PREPARED STATEMENT OF

THE FEDERAL TRADE COMMISSION

on

IMPROVING CONSUMER PROTECTIONS IN SUBPRIME LENDING

Before the

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

SUBCOMMITTEE ON INTERSTATE COMMERCE, TRADE, AND TOURISM

Washington, D.C.
April 29, 2008

I. INTRODUCTION

Chairman Dorgan, Ranking Member DeMint, and Members of the Committee, I am Lydia B. Parnes, Director of the Bureau of Consumer Protection at the Federal Trade Commission ("FTC" or "Commission").[1] I appreciate the opportunity to appear before you today to discuss the Commission's wide range of activities to protect consumers in the subprime mortgage market. The Commission is concerned about the rise in delinquencies and foreclosures in the subprime market, and the impact on communities, and is committed to using all of its tools to protect consumers in this market.

During today's testimony, the FTC would like to emphasize the following points:

- The Commission has been at the forefront of the fight against deceptive subprime lending and servicing practices since 1998, when it filed its case against Capital City Mortgage, which allegedly took advantage of African American consumers here in Washington, D.C.

- In the past decade, the FTC has brought 22 actions focused on the mortgage lending industry, with particular attention to entities in the subprime market, alleging that mortgage lenders and servicers engaged in unfair or deceptive acts and practices. Through these cases, the FTC has returned more than $320 million to consumers. Many of these cases have challenged deceptive advertising and marketing practices.

- The Commission is currently investigating more than a dozen mortgage companies as part of a mortgage advertising law enforcement sweep. In addition to these investigations, the Commission sent more than 200 warning letters last year to mortgage brokers and lenders, as well as the media outlets that carry their home mortgage advertisements. FTC staff recently reviewed the current advertising of those who received warning letters and will follow up with law enforcement where appropriate.

- With the recent rapid increase in mortgage delinquencies and foreclosures, the FTC also has intensified its focus on protecting consumers from mortgage foreclosure rescue scams. The Commission has filed law enforcement actions against defendants allegedly engaged in mortgage foreclosure fraud, and has additional nonpublic matters under investigation.

---

[1]The views expressed in this statement represent the views of the Commission. My oral presentation and responses to any questions are my own, however, and do not necessarily reflect the views of the Commission or any individual Commissioner.

- This month, Commission staff filed a public comment in response to the Federal Reserve Board's proposed rules to restrict certain mortgage practices. The comment supports the Board's goals of protecting consumers in the mortgage market from unfair, abusive, or deceptive lending and servicing practices. If finalized, the FTC will have the authority to enforce these rules against nonbank entities under its jurisdiction. The FTC's enforcement efforts would be more effective if it could obtain civil penalties for violations of these rules.

- To empower consumers to better protect themselves from potentially harmful conduct, the FTC also engages in extensive consumer education related to mortgage lending. The FTC has recently developed new educational materials in English and Spanish to provide information about deceptive mortgage advertisements, mortgage foreclosure rescue scams, buying a home, and the steps borrowers can take to avoid foreclosure.

- The Commission also engages in research and policy development to better understand and protect consumers in the mortgage marketplace. Next month, FTC staff economists will host a conference to assess the role of consumer information in the current mortgage crisis and discuss strategies for ensuring that mortgage disclosures will be designed to provide the greatest benefit to consumers.

This testimony will discuss (1) the Commission's authority and mission related to subprime lending and (2) the FTC's efforts to protect mortgage borrowers, particularly in the subprime market. As detailed below, the agency's priorities include deceptive mortgage advertising, deceptive or unfair servicing practices, discrimination in lending, and foreclosure rescue scams.

II. THE FTC'S ROLE IN SUBPRIME LENDING

As the primary federal agency that enforces consumer credit laws with respect to entities other than banks, thrifts, and federal credit unions, the Commission has wide-ranging responsibility regarding consumer financial issues in the mortgage market, including those involving mortgage lenders, brokers, and servicers. The FTC enforces a number of federal laws governing mortgage lending, including the Truth in Lending Act ("TILA"),[2] the Home

[2] 15 U.S.C. §§ 1601-1666j (requiring disclosures and establishing other requirements in connection with consumer credit transactions).

