PREPARED STATEMENT OF

THE FEDERAL TRADE COMMISSION

on

HOME MORTGAGE DISCLOSURE ACT DATA AND
FTC LENDING ENFORCEMENT

Before the

HOUSE COMMITTEE ON FINANCIAL SERVICES

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

Washington, D.C.

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I. INTRODUCTION

Chairman Watt, Ranking Member Miller, and Members of the Subcommittee, I am Lydia B. Parnes, Director of the Bureau of Consumer Protection of the Federal Trade Commission ("FTC" or "Commission").[1] I appreciate the opportunity to appear before you today to discuss the Commission's efforts to combat unfair, deceptive, and other illegal practices in the mortgage lending industry, including its fair lending enforcement program.

This testimony will discuss (1) the Commission's legal authority to address illegal mortgage lending practices, including violations of the fair lending laws it enforces, and its coordination with the federal banking agencies and other law enforcers; (2) the Commission's use of the Home Mortgage Disclosure Act ("HMDA") data; and (3) the Commission's lending enforcement program and consumer education initiatives. As detailed below, the Commission has brought over two dozen fair lending cases, has several ongoing, nonpublic fair lending investigations, and has brought 21 cases to combat deceptive and unfair lending practices, focusing in particular on the subprime market and returning $320 million to consumers.

II. THE COMMISSION'S LEGAL AUTHORITY AND INTERAGENCY COORDINATION

A. The Commission's Legal Authority

The Commission has wide-ranging responsibilities regarding consumer financial issues.[2] As part of its mandate to protect consumers, the Commission enforces Section 5 of the FTC Act,

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

[2] The Commission's June 13, 2007 testimony before the House Committee on Financial Services enumerated in detail the agency's activities in the financial services sector. The Commission's statement is available at www.ftc.gov/os/2007/06/070613statement.pdf.

which broadly prohibits unfair or deceptive acts or practices in or affecting commerce.[3] This section has provided the principal basis for much of the Commission's mortgage lending enforcement. The Commission also enforces a number of laws specifically governing lending practices, including the Equal Credit Opportunity Act ("ECOA"),[4] which prohibits discrimination against applicants for credit on the basis of race, national origin, sex, marital status, age, or other prohibited factors; the Truth in Lending Act ("TILA"),[5] which requires disclosures and establishes certain substantive requirements in connection with consumer credit transactions; and the Home Ownership and Equity Protection Act ("HOEPA"),[6] which, as part of the TILA, provides special protections for consumers in certain high-cost refinance loans secured by their homes.

The FTC Act and the other statutes that the FTC enforces specifically exempt banks, savings and loan institutions, and federal credit unions from the agency's jurisdiction.[7] The Commission, however, does have jurisdiction over nonbank financial companies, including nonbank mortgage companies, mortgage brokers, finance companies, and units of bank holding companies. As a general matter, the Commission engages in law enforcement investigations and, unlike other financial regulatory agencies, does not conduct regular examinations of the entities under its jurisdiction.

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[3] 15 U.S.C. § 5(a).

[4] 15 U.S.C. § 1691. Congress directed the Federal Reserve Board to implement the ECOA through Regulation B, 12 C.F.R. § 202.

[5] 15 U.S.C. §§ 1601-1666j.

[6] 15 U.S.C. § 1639.

[7] *E.g.,* 15 U.S.C. § 45(a)(2).

B. Interagency Coordination

In the fair lending area, the Commission coordinates closely with federal and state regulators and enforcers on enforcement, education, and policy. Last week, the FTC, along with the Federal Reserve Board ("Board"), the Office of Thrift Supervision ("OTS"), and state regulators, announced a pilot project to conduct targeted consumer protection compliance reviews and investigations of certain nonbank subsidiaries of bank holding companies with significant subprime mortgage operations.[8] The agencies will select a sample of entities under their respective authority and will assess compliance with key consumer protection laws, including Section 5 of the FTC Act, the TILA, and the ECOA.[9] The Commission will take aggressive enforcement action if warranted based on its findings.

