

**PREPARED STATEMENT OF
THE FEDERAL TRADE COMMISSION**

on

*“Leveraging FTC Resources
to Protect Consumers of Financial Services and Promote Competition”*

Before the

**HOUSE COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT
UNITED STATES HOUSE OF REPRESENTATIVES**

**Washington, D.C.
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I. Introduction

Chairman Serrano, Ranking Member Emerson, and members of the Subcommittee, I am Jon Leibowitz, Chairman 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 protect consumers of financial services. In the last five years, the FTC has brought more than 70 financial services consumer protection cases.

The FTC is the only federal agency with both consumer protection and competition jurisdiction in broad sectors of the economy. The agency enforces laws that prohibit practices that are harmful to consumers because they are anticompetitive, deceptive, or unfair, and it promotes informed consumer choice.

The current economic crisis has demonstrated the need for federal agencies to more effectively police the financial services industry. The crisis has had devastating effects on consumers' ability to obtain credit, make their credit payments, and maintain their credit ratings. Although the Commission believes that it has provided important protections to consumers of financial services, it must do more.

This testimony provides an overview of the FTC's consumer protection authority related to financial services, describes the Commission's recent law enforcement efforts and outreach on behalf of consumers of financial services, and recommends changes in the law and resources to enhance the FTC's ability to protect consumers. This testimony also discusses the Commission's recent competition agenda and current resource allocations.

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

II. Overview of FTC Authority in the Financial Services Arena

Although many federal agencies have authority over financial services, the FTC is the only federal agency whose sole objective with respect to financial services is to protect consumers. The Commission enforces the Federal Trade Commission Act (FTC Act), which prohibits unfair or deceptive acts or practices in or affecting commerce. 15 U.S.C. § 45(a). The Commission also enforces many other consumer protection statutes that govern financial services providers, including the Truth in Lending Act (TILA), the Home Ownership and Equity Protection Act (HOEPA), the Consumer Leasing Act (CLA), the Fair Debt Collection Practices Act (FDCPA), the Fair Credit Reporting Act (FCRA), the Equal Credit Opportunity Act (ECOA), the Credit Repair Organizations Act (CROA), the Electronic Funds Transfer Act (EFTA), and the privacy provisions of the Gramm-Leach-Bliley Act (GLB Act).

Although the Commission has authority over a wide range of acts and practices related to financial products and services, many financial service providers – such as banks, thrifts, and federal credit unions – are exempt from the Commission’s jurisdiction under the FTC Act. The Commission’s jurisdiction under the FTC Act reaches only to non-bank financial companies, including non-bank mortgage companies, mortgage brokers, and finance companies. Similarly, under the FDCPA and CROA, the Commission has jurisdiction over non-bank entities, including debt collectors and credit repair organizations, respectively.

III. FTC’s Protection of Consumers of Financial Services

The Commission has intensified its efforts to protect consumers in the financial services marketplace. The FTC has focused on seven critical areas: (1) foreclosure rescue and loan modification scams; (2) mortgage servicing; (3) fair lending; (4) credit advertising; (5) debt collection; (6) debt settlement; and (7) credit repair. Recent major FTC enforcement actions in

each of these areas are discussed below.² In addition to law enforcement, the Commission uses consumer and business education, as well as research and policy development, to protect consumers of financial services.

A. Foreclosure Rescue and Loan Modification Scams

With the rapid increase in mortgage delinquencies and foreclosures, the FTC has stepped up its efforts to protect consumers from foreclosure rescue and mortgage loan modification scams. In a little over a year, the Commission has brought eight cases targeting mortgage foreclosure rescue scams, including two cases filed this month.³ In these cases, the Commission alleges that the defendants promise to obtain loan modifications or stop foreclosure in exchange for an up-front consumer payment, ranging from \$500 to \$2,000, but fail to obtain the loan modification or stop the foreclosure. In the two cases filed this month, the FTC also charged the defendants with falsely purporting to be affiliated with the non-profit, government-endorsed HOPE NOW Alliance, which provides free foreclosure prevention assistance.⁴ Such scams not

² For a more detailed description of recent cases brought in these areas, see the FTC's March 24, 2009 testimony before the House Committee on Energy and Commerce, Subcommittee on Commerce, Trade, and Consumer Protection, which is available at <http://www.ftc.gov/os/2009/03/P064814consumercreditdebt.pdf>.

