

Testimony of the Federal Trade Commission

**Before the House Committee on Appropriations
Subcommittee on Financial Services and General Government**

United States House of Representatives

**Washington, D.C.
April 27, 2023**

I. INTRODUCTION

Chairman Womack, Ranking Member Hoyer, and members of the Subcommittee, thank you for inviting me to testify today.¹ Since I testified last year, the Commission has actively been protecting consumers and promoting competition throughout the economy. This testimony will address the Federal Trade Commission's FY 2024 budget request; describe some of the important work the FTC is doing to fulfill its broad mission of ensuring open, competitive, and fair markets on behalf of consumers, workers, and honest businesses; and highlight some of the challenges we face.

The Commission is grateful that in recent years, and particularly last year, Congress has increased the FTC's appropriation. The Commission is putting this funding to good use as it continues to be at the forefront of many pressing issues, from corporate mergers affecting critical sectors of the economy, the integrity of our supply chains, and the prices consumers pay for drugs, to data practices that can expose Americans' most sensitive and personal information. The FTC is charged with tackling unfair or deceptive practices—be it companies who lie about products being Made in America, prey on small businesses, make it hard for consumers to cancel unwanted subscriptions, use dark patterns to get children to make unintentional purchases online, or who peddle fake COVID cures or ineffective treatments for opioid addictions—and we're responsible for rooting out unfair methods of competition that can crush entrepreneurs and stifle innovation. Our jurisdiction spans the entirety of the U.S. economy, and Congress has assigned us the task of enforcing or administering the provisions of more than 80 statutes.²

¹ This written testimony reflects the views of the Commission. The oral statement and responses to questions reflect the views of the individual Commissioners, and do not necessarily reflect the views of the Commission or any other Commissioner.

² FTC, *Legal Library: Statutes*, <https://www.ftc.gov/legal-library/browse/statutes> (last visited Apr. 23, 2023).

We continue to deploy the full set of tools and authorities that Congress has granted us. This includes law enforcement, rulemaking, and research. As this testimony will describe, the FTC staff has been tireless in addressing fraud targeting seniors, servicemembers, and non-English speakers; understanding and responding to the effects of rapidly changing technology; reviewing ever more complex merger transactions; litigating against defendants with seemingly limitless resources; undertaking new studies on pressing issues; and confronting legal challenges to our authority. But we are not keeping pace with the demands of our expansive mission, which is why the FTC has requested \$590 million in FY 2024.

We are committed to ensuring that the funding Congress appropriates for the agency is used effectively and that we are addressing root causes and dealing with the most significant harms across markets, particularly by dominant firms whose business practices affect large numbers of Americans. And, as evidenced by our creation earlier this year of an Office of Technology, we are focused on the need to be forward-looking in anticipating problems and taking swift action, especially as it concerns next-generation technologies and nascent markets across sectors. Orienting our work around these principles can help maximize our efficacy.

II. BUDGET AND RESOURCES

Currently, the FTC has around 1,200 employees on-board. The FTC's enacted budget for FY 2023 of \$430 million will enable us to grow by approximately 150 FTE, taking us from 1,230 FTE to 1,380 FTE, a level we aim to hire to within the next year. Despite this increase, an FTE level of 1,380 is still approximately just 80% of what it was at the beginning of 1980,³ while the nation's GDP has increased six-fold since then. Demands on the Commission continue to grow

³ FTC, *FTC Appropriation and Full-Time Equivalent (FTE) History*, <https://www.ftc.gov/about-ftc/bureaus-offices/office-executive-director/financial-management-office/ftc-appropriation> (last visited Apr. 23, 2023) (showing 1719 FTE in 1980).

as we review corporate mergers,⁴ conduct more complex and expensive litigation, receive consumer complaints,⁵ try to stay abreast of transformative technological and market changes,⁶ and respond to burgeoning requests for research and investigation of various economic sectors.

These factors have underscored both the importance of our work and the critical need for additional resources. Last year, Congress increased the merger filing fees that offset the FTC's appropriation, and we hope this facilitates bolstering the agency's funding.

For FY 2024, the FTC is requesting \$590 million and 1,690 FTE. This request to increase our budget by \$160 million will fund an additional 310 FTE over our planned FY 2023 level of 1,380 and enable us to address in part the increased demand on agency staff and resources. For FY 2024, we plan to deploy existing hiring strategies to build on the growth started in FY 2022 to recruit the additional FTE sought in the FY 2024 budget request.

This budget request leverages the agency's existing Regional Office structure to expand the agency's candidate pool and community presence, effectively use telework, and implement a

⁴ As reflected in the annual report on the Hart-Scott-Rodino premerger program, the agencies reviewed an overwhelming number of HSR-reportable transactions in FY 2021 and issued more "Second Requests" for additional information from the merging parties than the year before, signaling a significant increase in the merger workload. *See* Press Release, Fed. Trade Comm'n, FTC, DOJ Issue Fiscal Year 2021 Hart Scott Rodino Premerger Notification Report (Feb. 10, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-doj-issue-fiscal-year-2021-hart-scott-rodino-premerger-notification-report>. While the number of HSR filings has fallen since the FY2021 peak, they remain high, with filings for over 3200 transactions in FY2022. (Monthly HSR numbers are posted on the FTC website at <https://www.ftc.gov/enforcement/premerger-notification-program>).

⁵ *See, e.g.*, Press Release, Fed. Trade Comm'n, New FTC Data Show Consumers Reported Losing Nearly \$8.8 Billion to Scams in 2022, <https://www.ftc.gov/news-events/news/press-releases/2023/02/new-ftc-data-show-consumers-reported-losing-nearly-88-billion-scams-2022>.

⁶ For example, as of March 2022, the UK's Information Commissioner's Office, the principal privacy enforcement agency in the UK, had 944 permanent staff. *See* Information Commissioner's Office, Information Commissioner's Annual Report and Financial Statements 2021-22 at 107 (July 2022), <https://ico.org.uk/media/about-the-ico/documents/4021039/ico-annual-report-2021-22.pdf>. Ireland's Data Protection Commission, responsible for enforcing the European privacy regulation, had 196 employees as of December 2022. *See* Data Protection Commission, Annual Report 2022 at 53, https://www.dataprotection.ie/sites/default/files/uploads/2023-03/DPC%20AR%20English_web.pdf. By contrast, the Federal Trade Commission's Division of Privacy and Identity Protection currently has just 48 employees. Although it is true that FTC employees in other units, including the regional offices, the Division of Enforcement, and the Division of Marketing Practices, contribute to the Commission's security and privacy efforts, the total number of FTC employees working on these issues is far exceeded by our European counterparts.

nimbler workforce that will work on consumer protection and competition matters. Fully executing on our mission requires that our analytical capabilities keep up with changing market realities, and this budget request accordingly seeks to better position us to recruit a range of experts, including financial analysts, technologists, and others. In addition to expanding on existing expertise, we intend to expand into new areas, such as by retaining child psychologists and youth-development experts to address certain harms and remedies.⁷ These skills will allow us to continue building in-house expertise, supporting our ability to conduct market-wide inquiries and scrutinize emerging business practices.

The FY 2024 budget request also funds additional expert witness levels commensurate with the additional FTE levels, given our need to support expert work in litigation, particularly in cases against large, well-financed defendants.

Additionally, the FTC seeks resources for systems modernization and infrastructure upgrades to support a larger decentralized workforce and enhance applications that directly support our mission, such as the comprehensive complaint database known as the Consumer Sentinel Network, which is accessible to law enforcement agencies across the country and internationally.

The FTC's budget request would be offset by fees collected from HSR filings and pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act. When possible, the agency collects money to return to harmed consumers. During FY 2022, the FTC returned \$497 million to consumers and the U.S. Treasury General Fund. Of this amount, judgments

⁷ FTC, Annual Performance Report for Fiscal Year 2021 and Annual Performance Plan for Fiscal Years 2022 to 2023 at 79, https://www.ftc.gov/system/files/ftc_gov/pdf/21apr_22-23app.pdf; FTC, Strategic Plan for Fiscal Years 2022-2026 at 24, https://www.ftc.gov/system/files/ftc_gov/pdf/fy-2022-2026-ftc-strategic-plan.pdf.

resulting in redress disbursements to harmed consumers totaled \$325 million,⁸ and an additional \$14 million in disgorgements was returned to Treasury. Also, civil penalty collections returned to Treasury totaled \$158 million.

Throughout FY 2022, the FTC saved consumers an estimated \$4.1 billion through its merger and nonmerger competition law enforcement actions and its consumer protection law enforcement actions.⁹ For FY 2022, every \$1 of the FTC's costs returned an estimated \$30 in FTC-provided benefits to consumers. We expect that a larger budget would position us to further improve on this return on investment.

III. CONSUMER PROTECTION MISSION

As the nation's primary consumer protection agency, the FTC has a broad mandate to protect the public from unfair or deceptive practices throughout the economy. Among other issues, the FTC works to protect privacy and data security; ensure that domestic manufacturers, independent repairers, and other small businesses have a chance to compete fairly; fight fraud, junk fees, and related harms affecting consumers; combat opioid recovery and other health fraud; and stand up for historically underserved communities such as Older Americans and servicemembers.

A. Protecting Every Community from Fraud and Deceptive Business Practices

The FTC is undertaking comprehensive enforcement action to root out fraud and deceptive business practices, including those that target historically underserved communities.

⁸ Most of the redress disbursements were from cases that were resolved prior to the Supreme Court's April 2021 decision in *AMG Capital Management, LLC v. FTC*, 141 S. Ct. 1341 (2021), which invalidated the Commission's ability to obtain refunds for consumers under Section 13(b) of the FTC Act. Once the Commission completes distribution of funds obtained in cases resolved prior to *AMG*, future Commission distributions will likely decrease due to the loss of the ability to obtain monetary relief under Section 13(b).

⁹ These estimates were calculated based on performance measures 1.1.1 (money returned to consumers and treasury), 1.1.2 (consumer savings from consumer protection law enforcement), and 2.1.2 (consumer savings from antitrust enforcement). For more details on measurement and data quality, see FTC, *FTC Data Quality Appendix*, https://www.ftc.gov/system/files/ftc_gov/pdf/DQA-FY22-26%2C-3-1-2023.pdf (last visited Apr. 23, 2023).