For more than a decade, the FTC has been a member of the Interagency Task Force on Fair Lending, a joint undertaking with the Department of Justice ("DOJ"), the Department of Housing and Urban Development ("HUD"), and the federal banking regulatory agencies. The purpose of the task force is to work together to share information on lending discrimination and predatory lending enforcement and policy issues. The Task Force has published a Policy Statement on Lending Discrimination[10] and meets frequently to discuss fair lending issues. Task Force members also share information about developments in the law and marketplace and trends

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8 *See* Joint Agency Press Release, *available at* www.ftc.gov/opa/2007/07/subprime.shtm.

9 The agencies will also review compliance with the HMDA, HOEPA, and the Real Estate Settlement Procedures Act.

10 *See* Notice of Approval and Adoption of "Policy Statement on Discrimination in Lending" and Solicitation of Comments Regarding its Application, 59 Fed. Reg. 18,266 (Apr. 15, 1994).

in consumer complaints. To assist coordination among federal and state enforcers, the federal banking regulators also publish model fair lending examination procedures.[11]

The FTC routinely coordinates its enforcement activities with DOJ and HUD because the FTC's fair lending jurisdiction overlaps with the jurisdiction of those agencies with respect to nonbank independent mortgage companies. HUD has authority to enforce the Fair Housing Act[12] with respect to nonbank mortgage lenders. DOJ has authority to enforce both the ECOA and the Fair Housing Act with respect to nonbank and bank mortgage lenders if there is a pattern or practice of violations. The three agencies regularly share information about targets and collaborate on strategies for examining lender compliance to ensure that our actions do not conflict or overlap.[13]

Moreover, the Commission has provided comments and testimony to the Board regarding various issues relating to fair lending and HMDA,[14] as well as mortgage lending generally.[15]

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[11] "Interagency Fair Lending Examination Procedures," available at www.ffiec.gov/PDF/fairlend.pdf

[12] 42 U.S.C. § 3601. The Fair Housing Act also prohibits discrimination on the basis of race, national origin, religion, and sex in any housing-related transaction, including making home loans.

[13] In addition, the ECOA requires the federal banking agencies and HUD to make referrals to DOJ when the agency determines an entity has engaged in a pattern or practice of discrimination. Notice of Approval and Adoption of "Policy Statement on Discrimination in Lending" and Solicitation of Comments Regarding its Application, 59 Fed. Reg. 18,266 (Apr. 15, 1994); "The Attorney General's 2006 Annual Report to Congress Pursuant to the Equal Credit Opportunity Act Amendments of 1976," www.usdoj.gov/crt/housing/documents/ecoa2006.pdf.

[14] *See* FTC Comment on Federal Reserve Board Proposed Amendments to Provisions of Regulation C of the Home Mortgage Disclosure Act (March 9, 2001), www.ftc.gov/be/v010005.shtm.

[15] *See, e.g.,* FTC Comment on Federal Reserve Board Notice Regarding the Home Equity Lending Market (Sept. 14, 2006), www.ftc.gov/os/2006/09/docketop-1253commentfedreserve homeeqlenditextv.pdf; FTC Comments on Proposed Amendments to Regulation Z, Implementing the Home Ownership and Equity Protection Act (Mar. 9, 2001), www.ftc.gov/be/v010004.shtm; Prepared Statement of the Federal Trade Commission before the Board of Governors of the Federal Reserve System on Predatory Lending Practices in the Home-Equity Lending Market (Sept. 7, 2000), www.ftc.gov/os/2000/09/predatorylending.htm.

