04

Who Are State Attorneys General— and Why They Matter to Companies

Not just “local prosecutors”

- Chief legal officers of their states
- Among the most powerful U.S. consumer protection enforcers

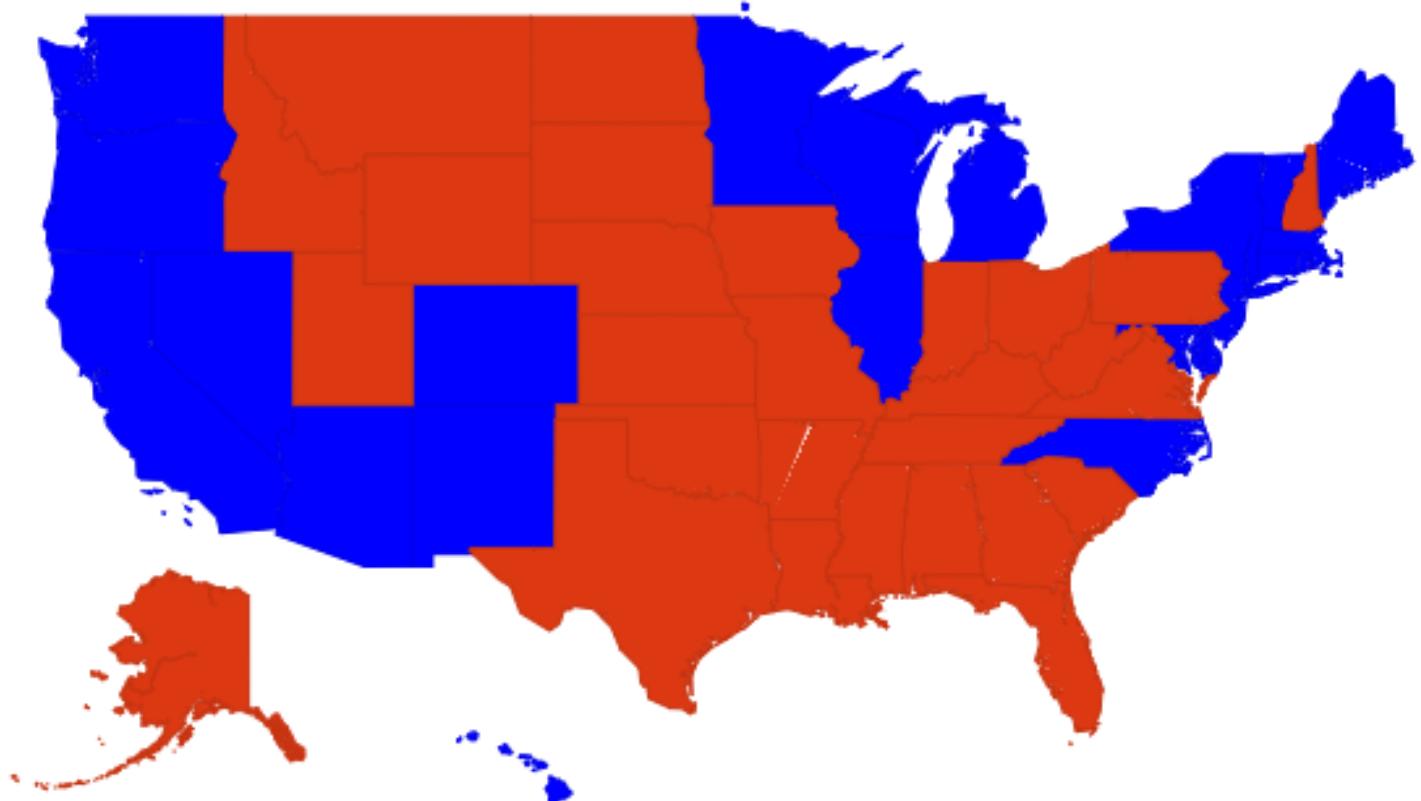
Core roles:

- Independent constitutional officers (in most states)
- Legal advisors to governors, legislatures, and state agencies
- Enforcers and defenders of state law and state agency actions
- Participants in the broader policy ecosystem:
 - Propose legislation
 - Submit comments on state and federal rulemakings
 - Testify before legislatures
 - File amicus briefs and intervene in private litigation

AGs can shape both rules and enforcement

- Many have deep, industry-specific expertise
- Many states have unique statutes giving their AGs extraordinary leverage

The Political Reality of the AG Office



Red = Republican AG
Blue = Democrat AG

What Makes State AG Enforcement Different

Investigatory Power

- Pre-complaint subpoena or CID authority
- Can compel documents, written responses, and testimony
- Often used broadly and early

Substantive Enforcement Tools

- Parens Patriae authority
- State UDAP statutes (the workhorse)
- Conduct that may be defensible in private litigation can still attract AG scrutiny

Co-Enforcement of Federal Law

- AGs may enforce federal statutes alongside federal agencies
- May result in parallel state and federal exposure for the same conduct

Multistate Actions: Force Multiplier—and Complication

The Norm, Not The Exception

- Pool investigative resources
- Share information and legal theories
- File joint letters, amicus briefs, or complaints
- Negotiate multistate settlements
- Reflects a combination of political positions, the defendant's footprint, subject-matter expertise, and issue-specific leadership

Coordination Infrastructure

- Non-partisan: NAAG, AGA
- Partisan: RAGA, DAGA

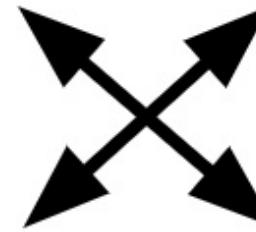
Challenges

- Multiple theories
- Multiple laws and political priorities
- Opt outs

Opportunities

- Comprehensive resolution
- Setting industry standards

Coordination with Federal Regulators



Enforcement Trends: What's Constant and What's Emerging

AGs are applying traditional deception and unfairness theories to new technologies, child safety concerns, and global business models.

Longstanding AG Focus Areas

- Advertising and labeling claims
- Telemarketing and robocalls
- Pricing practices

Expanding and Emerging Areas

- Dark patterns and subscription design
- Data privacy and cybersecurity
- AI and algorithmic decision-making
- Protection of children and child safety
- Heightened scrutiny of foreign-based companies
- ESG-related representations and investing claims

Recent Enforcement Trends

05

Recent Enforcement Trends Subscriptions

Continued interest in regulating subscription practices, particularly when there are alleged barriers to cancellation

July 23, 2025 – Eighth Circuit **vacates FTC's Click-to-Cancel Rule** in challenge brought by Gibson Dunn

Oct. 2025 – **\$4.8 million multistate settlement** announced between an online shopping platform and 32 states and D.C. regarding its auto-renewing VIP membership program. Among other allegations, the AG alleged the platform automatically enrolled consumers in its VIP program and made it difficult for users to cancel

Dec. 2025 – **FTC, 21 states, and DC filed amended complaint against a food delivery platform** alleging ROSCA violations associated with its subscription service. The complaint alleges that the business signed users up without knowledge or consent and made it difficult to cancel

Dec. 2025 – **FTC announced \$60 million settlement with a grocery delivery platform.** FTC alleged in part the company **had failed to clearly disclose the terms of its subscription service**, including the price of the service, before consumers signed up in violation of ROSCA

Recent Enforcement Trends Hidden Fees

Federal and state regulators continue to challenge “hidden” fees

Dec. 2024 – FTC announced final “**Junk Fees Rule**” regulating live-event ticketing and short-term lodging industries. The rule requires businesses to clearly and conspicuously disclose the total price when they advertise live-event tickets or short-term lodging

Jan. 2025 – **Minnesota’s Price Transparency law** went into effect. The law requires businesses to display the total price upfront

Sept. 2025 – **Massachusetts’ Junk Fee regulations** went into effect, requiring disclosure of the “total price” when any price for a product or service is displayed

Dec. 2025 – FTC announced **\$60 million settlement with a grocery delivery platform**. FTC alleged in part **the platform falsely advertised “free delivery” on orders** when consumers still had to pay a service fee. The FTC also announced potential new rulemaking targeting the rental housing industry.