Ownership and Equity Protection Act ("HOEPA"),[3] and the Equal Credit Opportunity Act ("ECOA").[4] The Commission also enforces Section 5 of the Federal Trade Commission Act ("FTC Act"), which more generally prohibits unfair or deceptive acts or practices in the marketplace.[5] In addition, the Commission enforces a number of other consumer protection statutes that govern financial service providers, including the Consumer Leasing Act,[6] the Fair Debt Collection Practices Act,[7] the Fair Credit Reporting Act,[8] the Credit Repair Organizations Act,[9] and the privacy provisions of the Gramm-Leach-Bliley Act.[10]

The Commission's legal authority does not extend to all entities that provide financial services to consumers. The FTC Act and the credit statutes that the FTC enforces specifically

---

[3] 15 U.S.C. § 1639 (providing additional protections for consumers who enter into certain high-cost refinance mortgage loans). HOEPA is a part of TILA.

[4] 15 U.S.C. §§ 1691-1691f (prohibiting creditor practices that discriminate on the basis of race, religion, national origin, sex, marital status, age, receipt of public assistance, and the exercise of certain legal rights).

[5] 15 U.S.C. § 45(a).

[6] 15 U.S.C. §§ 1667-1667f (requiring disclosures, limiting balloon payments, and regulating advertising in connection with consumer lease transactions).

[7] 15 U.S.C. §§ 1692-1692p (prohibiting abusive, deceptive, and unfair debt collection practices by third-party debt collectors).

[8] 15 U.S.C. §§ 1681-1681x (imposing standards for consumer reporting agencies and information furnishers in connection with the credit reporting system and placing restrictions on the use of credit reporting information).

[9] 15 U.S.C. §§ 1679-1679j (prohibiting untrue or misleading representations, requiring certain affirmative disclosures, and imposing other restrictions in the offering and sale of "credit repair" services).

[10] 15 U.S.C. §§ 6801-6809 (imposing requirements on financial institutions with respect to annual privacy notices, procedures for providing customers an opt-out from having certain information shared with nonaffiliated third parties, and safeguarding customers' personally identifiable information).

exempt banks, thrifts, and federal credit unions, among other types of entities, from the Commission's jurisdiction.[11] The FTC, however, has jurisdiction over nonbank financial companies, including nonbank mortgage companies, mortgage brokers, and finance companies. The agency also coordinates regularly on financial practices matters with federal banking agencies, the Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD"). In addition, the FTC cooperates with state attorneys general and state banking departments to protect consumers in the mortgage lending arena.

The Commission employs a multi-faceted approach to protect consumers in the subprime market. The Commission brings enforcement actions against entities that violate the law, educates consumers and businesses as to their rights and responsibilities under the law, and engages in research to adapt its policies to protect consumers more effectively. The testimony below discusses how the FTC is using this approach to protect consumers in the subprime mortgage marketplace.

III. PROTECTING SUBPRIME MORTGAGE BORROWERS

The Commission is committed to using all means at its disposal to protect mortgage borrowers from those who would prey on their financial turmoil, and to provide information to help these consumers confront the challenges they face.

---

[11] *See, e.g.,* 15 U.S.C. § 45(a)(2).

A. Law Enforcement

The Commission's law enforcement actions have targeted deception and other illegal practices in the mortgage market, with a particular focus on the subprime market. In recent years, the agency has brought 22 actions against companies and principals in the mortgage lending industry, including both large and small companies located throughout the country.[12] Several of these cases have resulted in large monetary judgments, collectively returning more than $320 million to consumers. These enforcement actions have targeted deceptive or unfair practices in all stages of mortgage lending – from advertising and marketing through loan servicing – by mortgage lenders, brokers, and loan servicers.