1. Reducing the Scourge of Unwanted Calls

In FY 2022, the FTC received more than 3 million complaints about unwanted calls, including 1.8 million reports about robocalls.¹⁰ The Commission uses every tool at its disposal to combat these calls. The FTC has filed 161 enforcement actions against 545 companies and 438 individuals alleged to be responsible for placing billions of unwanted telemarketing calls to consumers. We have also collected over \$393 million in civil penalties and equitable monetary relief from these violators. In cases where perpetrators ran telemarketing scams, the FTC has obtained court orders shutting down these businesses and freezing their remaining assets so that those funds could be returned to consumers.¹¹

The FTC is also disrupting foreign-based scammers that bring illegal robocalls into the United States. Earlier this month, the FTC announced Project Point of No Entry (“PoNE”), a new initiative targeting “point of entry” or “gateway” Voice over Internet Protocol (“VoIP”) service providers.¹² In collaboration with the Federal Communications Commission, the Industry Traceback Group, and state attorneys general, the FTC identifies point of entry VoIP service providers that are routing or transmitting illegal robocall traffic. The FTC then demands that they stop, warns that their conduct may violate the Telemarketing Sales Rule (“TSR”), and monitors

¹⁰ FTC, Do Not Call Registry Data Book 2022: Complaint Figures for FY 2022 (2022), www.ftc.gov/system/files/ftc_gov/pdf/DNC-Data-Book-2022.pdf.

¹¹ Temporary Restraining Order, *FTC v. Green Equitable Sols.*, No. 2:22-cv-06499-FLA (C.D. Cal. Sept. 14, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/2022.09.14%20Order%20granting%20TRO.pdf (freezing the defendants’ assets and shutting down their deceptive practices). This action is being taken in conjunction with the state of California and involves allegations that the defendants illegally called consumers on the Do Not Call Registry, pitching mortgage relief services and falsely claiming to be affiliated with government COVID-19 relief programs. See Press Release, Fed. Trade Comm’n, Federal Trade Commission, California Take Action To Shut Down Mortgage Relief Operation That Preyed on Struggling Homeowners (Sept. 19, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/09/federal-trade-commission-california-take-action-shut-down-mortgage-relief-operation-preyed>.

¹² Press Release, Fed Trade Comm’n, FTC Ramps Up Fight to Close the Door on Illegal Robocalls Originating from Overseas Scammers and Imposters (Apr. 11, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-ramps-fight-close-door-illegal-robocalls-originating-overseas-scammers-imposters>.

their pursuit of recalcitrant providers, including by conducting law enforcement investigations and filing lawsuits when appropriate.

The FTC is determined to go after not only individual bad actors but also the platforms that enable these practices on a massive scale.¹³ The Commission has initiated two rulemakings that would modify the TSR to further assist law enforcement in the fight against unwanted calls.¹⁴

2. Fighting Opioid Recovery Fraud and Other Health-Related Misconduct

The FTC has used the authority Congress gave us in the Opioid Addiction Recovery Fraud Prevention Act (“OARFPA”) to stop companies from exploiting Americans struggling with substance use disorders. In our first OARFPA case, we obtained a \$3.8 million civil penalty judgment against R360 based on allegedly deceptive claims to consumers seeking substance abuse treatment.¹⁵ Just last month, we announced an OARFPA action against AWAREmed alleging false efficacy claims and obtained a \$100,000 civil penalty.¹⁶

The FTC also has used its authorities to put an end to a variety of other deceptive treatment claims. In January 2023, the FTC put an end to allegedly deceptive bait-and-switch advertising for vision correction services, which cost consumers time and put honest businesses

¹³ Complaint, *United States v. Stratics Networks, Inc.*, No. 3:23-cv-00313 (S.D. Cal. Feb. 17, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/001-complaint.pdf.

¹⁴ Notice of Proposed Rulemaking, 87 Fed. Reg. 33,677 (June 3, 2022); Advance Notice of Proposed Rulemaking, 87 Fed. Reg. 33,662 (June 3, 2022).

¹⁵ See Press Release, Fed. Trade Comm’n, FTC Hits R360 and its Owner With \$3.8 Million Civil Penalty Judgment for Preying on People Seeking Treatment for Addiction (May 17, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/05/ftc-hits-r360-its-owner-38-million-civil-penalty-judgment-preying-people-seeking-treatment-addiction>.

¹⁶ Press Release, Fed. Trade Comm’n, FTC Sues Medical Clinic and Its Owner for False or Unsubstantiated Claims Its Treatment Center Could Cure Addiction and Other Diseases (Mar. 16, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-sues-medical-clinic-its-owner-false-or-unsubstantiated-claims-its-treatment-could-cure-addiction>.

at a disadvantage.¹⁷ We continued aggressively litigating a case against health products marketers for allegedly making deceptive claims that their products grow bone and cartilage and relieve joint pain.¹⁸ And, to ensure businesses avoid running afoul of the FTC Act, FTC staff recently issued the *Health Products Compliance Guidance*, the first update the FTC has made to its health-product business guidance in nearly 25 years.¹⁹

3. Combatting Fraud Targeting Older Americans

Protecting older consumers continues to be one of the FTC's top priorities, which the agency pursues through aggressive law enforcement actions, innovative education and outreach campaigns, extensive research, and collaboration with partners and stakeholders. The FTC has brought a number of actions against companies targeting older adults with allegedly deceptive practices, including around timeshares,²⁰ sham health plans,²¹ and foot pain.²² In addition, as with its work on unwanted calls, the FTC is going after platforms that allegedly facilitate scams (like the grandparent and lottery or sweepstakes scams) at scale.²³ The FTC also has aggressively gone after companies making deceptive earnings claims, a business practice that disproportionately affects retirees and older adults looking to supplement their incomes. The

¹⁷ Press Release, Fed. Trade Comm'n, FTC Approves Final Order Against LCA-Vision, Halting Alleged Bait-and-Switch Advertising for LASIK Laser Eye Surgery (Mar. 15, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-approves-final-order-against-lca-vision-halting-alleged-bait-switch-advertising-lasik-laser-eye>.

¹⁸ Press Release, Fed. Trade Comm'n, FTC Order to Bar ZyCal Bioceuticals from Deceptive Health Marketing (Feb. 6, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-order-bar-zycal-bioceuticals-deceptive-health-marketing>.

¹⁹ Press Release, Fed. Trade Comm'n, FTC Announces New Business Guidance for Marketers and Sellers of Health Products (Dec. 20, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/12/ftc-announces-new-business-guidance-marketers-sellers-health-products>.

²⁰ Complaint, *United States v. Consumer Law Prot., LLC*, No. 4:22-cv-01243 (E.D. Mo. Nov. 21, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/2123065SquareOneComplaint.pdf.

²¹ Press Release, Fed. Trade Comm'n, FTC Action Against Benefytt Results in \$100 Million in Refunds for Consumers Tricked into Sham Health Plans and Charged Exorbitant Junk Fees (Aug. 8, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-action-against-benefytt-results-100-millionrefunds-consumers-tricked-sham-health-plans-charged>.

²² Complaint, *FTC v. Gravity Defyer Medical Technology Corp.*, No. 1:22-cv-01464 (D.D.C. May 25, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/1923114GravityDefyerComplaintrev.pdf.

²³ Complaint, *FTC v. Walmart, Inc.*, No. 1:22-cv-03372 (N.D. Ill. June 28, 2022), <https://www.ftc.gov/legal-library/browse/cases-proceedings/182-3012-walmart-ftc-v>.

Commission's deceptive earnings actions have included investment advisors,²⁴ crypto and other bogus business schemes,²⁵ and day trading.²⁶

The agency's education and outreach work complements this vigorous enforcement. During 2022, the FTC updated its most popular²⁷ education campaign, *Pass It On*²⁸ (*Pásalo*²⁹ in Spanish), and promoted it through a series of webinars presented to thousands of representatives from congressional offices, aging services providers, and military support groups, among others. The FTC also created the Senior Fraud Advisory Office, pursuant to the Seniors Fraud Prevention Act of 2022, to advise the Commission on strategies to protect older Americans. The Commission's external outreach was also formalized this year through the establishment of the Advisory Group, which facilitates collaborations with outside stakeholders.³⁰ The Commission's annual report to Congress describes in detail our work for older adults.³¹

4. Protecting Servicemembers and Veterans

Combatting fraud aimed at servicemembers remains a top priority. In July 2022, in its first case enforcing the Military Lending Act,³² the FTC and a group of 18 states took action

²⁴ Press Release, Fed. Trade Comm'n, FTC Suit Requires Investment Advice Company WealthPress to Pay \$1.7 Million for Deceiving Consumers (Jan. 13, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-suit-requires-investment-advice-company-wealthpress-pay-17-million-deceiving-consumers>.

²⁵ Press Release, Fed. Trade Comm'n, FTC Takes Action to Stop DK Automation and Kevin David Hulse from Pitching Phony Amazon and Crypto Moneymaking Schemes (Nov. 16, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/11/ftc-takes-action-stop-dk-automation-kevin-david-hulse-pitching-phony-amazon-crypto-moneymaking>.

²⁶ Press Release, Fed. Trade Comm'n, Federal Trade Commission Cracks Down on Warrior Trading For Misleading Consumers With False Investment Promises (Apr. 19, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/04/federal-trade-commission-cracks-down-warrior-trading-misleading-consumers-false-investment-promises>.

²⁷ Since its original launch in 2014, nearly 18 million Pass It On materials have been distributed nationwide in English and Spanish.

²⁸ See <http://www.ftc.gov/PassItOn>.

²⁹ See <http://www.ftc.gov/Pasalo>.

³⁰ See FTC, Scams Against Older Adults Advisory Group Meeting (Sept. 29, 2022), <https://www.ftc.gov/newsevents/events/2022/09/scams-against-older-adults-advisory-group-meeting>.

³¹ FTC, Protecting Older Consumers 2021-2022 (Oct. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P144400OlderConsumersReportFY22.pdf.