³ *FTC v. Hope Now Modifications*, No. 1:09-cv-01204-JBS-JS (D.N.J. Mar. 17, 2009); *FTC v. New Hope Property LLC*, No. 1:09-cv-01203-JBS-JS (D.N.J. Mar. 17, 2009); *FTC v. National Foreclosure Relief, Inc.*, No. SACV09-117 (C.D. Cal. Feb. 2, 2009); *FTC v. United Home Savers, LLP*, No. 8:08-cv-01735-VMC-TBM (M.D. Fla. Sept. 3, 2008); *FTC v. Foreclosure Solutions, LLC*, No. 1:08-cv-01075 (N.D. Ohio April 28, 2008); *FTC v. Mortgage Foreclosure Solutions, Inc.*, No. 8:08-cv-388-T-23EAJ (M.D. Fla. Feb. 26, 2008); *FTC v. National Hometeam Solutions, Inc.*, No. 4:08-cv-067 (E.D. Tex. Feb. 26, 2008); *FTC v. Safe Harbour Foundation*, No. 08 C 1185 (N.D. Ill. Feb. 25, 2008).

⁴ *FTC v. Hope Now Modifications*, No. 1:09-cv-01204-JBS-JS (D.N.J. March 17, 2009); *FTC v. New Hope Property LLC*, No. 1:09-cv-01203-JBS-JS (D.N.J. March 17, 2009) (temporary restraining orders entered in each case pending a hearing on the FTC's motion for preliminary injunction).

only defraud consumers out of desperately needed funds but also may lead them to forgo viable options for avoiding foreclosure.

In tandem with its law enforcement actions, the Commission also has launched a variety of outreach initiatives to warn consumers about red flags for foreclosure rescue scams and to inform them about the legitimate resources available to them. In addition, the FTC participates in task forces in several regions where foreclosures are most prevalent, both to coordinate enforcement and to develop consumer outreach strategies.

B. Mortgage Servicing

The Commission also has focused on deceptive and unfair practices in the servicing of mortgage loans. Our cases have targeted core servicing issues such as failing to post payments upon receipt, charging unauthorized fees, and engaging in deceptive or abusive collection tactics. For example, in September 2008, the FTC settled charges that EMC Mortgage Corporation and its parent, The Bear Stearns Companies, LLC, violated Section 5 of the FTC Act and the FDCPA in servicing mortgage loans, including debts that were in default when EMC obtained them.⁵ The EMC settlement required the defendants to pay \$28 million in consumer redress, and the Commission has sent checks to more than 86,000 consumers. The settlement also barred the defendants from future law violations and required EMC to establish a comprehensive data integrity program.

C. Fair Lending

Another significant focus in the mortgage lending area is discrimination. Since the ECOA was enacted, the Commission has brought over three dozen cases alleging that large

⁵ *FTC v. EMC Mortgage Corp.*, No. 4:08-cv-338 (E.D. Tex. Sept. 9, 2008).

subprime lenders, major non-mortgage creditors, and smaller finance companies violated that statute. Most recently, the FTC's enforcement has focused on discrimination in mortgage loan pricing. In December 2008, the FTC reached a settlement with Gateway Funding Diversified Mortgage Services, L.P., and Gateway Funding Inc. (collectively, Gateway), after alleging that Gateway violated the ECOA by charging African-American and Hispanic consumers higher prices for mortgage loans than non-Hispanic white consumers.⁶ The \$2.9 million settlement, which was partially suspended due to Gateway's inability to pay, bars Gateway from discriminatory lending practices and requires it to implement a fair lending training program. The FTC is using the settlement funds to redress African-American and Hispanic consumers who were harmed by Gateway's practices.

D. Credit Advertising and Marketing

The FTC has initiated numerous cases challenging illegal marketing by lenders, brokers, and other advertisers of consumer credit in violation of the FTC Act or the TILA.⁷ The Commission has brought actions against mortgage lenders and brokers for deceptive marketing of loan costs⁸ or other key loan terms, such as the existence of a prepayment penalty⁹ or a large

⁶ *FTC v. Gateway Funding Diversified Mortgage Services, L.P.*, No. 08-5805 (E.D. Pa. Dec. 17, 2008).