In most of its mortgage lending cases, the Commission has challenged deception in the advertising or marketing of subprime loans. For example, the FTC's complaint against a large subprime mortgage lender, Associates First Capital Corp. and Associates Corporation of North America (the "Associates"), alleged that the defendants marketed subprime mortgage loans through false and misleading statements about loan costs.[13] Specifically, the complaint alleged

---

[12] *FTC v. Safe Harbour Found. of Fl., Inc.,* No. 08-1185 (N.D. Ill. 2008); *FTC v. Mortgages Para Hispanos.Com Corp.,* No. 06-00019 (E.D. Tex. 2006); *FTC v. Ranney,* No. 04-1065 (D. Colo. 2004); *FTC v. Chase Fin. Funding,* No. 04-549 (C.D. Cal. 2004); *United States v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. 2003); *FTC v. Diamond*, No. 02-5078 (N.D. Ill. 2002); *United States v. Mercantile Mortgage Co.*, No. 02-5079 (N.D. Ill. 2002); *FTC v. Associates First Capital Corp.,* No. 01-00606 (N.D. Ga. 2001); *FTC v. First Alliance Mortgage Co.,* No. 00-964 (C.D. Cal. 2000); *United States v. Action Loan Co.*, No. 00-511 (W.D. Ky. 2000); *FTC v. NuWest, Inc.*, No. 00-1197 (W.D. Wash. 2000); *United States v. Delta Funding Corp.*, No. 00-1872 (E.D.N.Y. 2000); *FTC v. Barry Cooper Prop.*, No. 99-07782 (C.D. Cal. 1999); *FTC v. Capitol Mortgage Corp.*, No. 99-580 (D. Utah 1999); *FTC v. CLS Fin. Serv., Inc.*, No. 99-1215 (W.D. Wash. 1999); *FTC v. Granite Mortgage, LLC,* No. 99-289 (E.D. Ky. 1999); *FTC v. Interstate Res. Corp.*, No. 99-5988 (S.D.N.Y. 1999); *FTC v. LAP Fin. Serv., Inc.*, No. 99-496 (W.D. Ky. 1999); *FTC v. Wasatch Credit Corp.*, No. 99-579 (D. Utah 1999); *In re First Plus Fin. Group, Inc.*, FTC Docket No. C-3984 (2000); *In re Fleet Fin., Inc.*, FTC Docket No. C-3899 (1999); *FTC v. Capital City Mortgage Corp.*, No. 98-00237 (D.D.C. 1998).

[13] *FTC v. Associates First Capital Corp.,* No. 01-00606 (N.D. Ga. 2001).

that the Associates represented that consumers would save money when consolidating their existing debts, but these "savings claims" did not take into account the loan fees and closing costs the company typically added to consumers' loan amounts. Further, the claims did not reveal that, for certain Associates loans, consumers would pay only interest and still would owe the entire principal amount in a "balloon" payment at the end of the loan term. The complaint also challenged as deceptive the Associates' practice of including single-premium credit insurance in loans, without disclosing its inclusion to consumers. The defendants paid a record-setting $215 million in consumer redress to settle the allegations in the FTC complaint.[14]

Mortgage brokers also have been the subject of substantial FTC law enforcement activity in recent years. The FTC has brought enforcement actions against brokers for allegedly deceiving consumers about key loan terms, such as the existence of a prepayment penalty[15] or a large balloon payment due at the end of the loan.[16] In some of these cases, the Commission also has charged brokers with falsely promising consumers low fixed payments and rates on their mortgage loans.[17] For example, in June 2004, the Commission sued Chase Financial Funding ("CFF"), a California mortgage broker, and its principals, in connection with sending unsolicited email and direct mail promising a "3.5% fixed payment loan."[18] The FTC alleged that CFF did

---

[14]*FTC v. Associates First Capital Corp.,* No. 01-00606 (N.D. Ga. Sept. 23, 2002) (Order Preliminarily Approving Stipulated Final Judgment and Order). Defendants paid an additional $25 million to settle a concurrent class action.

[15]*FTC v. Chase Fin. Funding*, No. 04-549 (C.D. Cal. 2004); *FTC v. Diamond*, No. 02-5078 (N.D. Ill. 2002).