Indeed, the FTC and other federal agencies have collaborated several times to submit joint comments on fair lending issues.[16]

III. The Home Mortgage Disclosure Act and Use in FTC Enforcement

Since 1975, certain mortgage lenders located in metropolitan areas have collected and reported to the government data regarding their housing-related loans and applications for such loans as mandated by the HMDA.[17] The HMDA reporting requirements do not impose substantive lending standards; rather, to enhance law enforcement and public understanding of national trends in mortgage lending, the statute requires the reporting of data to be made available to the public.[18]

A. HMDA's Requirements

Since its enactment, HMDA has undergone significant changes that reflect the dynamic and dramatic changes in mortgage lending, particularly in the subprime lending market.[19]

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16 *See* Joint Comment of FTC, Dep't of the Treasury ("Treasury"), DOJ, HUD, OTS, OCC, the Small Business Administration ("SBA"), and the Office of Federal Housing Enterprise Oversight Regarding Regulation B (Nov. 29, 1999); Joint Comment of FTC, Treasury, DOJ, HUD, OCC, OTS, and SBA on Regulation B (May 29, 1998); Joint Comment of FTC, Treasury, DOJ, HUD, OCC, and OTS on Regulation C (May 29, 1998).

17 12 U.S.C. § 2801. HMDA is implemented by the Board's Regulation C, 12 C.F.R. § 203, and a Staff Commentary. Under current regulations, non-depository institutions need only report data under HMDA if they (1) originated mortgage loans equaling at least 10 percent of their loan-origination volume, or (2) originated mortgage loans whose total dollar volume amount equals at least $25 million in the preceding calendar year. 12 C.F.R. § 203.2(e)(2). The Board staff estimates that 80 percent of home lending nationwide is covered by the law. Robert B. Avery, Kenneth P. Bevoort, and Glenn B. Canner, *Higher-Priced Home Lending and the 2005 HMDA Data*, FEDERAL RESERVE BULLETIN, 2006, at A123, A123.

18 HMDA's specific goals are three-fold: (1) to provide the public information to judge whether lenders are providing services in their communities; (2) to promote enforcement of fair lending laws; and (3) to provide information to public and private entities seeking to invest in the housing market. Avery, *supra* n.17. To safeguard the privacy of the consumers whose loan data are reported, HMDA requires lenders to remove from their public HMDA submission the loan or application number and the application and action-taken dates.

19 Testimony of Governor Mark W. Olson of the Federal Reserve Board, "Home Mortgage Disclosure Act" before the Subcommittee on Financial Institutions and Consumer Credit, Committee on

Initially, HMDA required bank lenders to report mortgage loan information only by census tract. Lenders subject to the Commission's jurisdiction began reporting data in 1989, when the statute's requirements were expanded to cover nonbank lenders and to include information on the race, national origin, sex, and income level of loan applicants. In the early to mid-1990s, the focus of fair lending enforcement was whether illegal discrimination caused the higher denial rates for minority applicants reported by many mortgage lenders in the HMDA data or whether the disparities in denials could be explained by the legitimate criteria used by lenders to make decisions on whether to approve or deny a mortgage loan.

In the late 1990s, subprime mortgage lending began to grow dramatically.[20] The enormous growth in the subprime mortgage industry is part of a broader trend of the increasing availability of credit to populations that in the past could not qualify for it.[21] Creditors increasingly used credit data to undertake risk-based pricing. This allowed them to move away from simple approval or denial of all loans towards using credit data to more finely calibrate the price of the loan and loan terms to the risk. With this growth of higher-priced loans to consumers who previously could not obtain a mortgage, fair lending concerns became more focused on whether lenders were engaged in illegal pricing discrimination on the basis of race or national origin. At the same time, the Commission increased its scrutiny of deceptive representations by subprime lenders regarding the cost and other key terms of a mortgage loan.

Financial Services, U.S. House of Representatives, June 13, 2006, www.zentralbank.us./boarddocs/ testimony/2006/20060613/default.htm.