⁷ *E.g.*, *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); *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).

⁸ *E.g.*, *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).

⁹ *FTC v. Chase Fin. Funding*, No. 04-549 (C.D. Cal. 2004); *FTC v. Diamond*, No. 02-5078 (N.D. Ill. 2002).

balloon payment due at the end of the loan.¹⁰ Most recently, the Commission announced settlements with three mortgage lenders charged with advertising low interest rates and low monthly payments, but failing to disclose adequately that those rates and payments would increase substantially after a short period of time.¹¹ The Commission also has taken enforcement actions against payday lenders under the FTC Act, the TILA, and Regulation Z.¹²

As to credit cards, the Commission has jurisdiction over very few issuers, although it has jurisdiction over non-bank entities that market credit cards.¹³ In June 2008, for example, the FTC sued CompuCredit Corporation for allegedly deceptively marketing its credit cards to subprime consumers nationwide.¹⁴ Last December, CompuCredit agreed to settle this case for an estimated \$114 million in credits and cash refunds to consumers.¹⁵

¹⁰ *FTC v. Diamond*, No. 02-5078 (N.D. Ill. 2002).

¹¹ *In the Matter of American Nationwide Mortgage Co.*, FTC Dkt. No. C-4249 (Feb. 17, 2009); *In the Matter of Shiva Venture Group, Inc.*, FTC Dkt. No. C-4250 (Feb. 17, 2009); *In the Matter of Michael Gendrolis*, FTC Dkt. No. C-4248 (Feb. 17, 2009).

¹² For example, in November 2008, the FTC and the State of Nevada charged ten related Internet payday lenders and their principals, based mainly in the United Kingdom, with violations of federal and state law. *See FTC and State of Nevada v. Cash Today, Ltd.*, No. 3:08-cv-00590 (D. Nev. Nov. 6, 2008).

¹³ Banks, savings associations, and credit unions issue the vast majority of credit cards, with national banks alone being responsible for approximately 75 percent of credit cards issued.

¹⁴ *FTC v. CompuCredit Corp.*, No. 1:08-CV-1976-BBM-RGV (N.D. Ga. 2008). The Commission worked closely on this case with the FDIC, which brought a parallel action challenging this deceptive conduct.

¹⁵ *See* Press Release, Subprime Credit Card Marketer to Provide At Least \$114 Million in Consumer Redress to Settle FTC Charges of Deceptive Conduct (Dec. 19, 2008), available at <http://www.ftc.gov/opa/2008/12/compucredit.shtm>.

E. Debt Collection

The Commission has stepped up its commitment to enforcing the FDCPA, which prohibits third-party debt collectors from engaging in abusive, deceptive, and unfair debt collection practices. Since 1999, the FTC has brought 21 lawsuits to combat illegal debt collection practices. Through these cases, the Commission has obtained strong permanent injunctive and other relief, including substantial monetary judgments and, for some defendants, bans on collecting debts.¹⁶ In a recent example, in November 2008, Academy Collection Service, Inc. and its owner, Keith Dickstein, agreed to pay \$2.25 million in civil penalties to settle charges that they violated the FDCPA and Section 5 of the FTC Act.¹⁷ This is the largest civil penalty that the Commission has ever obtained in an FDCPA case.¹⁸

F. Debt Settlement

Historically high levels of consumer debt have led many consumers to look for ways to manage their debt. Since 2001, the Commission has filed 14 cases against both for-profit debt settlement companies and sham non-profit credit counseling agencies.¹⁹ The defendants in these

¹⁶ See, e.g., *FTC v. Check Investors, Inc.*, No. 03-2115, 2005 U.S. Dist. LEXIS 37199 (D.N.J. July 18, 2005) (ban on debt collection and \$10.2 million judgment), *aff'd*, 503 F.3d 159 (3d Cir. 2007), *petition for reh'g denied*, Nos. 05-3558, 05-3957 (3d Cir. Feb. 6, 2008).

¹⁷ *United States v. Academy Collection Servs., Inc.*, No. 2:08-CV-1576 (D. Nev. Nov. 18, 2008).