[16]*FTC v. Diamond*, No. 02-5078 (N.D. Ill. 2002).

[17]*FTC v. Chase Fin. Funding*, No. 04-549 (C.D. Cal. 2004); *FTC v. Ranney*, No. 04-1065 (D. Colo. 2004)*; FTC v. Diamond,* No. 02-5078 (N.D. Ill. 2002).

[18]*FTC v. Chase Fin. Funding,* No. 04-549 (C.D. Cal. 2004).

not offer any such loan and that the loan CFF falsely advertised was actually a "payment option" adjustable rate mortgage in which interest accrued at a rate higher than advertised, the principal balance would increase if consumers made payments at the advertised rates, and the payments were not "fixed."

In 2006, the Commission filed suit against a mortgage broker for allegedly misrepresenting numerous key loan terms to Hispanic consumers who sought to refinance their homes.[19] As alleged in the Commission's complaint, the defendant conducted business with his clients almost entirely in Spanish but then provided at closing loan documents in English containing less favorable terms. As a result of the FTC's case, the lender has been permanently enjoined from misrepresenting loan terms. In addition, the court entered a suspended judgment of $240,000 against the broker, and the broker paid $10,000 in consumer redress based on a documented inability to pay the full judgment amount.[20]

Currently, the Commission is investigating more than a dozen mortgage companies as part of a mortgage advertising law enforcement sweep. In addition, in September 2007, the Commission sent warning letters to more than 200 mortgage brokers and lenders, and media outlets that carry their advertisements for home mortgages, to advise them that certain of their mortgage ads may be deceptive in violation of Section 5 of the FTC Act or may violate the TILA.[21] The FTC identified the ads, including some in Spanish, in June 2007 during its nationwide review of ads featuring claims for very low interest rates or monthly payment

---

[19] *FTC v. Mortgages Para Hispanos.Com Corp*., No. 06-00019 (E.D. Tex. 2006).

[20] *FTC v. Mortgages Para Hispanos.Com Corp*., No. 06-00019 (E.D. Tex. Sept. 25, 2006) (Stipulated Final Judgment and Order of Permanent Injunction).

[21] *See* Press Release, FTC, FTC Warns Mortgage Advertisers and Media That Ads May Be Deceptive (Sept. 11, 2007), *available at* www.ftc.gov/opa/2007/09/mortsurf.shtm.

amounts without adequate disclosure of other important loan terms. The Commission staff recently reviewed the current advertising of those who received warning letters and will follow up with law enforcement where appropriate.

In addition to law enforcement related to mortgage advertising, the FTC plays an important role in preventing unlawful mortgage discrimination.[22] Since the ECOA was enacted, the Commission has brought more than three dozen cases against large subprime lenders, major non-mortgage creditors, and smaller finance companies alleging ECOA violations. About two dozen of these cases have alleged substantive discrimination on the basis of race, marital status, sex, age, and the receipt of public assistance.

The FTC closely coordinates its fair lending investigations with those of other federal law enforcement agencies.[23] A major component of the Commission's investigations is a statistical analysis of the data that companies within the FTC's jurisdiction have produced pursuant to the Home Mortgage Disclosure Act ("HMDA").[24] At this time, the Commission is conducting

---

[22]The Commission's July 25, 2007 testimony before the Subcommittee on Oversight and Investigations of the House Committee on Financial Services detailed the Commission's fair lending program. The testimony is available at www.ftc.gov/os/testimony/P064806hdma.pdf.

[23]For more than a decade, the FTC has been a member of the Interagency Task Force on Fair Lending, a joint undertaking with the DOJ, the HUD, and the federal banking regulatory agencies. Task Force members meet often to share information on lending discrimination, predatory lending enforcement, and policy issues.