Dec. 2025 – Texas AG announces **\$1.25 million settlement with a hotel chain related to alleged hidden fees**. The settlement requires the chain to disclose any fees added on to a hotel room’s price. Texas AG has previously announced similar settlements with multiple other hotel chains

Jan. 2026 – NY Mayor Mamdani signs **executive orders targeting junk fees and unlawful subscription practices**

Recent Enforcement Trends Children's Privacy

Federal and state legislators continue to seek to implement stronger privacy protections for children online

Ongoing - State AGs are actively pursuing social media companies for allegedly harming youth mental health through addictive platform designs, pushing for federal legislation, and implementing state-level laws to restrict features like algorithmic feeds and constant notifications for minors.

March 2025 – NY Attorney General announced a **\$650,000 settlement with a social network company** alleging it failed to authenticate users on its website, thereby permitting users from different high schools to message each other and allowing unverified non-students to join with almost complete access to the site

August 2025 – TX AG Ken Paxton initiates investigations into tech companies' use of AI chatbots, following other state initiatives and legislation.

Dec. 2025 – DOJ announced a **\$10M stipulated order against an entertainment company settling** allegations that the company violated COPPA in connection with its YouTube video content by failing to properly designate its YouTube contents as targeted toward children, such that it and others improperly targeted advertising to children without parental notice and consent

Jan. 2026 – FTC to convene age gating workshop

Recent Enforcement Trends AI

Federal regulation of AI likely will slow, however federal AI enforcement grounded in fraud and state activity will continue

Jan. 2025 – White House issued EO 14179, “Removing Barriers to American Leadership in Artificial Intelligence,” to promote competition, enhance national security, and prioritize AI free from “ideological bias and engineered social agendas”

May 2025 – FTC emphasized that the FTC’s mission with respect to AI regulation remains grounded in catching deception and fraud, rather than trying to “micromanage” AI technology

August 2025 – the FTC sued multiple AI companies for **allegedly deceptively misrepresented accuracy of AI content detection product.**

Oct. 2025 – California enacts first state AI law that includes **a private right of action** for harms caused by AI-powered companion chatbots (effective Jan. 2026). New York, Maine, Utah, Nevada, and Illinois have also adopted AI chatbot laws.

Dec. 2025 – White House issues “Ensuring a National Policy Framework for Artificial Intelligence” Executive Order which requires, among other things, legislative recommendations for the **preemption of state AI laws.**

Dec. 2025 – Citing EO 14179, the FTC **sets aside** its 2024 final consent order against Rytr, stating it unduly burdens AI innovation.

Recent Enforcement Trends Algorithmic Pricing

Federal and state legislators continue to express interest in regulating the use of algorithmic pricing, with numerous federal and state bills pending

Nov. 10, 2025 – New York's Algorithmic Pricing Disclosure Act took effect. The Act requires businesses who use personal data to set prices to disclose that practice by stating: THIS PRICE WAS SET BY AN ALGORITHM USING YOUR PERSONAL DATA

Nov. 24, 2025 – DOJ filed a proposed settlement with a property management software company, which would prohibit the company from using nonpublic, competitively sensitive data to determine rental prices

Dec. 18, 2025 – Following negative press regarding its pricing practices, news articles reported the FTC opened an investigation into a grocery delivery platform's use of algorithmic pricing

Jan. 1, 2026 – California's AB 325 took effect. AB 325 modifies California's Cartwright Act. It provides that in certain circumstances, the use or distribution of a common pricing algorithm constitutes an antitrust violation