³² 10 U.S.C. § 987.

against Harris Jewelry, a national jewelry retailer, to stop the company from targeting military families with illegal financing and sales practices, ultimately requiring the company to pay \$10.9 million in refunds and engage in other affirmative assistance to its victims.³³ The Commission's efforts to protect military and veteran communities include a vigorous, long-standing educational campaign and close coordination with servicemember and veteran agencies.³⁴ This collaborative outreach is the cornerstone of the annual Military Consumer Month,³⁵ which the FTC created and manages with its partners, including AARP's Veterans & Military Families Initiative.³⁶ The agency also participates in an ongoing working group led by the Department of Veterans Affairs (VA) to inform veterans how to avoid scams.

5. Preventing Financial Exploitation

The FTC brought eight federal court actions in recent years against companies that targeted financially insecure consumers and made false credit repair, mortgage, or other debt

³³ Press Release, Fed. Trade Comm'n, FTC and 18 States Sue to Stop Harris Jewelry from Cheating Military Families with Illegal Financing and Sales Tactics (July 20, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/07/ftc-18-states-sue-stop-harris-jewelry-cheating-military-families-illegal-financing-sales-tactics>; *see also infra* note 75 (discussing action against BurgerIM for deceiving veterans).

³⁴ *See, e.g.*, militaryconsumer.gov (launched by FTC and operated in cooperation with Department of Defense Office of Financial Readiness (DoD FinRed) and the Consumer Financial Protection Bureau's Office of Servicemember Affairs (CFPB OSA)).

³⁵ *See* Carol A. Kando-Pineda, Military Consumer Month 2022, FTC (June 27, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/06/military-consumer-month-2022>.

³⁶ *See* AARP, Veterans and Military Families, <https://www.aarp.org/volunteer/causes/veterans-military-families/>.

relief promises,³⁷ as well as one action against a debt relief payment processor.³⁸ For example, last September, the FTC and the California Department of Financial Protection and Innovation filed a law enforcement action against several corporate and individual defendants doing business as Home Matters USA, among other names, for allegedly operating sham mortgage relief services that misled consumers and cost them millions.³⁹ The federal district court granted a Temporary Restraining Order including an asset freeze against the defendants, and litigation is ongoing. The Commission also is working closely with the Department of Education to prevent fraud around recent changes to the student loan program⁴⁰ and to ensure relief for those affected by deceptive practices by for-profit colleges.⁴¹

³⁷ Complaint, *FTC v. ACRO Servs. LLC*, No. 3:22-cv-00895 (M.D. Tenn. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Complaint-Unsealed.pdf; Complaint, *FTC v. Fin. Educ. Servs. Inc.*, 2:22-cv-11120-BAF-APP (E.D. Mich. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/DE%201%20-%20Complaint.pdf; Complaint, *FTC v. Green Equitable Sols.*, No. 2:22-cv-06499-FLA (C.D. Cal. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Home%20Matters%20-%20Complaint.pdf; Complaint, *FTC v. SLAC, Inc.*, No. 5:20-cv-00470 (C.D. Cal. 2020), https://www.ftc.gov/system/files/documents/cases/doc_1_complaint.pdf; Complaint, *FTC v. Am. Fin. Support Servs., Inc.*, No. 8:19-cv-02109-JWH (C.D. Cal. 2019), https://www.ftc.gov/system/files/documents/cases/192_3040_arete_financial_group_complaint_for_permanent_injunction_and_other_equitable_relief_11-12-19.pdf; Complaint, *FTC v. Manhattan Beach Venture LLC*, No. 2:19-cv-7849 (C.D. Cal. 2019), https://www.ftc.gov/system/files/documents/cases/172_3041_mbv_complaint_0.pdf; Complaint, *FTC v. Student Advocates Team, LLC*, No. 8:19-cv-01728-JVS (C.D. Cal. 2019), https://www.ftc.gov/system/files/documents/cases/172_3036_pag_complaint_1.pdf; Complaint, *FTC v. Elegant Sols., Inc.*, No. 8:19-cv-01333-JVS (C.D. Cal. 2019), https://www.ftc.gov/system/files/documents/cases/192_3105_elegant_solutions_-_first_amended_complaint.pdf.

³⁸ Complaint, *FTC v. Automatic Funds Transfer Servs., Inc.*, No. 1:21-cv-02932 (D.D.C. 2021), https://www.ftc.gov/system/files/documents/cases/complaint_7.pdf.

³⁹ Press Release, Fed. Trade Comm'n, Federal Trade Commission, California Take Action To Shut Down Mortgage Relief Operation that Preyed on Struggling Homeowners (Sept. 19, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/09/federal-trade-commission-california-take-action-shut-down-mortgage-relief-operation-preyed>.

⁴⁰ See K. Michelle Grajales, *Student Loan Scammers Are Circling. Keep Them at Bay*, FTC (Oct. 3, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/10/student-loan-scammers-are-circling-keep-them-bay>; Terri Miller, *Got Student Loans? Spot Scams Related to the Sweet Lawsuit*, FTC (Sept. 16, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/09/got-student-loans-spot-scams-related-sweet-lawsuit>; Terri Miller, *Limited Waiver for Student Loan Forgiveness Ends October 31*, FTC (July 21, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/07/limited-waiver-student-loan-forgiveness-ends-october-31-0>.

⁴¹ See Press Release, Fed. Trade Comm'n, FTC Enforcement Action Leads U.S. Dept. of Education to Forgive \$71.7 Million in Loans for Students Deceived by DeVry University (Feb. 16, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/02/ftc-enforcement-action-leads-us-dept-education-forgive-717-million-loans-students-deceived-devry>; Press Release, Fed. Trade Comm'n, Federal Trade Commission Takes Action Against For-Profit Medical School for Using Deceptive Marketing to Lure Students (Apr. 15, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/04/federal-trade-commission-takes-action-against-profit-medical-school-using-deceptive-marketing-lure>.

6. Combatting Junk Fees and Unwanted Charges

Junk fees are unavoidable charges for products with little or no value that are imposed on consumers with no notice. Consumers can get hit with junk fees at any stage of the purchase process, and companies may use digital dark patterns and other tricks to hide or mask them. These fees undercut honest businesses by making it harder to compete on price and cause harm to consumers who are often surprised and frustrated by unexpected charges. The FTC has initiated two new rulemakings to address this problematic conduct. Last year the FTC published a notice of proposed rulemaking to ban certain junk fees and bait-and-switch advertising tactics that can plague consumers throughout the car-buying experience. The proposal also would require dealers to make key disclosures to consumers, including providing a true “offering price” for a vehicle that would be the full price a consumer would pay, excluding only taxes and government fees.⁴² Separately, we are exploring a rulemaking to crack down on deceptive or unfair junk fees across multiple industries. We are reviewing thousands of comments we received from the public on the types of junk fees they’ve experienced, and the harm caused by such fees.⁴³

The Commission also has proposed to amend the Negative Option Rule to better address deceptive or unfair practices around negative marketing, including perpetual subscriptions, difficulty in cancellation, and failure to obtain consumers’ express, affirmative consent.⁴⁴ The

⁴² Press Release, Fed. Trade Comm’n, FTC Proposes Rule to Ban Junk Fees, Bait-and-Switch Tactics Plaguing Car Buyers (June 23, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-proposes-rule-ban-junk-fees-bait-switch-tactics-plaguing-car-buyers>.

⁴³ Press Release, Fed. Trade Comm’n, Federal Trade Commission Explores Rule Cracking Down on Junk Fees (Oct. 20, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/federal-trade-commission-explores-rule-cracking-down-junk-fees>.

⁴⁴ Press Release, Fed. Trade Comm’n, Federal Trade Commission Proposes Rule Provision Making It Easier for Consumers to ‘Click to Cancel’ Recurring Subscriptions and Memberships (Mar. 23, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/federal-trade-commission-proposes-rule-provision-making-it-easier-consumers-click-cancel-recurring>.

proposed rule amendment covers a broad scope of recurring subscriptions and similar arrangements in all media to ensure that sellers provide important information about these contracts up front, obtain consumers' express informed consent, and provide simple cancellation mechanisms to allow consumers to easily cancel unwanted subscriptions.

7. Expanding Consumer and Business Education

The FTC's Every Community Initiative represents the agency's coordinated effort to ensure that the FTC is responsive to the needs of historically underserved communities. Through this initiative, the agency has provided historically underserved communities with practical, language-appropriate, and user-friendly educational resources and information to help them spot, avoid, and report scams.⁴⁵ The FTC continues to translate all its consumer education materials into Spanish and recently expanded its reach to speakers of other languages. With the launch of ftc.gov/languages, the agency now provides information on how to spot, avoid, and recover from scams in 12 languages.⁴⁶ All of these Every Community education and outreach efforts are supported by ethnic-media telebriefings, in-person roundtables, and paid media campaigns that have led to millions of impressions through print, radio, and digital media.

⁴⁵ See, e.g., FTC, *Consumer Issues Affecting American Indian and Alaska Native Communities* (2023), <https://www.ftc.gov/reports/consumer-issues-affecting-american-indian-alaska-native-communities> (describing expanded targeted education and outreach efforts with American Indian/Alaska Native (AI/AN) communities nationwide). Agency staff also employed listening sessions with sources trusted in AI/AN communities, built ongoing partnerships with tribal governments and organizations serving AI/AN populations, and created a site—as directed by Congress—to share information on the issues raised. See FTC, *Native American Communities: Spot, Avoid, and Report Scams*, <https://consumer.ftc.gov/features/native-american-communities-spot-avoid-and-report-scams>.

⁴⁶ See FTC, *Consumer Education in Multiple Languages*, <https://consumer.ftc.gov/features/languages>. The 12 languages include: Amharic, Arabic, Chinese (Simplified and Traditional), French, Hmong, Korean, Russian, Somali, Spanish, Tagalog, Ukrainian, and Vietnamese.

B. Safeguarding Consumer Privacy and Strengthening Data Security

The FTC is taking bold steps to safeguard consumer data and move away from the “notice and choice” privacy model. We are particularly focused on health data, children and teens, data security, and market-wide initiatives to strengthen privacy and data security.