20 In 1999, subprime lenders originated $160 billion in mortgage loans, while in 2006 subprime lenders originated $640 billion in mortgage loans. *Top 25 B & C Lenders in 1999*, INSIDE B & C LENDING, Feb. 14, 2000, at 2; *Top 25 B & C Lenders in 2006*, INSIDE B & C LENDING, Feb. 23, 2007, at 12.

21 *See, e.g.,* Avery, *supra* n.17, at A125.

In response to these concerns related to mortgage loan pricing, the Board amended HMDA's implementing Regulation C to require the reporting of additional information for home loans.[22] In 2005, for the first time, lenders were required to report specific pricing information for each higher-priced loan made in 2004 based on pricing thresholds set by Regulation C. Specifically, lenders must report the difference (or rate spread) between the annual percentage rate ("APR") and the applicable Treasury rate on certain loans. Lenders must report first-lien loans with an APR at least 3 points above the applicable rate and must report second-lien loans with an APR at least 5 points above the applicable rate.[23] This new information allows for improved monitoring and understanding of lending activity in the higher-priced segment of the home loan market, which has been particularly susceptible to illegal lending practices.

B. Use of HMDA Data in FTC's Fair Lending Enforcement

Currently, the Commission is engaged in several ongoing, non-public fair lending investigations of mortgage lending companies. The Commission uses the HMDA data as a screening or targeting tool for fair lending compliance investigations.[24] Although some pricing data and loan applicant information are available in HMDA, the data overall are limited. For example, the data do not include the many other criteria lenders typically use to evaluate the risk

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[22] The amendments to Regulation C setting forth the new pricing reporting thresholds took effect on December 1, 2004. *See* 12 C.F.R. 203, *et seq.* The Federal Financial Institutions Examination Council ("FFIEC") publishes and updates extended business guidance for HMDA reporters and maintains a web site (www.ffiec.gov) where all of those materials are available. *See, e.g.,* "A Guide to HMDA Reporting; Getting it Right!" available at www.ffiec.gov/hmda/guide.htm. The FFIEC is a formal interagency body empowered to prescribe uniform principles and standards for examinations by the federal banking agencies.

[23] In calculating and setting these thresholds, the Federal Reserve Board seeks to exclude the vast majority of prime-rate loans and include the vast majority of subprime-rate loans. *See* "Frequently Asked Questions about the New HMDA Data," published by the FFIEC and available at www.federalreserve.gov/boarddocs/press/bcreg/2006/20060403/attachment.pdf.

[24] Of the 8,848 institutions that reported HMDA data in 2005, 1,923 institutions are non-depository institutions. Avery, *supra* n. 17, at A129.

of a loan, such as borrower credit scores, loan-to-value ratios, debt-to-income ratios, loan type, or the length of the loan. Thus, the HMDA data alone are insufficient to establish a law violation. Rather, the Commission uses the reported data to identify lenders with differences in outcomes for protected classes, and in particular for minorities compared to non-minorities.[25] The disparities in denial rates or pricing, however, may be explained by information on the many credit characteristics and loan terms that are not contained in the HMDA data. Consequently, the principal goal of a fair lending investigation is to determine whether or not the differences in outcomes persist after legitimate underwriting criteria are taken into account.

Typically, an investigation begins with substantial requests for information directed to the target lender, such as requests for documents fully reflective of the target's lending operations, including its underwriting policies and procedures, the extent and nature of the loan products offered, and the role of discretion in any underwriting and pricing decisions. As part of the initial inquiry, the Commission staff also obtains the documents and data necessary to test the accuracy and integrity of the HMDA data filed by the target lender. If that data set is not accurate, the FTC staff takes steps to obtain accurate data.