Recent Enforcement Trends MAHA

The MAHA movement, led by HHS Secretary Robert F. Kennedy, Jr., is focused on reforms to food, medical products, and more

Feb. 2025 – President Trump established the **MAHA Commission** to advise on “the childhood chronic disease crisis,” and help develop a strategy in response

May 2025 – the MAHA Commission published the **MAHA Report**, which focused on various causes

Sept. 2025 – the MAHA Commission published the **MAHA Strategy**, which outlines FDA-related priorities

State Action

- California is adopting official definitions of UPF and banning UPFs from school lunches
- Texas and Louisiana enacting their own labeling and warning requirements for certain food additives
- Texas Attorney General investigations of UPF and fluoride

Closing & Questions

04

Takeaways

- Federal consumer protection agencies **generally will be less active** as resources are reduced and priorities shifted
- **BUT** federal enforcement action is **quick, aggressive, and process-lose action** on products and services of concern
- **AND** states and civil litigants are **seeking to fill regulatory and enforcement gaps** through new legislation and enforcement actions
- Companies need to **stay informed** about enforcement risks and **prepared to respond** to these new enforcement dynamics

Practical Checklist: What to Do Now

Bottom line: Regulators focus less on intent and more on design choices, disclosures, and documentation.

1. User Flows / Pricing

- a. Review consumer journeys for clarity
- b. Where required, ensure express, informed consent and simple cancellation
- c. Surface all-in pricing and mandatory fees early and prominently

2. Privacy and Security

- a. Maintain defensible data maps (especially sensitive and location data)
- b. Strengthen vendor oversight and purpose limitations
- c. Keep incident response and security documentation investigation-ready

3. Multistate / Multi-Regulator Readiness

- a. Centralize complaints, CIDs, and regulator communications
- b. Preserve product, pricing, and marketing decision trails
- c. Plan for parallel state and federal investigations

Practical Checklist: What to Do Now

Bottom line: Regulators focus less on intent and more on design choices, disclosures, and documentation.

4. Artificial Intelligence

- a. Inventory AI use cases and assign clear ownership
- b. Review disclosures, substantiate AI-related claims, and avoid overpromising
- c. Document guardrails, bias testing, and human oversight

5. Children's Privacy and Safety

- a. Assess whether products reach or appeal to minors
- b. Ensure COPPA/state-law compliance and data minimization
- c. Review design features alleged to be addictive or harmful

6. Regulated Products

- a. Analyze consumer complaints and timely address hazards
- b. Focus on supply chain and labeling

7. Content Moderation

- a. Review public safety claims to ensure alignment with practice
- b. Ensure consistent, auditable moderation processes
- c. Monitor third-party tools and escalation protocols

Questions?

Upcoming January Programs

2025/2026 White Collar Webcast Series

Date and Time	Program	Registration Link
Tuesday, January 13, 2026 9:00 AM – 10:00 AM PT 12:00 PM – 1:00 PM ET	SDNY Prosecution Trends Presenters: Barry Berke, Reed Brodsky, Mylan Denerstein, Jordan Estes, Karin Portlock	Event Details
Wednesday, January 14, 2026 9:00 AM – 10:00 AM PT 12:00 PM – 1:00 PM ET	World Bank Enforcement Initiatives Presenters: Michael Diamant, Pedro Soto, Oleh Vretsona	Event Details
Thursday, January 15, 2026 9:00 AM – 10:00 AM PT 12:00 PM – 1:00 PM ET	Managing Global Cross-Borders Investigations Presenters: Amy Feagles, Katharina Humphrey, Oleh Vretsona	Event Details
Wednesday, January 28, 2026 9:00 AM – 10:00 AM PT 12:00 PM – 1:00 PM ET	Commodities Enforcement and the CFTC Presenters: Amy Feagles, Jeffrey Steiner, David Burns	Event Details



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