[24]12 U.S.C. § 2801. HMDA requires certain mortgage lenders located in metropolitan areas to collect and report to the government data about their housing-related loans and applications for such loans. The data include pricing data for higher-priced loans made in 2004 or later. Of the 8,886 institutions that reported HMDA data in 2006, 2,004 institutions are nondepository institutions subject to FTC jurisdiction. Robert B. Avery, Kenneth P. Brevoort, and Glenn B. Canner, *The 2006 HMDA Data*, 93 FEDERAL RESERVE BULLETIN (Dec. 2007) at A73, *available at* www.federalreserve.gov/pubs/bulletin/2007/pdf/hmda06final.pdf. The remaining 6,882 institutions reporting data are depository institutions subject to federal banking agency jurisdiction.

several non-public investigations of mortgage originators for possible violations of fair lending laws.

The FTC also has challenged deceptive and unfair practices in the servicing of mortgage loans. For example, in November 2003, the Commission, along with the HUD, announced a settlement with Fairbanks Capital Corp. and its parent company. The Commission alleged that Fairbanks (now called Select Portfolio Servicing, Inc.) failed to post consumers' payments upon receipt, charged unauthorized fees, used dishonest or abusive tactics to collect debts, and reported to credit bureaus consumer payment information that it knew to be inaccurate.[25] The settlement agreement included a $40 million redress fund for consumers as well as strong injunctive provisions and specific safeguards to prevent the company from foreclosing on consumers without cause.[26] Furthermore, last year, based on a compliance review of the company, the Commission negotiated modifications of the 2003 consent order. The modified consent order provides substantial benefits to consumers beyond those in the original order, including additional refunds of fees paid in certain circumstances.[27]

The Commission continues to investigate mortgage servicing practices for compliance with the law. Last month, The Bear Stearns Companies, Inc. ("Bear Stearns") disclosed that FTC staff has notified its mortgage servicing subsidiary, EMC Mortgage Corporation ("EMC"), that the staff believes EMC and its parent Bear Stearns have violated a number of federal consumer

---

[25] *United States v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. 2003).

[26] *United States v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. Nov. 21, 2003) (Order Preliminarily Approving Stipulated Final Judgment and Order as to Fairbanks Capital Corp. and Fairbanks Capital Holding Corp.).

[27] *United States v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. Sept. 4, 2007) (Modified Stipulated Final Judgment and Order).

protection statutes in connection with its servicing activities. Bear Stearns further disclosed that FTC staff offered an opportunity to resolve the matter through consent negotiations before seeking approval from the Commission to proceed with the filing of a complaint. According to the disclosure, EMC expects to engage in such discussions with Commission staff.[28] The FTC cannot comment further on this ongoing law enforcement investigation.

Finally, with the rapid increase in mortgage delinquencies and foreclosures, the FTC has intensified its efforts to protect consumers from mortgage foreclosure rescue scams.[29] There are many varieties of mortgage foreclosure rescue fraud but, in each case, the perpetrator makes misleading promises that a consumer's home will be saved from the pending foreclosure permanently.[30] Many consumers, however, ultimately lose their homes and lose the money they paid to scammers.

In February of this year, the Commission announced three cases targeting mortgage foreclosure rescue scams. These scams, as well as additional conduct currently under investigation, share at least two common characteristics. First, the fraudulent schemes target consumers who face imminent foreclosure and who thus have limited time and resources to save

---

[28]Form 10-K, Bear Stearns Mortgage Funding Trust 2007-AR4 (CIK No. 1393708), at Item 1117 of Reg AB, Legal Proceedings (filed Mar. 31, 2008), *available at* www.sec.gov/Archives/edgar/data/1393708/000105640408001164/0001056404-08-001164.txt.

[29]In testimony on February 13, 2008 before the Senate Special Committee on Aging on foreclosure rescue fraud, the Commission set forth a more complete description of the FTC's efforts to address such fraud. The FTC's testimony is available at ftc.gov/os/testimony/P064814foreclosure.pdf.

[30]*See* Prentiss Cox, *Foreclosure Equity Stripping: Legal Theories and Strategies to Attack a Growing Problem,* CLEARINGHOUSE REV. J. OF POVERTY LAW AND POL'Y, Mar.-Apr. 2006 at 607, 608.

their homes. Second, these schemes falsely promise that they can save the consumers' homes from foreclosure.