After ensuring the accuracy of the data, the Commission staff then obtains from the target all of the criteria and data used by the lender to underwrite the mortgage loans. The staff investigates the underwriting model, as well as any pricing discretion the lender allows. The FTC staff economists then carefully analyze the underwriting data, employing rigorous statistical protocols, to determine whether the disparities persist after credit risk and other legitimate factors used to price the loan are taken into account. The staff also investigates whether the lender

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25 The Federal Reserve Board provides to the Commission information and analysis regarding HMDA data reported by the lenders within the FTC's jurisdiction. The Commission staff reviews this analysis and also performs its own, independent analysis of the data.

engages in fair lending compliance monitoring and may conduct interviews of current and former employees or officers of the target and other related entities possessing relevant information.

The determination of whether a law violation occurred requires the resource-intensive and careful review of all of the statistical analyses and the additional facts obtained through extensive document review and other evidentiary sources. The Commission has a strong commitment to enforcing the fair lending laws and will pursue vigorously any violations revealed by its investigations.

IV. THE COMMISSION'S LENDING ENFORCEMENT AND EDUCATION PROGRAM

The current fair lending investigations are part of a broad and aggressive law enforcement and consumer education program to protect consumers from deceptive, unfair, and otherwise illegal credit practices, particularly in the subprime mortgage market.

A. Law Enforcement

The Commission has brought over two dozen cases enforcing the ECOA's fair lending mandates against large subprime lenders, major non-mortgage creditors, as well as smaller finance companies.[26] The agency's enforcement has addressed both substantive and procedural protections afforded by the statute, from failures to comply with the adverse action notice requirement[27] and the record-keeping requirements necessary for determining fair lending

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[26] Pursuant to ECOA, a violation of ECOA is deemed to be a violation of the FTC Act, and the FTC is authorized to enforce compliance with ECOA as if it were a violation of an FTC Trade Regulation Rule. 15 U.S.C. § 1691c(c) (violations of a trade regulation rule are subject to civil penalties of up to $11,000 per violation). The FTC Act does not authorize the FTC to collect civil penalties in its own right. Thus, where the Commission seeks civil penalties for alleged ECOA violations, it refers the case to the DOJ, and if DOJ declines to litigate the matter, the FTC may prosecute the matter, including the request for civil penalties. In cases where the Commission seeks equitable relief and does not seek civil penalties, it files the case by its own attorneys in federal district court. *See generally*, 15 U.S.C. § 56(a).

[27] *United States v. Sprint Corp.*, No. 04-00361 (N.D. Fla. 2004); *United States v. Action Loan, Inc.*, No. 3:00CV-511-H (W.D. Ky. 2000); *United States v. Franklin Acceptance Corp.*, No. 99-

compliance in the first instance[28] to discrimination on the basis of race,[29] marital status,[30] sex,[31] age,[32] and receipt of public assistance.[33] The Commission obtained a $1.125 million civil penalty from Sprint to settle charges that it failed to notify certain applicants for telephone service – which qualifies as credit under the ECOA – that it took adverse actions based on the consumers' credit reports in violation of ECOA and the Fair Credit Reporting Act.[34] Moreover, in a coordinated effort in 2000, the Commission, DOJ, and HUD obtained a joint settlement with

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CV-2435 (E.D. Penn. 1999); *FTC v. Capital City Mortgage Corp.*, No. 98-00237 (D.D.C. 1998); *United States v. Bonlar Loan Co., Inc.*, No. 97C-7274 (N.D. Ill. 1997); *United States v. J.C. Penney Company*, No. CV-96-4696 (E.D.N.Y. 1996).

[28] *FTC v. Associates First Capital Corp.,* No. 01-00606 (N.D. Ga. 2001); *United States v. Action Loan, Inc.*, No. 03-511 (W.D. Ky. 2000); *United States v. Franklin Acceptance Corp.*, No. 99-2435 (E.D. Penn. 1999); *FTC v. Capital City Mortgage Corp.*, No. 98-00237 (D.D.C. 1998) (2005 settlement resolving alleged violations of ECOA, TILA, FDCPA, and Section 5 of the FTC Act and imposing $750,000 judgment for consumer redress); *United States v. Paine Webber*, No. 92-2921 (D. Md. 1992); *United States v. Academic Int'l*, No. 91-2738 (N.D. Ga. 1991); *United States v. Barclays American*, No. 91-14 (W.D.N.C. 1991); *United States v. Tower Loan of Mississippi*, No. 90-0447 (S.D. Miss. 1990); *United States v. Blake*, No. 90-1064 (W.D. Okl. 1990); *United States v. Chesterfield*, No. 90-0347 (N.D. Al. 1990); *United States v. City Finance*, No. 90-246 (N.D. Ga. 1990).

