Prepared Statement of

The Federal Trade Commission

"Enhancing FTC Consumer Protection in
Financial Dealings, with Telemarketers, and on the Internet"

Before the

Committee on Energy and Commerce
Subcommittee on Commerce, Trade, and Consumer Protection
United States House of Representatives

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Chairman Rush, Ranking Member Stearns, and members of the committee, I am Lydia Parnes, Director of the Bureau of Consumer Protection at the Federal Trade Commission ("Commission" or "FTC").[1] I appreciate the opportunity to appear before you today to talk about the Commission's Do Not Call program, its activities to promote Internet safety, and its views on proposed legislation that would give certain financial regulatory agencies rulemaking authority under the FTC Act.

I. The Do Not Call Program

An important component of the FTC's program to protect consumers from telemarketing abuse is the National Do Not Call Registry, which protects the privacy of Americans who have expressed their wish not to receive telemarketing calls by entering their numbers in the Registry. Simply put, the Commission is enormously pleased with the effectiveness of the Do Not Call program and how it has helped restore the sanctity of the American dinner hour, and remains committed to strongly sanctioning those who have failed to abide by the Do Not Call rules.

In 2003, the Commission amended its Telemarketing Sales Rule ("TSR") to, among other things, establish the National Do Not Call Registry.[2] The Registry currently includes 145 million telephone numbers and has been tremendously successful in protecting consumers'

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

[2] The FTC promulgated the Do Not Call provisions and other substantial amendments to the TSR under the express authority granted to the Commission by the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108. Specifically, the Telemarketing Act mandated that the rule – now known as the TSR -- include prohibitions against any pattern of unsolicited telemarketing calls "which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy," as well as restrictions on the hours unsolicited telephone calls may be made to consumers.

privacy from unwanted telemarketing calls. A Harris Interactive® Survey released in January 2006 showed that 94% of American adults have heard of the Registry and 76% have signed up for it.[3] Ninety-two percent of those polled reported receiving fewer telemarketing calls.[4] Similarly, an independent survey by the Customer Care Alliance[5] demonstrates that the National Registry has been an effective means for consumers to limit unwanted telemarketing calls.[6]

This section of the testimony discusses the mechanics of operating the Do Not Call Registry. It then describes the FTC's enforcement program related to the Do Not Call Registry. Next, it discusses the fee structure for operating the Registry. Finally, it discusses the five-year re-registration requirement imposed by the Commission in 2003.

A. The Mechanics of the Registry

The National Registry is a comprehensive, automated system used by consumers, telemarketers, and law enforcement agencies. The Registry was built to accomplish four primary tasks:

(1) To allow consumers to register their preference not to receive telemarketing calls at registered telephone numbers;

(2) To allow telemarketers and sellers to access the telephone numbers included in

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[3] *See* http://www.harrisinteractive.com/harris_poll/index.asp?PID=627.

[4] *Id.* Discussing the effectiveness of Do Not Call just one year after the inception of the program, the chairman of Harris Interactive Humphrey Taylor stated, "In my experience, these results are remarkable. It is rare to find so many people benefit so quickly from a relatively inexpensive government program." http://www.ftc.gov/opa/2004/02/dncstats0204.shtm.

[5] Customer Care Alliance is a consortium of companies involved in customer service, dispute resolution, and related activities. *See* www.ccareall.org.

[6] *See National Do Not Call Study Preliminary Findings*, Customer Care Alliance, June 2004.

the National Registry in order to remove those numbers from their call lists, and to pay the applicable fees for such access;

(3) To gather consumer complaint information concerning alleged do not call violations automatically over the telephone and the Internet; and

(4) To allow FTC, state, and other law enforcement personnel access to consumer registration information, telemarketer access information, and complaint information maintained in the Registry.

Consumers can register their telephone numbers through two methods: by calling a toll-free number from the telephone number they wish to register, or over the Internet. The process is fully automated, takes only a few minutes, and requires consumers to provide minimal personally identifying information.[7]

Telemarketers and sellers can access registered telephone numbers, and pay the applicable fee for that access, if any, through an Internet website dedicated to that purpose. The only information about consumers that companies receive from the National Registry is the registered telephone number with no name attached. Those numbers are sorted and available for download by area code. Companies may also check a small number of telephone numbers at a time via interactive Internet pages.