1. Protecting Consumers’ Sensitive Health Data

The FTC is taking action to address the privacy of health data where HIPAA does not apply, including data shared with direct-to-consumer health websites and apps that can reveal consumers’ medications, visits to providers, and health conditions.

First, the FTC is taking action to ensure that geolocation data that reveals health conditions and other sensitive information is not indiscriminately sold to the highest bidder. In the summer of 2022, FTC staff warned the marketplace that we were prepared to bring enforcement actions to halt the illegal use and sharing of consumers’ geolocation data.⁴⁷ Last August, we filed a complaint against Kochava, Inc., alleging that the data broker compiled massive amounts of consumers’ geolocation data and then sold it to customers in a format that makes it easy to track consumers’ visits to sensitive locations, such as doctors’ offices, houses of worship, and temporary shelters for domestic violence survivors.⁴⁸ This matter remains in active litigation.

⁴⁷ Kristin Cohen, *Location, Health, and Other Sensitive Information: FTC Committed to Fully Enforcing the Law Against Illegal Use and Sharing of Highly Sensitive Data*, FTC Business Blog (July 11, 2022), <https://www.ftc.gov/business-guidance/blog/2022/07/location-health-and-other-sensitive-information-ftc-committed-fully-enforcing-law-against-illegal>.

⁴⁸ Press Release, Fed. Trade Comm’n, *FTC Sues Kochava for Selling Data that Tracks People at Reproductive Health Clinics, Places of Worship, and Other Sensitive Locations* (Aug. 29, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-sues-kochava-selling-data-tracks-people-reproductive-health-clinics-places-worship-other>.

The FTC has also brought two groundbreaking actions barring consumer-facing health providers from sharing sensitive health data for advertising purposes. In *GoodRx*⁴⁹ and *BetterHelp*,⁵⁰ the Commission alleged that the companies disclosed their users' personal health information to advertising platforms such as Facebook and Google, without consent and in contravention of their privacy promises. The settlements in these actions included important provisions prohibiting the transfer of data to third parties for advertising purposes, as well as other strong injunctive provisions, including requirements for consent for certain information sharing, data retention limitations, and deletion requirements. The *GoodRx* settlement included civil penalties resulting from the Commission's first enforcement of the Health Breach Notification Rule.⁵¹ The *BetterHelp* order includes \$7.8 million in monetary relief which will go back to consumers as partial refunds, another first in a health privacy case.

2. Protecting Children and Teens

Online services can pose unique risks to children and teens, and the FTC is taking an expansive look at how to protect minors from digital harms, both through the Children's Online Privacy Protection Act Rule⁵² ("COPPA"), which protects children under 13, as well as through Section 5 of the FTC Act. For example, we brought a law enforcement action against Epic Games, Inc. ("Epic")—creator of the popular video game "Fortnite"—alleging that Epic violated

⁴⁹ Press Release, Fed. Trade Comm'n, FTC Enforcement Action to Bar GoodRx from Sharing Consumers' Sensitive Health Info for Advertising (Feb. 1, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-enforcement-action-bar-goodrx-sharing-consumers-sensitive-health-info-advertising>.

⁵⁰ Press Release, Fed. Trade Comm'n, FTC to Ban BetterHelp from Revealing Consumers' Data, Including Sensitive Mental Health Information, to Facebook and Others for Targeted Advertising (Mar. 2, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-ban-betterhelp-revealing-consumers-data-including-sensitive-mental-health-information-facebook>.

⁵¹ The Health Breach Notification Rule also is subject to a rule review to consider, among other things, whether modifications of the rule are appropriate to increase its benefits to consumers. See Health Breach Notification Rule, 85 Fed. Reg. 31,085 (Aug. 20, 2020).

⁵² 16 C.F.R. § 312.

COPPA⁵³ and engaged in an unfair practice by employing default settings that connected children and teens via voice and text chat to strangers, exposing them to psychological harm.⁵⁴ This action ultimately resulted in a federal court order securing strong and novel relief for consumers—requiring Epic to adopt strong default privacy settings for children and teens, implement a privacy program subject to outside assessments, and pay a \$275 million civil penalty, the largest ever under COPPA.

The Commission also is committed to preventing data abuses around educational technology services and last year issued a Policy Statement making clear that we would use our full set of authorities to hold firms accountable. Last year, we brought an enforcement action against online learning platform Chegg, Inc. We alleged that Chegg collected sensitive information about its users and employees but failed to properly protect this data, leading to several data breaches that exposed the personal data of millions of customers. Now under FTC order, Chegg is required to implement strong data security measures, including documenting and following a data collection and retention schedule, providing multifactor authentication or an equivalent authentication method to its customers and employees, and providing customers with access and deletion rights for the information that Chegg collects about them.⁵⁵

⁵³ Press Release, Fed. Trade Comm’n, Fortnite Video Game Maker Epic Games to Pay More Than Half a Billion Dollars Over FTC Allegations of Privacy Violations and Unwanted Charges (Dec. 19, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/12/fortnite-video-game-maker-epic-games-pay-more-half-billion-dollars-over-ftc-allegations>.

⁵⁴ The FTC is considering steps to deepen this work, including retaining psychologists and youth development experts to allow the agency to analyze conduct, assess harms and remedies, and pursue studies with an interdisciplinary approach, including conduct affecting children. FTC, Federal Trade Comm’n Annual Performance Report for Fiscal Year 2021 and Annual Performance Plan for Fiscal Years 2022 to 2023 [hereinafter “FTC FY22-23 Annual Performance Report”] at 79, https://www.ftc.gov/system/files/ftc_gov/pdf/21apr_22-23app.pdf; FTC, Federal Trade Comm’n Strategic Plan for Fiscal Years 2022-2026 [hereinafter “FTC FY22-26 Strategic Plan”] at 24, https://www.ftc.gov/system/files/ftc_gov/pdf/fy-2022-2026-ftc-strategic-plan.pdf.

⁵⁵ Press Release, Fed. Trade Comm’n, FTC Brings Action Against Ed Tech Provider Chegg for Careless Security that Exposed Personal Data of Millions of Customers (Oct. 31, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-brings-action-against-ed-tech-provider-chegg-careless-security-exposed-personal-data-millions>.

3. Strengthening Data Security

The best way for firms to protect consumers' data is not to collect it in the first place. Accordingly, several recent Commission data security orders mandate restrictions on what data firms can collect and retain. For example, our recent order against the online alcohol marketplace Drizly, LLC requires the company to minimize the data it collects and keeps from consumers.⁵⁶ Likewise, the settlement with online merchandise platform CafePress requires the company to implement policies to minimize the data it collects, stores, and retains. The CafePress settlement order also requires the company to use secure multi-factor authentication methods.⁵⁷

4. Developing Market-wide Initiatives to Protect Consumers' Data

In August 2022, the Commission issued an advance notice of proposed rulemaking on commercial surveillance and lax data security, which sought comment on the widespread collection of consumers' personal information (such as browsing data, precise geolocation data, and health-related data), ongoing concerns around the security of consumer data, harm to kids and teens, and concerns around automated decision-making.⁵⁸ The Commission is reviewing the more than 11,000 comments we received and considering next steps. The Commission also has significantly strengthened the Safeguards Rule, amending the rule in 2021 to include more detailed requirements for financial institutions' information security programs.⁵⁹ And we

⁵⁶ Press Release, Fed. Trade Comm'n, FTC Takes Action Against Drizly and its CEO James Cory Rellas for Security Failures that Exposed Data of 2.5 Million Consumers (Oct. 24, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-takes-action-against-drizly-its-ceo-james-cory-rellas-security-failures-exposed-data-25-million>. The Drizly settlement also names the CEO, and thus imposes separate obligations on him which will follow him beyond Drizly, underscoring the need for C-Suite attention to data security obligations.

⁵⁷ Press Release, Fed. Trade Comm'n, FTC Takes Action Against CafePress for Data Breach Cover Up (Mar. 15, 2022), www.ftc.gov/news-events/news/press-releases/2022/03/ftc-takes-action-against-cafepress-data-breach-cover.

⁵⁸ Press Release, Fed. Trade Comm'n, FTC Explores Rules Cracking Down on Commercial Surveillance and Lax Data Security Practices (Aug. 11, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-explores-rules-cracking-down-commercial-surveillance-lax-data-security-practices>.

⁵⁹ Press Release, Fed. Trade Comm'n, FTC Strengthens Security Safeguards for Consumer Financial Information Following Widespread Data Breaches (Oct. 27, 2021), www.ftc.gov/news-events/news/press-releases/2021/10/ftc-strengthens-security-safeguards-consumer-financial-information-following-widespread-data.

continue to review other rules, including COPPA⁶⁰ and the Health Breach Notification Rule,⁶¹ to assess whether changes are necessary to better protect consumers' data.

C. Ensuring Fairness for Workers, Entrepreneurs, and Small Businesses

As American workers and small businesses attempt to recover from the effects of the pandemic, the Commission is taking a comprehensive approach—through enforcement, rulemaking, and advocacy—to ensuring that they are not held back by unfair or deceptive practices.

1. Ensuring Domestic Manufacturers Can Compete Fairly

As many firms look to onshore production and as many consumers look to buy “Made in America” goods, the FTC is taking comprehensive action to protect the integrity of the label and ensure a level playing field for domestic manufacturers. In 2021, the Commission finalized a rule that prohibits the misuse of the “Made in America” label, and the Commission is already taking action to enforce this rule. For example, in 2022, the Commission charged a manufacturer of lithium-ion batteries with falsely labeling its products as “Made in America.”⁶² And months later, the Commission charged a seller of falsely advertised personal protective equipment.⁶³ The FTC will use all available tools to ensure scammers face heavy consequences for lawbreaking.

Marketers making false “Made in USA” claims covered by other laws and rules that the FTC enforces also can expect consequences. For example, in the past year we charged

⁶⁰ Press Release, Fed. Trade Comm’n, FTC Seeks Comments on Children’s Online Privacy Protection Act Rule (July 25, 2019), <https://www.ftc.gov/news-events/news/press-releases/2019/07/ftc-seeks-comments-childrens-online-privacy-protection-act-rule>.