[29] *United States v. Delta Funding Corp.*, No. 00-1872 (E.D.N.Y. 2000); *United States v. Shawmut Mortgage Co.*, No. 93-2453 (D. Conn. 1993); *United States v. Academic Int'l*, No. 91-2738 (N.D. Ga. 1991).

[30] *United States v. Ford Motor Credit Co.*, No. 99-75887 (E.D. Mich. 1999); *United States v. Franklin Acceptance Corp.*, No. 99-2435 (E.D. Penn. 1999); *Federal Trade Commission v. CIT*, No. 94-4092 (D.N.J. 1994); *United States v. Barclays American*, No. 91-14 (W.D.N.C. 1991); *United States v. Blake*, No. 90-1064 (W.D. Okl. 1990); *United States v. Chesterfield*, No. 90-0347; *United States v. City Finance*, No. 90-246 (N.D. Ga. 1990).

[31] *United States v. Delta Funding Corp.*, No. 00-1872 (E.D.N.Y. 2000); *United States v. Franklin Acceptance Corp.*, No. 99-2435 (E.D. Penn. 1999); *United States v. Barclays American*, No. 91-14 (W.D.N.C. 1991); *United States v. Blake*, Nos. 90-1064 (W.D. Okl. 1990) and 90-2470 (W.D. Tenn. 1990); *United States v. Chesterfield*, No. 90-0347 (N.D. Al. 1990); *United States v. City Finance*, No. 90-246 (N.D. Ga. 1990).

[32] *United States v. The Money Tree, Inc.*, No. 97-007 (M.D. Ga. 1997); *United States v. Tower Loan of Mississippi*, No. 90-0447 (S.D. Miss. 1990); *United States v. Chesterfield*, No. 90-0347 (N.D. Al. 1990); *United States v. City Finance*, No. 90-246 (N.D. Ga. 1990).

[33] *United States v. Franklin Acceptance Corp.*, No. 99-2435 (E.D. Penn. 1999); *United States v. The Money Tree, Inc.*, No. 97-007 (M.D. Ga. 1997).

[34] *United States v. Sprint Corp.*, No. 04-00361 (N.D. Fla. 2004).

Delta Funding Corporation, a national subprime mortgage lender, resolving alleged violations of ECOA, HOEPA, and the Real Estate Settlement Procedures Act.[35]

Since the late 1990s, with the dramatic growth of subprime lending, the Commission has focused on the most egregious lending practices of the nonbank lenders subject to its jurisdiction. Illegal practices in the subprime mortgage market particularly affect consumers living in lower-income and minority neighborhoods where traditional banking services are often unavailable.[36] To that end, in the last decade, the agency has brought 21 actions alleging deceptive or unfair practices against companies in the mortgage lending industry, focusing in particular on the subprime market.[37] Several of these landmark cases have resulted in large monetary judgments, collectively returning more than $320 million to consumers. The Commission actions focus on all stages of mortgage lending – from advertising and marketing through loan servicing – by mortgage lenders, brokers, and loan servicers.

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35 *United States v. Delta Funding Corp.*, No. 00-1871 (E.D.N.Y. 2000). The complaint alleged that Delta had engaged in a pattern or practice of asset-based lending and other practices in violation of HOEPA; that higher broker fees were charged to African American females than to white males in violation of the ECOA and the Fair Housing Act, 42 U.S.C. §§ 3601-3619, and that few or no services were performed in exchange for certain broker charges in violation of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2607.