In two of these cases, the Commission alleges that the defendants promise to stop foreclosure in exchange for a consumer's up-front payment of $500 to $1,200. After a consumer makes the payment, the defendants do little or nothing to stop the foreclosure. This fraud deprives consumers not only of much-needed funds but also of the opportunity to explore realistic options to avoid foreclosure.[31] In the third case, the Commission alleges that the defendants entice consumers into a second mortgage or home equity line of credit on very unfavorable terms without fully disclosing the costs, risks, and consequences of doing so.[32]

As described above, the Commission has a vigorous law enforcement program to protect consumers in connection with many aspects of their mortgage loans. The FTC continues to explore ways to enhance the effectiveness of its law enforcement activities related to subprime lending. For example, through the Interagency Pilot Project to Review Subprime Lender Conduct, the FTC, the Federal Reserve Board ("FRB"), the Office of Thrift Supervision ("OTS"), and two associations of state regulators have combined forces to undertake an innovative law enforcement project. The agencies are jointly conducting consumer protection

---

[31] *FTC v. Mortgage Foreclosure Solutions, Inc.,* Case No. 8:08-cv-388-T-23EAJ (M.D. Fla., filed Feb. 26, 2008); *FTC v. National Hometeam Solutions, Inc.,* Case No. 4:08-cv-067 (E.D. Tex., filed Feb. 26, 2008).

[32] *FTC v. Safe Harbour Foundation,* No. 08 C 1185 (N.D. Ill., filed Feb. 25, 2008).

compliance reviews and investigations of certain nonbank subsidiaries of bank holding companies with significant subprime mortgage operations.[33]

B. Consumer Education

Although law enforcement is the primary means that the Commission uses to combat illegal mortgage lending acts and practices, consumers are, of course, better off if they are not injured in the first place. To empower consumers to better protect themselves from potentially harmful conduct, the FTC engages in extensive consumer education related to mortgage lending.

In 2007, the Commission released several new mortgage-related consumer brochures, including brochures on deceptive mortgage advertisements, buying a home, how to manage a mortgage if the mortgage lender goes out of business or files for bankruptcy, and high-rate, high-fee mortgages.[34] To help consumers facing possible foreclosure, the Commission also released an alert offering guidance on steps borrowers can take to avoid foreclosure. In conjunction with its law enforcement actions alleging foreclosure rescue schemes, the Commission also developed a stepped-up consumer outreach initiative on foreclosure rescue fraud. Among other things, the FTC submitted a series of radio public service announcements, in English and Spanish, to stations in cities hardest hit by mortgage foreclosures and published classified advertisements in

---

[33] *See* Press Release, FTC, Federal and State Agencies Announce Pilot Project to Improve Supervision of Subprime Mortgage Lenders (July 17, 2007), *available at* www.ftc.gov/opa/2007/07/subprime.shtm.

[34] The Commission's consumer education materials are available from the FTC's website, www.ftc.gov. The FTC publishes many of its materials in both English and Spanish. Educational materials on mortgage and real estate issues are directly accessible from the FTC's webpage, Credit and Loans: Mortgages/Real Estate, www.ftc.gov/bcp/menus/consumer/credit/mortgage.shtm. In Spanish, the materials are available from the FTC's webpage, Crédito y Préstamos: Hipotecas/Propiedades, www.ftc.gov/bcp/menus/consumer/credit/mortgage_es.shtm.

English- and Spanish-language community newspapers.[35] All of the Commission's consumer protection materials, including many released in Spanish as part of the Commission's Hispanic Outreach Program, are available to the public on the FTC's website or by calling the FTC's Consumer Response Center toll-free at 1-877-FTC-HELP.[36]

The Commission also regularly partners with other agencies to educate consumers. Partnering with other agencies has proven to be an effective technique because it taps the respective expertise and distribution channels of the agencies involved. The FTC has jointly published with the banking regulators, the DOJ, and HUD, brochures addressing key lending issues.[37] The FTC continues to participate in the governmental Financial Literacy and Education Commission, contributing its expertise to subcommittees that produced *MyMoney.gov* and *Taking Ownership of the Future: The National Strategy for Financial Literacy.*[38]

C. Research and Policy Development

The mortgage marketplace in the United States is dynamic. The Commission therefore engages in public workshops and other research efforts so that it may better understand particular

---

[35] The Commission also will send information to community libraries, unions, and other organizations warning consumers about foreclosure rescue scams.