⁶¹ Press Release, Fed. Trade Comm’n, FTC Seeks Comment as Part of Review of Health Breach Notification Rule (May 8, 2020), <https://www.ftc.gov/news-events/news/press-releases/2020/05/ftc-seeks-comment-part-review-health-breach-notification-rule>.

⁶² See *United States v. Lithionics Battery, LLC*, No. 8:22-cv-00868 (M.D. Fla. 2022) (imposing a civil penalty of treble profits on sales of deceptively marketed battery products).

⁶³ See *United States v. Axis LED Group, LLC*, No. 3:22-cv-01389 (N.D. Ohio 2022) (imposing a civil penalty and suspended redress judgment based on sales of falsely labeled PPE and LED products).

companies with making false claims for imported textile products such as apparel and bedding.⁶⁴ We also recently sued a manufacturer of glass baking products for continuing to advertise its products as “Made in USA” during a shift to overseas production at the height of the pandemic.⁶⁵ The FTC continues to carefully monitor the market for false “Made in America” claims and will use all available tools to ensure scammers who cheat consumers, honest businesses, and American workers face heavy consequences for their lawbreaking.

2. Combatting Unfair or Deceptive Practices Affecting Gig Workers

The Commission is making clear that regardless of whether gig workers are treated as employees or independent contractors under labor laws, they are fully protected by the FTC’s prohibition on unfair or deceptive practices. Last year, the Commission issued a Policy Statement highlighting how traditional principles of consumer protection and competition apply in the gig economy,⁶⁶ and the Commission continues to investigate potential law violations and bring enforcement actions to ensure fairness for these workers. Earlier this year, for example, the Commission issued a proposed order requiring HomeAdvisor to pay up to \$7.2 million to contractors who may have been harmed by deceptive claims about the quality and source of the leads the company sells.⁶⁷ Since November 2021, the FTC has sent more than \$60 million to

⁶⁴ See *In re Lions Not Sheep Products, LLC*, Docket No. C-4772 (July 28, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/C4772%20Decision%20and%20Order.pdf (imported apparel products relabeled as “Made in USA”); *In re Electrowarmth Products, LLC*, Docket No. C-4779 (Oct. 25, 2022) (imported bedding products entering the USA pre-labeled as “Made in USA”), https://www.ftc.gov/system/files/ftc_gov/pdf/222-3096-Electrowarmth-Decision-and-Order.pdf.

⁶⁵ *In re Instant Brands LLC*, Docket No. C-4788 (Mar. 1, 2023) (imported glass measuring cups advertised as “Made in USA”).

⁶⁶ See FTC, Policy Statement on Enforcement Related to Gig Work (Sept. 15, 2022), <https://www.ftc.gov/legal-library/browse/policy-statement-enforcement-related-gig-work>.

⁶⁷ Proposed Order, *In re HomeAdvisor, Inc.*, Docket No. D-9047 (Jan. 23, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-order-requires-homeadvisor-pay-72-million-stop-deceptively-marketing-its-leads-home-improvement>.

141,000 Amazon Flex drivers who allegedly had their tips deceptively withheld.⁶⁸ And, in July 2022, the FTC and NLRB entered a Memorandum of Understanding to facilitate collaboration between the agencies on gig work and other labor markets.⁶⁹

3. Allowing Consumers to Repair their Products and Giving Independent Repairers a Chance to Compete

In May 2021, the Commission submitted a report to Congress entitled *Nixing the Fix: An FTC Report to Congress on Repair Restrictions*.⁷⁰ In the report, the Commission found “scant evidence” to support manufacturers’ justifications for repair restrictions.⁷¹ The Commission followed this report with three major actions against companies for allegedly imposing unlawful repair restrictions on consumers.⁷² The Commission also is exploring other avenues to strengthen consumers’ right to repair, including by supporting state efforts⁷³ and seeking comment on whether manufacturers should be required to provide consumers with repair instructions.⁷⁴

4. Protecting Franchisees from Unfair or Deceptive Practices

The agency continues to take an integrated approach to franchise issues, undertaking both enforcement and policy initiatives. Last year, for example, we partnered with the Department of

⁶⁸ Press Release, Fed. Trade Comm’n, FTC Returns Nearly \$60 Million to Drivers Whose Tips Were Illegally Withheld by Amazon (Nov. 2, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/11/ftc-returns-nearly-60-million-drivers-whose-tips-were-illegally-withheld-amazon>.

⁶⁹ Press Release, Fed. Trade Comm’n, Federal Trade Commission, National Labor Relations Board Forge New Partnership to Protect Workers from Anticompetitive, Unfair, and Deceptive Practices (July 19, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/07/federal-trade-commission-national-labor-relations-board-forge-new-partnership-protect-workers>.

⁷⁰ FTC, *Nixing the Fix: An FTC Report to Congress on Repair Restrictions* (May 2021), https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf.

⁷¹ *Id.* at 6.

⁷² Press Release, Fed. Trade Comm’n, FTC Approves Final Orders in Right-to-Repair Cases Against Harley-Davidson, MWE Investments, and Weber (Oct. 27, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-approves-final-orders-right-repair-cases-against-harley-davidson-mwe-investments-weber>.

⁷³ Press Release, Fed. Trade Comm’n, FTC Testifies Before California State Senate on Right to Repair (Apr. 11, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-testifies-california-state-senate-right-repair>.

⁷⁴ 87 Fed. Reg. 64,399 (Oct. 25, 2022).

Justice (“DOJ”) to file a suit against fast-food chain BurgerIM, alleging that the chain made false promises and withheld information required by the Franchise Rule to persuade more than 1,500 consumers, some of them veterans, to purchase franchises.⁷⁵ Earlier this year, the agency issued a Request for Information (“RFI”) related to franchise agreements and franchisor business practices.⁷⁶ The RFI seeks information about the means by which franchisors may exert control over franchisees and their workers. Finally, we are coordinating closely with DOJ and the National Labor Relations Board over labor concerns, and in December 2021 we filed an amicus brief in a class action suit by 7-Eleven franchisees in which we successfully argued that the FTC’s Franchise Rule does not address whether franchisees are employees under Massachusetts law.

5. Shining a Light on Small Business Credit Reports

Credit reports can be make-or-break for small businesses. To better understand this opaque market, the FTC recently voted to issue orders under Section 6(b) of the FTC Act to five business credit reporting agencies, requiring that they provide information about: (1) how they collect and report data on small businesses; (2) how they market their business credit reporting products; and (3) whether and how they address factual errors in the reports.⁷⁷ The 6(b) study will shine a needed light on an industry that has not been reported on extensively but can be critical to the survival of a smaller firm. It will also advance the agency’s broader effort to ensure

⁷⁵ Press Release, Fed. Trade Comm’n, *FTC Sues Burger Franchise Company That Targets Veterans and Others with False Promises and Misleading Documents* (Feb. 8, 2023), <https://www.ftc.gov/news-events/news/press-releases/2022/02/ftc-sues-burger-franchise-company-targets-veterans-others-false-promises-misleading-documents>.

⁷⁶ Press Release, Fed. Trade Comm’n, *Solicitation for Public Comments on Provisions of Franchise Agreements and Franchisor Business Practices* (Mar. 10, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-seeks-public-comment-franchisors-exerting-control-over-franchisees-workers>.

⁷⁷ In March 2023, the FTC issued 6(b) orders to D&B, Experian Information Solutions, Equifax, Ansonia Credit Data, and Creditsafe USA. *See* Press Release, Fed. Trade Comm’n, *FTC Launches Inquiry into Small Business Credit Reports* (Mar. 16, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-launches-inquiry-small-business-credit-reports>.

a fair shot in the marketplace for small businesses and entrepreneurs. The 6(b) study follows the FTC’s April 2022 complaint and order with Dun & Bradstreet (“D&B”) in which the FTC alleged, among other things, that D&B reported incorrect information about small businesses then failed to provide a clear, consistent, and reliable way for those businesses to get corrections.⁷⁸ D&B is now subject to an order that bars it from misrepresenting certain types of credit improvement products and mandates better processes for businesses to correct errors.

IV. COMPETITION MISSION

In addition to the consumer protection and privacy work discussed above, the FTC enforces the competition laws in many crucial sectors of our economy. Our competition mission is driven by the tenet that vigorous antitrust enforcement is critical to the growth and dynamism of our economy as well as to our shared prosperity and liberty. Recent decades, however, have vividly illustrated how Americans lose out when markets become more consolidated and less competitive. Prices rise, wages fall, and our markets become more fragile and less resilient. These effects have been on full display over the last few years, as supply shocks stemming from the pandemic and contaminated products have led to severe shortages and steep price hikes. In light of these troubling realities, the FTC has been reassessing how we can enforce the antitrust laws to maximize our efficacy. This effort includes utilizing the full range of our competition authority, ensuring that our merger review fully captures a deal’s potential for harm, rethinking our approach to remedies, and targeting the root causes of competitive harm. Although this process is ongoing, as detailed below, we are proud of the significant accomplishments we have already made on this front.

⁷⁸ Decision and Order, *In re Dun & Bradstreet*, Docket No. C-4761, https://www.ftc.gov/system/files/ftc_gov/pdf/172%203196%20Dunn%20and%20Bradstreet%20combined%20package%20unsigned_0.pdf.

A. Using the FTC's Congressionally Provided Authorities

When Congress created the FTC, it gave the agency a wide range of authorities to combat unfair methods of competition. To ensure the Commission is faithfully discharging its statutory obligations, the FTC has renewed its commitment to use its entire suite of authorities to maximize the agency's impact and faithfully execute the agency's mission.

Notably, the Commission issued a policy statement outlining the scope of Section 5 of the FTC Act, an authority Congress provided to the FTC to combat harmful and unfair conduct that lies outside the boundaries of the Sherman Act.⁷⁹ The policy statement lays out key principles for determining whether a business practice constitutes an unfair method of competition, including conduct that “may be coercive, exploitative, collusive, abusive, deceptive, predatory, or involve the use of economic power of a similar nature.”⁸⁰ The FTC used this authority to bring cases that resulted in three companies and two individuals dropping noncompete restrictions that they imposed on thousands of workers. According to the FTC complaints, these noncompete restrictions barred workers from seeking or accepting work with another employer or operating a competing business after they left the company.⁸¹ These actions mark the first time the agency has challenged the use of noncompete restrictions for workers in positions ranging from low-wage security guards to manufacturing workers to engineers.