36 *See* Comptroller of the Currency, *Economic Issues in Predatory Lending,* OCC WORKING PAPER, July 30, 2003, at 2.

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

In several of its major cases, the Commission alleged violations of ECOA, TILA, and other credit statutes. For example, the FTC's complaint against Associates First Capital Corporation and Associates Corporation of North America ("the Associates") alleged that the defendants marketed subprime mortgage loans through false and misleading statements about loan costs and failed to maintain loan applicant records as required by the ECOA.[38] The Associates represented that consumers would save money when consolidating their existing debts, but these "savings claims" did not take into account the typical loan fees and closing costs or certain "balloon" payments. The complaint also challenged as deceptive the Associates' practice of including single-premium credit insurance in loans. The defendants paid a record-setting $215 million in consumer redress to settle the FTC complaint.[39]

The Commission also alleged unfair and deceptive loan servicing practices in its lengthy litigation against Capital City Mortgage Corp. ("Capital City"), which both originated and serviced subprime mortgage loans.[40] The Commission alleged that Capital City targeted minority borrowers with fixed or low incomes with offers for loans based on the equity in their homes, rather than on the borrowers' ability to repay the loan, putting them at high risk of foreclosure. The complaint also alleged that Capital City violated ECOA by failing (1) to take written applications, (2) to collect information about the race/national origin, sex, marital status, and age of applicants for mortgage credit, and (3) to provide notice of adverse action. According to the Commission's complaint, Capital City included phony charges in monthly statements, added

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

[39] *FTC v. Associates First Capital Corp.,* No. 01-00606 (N.D. Ga. Jan. 26, 2002) (Order Preliminarily Approving Stipulated Final Judgment and Order). Defendants paid an additional $25 million to settle a concurrent class action. The Commission sought and obtained equitable monetary relief in this case so that the $215 million paid by the defendants was returned directly to consumers. As a result, the Commission did not seek civil penalties for the alleged violations of ECOA.

[40] *FTC v. Capital City Mortgage Corp.*, No. 98-00237 (D.D.C. 1998).

phony charges to loan balances, foreclosed on borrowers who were in compliance with the terms of their loans, and failed to release liens on borrowers' homes after the loans were paid off. A settlement, reached in February 2005, permanently enjoined the defendants from future deception, required them to pay $750,000 in consumer redress, and required them to post a $350,000 performance bond to remain in the lending business.[41]

In another case against a subprime mortgage lender that alleged deceptive marketing, the Commission reached a settlement in March 2002 with First Alliance Mortgage Co. ("FAMCO"). The Commission's complaint charged that FAMCO's loan officers made deceptive claims in their sales presentations about fees and other loan terms.[42] For example, FAMCO representatives allegedly promised consumers that the loans contained no upfront fees, when in fact they imposed origination fees that were typically 10 percent of the loan amount and sometimes as high as 20 percent. The Commission ultimately obtained redress totaling over $69 million for nearly 20,000 consumers.

With mortgage brokers now originating between 65-70% of all mortgage loans,[43] the Commission has brought several enforcement actions against these entities for allegedly deceiving consumers about key loan terms, such as the existence of a prepayment penalty,[44] a large balloon payment due at the end of the loan,[45] or low "fixed" payments that were not actually

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[41] *Id.*

[42] *FTC v. First Alliance Mortgage Co.*, No. 00-964 (C.D. Cal. 2000). The court consolidated our complaint with cases brought by six states, AARP, and private plaintiffs.

[43] *See* NEW RESEARCH ABOUT MORTGAGE BROKERS PUBLISHED (July 28, 2005), and other data, available at www.wholesaleaccess.com.