Consumers who receive unwanted telemarketing calls can register a complaint via either a toll-free telephone number or the Internet. To conduct investigations, law enforcement officials also can access data in the National Registry, including consumer registration information, telemarketer access information, and consumer complaints. Such access is

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[7] In the case of registration by telephone, the only personal information provided is the telephone number to be registered. In the case of Internet registration, a consumer must provide, in addition to the telephone number(s) to be registered, a valid e-mail address to which a confirmation e-mail message is sent. Once the confirmation is complete, however, the e-mail address is hashed and made unusable. Thus, only consumers' telephone numbers, without names or other identifying information, are maintained in the database.

provided through Consumer Sentinel, a secure Internet website maintained by the FTC, to the law enforcement community throughout the United States, Canada, and Australia.

B. Do Not Call Enforcement

While the Commission appreciates the high rate of compliance with the Do Not Call provisions of the TSR, it vigorously enforces compliance to ensure the program's ongoing effectiveness. Violating Do Not Call provisions subjects telemarketers to civil penalties of up to $11,000 per violation. The Commission has initiated 27 cases alleging Do Not Call violations, which have resulted in orders totaling $8.8 million in civil penalties and $8.6 million in redress or disgorgement.

A recent case against The Broadcast Team illustrates the enforcement of the TSR's Do Not Call provisions.[8] The case targeted a telemarketer that allegedly used "voice broadcasting" to make tens of millions of illegal automated telemarketing calls, often to numbers on the National Do Not Call Registry. The complaint alleged that The Broadcast Team used an automated phone dialing service to call and deliver pre-recorded telemarketing messages. When a live person picked up the phone, The Broadcast Team allegedly hung up immediately or, in other instances, played a recording. Either course of conduct violates the TSR's restriction on "abandoning calls" – that is, failing to connect a consumer to a live sales representative within two seconds after the consumer says "hello."[9] The Broadcast Team agreed to pay a $1 million civil penalty to settle the charges.[10]

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[8] *United States v. The Broadcast Team, Inc.*, No. 6:05-cv-01920-PCF-JGG (M.D. Fla. 2005).

[9] 16 C.F.R. § 310.4(b)(1)(iv).

[10] *See* Press Release at http://www.ftc.gov/opa/2007/02/broadcastteam.shtm.

In the largest Do Not Call case to date, the Commission challenged satellite television subscription seller DirecTV and a number of companies that telemarketed on behalf of DirecTV. DirecTV paid over $5.3 million to settle Do Not Call and call abandonment charges.[11] Through this case, the Commission obtained one of the largest civil penalties in any case enforcing a consumer protection law.

C. The Do Not Call Fee Structure

The Do Not Call Implementation Act ("DNCIA"), passed by Congress in 2003, gave the Commission the specific authority to "promulgate regulations establishing fees sufficient to implement and enforce the provisions relating to the 'Do-Not-Call' Registry of the TSR." It also provided that "[n]o amounts shall be collected as fees pursuant to this section for such fiscal years except to the extent provided in advance in appropriations Acts. Such amounts shall be available . . . to offset the costs of activities and services related to the implementation and enforcement of the [TSR], and other activities resulting from such implementation and enforcement." Pursuant to the DNCIA and the appropriations Acts, the Commission has conducted annual rulemaking proceedings to establish the appropriate level of fees to charge telemarketers for access to the Registry.

The fees collected are intended to offset costs in three areas. First, funds are required for direct operation of the Registry. As described above, the development and ongoing operation of the DNC Registry involves significant resources and effort.

Second, funds are required for law enforcement efforts, including identifying targets, coordinating domestic and international initiatives, challenging alleged violators, and engaging

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[11] *United States v. DirecTV*, Civ. No. SACV05 1211 (C.D. Cal. Dec. 12, 2005). *See also* http://www.ftc.gov/opa/2005/12/directv.shtm.

in consumer and business education efforts, which are critical to securing compliance with the TSR. The agency coordinates with its state partners and DOJ, thereby leveraging resources and maximizing the deterrent effect. Further, given the fact that various telemarketing operations are moving offshore, international coordination is especially important. These law enforcement efforts entail significant costs.

The Commission considers consumer and business education efforts to be important complements to enforcement in securing compliance with the TSR. Because the amendments to the TSR were substantial, and the National Registry was an entirely new feature, educating consumers and businesses has helped to reduce confusion, enhance consumers' privacy, and ensure the overall effectiveness of the system. Based on the Commission's experience, this substantial outreach effort has been necessary, constructive, and effective in ensuring the success of the program.

Third, funds are required to cover ongoing agency infrastructure and administration costs associated with the operation and enforcement of the Registry, including information technology structural supports and distributed mission overhead support costs for staff and non-personnel expenses such as office space, utilities, and supplies. In this regard, the FTC has made substantial investments in technology and infrastructure in response to the significantly increased capacity required by the National Registry.