Reactivating the Commission's competition rulemaking authority under Section 6(g) of the FTC Act is another example of this effort. In January, the Commission proposed a rule that

⁷⁹ FTC, Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of The Federal Trade Commission Act (2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P221202Section5PolicyStatement.pdf.

⁸⁰ *Id.*

⁸¹ Press Release, Fed. Trade Comm'n, FTC Cracks Down on Companies That Impose Harmful Noncompete Restrictions on Thousands of Workers (Jan. 4, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-cracks-down-companies-impose-harmful-noncompete-restrictions-thousands-workers>; Press Release, Fed. Trade Comm'n, FTC Takes Action Against Another Company That Imposed Harmful Noncompete Restrictions on its Workers (Mar. 15, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-takes-action-against-another-company-imposed-harmful-noncompete-restrictions-its-workers>.

would ban employers from imposing noncompete restrictions on workers in all but a limited set of circumstances.⁸² Substantial evidence shows that noncompete restrictions are reducing the competitiveness of labor markets and depriving businesses of a talent pool that they need to enter, build, and/or expand. Moreover, the FTC estimates that the new proposed rule could increase wages by nearly \$300 billion per year and expand career opportunities for about 30 million Americans. The Commission is taking extensive steps to inform the public about the proposed rule to ensure that all viewpoints are heard during the public comment period and will consider the input collected on the record before determining how to proceed.⁸³

B. Prioritizing Vigorous Merger Enforcement to Combat Consolidation

Together, the FTC and the DOJ represent the American people's front-line defense against unlawful consolidation, and the work we do to prevent that consolidation is critically important. Our staff has worked tirelessly to meet the enormous demand of enforcing the laws against unlawful mergers, even as Commission resources have been strained by the unprecedented scale, volume, and complexity of mergers in recent years. Against this backdrop, the FTC remains committed to challenging unlawful deals. Consistent with that, over the past 16 months, the FTC has moved to challenge major transactions in critical sectors of the economy, including semiconductors, defense, energy, healthcare, mortgage technology, and digital

⁸² Press Release, Fed. Trade Comm'n, FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition (Jan. 5, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-proposes-ruleban-noncompete-clauses-which-hurt-workers-harm-competition>.

⁸³ On February 16, 2023, the FTC hosted a public forum to provide an opportunity for people to directly share their experiences with noncompetes. See FTC, FTC Forum Examining Proposed Rule to Ban Noncompete Clauses (Feb. 16, 2023), <https://www.ftc.gov/news-events/events/2023/02/ftc-forum-examining-proposed-rule-ban-noncompete-clauses>.

markets.⁸⁴ This includes filing suit to block eight mergers outright,⁸⁵ as well as eleven other anticompetitive mergers that parties have abandoned after the agency indicated competition concerns but before it filed a complaint.⁸⁶

The Commission is particularly concerned about mergers that may cause significant economywide harm. Just last month, the Commission challenged a \$13.1 billion merger between the two leading providers of mortgage technology, Intercontinental Exchange, Inc. (“ICE”) and Black Knight.⁸⁷ The FTC’s complaint alleges that the merger would eliminate competition between the merging parties for certain key mortgage processing platforms and tools used by

⁸⁴ Fed. Trade Comm’n & Dep’t of Justice, Hart-Scott-Rodino Annual Rep. Fiscal Year 2022 (2023), https://www.ftc.gov/system/files/ftc_gov/pdf/p110014fy2021hsannualreport.pdf.

⁸⁵ Press Release, Fed. Trade Comm’n, FTC Acts to Block Deal Combining the Two Top Mortgage Loan Technology Providers (Mar. 9, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-acts-block-deal-combining-two-top-mortgage-loan-technology-providers>; Press Release, Fed. Trade Comm’n, FTC Seeks to Block Microsoft Corp.’s Acquisition of Activision Blizzard, Inc. (Dec. 8, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/12/ftc-seeks-block-microsoft-corps-acquisition-activision-blizzard-inc>; Press Release, Fed. Trade Comm’n, FTC Seeks to Block Virtual Reality Giant Meta’s Acquisition of Popular App Creator Within (July 27, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/07/ftc-seeks-block-virtual-reality-giant-metas-acquisition-popular-app-creator-within>; Press Release, Fed. Trade Comm’n, FTC Sues to Block Merger Between Utah Healthcare Rivals HCA Healthcare and Steward Health Care System (June 2, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-sues-block-merger-between-utah-healthcare-rivals-hca-healthcare-steward-health-care-system>; Press Release, Fed. Trade Comm’n, FTC Sues to Block Merger Between New Jersey Healthcare Rivals RWJBarnabas Health and Saint Peter’s Healthcare System (June 2, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-sues-block-merger-between-new-jersey-healthcare-rivals-rwjbarnabas-health-saint-peters>; Press Release, Fed. Trade Comm’n, FTC and Rhode Island Attorney General Step in to Block Merger of Rhode Island’s Two Largest Healthcare Providers (Feb. 17, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/02/ftc-rhode-island-attorney-general-step-block-merger-rhode-islands-two-largest-healthcare-providers>; Press Release, Fed. Trade Comm’n, FTC Sues to Block Lockheed Martin Corporation’s Vertical Acquisition of Aerojet Rocketdyne Holdings Inc. (Feb. 15, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/01/ftc-sues-block-lockheed-martin-corporations-44-billion-vertical-acquisition-aerojet-rocketdyne>; Press Release, Fed. Trade Comm’n, FTC Sues to Block \$40 Billion Semiconductor Chip Merger (Dec. 2, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/12/ftc-sues-block-40-billion-semiconductor-chip-merger>.

⁸⁶ See, e.g., Press Release, Fed. Trade Comm’n, Expected Federal Trade Commission Opposition to Transaction Leads Great Outdoors Group, LLC and Rival Sportsman’s Warehouse Holdings, Inc. to Abandon Plans for Proposed Merger (Dec. 3, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/12/expected-federal-trade-commission-opposition-transaction-leads-great-outdoors-group-llc-rival>.

⁸⁷ Press Release, Fed. Trade Comm’n, FTC Acts to Block Deal Combining the Two Top Mortgage Loan Technology Providers (Mar. 9, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-acts-block-deal-combining-two-top-mortgage-loan-technology-providers>.

lenders to secure the best interest rates for customers, leading to higher prices for lenders and homebuyers.⁸⁸

The FTC is focused on fully scrutinizing all of the ways in which mergers can harm competition. Central to this effort is prioritizing consideration of both non-horizontal and forward-looking competitive harm. This approach is being incorporated into FTC merger review generally and has been reflected in several recent merger challenges, including those in the high-tech, semiconductor, and defense markets.

For example, in December 2022, the FTC sued to stop Microsoft Corp. from acquiring leading video game developer Activision Blizzard, Inc. and its blockbuster gaming franchises such as Call of Duty and World of Warcraft, alleging that the \$69 billion deal would enable Microsoft to suppress competitors to its Xbox gaming consoles and its rapidly growing subscription content and cloud-gaming business.⁸⁹ The FTC's complaint points to Microsoft's record of acquiring and using gaming content to suppress competition from rival consoles. Currently, Activision is one of only a small number of top video game developers that create video games for multiple devices, including video game consoles, and it has pursued a strategy of offering its games on many devices as well as to subscription and cloud-gaming services, according to the complaint. After the merger, the complaint alleges, Microsoft would have both the means and the motive to harm competition by manipulating Activision's pricing, degrading player experience on rival consoles or services, changing the terms of access to Activision games, or withholding content from competitors entirely, resulting in harm to consumers. The trial is scheduled to begin in August.

⁸⁸ *Id.*

⁸⁹ See FTC Seeks to Block Microsoft Corp.'s Acquisition of Activision Blizzard, Inc., *supra* note 85.

The FTC’s suit to stop U.S. chip supplier Nvidia’s proposed \$40 billion acquisition of U.K. chip design provider Arm is another example of an FTC merger challenged focus on non-horizontal harm.⁹⁰ The complaint alleged that the proposed merger would have given one of the largest chip companies control over its rivals’ designs for competing chips. By doing so, the FTC’s complaint alleged that the combined firm would have had the means and incentive to stifle next-generation technologies, including those used to run datacenters and driver-assistance systems in cars. More than two months into its litigation with the FTC, Nvidia abandoned its acquisition of Arm—representing the first abandonment of a litigated vertical merger in many years. Blocking the deal preserved competition for key technologies and safeguarded future innovation while also preventing further disruption to an already distressed semiconductor supply chain.

And the FTC’s increased focus on non-horizontal harm played a role in ensuring that our military continues to benefit from competition for crucial equipment. Last year, the FTC voted on a bipartisan basis to file a lawsuit to block Lockheed’s proposed acquisition of Aerojet, a \$4.4 billion defense merger that would have eliminated the country’s only remaining independent supplier of key missile propulsion inputs and given Lockheed the ability to cut off its competitors’ access to these critical components.⁹¹ The FTC’s investigation, conducted in close collaboration with the Department of Defense, determined that the deal would have resulted in higher prices and diminished quality and innovation for programs critical to our national security. This challenge dovetailed with a

⁹⁰ See FTC Sues to Block \$40 Billion Semiconductor Chip Merger, *supra* note 85.

⁹¹ Press Release, Fed. Trade Comm’n, Statement Regarding Termination of Lockheed Martin Corporation’s Attempted Acquisition of Aerojet Rocketdyne Holdings Inc. (Feb. 15, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/02/statement-regarding-termination-lockheed-martin-corporations-attempted-acquisition-aerojet>.