[36] The Commission's Spanish-language publications are available from its webpages, Información de la FTC para Consumidores, *available at* www.ftc.gov/bcp/consumer_es.shtm, and ¡OJO! Mantente alerta contra el fraude: Infórmate con la FTC, *available at* www.ftc.gov/ojo.

[37] *See, e.g., Looking for the Best Mortgage? Shop, Compare, and Negotiate, available at* www.ftc.gov/bcp/edu/pubs/consumer/homes/rea09.shtm.

[38] *See* www.mymoney.gov. In addition, each year, the FTC participates in Financial Literacy Month. Activities include presentations to students on the importance of responsible credit card use and safeguarding personal information, and exhibits at Financial Literacy Day on Capitol Hill, where agency representatives distribute free consumer education materials.

consumer protection issues in the changing marketplace, and advocate for policies that promote protections for consumers, such as policies that foster informed mortgage borrowing.

For example, in June 2007, the FTC staff released an empirical study assessing the effectiveness of mortgage disclosure documents that mortgage originators are required to provide to consumers under the Real Estate Settlement Procedures Act ("RESPA") and TILA.[39] The study found that these disclosures were not very effective in helping consumers of subprime and prime mortgages understand the terms of mortgages and their implications. The study also demonstrated that consumers could benefit from changes in current disclosure requirements. Significantly, the study suggested that, in actual market transactions, subprime borrowers may face even greater difficulties understanding the terms of their mortgages than they did in the study and, therefore, these borrowers may benefit the most from improved disclosures.

Based in part on its mortgage disclosure study, the FTC staff in November 2007 submitted comments to the federal banking agencies in response to their request for comments on proposed illustrations to disclose information to consumers about subprime mortgages.[40] The comments stated that consumers likely would benefit from one clear disclosure document that alerts them to the major costs and features of a mortgage. The comments also noted that such a document would significantly reduce the cost of obtaining accurate information about the value

---

[39] James M. Lacko & Janis K. Pappalardo, Federal Trade Comm'n, Bureau of Economics Staff Report, Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current and Prototype Disclosure Forms (2007), *available at* www.ftc.gov/os/2007/06/P025505mortgagedisclosurereport.pdf.

[40] *See* Federal Trade Comm'n Staff Comments to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System (November 2007), *available at* www.ftc.gov/be/v080000.pdf.

of different mortgage options, be noticeable and easy to read and understand, feature up-front summaries of key loan features, and make clear what a consumer is getting before signing legal documents. The comments further noted the importance of consumer research and expressed the FTC staff's readiness to participate with the FRB and HUD in a more comprehensive effort to improve mortgage disclosures.[41]

Next month, the FTC will host a conference to highlight and assess the role of consumer information in the current mortgage crisis from an economic perspective. Experts from several relevant specialties will gather to examine how consumer information – and regulation of such information – affects consumer choices, mortgage outcomes, and consumer welfare. For example, panelists will discuss the causes and effects of mortgage market product developments, the role of consumer information in the mortgage market and how it relates to the current mortgage crisis, and strategies for ensuring that mandatory information disclosures will provide the greatest benefit to consumers.