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

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

fixed.[46] Most recently, in 2006, the Commission filed suit against a mortgage broker for allegedly deceiving Hispanic consumers who sought to refinance their homes by misrepresenting numerous key loan terms.[47] The alleged conduct was egregious – a lender conducting business with his clients almost entirely in Spanish, and then providing at closing loan documents in English containing the less favorable terms.[48]

The Commission also has challenged allegedly deceptive and unfair practices in the servicing of subprime mortgage loans.[49] For example, in November 2003, the Commission, along with HUD, announced a settlement with Fairbanks Capital Corp. and its parent company. Fairbanks (now called Select Portfolio Servicing, Inc.) had been one of the country's largest third-party subprime loan servicers – it did not originate any loans, but collected and processed payments on behalf of the holders of the mortgage notes. The Commission alleged that Fairbanks failed to post consumers' payments upon receipt, charged unauthorized fees, used dishonest or abusive tactics to collect debts, and reported consumer payment information that it knew to be inaccurate to credit bureaus. To resolve these charges, Fairbanks and its former chief executive officer paid over $40 million in consumer redress, agreed to halt the alleged illegal practices, and implemented significant changes to company business practices to prevent future violations.[50]

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

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

[48] *FTC v. Mortgages Para Hispanos.Com Corp.*, No. 06-00019 (E.D. Tex. Sept. 25, 2006) (Stipulated Final Judgment and Order of Permanent Injunction) (entering suspended judgment of $240,000 and ordering payment of $10,000 based on documented inability to pay full judgment amount).

[49] *United States v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. 2003); *FTC v. Capital City Mortgage Corp.*, No. 98-00237 (D.D.C. 1998).

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

The Commission is continuing to investigate companies in the mortgage lending industry, focusing in particular on the subprime market.

B. Consumer Education

Of course, educated consumers are the first line of defense against fraud and deception. This is especially true for subprime borrowers, given the complexity of the loan transaction and many borrowers' limited experience in obtaining mortgages.

The Commission has implemented extensive programs to educate consumers about financial literacy generally, and subprime borrowing specifically, including a plain English brochure setting forth consumer rights under the fair lending laws, called "Mortgage Discrimination."[51] The Commission also has included educational materials on mortgage loans in numerous redress distributions. For example, when the Commission mailed over 800,000 redress checks to claimants in our case against The Associates, it included a bookmark containing tips for shopping for a home equity loan. Most recently, in the wake of reports of rising mortgage delinquencies, the Commission published an alert with guidance on steps borrowers can take to avoid foreclosure.[52]

The Commission regularly partners with other enforcers to educate consumers. The FTC has jointly published with the banking regulators, DOJ, and HUD brochures addressing key lending issues, including brochures such as "Looking for the Best Mortgage? Shop, Compare,

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Fairbanks Capital Holding Corp.); *United States v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. Nov. 21, 2003) (Stipulated Final Judgment and Order as to Thomas D. Basmajian).

[51] www.ftc.gov/bcp/conline/pubs/homes/mortgdis.pdf (English version); www.ftc.gov/bcp/conline/spanish/homes/s-mortgdis.shtm (Spanish version). All of the Commission's mortgage and real estate-related publications, many in both English and Spanish, are available online at www.ftc.gov/bcp/menus/consumer/credit/mortgage.shtm.

[52] "Mortgage Payments Sending You Reeling? Here's What to Do", *available at* www.ftc.gov/bcp/edu/pubs/consumer/homes/rea04.shtm.

and Negotiate."[53] The FTC also continues to participate in the governmental Financial Literacy and Education Commission, contributing its expertise to subcommittees that produced MyMoney.gov and "Taking Ownership of the Future: The National Strategy for Financial Literacy."[54]

V. CONCLUSION

The Commission will continue to take aggressive and concerted action to halt illegal practices in the marketplace, while mindful of the important benefits that increased access to credit brings consumers. Through our enforcement and education, the Commission works to protect consumers in the subprime lending market and to enforce the fair lending laws.

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[53] www.ftc.gov/bcp/conline/pubs/homes/bestmorg.shtm.

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