Under the current fee structure, telemarketers are charged $62 per area code of data, starting with the sixth area code, up to a maximum of $17,050 for the entire Registry.[12]

[12] The Commission set the initial fees at $25 per area code of data with a maximum annual fee of $7,375. *See* 68 Fed. Reg. 45134 (July 31, 2003). The fees have increased each year to their current level. *See* 69 Fed. Reg. 45580 (July 30, 2004); 70 Fed. Reg. 43273 (July 27, 2005); and 71 Fed. Reg. 43048 (July 31, 2006).

Telemarketers are prohibited from entering into fee-sharing arrangements, including any arrangement with any telemarketer or service provider to divide the fees amongst its various clients.

Telemarketers receive the first five area codes of data at no cost. The Commission allowed such free access in order to limit the burden placed on small businesses that only require access to a small portion of the Registry. The National Registry also allows organizations exempt from the Registry requirements to access the Registry at no cost.[13] While these entities are not required by law to access the Registry, many do so voluntarily in order to avoid calling consumers who have expressed their preference not to receive telemarketing calls. The Commission determined that such entities should not be charged access fees when they are under no legal obligation to comply with the "Do Not Call" requirements of the TSR because it may make them less likely to obtain access to the Registry, which would result in an increase in the number of unwanted, albeit legal, calls to consumers.

The Commission believes that reauthorizing the DNCIA will demonstrate Congress' continued commitment to protecting consumers from unwanted intrusions into the privacy of their homes, and appreciates Ranking Member Stearns' and Chairman Rush's proposed reauthorizing legislation. The Commission believes that the bill can be strengthened by statutorily setting the fees charged to telemarketers accessing the National Registry in an amount sufficient to enable the Commission to enforce the TSR. The Commission believes that such an

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[13] Such exempt organizations include entities that engage in outbound telephone calls to consumers to induce charitable contributions, for political fund raising, or to conduct surveys. They also include entities engaged solely in calls to persons with whom they have an established business relationship or from whom they have obtained express written agreement to call, as defined by the Rule, and who do not access the National Registry for any other purpose.

amendment to the DNCIA would ensure the continued success of the National Registry by providing the Commission with a stable funding source for its TSR enforcement activities. The Commission also believes a stable fee structure would benefit telemarketers, sellers, and service providers who access the Registry. The Commission looks forward to working with you on this matter.

D. The Re-Registration Requirement

As this testimony highlights, the Commission has a strong record on Do Not Call implementation, management, and enforcement. It has implemented a process for registration that is simple, quick, and effective for consumers. The Commission wants to continue to make it as easy as possible for consumers to enjoy the benefits of the Registry.

In connection with the Commission's 2003 rulemaking proceeding that established the Do Not Call Registry, the Commission adopted a five-year re-registration mechanism and stated that the Registry would be periodically purged of numbers that have been disconnected or reassigned. At that time, a number of public commenters in the rulemaking proceeding informed the Commission that 16 percent of all telephone numbers change each year and that 20 percent of all Americans move each year.[14] The Commission determined that, unless the Registry

[14] 68 Fed. Reg. 4580, 4640 (Jan. 29, 2003). Four commenters cited these figures. Both the Direct Marketing Association and Nextel Communications, Inc. stated that 16 percent of all telephone numbers change each year. SBC Communications, Inc. cited the Federal Communication Commission's ("FCC") 1992 rulemaking record to implement the Telephone Consumer Protection Act, in which the FCC stated that approximately 20 percent of all telephone numbers change hands each year. Finally, Household Finance Corporation cited figures from the U.S. Census Bureau and the U.S. Postal Service that 15 to 20 percent of all consumers move each year. Note, however, that according to a March 2000 report of the Census Bureau, 56.2% of people who had moved in the previous year moved within the same county and another 19.4% moved within the same state – some likely within the same area code. Population Profile of the United States: 2000 (Internet Release), at 3-1 (Figure 3-1). As a result of the Telecommunications Act of 1996 and the implementing regulations issued by the FCC, telephone numbers are now portable, so these consumers should have had the option to keep

included a process to counteract this effect, over a period of time, the Registry would include more and more numbers that had been disconnected and then reassigned to other line subscribers even though those new line subscribers might not object to receiving telemarketing calls.[15] In light of the general constitutional directive to limit restrictions on speech to the extent practicable consistent with the underlying privacy goals, the Commission concluded that a combination of automatic scrubbing and re-registration every five years would adequately balance the privacy and commercial speech interests. The Commission also noted that 13 state registries had re-registration requirements ranging from one to five years, while 14 states had no re-registration requirement.[16]

Based on this record, the Commission concluded that a five-year registration period, coupled with the periodic purging of disconnected telephone numbers from the Registry adequately balanced the need to maintain a high level of accuracy in the Registry with the imposition on consumers to periodically re-register their telephone numbers.[17]

The Commission adopted the five-year re-registration requirement based on the information it had in 2003. Since then, several changes have taken place. First, changes in the marketplace, including increased usage of cell phones and increased popularity of telephone number portability, may have had an impact on data underlying the 2003 rulemaking proceeding. Second, the legal landscape has become clearer because we have more information about how

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their telephone numbers after they moved.