¹⁸ The Commission also recently issued a report recommending legislative and other changes to reform and modernize the debt collection regulatory system. FTC Workshop Report, *Collecting Consumer Debts – The Challenges of Change* (Feb. 2009), *available at* <http://www.ftc.gov/bcp/workshops/debtcollection/dcwr.pdf>.

¹⁹ For a list of these cases, see Prepared Statement of the Federal Trade Commission on Consumer Protection and the Credit Crisis before the Senate Committee on Commerce, Science, and Transportation (Feb. 26, 2009), *available at* <http://www.ftc.gov/os/2009/02/P084800creditchrisis.pdf>.

cases allegedly deceived consumers who were seeking workout options for credit card debt into paying large up-front fees for credit card debt relief services that were never provided. These defendants also allegedly falsely represented that, if consumers enrolled in their programs, debt collectors would stop their collection efforts and consumers could stop making payments to creditors without hurting their creditworthiness.

G. Credit Repair

Finally, with the economic downturn, delinquencies, bankruptcy, and other negative information on credit reports have made it even more difficult for some consumers to obtain credit. Fraudulent credit repair companies falsely promise, in exchange for a fee, to remove negative but accurate information from consumers' credit reports. Since 1999, the FTC has brought 43 cases against such "credit repair" companies. Most recently, in October 2008, the Commission and 24 state agencies announced a law enforcement sweep that included ten FTC actions and 26 state actions against credit repair operations.²⁰

H. Enhancing FTC Consumer Protection Efforts

The FTC believes that its past efforts have provided important protections to American consumers in the credit marketplace. The agency, however, recognizes that it must do more. To that end, the Commission recommends that Congress make the FTC more effective by providing it with additional authority. First, the Commission recommends that Congress authorize the agency to employ notice and comment rulemaking procedures to establish rules pursuant to the FTC Act that set forth unfair or deceptive acts and practices relating to all financial services. Second, the Commission recommends that Congress authorize the agency to obtain civil

²⁰ See Press Release, FTC's Operation "Clean Sweep" Targets "Credit Repair" Companies (Oct. 23, 2008), *available at* <http://www.ftc.gov/opa/2008/10/cleansweep.shtm>.

penalties for unfair or deceptive acts and practices relating to all financial services and authorize the agency to bring suit in its own right in federal court to obtain civil penalties. Third, the Commission recommends that Congress ensure that, because of the Commission's unequaled and comprehensive focus on consumer protection, its independence from providers of financial services, and its emphasis on vigorous law enforcement, the FTC is considered as Congress moves forward in determining how to modify federal oversight of consumer financial services.²¹

In addition, the Commission asks that Congress provide additional resources to the FTC to increase its law enforcement activities related to financial services and to expand its critical research on the efficacy of mortgage disclosures and other topics.

IV. FTC's Competition Agenda and Workload

The Commission actively enforces the antitrust laws in a range of industries of critical importance to American consumers, including health care, energy, technology, real estate, retail, and consumer goods. Although the number of reportable mergers and other transactions has decreased significantly in the past few months – resulting in a significant decrease in offsetting fees collected – the FTC's competition workload has not fallen off. Competition enforcement activities regarding both mergers and non-merger conduct continue to be substantial. In the last year, the Commission pursued over 30 new competition enforcement actions, including cases that added to the agency's already substantial ongoing litigation workload.

With respect to mergers, the past twelve months was one of the most active periods the FTC has ever experienced. The Commission filed a record six merger challenges in court, two

²¹ These recommendations are discussed in greater detail in the FTC's March 24, 2009 testimony before the House Committee on Energy and Commerce, Subcommittee on Commerce, Trade, and Consumer Protection, which is available at <http://www.ftc.gov/os/2009/03/P064814consumercreditdebt.pdf>.

of which remain in litigation. The Commission resolved another sixteen merger matters by consent order and the parties restructured or abandoned an additional six mergers in the face of the Commission's concerns.

Antitrust merger litigation is highly resource-intensive because the issues litigated increasingly are technically complex and involve sophisticated economic theories; necessarily, over time the size of litigation teams assigned to matters has grown. Thus, when less staff time is needed for processing and reviewing filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act), staff time may be reassigned to these litigations and other matters requiring collection and review of information in preparation for litigation or possible litigation. In addition, the FTC continues to look for and review transactions not subject to the HSR filing requirements and transactions where an antitrust problem may arise or become identifiable only after the deal is consummated. The two matters currently in litigation, and two matters in which the Commission recently obtained favorable results, are of these types. Further, the decrease in filings may reflect a decrease in types of mergers that do not raise competitive concerns; we continue to see significant filings that do raise concerns.