---

[41]Similarly, in a comment filed with the FRB, the Commission stated that, as consumers shop for a mortgage, it is important that they receive timely and understandable information about the loan terms and costs of the particular products they are trying to analyze and compare. Moreover, for many mortgage products with payment schedules that likely will increase substantially in future years, it is important that consumers receive information about their future payments at a time when they can readily use the information in selecting their preferred loan and terms. *See* FEDERAL TRADE COMM'N, COMMENT BEFORE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, DOCKET NO. OP-1253: UNFAIR AND DECEPTIVE PRACTICES IN THE MORTGAGE LENDING MARKET, ALTERNATIVE MORTGAGE PRODUCTS, AND INFORMED CONSUMER CHOICE IN THE MORTGAGE MARKETPLACE (September 2006), *available at* www.ftc.gov/os/2006/09/docketop-1253commentfedreserve homeeqlenditextv.pdf. The comment was based, in part, on information learned at a May 2006 workshop the Commission sponsored on consumer protection issues associated with nontraditional mortgage products. *See* Protecting Consumers in the New Mortgage Marketplace, 71 Fed. Reg. 15,417 (Mar. 28, 2006); *see also* www.ftc.gov/bcp/workshops/mortgage/index.html.

Finally, the Commission continues to coordinate and share its expertise with federal banking agencies in connection with their proposals to protect consumers in the mortgage marketplace. This month, the FTC staff filed a public comment with the FRB in response to its proposed rule to restrict certain mortgage practices under the TILA and HOEPA.[42] In the comment, the FTC staff supported the FRB's goals of: (1) protecting consumers in the mortgage market from unfair, abusive, or deceptive lending and servicing practices while preserving responsible lending and sustainable home ownership; (2) ensuring that advertisements for mortgage loans are accurate and not misleading; and (3) providing consumers with transaction-specific disclosures early enough to use while shopping. The comment concludes that the FRB's proposed restrictions on appraisal, servicing, and advertising practices, and the revised timing requirement for TILA disclosures, would be beneficial for consumers. The comment also notes that, while FRB's proposed restrictions on a new category of higher-cost loans appear to strike a reasonable balance, FTC staff encourages the FRB to continue to weigh their potential benefits and costs, including considering any empirical evidence submitted in response to its proposed rulemaking to confirm that this balance is reasonable. Finally, the comment assesses the Board's proposal regarding mortgage broker compensation disclosures and recommends an alternative approach.[43]

---

[42]Truth in Lending, Proposed Rule, 73 Fed. Reg. 1672 (Jan. 9, 2008), *available at* http://a257.g.akamaitech.net/7/257/2422/01jan20081800/edocket.access.gpo.gov/2008/pdf/E7-25058.pdf.

[43]Similarly, the FTC staff late last year shared with the OTS the Commission's experience in challenging unfair or deceptive acts and practices in the financial services context. The FTC staff filed a public comment with the OTS in response to a request for information about whether the OTS should issue regulations to expand its prohibitions against thrifts engaging in unfair or deceptive acts and practices in mortgage and non-mortgage lending. FEDERAL TRADE COMM'N

If the FRB's proposed rules are finalized, the Commission will have the authority to enforce those rules against nonbank entities under its jurisdiction. As with its current authority, the Commission intends to use that new authority to the fullest extent possible to protect consumers in the subprime mortgage market. The FTC's enforcement efforts would be more effective if civil penalties were available against nonbank entities within the FTC's jurisdiction who violate the rules, a remedy that will be available against entities within the jurisdiction of the federal banking agencies.[44]

IV. CONCLUSION

The Commission is committed to protecting subprime mortgage borrowers. The FTC's law enforcement, consumer education, and policy research initiatives in the mortgage market are part of the FTC's broad, vigorous, and continuing program to protect consumers from deceptive, unfair, and otherwise illegal practices. The Commission appreciates the opportunity to appear before you today to discuss the FTC's work.

STAFF COMMENT TO JOHN E. BOWMAN, CHIEF COUNSEL, REGULATION COMMENTS, OFFICE OF THRIFT SUPERVISION, REGARDING SECTION 5 POLICY ISSUE FOR FINANCIAL PRACTICES (December 2007), *available at* www.ftc.gov/os/2007/12/P084800anpr.pdf.

[44] Under the Federal Deposit Insurance Act, 12 U.S.C. Section 1818(i)(2), federal banking agencies can obtain civil penalties from the entities they regulate who violate the laws they enforce, including TILA and its implementing regulations. The FTC has no comparable authority to obtain civil penalties from the nonbank entities it regulates for violations of TILA and its implementing regulations.