

The FTC's Growing Enforcement Interest in Fintech

By [Justine A. di Giovanni](#), [Jon Leibowitz](#), [Jai R. Massari](#) & [Margaret E. Tahyar](#) on September 11, 2018

POSTED IN [ADMINISTRATIVE LAW](#), [CFPB](#), [FINTECH](#)

The FTC is expanding its enforcement efforts for fintech, particularly in the areas of online and small-business lending, payments, and cryptocurrencies. At a recent event in Washington, D.C., the FTC's Director of Consumer Protection, Andrew Smith, stated, "Commissioners are really interested in [fintech]. Finance will be a steady part of our diet, and in particular fintech, 'cause that's where the new entrants to the marketplace are and that's where the action is."

Because the FTC has been less visible in this area in recent years, the agency's focus on fintech has come as a surprise to some. But the FTC has long-standing enforcement authority under Section 5 of the FTC Act over unfair and deceptive acts or practices by non-bank financial institutions, which includes most fintechs. And Congress deliberately preserved that FTC authority within the otherwise sweeping reforms of the Dodd Frank Act of 2010. As other regulators, like the CFPB (which has concurrent enforcement authority over consumer-facing non-bank financial institutions like payday and private education lenders) scale back their enforcement activities, the FTC and state AGs may be stepping up their own engagement with fintech and related sectors to fill the void. Notably, unlike the CFPB, the FTC does not have fining authority against first-time violators.

Smith's comments mark the first explicit statement noting the FTC's intention to increase enforcement in the fintech arena, but the FTC has already begun pursuing cases against a broad variety of fintech businesses and activities. For example, the FTC has brought several suits against online lenders for deceptive disclosure practices, and in February, the FTC announced a settlement with [PayPal](#) over misleading and inadequate disclosures for its Venmo payment service. And the FTC has pursued and settled several enforcement actions aimed at addressing fraud and deceptive marketing practices involving [cryptocurrencies](#) and [cryptocurrency schemes](#). Fintech companies

FinReg

Davis Polk Insights on Financial Regulation

should follow these cases and the FTC's upcoming hearings on competition and consumer protection closely to see the direction in which the FTC moves next. Davis Polk will also be monitoring the FTC's activity in this area, including the relevant hearings.