DoD report indicating that consolidation within the defense-industrial base poses a risk to national defense and identifying strong merger enforcement as a key tool to address it.⁹²

The FTC also prioritizes its Congressional mandate to arrest monopolies in their incipiency, an important effort to stop mergers before markets are dominated by only a few firms. This is demonstrated, in particular, by the FTC's July 2022 challenge to Meta's proposed acquisition of Within Unlimited.⁹³ As alleged in the complaint, social-media firm Meta has become the largest provider of virtual reality devices and a leading provider of related apps in the U.S., while Within is an independent virtual reality development studio that designed and built Supernatural, a popular app in the dedicated fitness virtual reality app market. The complaint alleged that, prior to the acquisition, Meta was a potential entrant in the virtual reality dedicated fitness app market with the required resources and a reasonable probability of building its own virtual reality app to compete in the space. While the court did not block the companies from consummating their deal, it did endorse a key theory that provides a pathway for challenging other mergers that eliminate a potential competitor.⁹⁴

The Commission also remains committed to stopping harmful mergers between direct competitors, especially in markets for healthcare services.⁹⁵ Those mergers threaten patients with

⁹² Dep't of Defense, Off. of the Under Secretary of Defense for Acquisition and Sustainment, State of Competition Within the Defense Industrial Base (Feb. 15, 2022), <https://media.defense.gov/2022/Feb/15/2002939087/-1/-1/1/state-of-competition-within-the-defense-industrial-base.pdf>.

⁹³ See FTC Seeks to Block Virtual Reality Giant Meta's Acquisition of Popular App Creator Within, *supra* note 85.

⁹⁴ See *FTC v. Meta Platforms Inc.*, No. 5:22-cv-04325 (N.D. Cal. Feb. 3, 2023).

⁹⁵ See, e.g., FTC Sues to Block Merger Between Utah Healthcare Rivals HCA Healthcare and Steward Health Care System, *supra* note 85; FTC Sues to Block Merger Between New Jersey Healthcare Rivals RWJBarnabas Health and Saint Peter's Healthcare System, *supra* note 85. Additionally, the two largest healthcare systems in Rhode Island, Lifespan Corp. and Care New England Health System, called off their merger after the FTC, in conjunction with the Rhode Island Attorney General, sought to block the merger. See Press Release, Fed. Trade Comm'n, Statement Regarding Termination of Attempted Merger of Rhode Island's Two Largest Healthcare Providers (Mar. 2, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/03/statement-regarding-termination-attempted-merger-rhode-islands-two-largest-healthcare-providers>.

higher cost and lower quality care.⁹⁶ and healthcare workers with lower wages and poorer working conditions.⁹⁷ For example, on the same day in June 2022, the Commission voted to block two proposed hospital mergers: HCA’s acquisition of Steward Health Care System⁹⁸ and RWJBarnabas’s acquisition of Saint Peter’s Healthcare System.⁹⁹ The FTC will continue to identify and challenge hospital mergers that threaten access to critical healthcare services.

The FTC also takes seriously its mandate to enforce federal premerger reporting requirements under the Hart-Scott-Rodino Act. Just last week, the Commission sued to stop Louisiana Children’s Medical Center from integrating three competing hospitals in the New Orleans area that it recently acquired from HCA Healthcare, Inc., alleging the parties defied

⁹⁶ See, e.g., Zack Cooper et al., *The Price Ain’t Right? Hospital Prices and Health Spending on the Privately Insured*, 134 Q.J. ECON. 51 (2019); Nancy Beaulieu et al., *Changes in Quality of Care After Hospital Mergers and Acquisitions*, 382 NEW ENG. J. MED. 51 (2020). For surveys of the research literature, see, e.g., Martin Gaynor & Robert Town, *The Impact of Hospital Consolidation*, THE SYNTHESIS PROJECT, ROBERT WOOD JOHNSON FOUNDATION (June 2012), http://www.rwjf.org/content/dam/farm/reports/issue_briefs/2012/rwjf73261; Martin Gaynor, Kate Ho & Robert Town, *The Industrial Organization of Health-Care Markets*, 53 J. ECON. LITERATURE 235 (2015).

⁹⁷ See, e.g., Elena Prager & Matt Schmitt, *Employer Consolidation and Wages: Evidence from Hospitals*, 111 AM. ECON. REV. 397 (2021); Daniel Arnold & Christopher Whaley, *Who Pays for Health Care Costs? The Effects of Health Care Prices on Wages* (RAND Health Care Working Paper, 2021), <https://www.ehealthecon.org/pdfs/Whaley.pdf>. The Commission laid out much of this empirical evidence in a recent policy paper highlighting the pitfalls of Certificates of Public Advantage (COPAs), which are efforts by states to replace beneficial healthcare competition with state oversight, that have proven to be detrimental for patient costs, quality, and reduced employee wages. Press Release, Fed. Trade Comm’n, *FTC Policy Paper Warns About Pitfalls of COPA Agreements for Patient Care and Healthcare Workers* (Aug. 15, 2022), <http://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-policy-paper-warns-about-pitfalls-copa-agreements-patient-care-healthcare-workers>. Recently, two hospital systems abandoned their proposed merger after the FTC raised concerns with the New York State Department of Health, voicing opposition to the granting of a COPA that would immunize the deal from antitrust scrutiny. See Press Release, Fed. Trade Comm’n, *Statement of Elizabeth Wilkins, Director of the FTC’s Office of Policy Planning, on the Decision of SUNY Upstate Medical University and Crouse Health System, Inc., to Drop Their Proposed Merger* (Feb. 16, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/02/statement-elizabeth-wilkins-director-ftcs-office-policy-planning-decision-suny-upstate-medical>.

⁹⁸ See *FTC Sues to Block Merger Between Utah Healthcare Rivals HCA Healthcare and Steward Health Care System*, *supra* note 85.

⁹⁹ See *FTC Sues to Block Merger Between New Jersey Healthcare Rivals RWJBarnabas Health and Saint Peter’s Healthcare System*, *supra* note 85.

federal law by consummating the \$150 million acquisition without reporting it to U.S. antitrust authorities and without observing the mandatory waiting period.¹⁰⁰

As a complement to this strengthened merger enforcement, the FTC is also reassessing the efficacy of its approach to merger remedies and identifying how to learn from lessons of the past. Specifically, we strongly disfavor behavioral remedies and will not hesitate to reject proposed divestitures that past experience has taught us cannot fully cure the underlying harm. For example, the FTC rejected a remedy proposal from the parties in challenging the merger between ICE and Black Knight, discussed above.¹⁰¹ The FTC's complaint alleges, among other things, that Black Knight's proposed remedy would not transfer a freestanding business, creates an ongoing risk of continuing entanglements between the divested assets and the merged entity, and fails to fully address the anticompetitive effects likely to result from the merger. American consumers should not be forced to bear the risk of remedies that fail to maintain competition.

C. Targeting Anticompetitive Conduct for Maximum Impact

Despite a heavy merger workload, the FTC continues to maintain and develop a robust program to identify and stop anticompetitive conduct outside of the merger context. Specifically, the FTC is orienting its limited enforcement resources around targeting and rectifying root causes of anticompetitive conduct to avoid a whack-a-mole approach that imposes significant enforcement burden with few long-term benefits. We are also ensuring that our work is tackling the most significant harms across markets, particularly by dominant firms whose business practices affect many Americans.

¹⁰⁰ Press Release, Fed. Trade Comm'n, FTC Sues to Stop the Potentially Illegal Integration of New Orleans Area Hospitals Over Failure to Follow Federal Reporting Law (Apr. 20, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-sues-stop-potentially-illegal-integration-new-orleans-area-hospitals-over-failure-follow-federal-reporting-law>.

¹⁰¹ Press Release, Fed. Trade Comm'n, FTC Acts to Block Deal Combining the Two Top Mortgage Loan Technology Providers (Mar. 9, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-acts-block-deal-combining-two-top-mortgage-loan-technology-providers>.

As part of this strategy, the FTC continues to scrutinize digital markets, recognizing that distinct features of digital technologies have ushered in new market dynamics and business strategies that require us to update our enforcement approach. Dominant digital platforms have captured control over key arteries of commerce and communications in ways that can undermine competition. The FTC’s investigations in digital markets recognize the critical role of data, network externalities, moat-building strategies, and other key factors to ensure that our enforcement is reflecting commercial realities.

Notably, the FTC continues to prosecute its complaint against Facebook (now Meta) in a lawsuit that, in addition to other forms of relief, seeks the divestment of Instagram and WhatsApp.¹⁰² The FTC’s amended complaint highlights the competitive importance of data and notes that privacy degradation can constitute an antitrust harm—a fact that the court also acknowledged when it denied Facebook’s motion to dismiss the FTC’s case.¹⁰³

The Commission is also committed to preventing the abuse of monopoly power that harms American farmers. In September 2022, the Commission and a bipartisan coalition of ten state attorneys general charged the two largest pesticides manufacturers, Syngenta and Corteva, with maintaining their monopoly positions by paying distributors to block competitors from selling their cheaper generic products to farmers.¹⁰⁴ The complaint alleges that Syngenta Crop Protection and Corteva, Inc. rely on pay-to-block schemes in which distributors get paid only if they limit their dealings with competing manufacturers. The primary legal issue in this case is

¹⁰² Press Release, Fed. Trade Comm’n, *FTC Alleges Facebook Resorted to Illegal Buy-or-Bury Scheme to Crush Competition After String of Failed Attempts to Innovate* (Aug. 19, 2021), <https://www.ftc.gov/newsevents/news/press-releases/2021/08/ftc-alleges-facebook-resorted-illegal-buy-or-bury-scheme-crush-competitionafter-string-failed>.

¹⁰³ *FTC v. Facebook, Inc.*, 581 F. Supp. 3d 34 (D.D.C. 2022).

¹⁰⁴ Press Release, Fed. Trade Comm’n, *FTC and State Partners Sue Pesticide Giants Syngenta and Corteva for Using Illegal Pay-to-Block Scheme to Inflate Prices for Farmers* (Sept. 29, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-state-partners-sue-pesticide-giants-syngenta-corteva-using-illegal-pay-block-scheme-inflate>.

whether the antitrust laws bar firms from extending their patent monopolies through these pay-to-block schemes that restrict distributors from buying cheaper generic products.¹⁰⁵ But for farmers the question is more practical: whether the antitrust laws protect them from abusive monopoly practices that threaten their livelihood by denying them access to cheaper versions of products they have to buy. This case is pending in federal court in North Carolina.¹⁰⁶

D. FTC Research and Policy Development

Alongside enforcement, the Commission is making long-term investments to maximize the impact of our policy and research work. To tackle the pressing issues of today and tomorrow, we are broadening our institutional skillsets to ensure we are fully grasping market realities, especially as the economy becomes increasingly digitized.

