



Forbes®

FTC Sets Its Sights On Occupational Licensing

An Interview With: Maureen Ohlhausen

By Jared Meyer

April 17, 2017

The Federal Trade Commission recently announced the rollout of an Economic Liberty Task Force. This major policy initiative's first focus is on occupational licensing. Given the growing consensus that occupational licensing makes it more difficult for Americans to find work — especially those with low-incomes — this move by the FTC has the potential to increase economic opportunity .

In what follows, Acting Chairman Maureen Ohlhausen explains why the FTC is focusing on occupational licensing reform and what it is doing to promote competition in general.

Jared Meyer: About 1,100 occupations are licensed in the United States. However, only 60 occupations require a license in all 50 states . What can this statistic tell us about occupational licensing?

Maureen Ohlhausen: It means that there is a lot of unnecessary government red tape that isn't making consumers safer. There are a few occupations out there that most people agree should be licensed. But there are far more occupations — more than 1,000 — where at least one state has decided that a license isn't necessary to protect consumers. Yet we don't hear stories about how "if only the state had licensed X," the public would have been protected from some calamity.

Furthermore, even when multiple states each license the same occupation, those states often impose very different licensing requirements such as the number of months of training required. This uneven licensing of the same occupation and different requirements for the same license across states strongly suggests that many occupational licenses do not advance public health, safety, or other legitimate public protections.

So, if these licenses aren't making consumers safer, why are they common and growing? The simple reason is money. A license can serve as a powerful barrier to competition; it increases the cost and effort required for an entrepreneur to start a new business . That's why mandatory licenses are often proposed



or supported by incumbents that want to reduce or eliminate competition. Established interests understand that government restrictions on competition can directly benefit them economically, even in situations where the public health and safety benefits of a license are negligible or non-existent.

JM: What can the FTC do to help restore some sanity to occupational licensing?

MO: The first thing we can do is shine a light on the practice of occupational licensing. Often, when considering whether to license a particular occupation, state and local policymakers only hear one side of the story from the established companies who will benefit from rules that keep out potential competitors. Legislators often do not hear about how such regulations will impose costs on the very constituents they wish to protect, entrepreneurs and consumers alike. We can help ensure that legislators hear both sides of the story by using the bully pulpit, commenting on proposed legislation, and partnering with state and local officials who are interested in occupational licensing reform. The FTC has a long history of commenting on proposed state laws, and my task force is going to build on those efforts to help states reform their occupational licensing regimes.

We can also use tools to educate the public, especially entrepreneurs and other people particularly harmed by unnecessary licensing. In fact, licensing disproportionately harms lower- and middle-income Americans as well as military families and veterans. Licenses can require expensive fees and hundreds of hours of unpaid training. For those without resources, these barriers are difficult to overcome. And even once earned, licenses can limit opportunities. For example, because military families often must move frequently, occupational licensing often blocks job opportunities for the trailing spouse. A new state may have additional or different licensing requirements that the trailing spouse must fulfill simply to practice his or her profession in that state, regardless of how many years of in-the-field experience they have.

One thing we've already done is create a new section of the FTC website that is dedicated to educating policymakers, businesses, and interested individuals about occupational licensing. I encourage your readers to check it out.

Finally, the FTC can bring and has brought antitrust cases against unaccountable occupational licensing boards, composed by members of the industry being regulated, when their actions have harmed competition.

JM: How did the FTC gain jurisdiction over state licensing schemes? I thought state regulators were immune from FTC enforcement of federal antitrust law.



MO: You're referring to the so-called "state action doctrine," a defense available to antitrust defendants. However, in our 2015 win in *North Carolina Dental v. FTC*, the Supreme Court further clarified the limits of state immunity.

JM: Beyond occupational licensing, the FTC released a report on the sharing economy in November 2016. The report states that allowing opportunities for creative destruction to occur "has long been a core part of the Federal Trade Commission's competition mission." Do you have plans to bring the FTC's competition advocacy to local restrictions on new economy services like Uber and Airbnb?

MO: As a longtime advocate for the beneficial effects of competition, I see the rise of the sharing economy as another example of how free markets can introduce transformative change, both in services to consumers and in opportunities for job seekers. Unfortunately, we have seen some problematic licensing issues arise in the sharing economy. I strongly believe that consumer demand should drive the evolution of markets rather than artificial, regulatory preferences for one business model over another. Misguided government regulation can be the barrier to innovation that never falls. So regulators should tread carefully, particularly when considering hypothetical rather than demonstrated consumer harm.

At the request of local officials, the FTC has weighed in on state and city regulation of sharing economy companies. Typically, our comments have focused on the potential competitive effects of regulation and whether the legislation is narrowly tailored to meet its purported objectives. I anticipate that we will continue to respond to the requests of state and local officials who seek our thoughts on similar issues.

JM: The FTC reaffirming its leading role in promoting competition is a welcome step that has taken years of work. The agency's win in *North Carolina Dental v. FTC* injects more oversight into what have become unaccountable licensing boards. As efforts to reform licensing spread across the country, look for the FTC to continue weighing in on this critical issue.

Jared Meyer | Senior Research Fellow
jared@thefga.org

TheFGA.org