On the non-merger side, the FTC has advanced an enforcement program to attack collusive "pay-for-delay" settlements in the pharmaceutical industry, where the brand name drug company pays the generic drug company to delay its entry into the market. These deals cost billions of dollars – for consumers and ultimately the government, which pays almost one-third of the nation's prescription drug costs. The Commission currently has two cases in court challenging patent settlement agreements between branded and generic pharmaceutical manufacturers as anticompetitive agreements to delay generic entry. Other such matters remain under investigation.

The agency also issued five consent orders this year involving allegations of agreements among competitors to fix prices or otherwise limit competition in real estate, health care services, and the retail sale of consumer goods. Finally, pursuant to the Energy Independence and Security Act of 2007, the Bureau of Competition is leading a task force of staff from throughout the agency to examine whether and in what ways the Commission should develop a rule defining and prohibiting market manipulation in wholesale petroleum markets. The Commission published a proposed rule for comment in August, and expects to conclude the proceeding this spring.

V. Resources

Despite its small size and the tremendous breadth of its mission in both consumer protection and competition, the FTC is working hard to protect consumers. Today, the Commission has only about 1,100 full-time equivalents (FTEs). This is considerably fewer than it had at its peak in 1979, when the Commission had nearly 1,800 FTEs.²² But in the past decades, the demands placed on the agency have continued to grow with the advent of the Internet and e-commerce, and a variety of significant new laws and regulations that the FTC is charged, at least in part, with implementing and enforcing, such as the CAN-SPAM Act, the Fair and Accurate Credit Transactions Act, the Do Not Call provisions of the Telemarketing Sales Rule, the Children's Online Privacy Protection Act, and the Gramm-Leach-Bliley Act.

Congress has responded by providing additional resources. For FY 2009, Congress has provided the FTC with \$259,200,000, which supports 1,116 FTEs. Of the 1,116 FTEs, just over 400 FTEs will work exclusively on consumer protection matters (with additional support drawn

²² Commissioner Kovacic believes the Commission will need additional resources but he disagrees with certain aspects of the analysis in Section V of this testimony.

from other parts of the agency), which, in addition to financial services, comprises privacy and data security, marketing practices (including spyware, spam, the Do Not Call Registry, deceptive advertising of prepaid calling cards, and enforcement of the Telemarketing Sales Rule) and advertising practices for a broad range of products, from violent video games marketed to children to fake cancer cures to so-called “green” products and services.

In 1979, when the Commission’s FTEs were at their peak, the U.S. population was approximately 225 million. It is now 30 percent greater, and although the agency is always striving to do more with less, the size of the agency has not kept pace with the growth in the population and the sophistication of the marketplace. In addition, the FTC anticipates a further need for resources to fund expanded regulation and enforcement for consumer protection in the area of financial services.

As you know, the agency’s appropriation (including offsetting HSR and DNC fees) funds the consumer protection mission of the Commission, which includes the substantial and now heightened efforts regarding financial practices, as well as the competition mission.²³ As we saw in FY 2008 and expect to see in FY 2009, shortfalls in these fee collections result in more of the FTC’s funding coming from the Treasury’s General Fund to support the agency’s critical mission.

VI. Conclusion

The Commission is committed to protecting consumers in the broader credit marketplace. The agency has used all of the tools in its arsenal – enforcement, research and policy

²³ The FTC’s appropriation is partially offset by collections of two separate fees. The first offsetting collections are fees collected under the HSR Act and are tied to the number and size of premerger filings. The second offsetting collections are fees collected under the Do-Not-Call Registry Fee Extension Act.

development, and consumer and business outreach – to protect consumers of financial services. To enable the FTC to perform a greater and more effective role protecting consumers in the financial services area, it recommends changes in the law and additional resources to enhance its authority to promulgate needed rules, prosecute cases against law violators, and conduct critical research. The Commission appreciates the opportunity to appear before you today to discuss the FTC's work and your consideration of its views.