Despite a very heavy enforcement workload, we continue to prioritize making substantial investments to remain faithful to our mandate to engage in policy and research development pursuant to Section 6 of the FTC Act. Through Section 6(b) of the FTC Act, Congress gave the agency broad investigative powers to conduct market-wide inquiries that allow us to keep pace with new business practices and market trends. In seeking to examine and get diverse feedback from stakeholders about pressing or emergent issues, the Commission has also issued Requests for Information.

One focus of Commission research and policy has been healthcare markets. For example, last June, the Commission authorized a 6(b) study of the contracting practices of pharmacy benefits managers (“PBMs”).¹⁰⁷ This comprehensive study will shine a light on the opaque

¹⁰⁵ The FTC has a long history of suing pharmaceutical companies for illegal pay-for-delay agreements that extend their patent monopolies and delay generic entry. *See FTC v. Actavis, Inc.*, 570 U.S. 136 (2013).

¹⁰⁶ *See FTC v. Syngenta Crop Protection AG, et al.*, No. 1:22-cv-00828 (M.D.N.C.).

¹⁰⁷ Press Release, Fed. Trade Comm’n, FTC Launches Inquiry Into Prescription Drug Middlemen Industry (June 7, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-launches-inquiry-prescription-drug-middlemen-industry>. Consistent with the competition concerns that prompted the PBM study, the Commission

operations of these large pharmacy middlemen who can dictate the pricing and access to life-saving drugs for so many Americans. The Commission also issued an RFI last year relating to the infant formula crisis,¹⁰⁸ and we hope to report soon on what we learned.

The Commission is also working to complete a report from its 6(b) study of ongoing supply chain disruptions.¹⁰⁹ As the recent shortage of baby formula illustrates, in industries dominated by a few large suppliers, a single plant closure can have ripple effects throughout the supply chain, leaving some Americans struggling to find essential products. In response, the Commission used its 6(b) authority to order nine large retailers, wholesalers, and consumer goods suppliers to provide detailed information needed to better understand both the factors that have contributed to supply chain disruptions and how they may have contributed to bottlenecks, shortages, anticompetitive practices, or rising consumer prices. We are endeavoring to complete this timely study as quickly as possible.

Just last month, the Commission announced a new RFI on cloud computing.¹¹⁰ The Commission is gathering information to inform our understanding of key features of cloud computing; the potential for outages from large cloud providers to have widespread impact on large parts of the economy that rely on them; security risks; and issues related to market power and business practices affecting competition.

issued a “Policy Statement on Rebates and Fees in Exchange for Excluding Lower Cost Products,” putting the drug industry on notice that paying rebates and fees to exclude competition from formularies violates the antitrust laws. Press Release, Fed. Trade Comm’n, FTC to Ramp Up Enforcement Against Any Illegal Rebate Schemes, Bribes to Prescription Drug Middlemen that Block Cheaper Drugs (June 16, 2022), <http://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-ramp-up-enforcement-against-illegal-rebate-schemes>.

¹⁰⁸ Press Release, Fed. Trade Comm’n, Federal Trade Commission Launches Inquiry Into Infant Formula Crisis (May 24, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/05/federal-trade-commission-launches-inquiry-infant-formula-crisis>.

¹⁰⁹ Press Release, Fed. Trade Comm’n, FTC Launches Inquiry Into Supply Chain Disruptions (Nov. 29, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/11/ftc-launches-inquiry-supply-chain-disruptions>.

¹¹⁰ Press Release, Fed. Trade Comm’n, An Inquiry into Cloud Computing Business Practices: The Federal Trade Commission is seeking public comments (Mar. 22, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-seeks-comment-business-practices-cloud-computing-providers-could-impact-competition-data>.

E. Collaboration Across Government to Promote Competition

The FTC recognizes the value and importance of deepening our collaboration and partnerships with other government entities. These relationships act as force multipliers to promote fair competition throughout our economy.

Collaborating with other federal agencies ensures we are benefiting from expertise across government, drawing on industry-specific knowledge, and in turn helping equip other agencies to diagnose and address competition problems more directly. Consistent with this “whole-of-government” approach to competition, the Commission provided input to several key reports, adding our perspective on issues affecting competition in a wide range of markets.¹¹¹ In July 2022, the FTC entered into an agreement with the National Labor Relations Board that lays out how the two agencies will work together on key issues such as labor market concentration, one-sided contract terms, and labor developments in the “gig economy.”¹¹² Overall, these collaborations have deepened our relationships with sector regulators, providing a basis for future coordination and cooperation.

Other opportunities for deepening our partnerships lie with both the state attorneys general and in the international arena. We regularly engage with our state and international enforcement partners on both policy initiatives as well as enforcement matters. This includes filing cases jointly with state attorneys general¹¹³ as well as cooperation on many matters with

¹¹¹ See, e.g., Dep’t of Treasury, Competition in the Markets for Beer, Wine, and Spirits (Feb. 2022), <https://home.treasury.gov/system/files/136/Competition-Report.pdf>.

¹¹² Press Release, Fed. Trade Comm’n, Federal Trade Commission, National Labor Relations Board Forge New Partnership to Protect Workers from Anticompetitive, Unfair, and Deceptive Practices (July 19, 2022), <http://www.ftc.gov/news-events/news/press-releases/2022/07/federal-trade-commission-national-labor-relations-board-forge-new-partnership-protect-workers>.

¹¹³ See, e.g., FTC and Rhode Island Attorney General Step in to Block Merger of Rhode Island’s Two Largest Healthcare Providers, *supra* note 85; Press Release, Fed. Trade Comm’n, FTC and NY Attorney General Charge Vyera Pharmaceuticals, Martin Shkreli, and Other Defendants with Anticompetitive Scheme to Protect a List-Price Increase of More than 4,000 Percent for Life-Saving Drug Daraprim (Jan. 27, 2020), <https://www.ftc.gov/news-events/news/press-releases/2020/01/ftc-ny-attorney-general-charge-vyerapharmaceuticals-martin-shkreli-other-defendants-anticompetitive>.

foreign antitrust agencies..¹¹⁴ Given the reality of limited resources, these partnerships are even more critical as we learn and benefit from the experience of our domestic and overseas counterpart agencies.

V. ENHANCING THE COMMISSION'S TECHNICAL EXPERTISE

In February, the FTC announced the launch of a new Office of Technology (OT) to support the agency's law enforcement and policy work. Led by our Chief Technology Officer, this office offers critical in-house technical expertise, enabling the Commission to keep pace with technological challenges in the digital marketplace. This office houses staff with skills and expertise across software engineering, human-computer interaction design, data science, and product management. Subject matter expertise will range across topics such as security and privacy, digital markets, augmented and virtual reality, automated decision making, the gig work economy, and ad-tracking technologies.

OT will work across the FTC to ensure that the agency can move swiftly and with sophistication on a wide range of issues implicating technology across the agency, with the following three mandates: First, to strengthen and support law enforcement investigations and actions. OT supports investigations into business practices and the technologies underlying them; develops investigative techniques; aids in the crafting of effective Civil Investigative Demands; aids in the review and analysis of data and documents received in investigations; supports the development of case theories and analysis; and advises on the creation of effective remedies. Where appropriate, OT will support litigation teams by serving as, or by helping to identify,

¹¹⁴ This includes our review of the now-abandoned merger between Nvidia and Arm, where we cooperated closely with agencies in many jurisdictions, including the European Union, Japan, South Korea, and the United Kingdom. *FTC Sues to Block \$40 Billion Semiconductor Chip Merger*, *supra* note 85.

expert witnesses. This behind-the-scenes work is OT's principal mission and is critical to the Commission's ability to address the rapidly changing digital marketplace.

Second, OT advises and engages with FTC staff and the Commission on policy and research initiatives. OT's technological expertise is routinely integrated into non-enforcement agency actions, including 6(b) studies, reports, requests for information, research, policy statements, and policy deliverables. OT offers a unique cross-bureau perspective on emerging technologies and industries, exemplified by its involvement with the Cloud Computing RFI, which identified significant competition and consumer protection issues for further study.¹¹⁵ Technologists provide strategic guidance on technology matters through report recommendations and participate in engagement with regulatory counterparts in partnership with the Office of International Affairs.

Third, OT engages the public and relevant experts to understand trends and to advance the Commission's work. OT will be uniquely suited to proactively engage with external stakeholders to identify emerging technologies that implicate the Commission's consumer protection and competition mandates and to use these findings to advance the Commission's work. This can be done through mechanisms such as formal workshops, research conferences, and briefings or consultations.¹¹⁶ OT can also draw on the combined authority of its expertise

¹¹⁵ See FTC Office of Technology, *An Inquiry into Cloud Computing Business Practices: The Federal Trade Commission is Seeking Public Comments* (Mar. 22, 2023) (seeking information about competition and data security, among other things), <https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2023/03/inquiry-cloud-computing-business-practices-federal-trade-commission-seeking-public-comments>. See also FTC Docket ID FTC-2023-0028, Solicitation for Public Comments on the Business Practices of Cloud Computing Providers (Mar. 22, 2023), <https://www.regulations.gov/docket/FTC-2023-0028>.

¹¹⁶ See, e.g., FTC Office of Technology, *Lurking Beneath the Surface: Hidden Impacts of Pixel Tracking* (Mar. 16, 2023) (identifying research questions arising out of the technology at issue in recent privacy settlements), <https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2023/03/lurking-beneath-surface-hidden-impacts-pixel-tracking>.

and the stature of the Commission to engage the public and relevant experts to highlight key trends and encourage best practices.

VI. CONCLUSION

The FTC continues to seek to fulfill its broad mission using the range of tools Congress afforded us. The agency will continue to anticipate and respond to changes in the marketplace and adapt as needed.

Additional resources from Congress would allow us to better ensure open, competitive, and fair markets on behalf of consumers, workers, and honest businesses. We look forward to continuing to work with the Subcommittee and Congress, and I am happy to answer your questions.