15 *Id.*

16 68 Fed. Reg. at 4640 nn.711, 712.

17 *Id.* at 4640.

courts view consumers' privacy in this context.[18] Third, the Registry has been implemented successfully for nearly 5 years, and has included a scrubbing program through which telephone numbers that have been disconnected and reassigned are purged from the Registry on a monthly basis.[19] Fourth, the Registry has enjoyed unprecedented popularity and helped enhance the privacy of the American public in a tangible way.

As a result of these changes, the Commission now commits that it will not drop any telephone numbers from the Registry based on the five-year expiration period pending final Congressional or agency action on whether to make registration permanent. The Commission will continue its robust efforts to maintain the Registry's accuracy and ensuring the continued success of the Do Not Call program.

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18 The Commission prevailed in two constitutional challenges to the National Registry. *See Nat'l Fed'n of the Blind v. FTC,* 420 F.3d 331 (3rd Cir. 2005); *Mainstream Mktg. Services v. FTC*, 358 F.3d 1228 (10th Cir. 2004). One overarching theme of the Commission's argument in response to those challenges involved the care the Commission put forth in ensuring that the Registry included only the telephone numbers of consumers who had indicated a preference not to receive telemarketing calls. However, the Commission did not directly present, nor did the courts address, the issue of the five-year re-registration requirement in those cases.

19 The Registry contractor subcontracts the process of purging obsolete numbers from the Registry to a list broker that provides consumer information to a host of large clients. The list broker states that it obtains information on every number in the North American Dialing Plan that is updated ten times per day. It acquires from Local Exchange Carriers ("LECs") daily updates of subscriber data, including disconnect and reconnect data and the dates these events occurred. To the best of the list broker's knowledge, it receives data from every LEC and the accuracy of the data it receives is consistent with the accuracy of the LEC's billing records. Once a month, the Registry contractor compares the Registry against the database maintained by the list broker to remove those telephone numbers that have been coded as disconnected and subsequently reassigned. At our request, the contractor takes a conservative approach in purging numbers from the Registry. Rather than purging a number from the Registry because it has been disconnected, the contractor purges a number only after it has been disconnected and reassigned. Removing telephone numbers based on the LEC's disconnect code alone would result in a significant number of consumers being removed from the Registry mistakenly. For example, a temporary disruption in service for vacation or failure to pay for services may be coded as a disconnect.

II. Internet Safety

The FTC has also been very active in educating consumers about Internet safety. The FTC's current computer security education campaign is built around an innovative multimedia website, OnGuardOnline.gov. The FTC teamed with other federal agencies, consumer advocates, and the technology industry to create OnGuardOnline.gov in September 2005 to help computer users guard against Internet fraud, secure their computers, and protect their personal information.

The content at OnGuardOnline.gov includes tips, articles, quizzes, and videos. It tells consumers where to report spam or a scam, and how to sign up for periodic computer security alerts. OnGuard Online's interactive quizzes help users figure out how savvy they are about computer safety. OnGuard Online has information on various technologies; it also emphasizes behavioral changes that computer users can make to stay safe online – for example "protect your personal information," and "know who you're dealing with." These tips remain relevant even as technology evolves. Since the Commission unveiled the site, it has added content on additional computer security topics, including tips on using social networking safely, investing online, protecting home wireless networks, and keeping laptops from being stolen.

OnGuardOnline.gov is popular; it has logged more than 4 million unique visitors in its first two years. It currently attracts 200,000-300,000 unique visits each month. More than 700,000 OnGuard Online paper bookmarks also have been distributed.

OnGuard Online is branded independently of the FTC, so other organizations can make the site and the information their own. The FTC encourages companies and other organizations to help fight Internet fraud, scams, and identity theft by sharing the tips at OnGuardOnline.gov with their employees, customers, members and constituents. OnGuard Online materials also are available in Spanish, at AlertaenLinea.gov.

The FTC maintains OnGuardOnline.gov with significant content and marketing assistance from partners including: the U.S. Department of Justice, Office of Justice Programs, the Department of Homeland Security, the United States Postal Inspection Service, the Department of Commerce, Technology Administration, the Securities and Exchange Commission, the Internet Education Foundation, the National Cyber Security Alliance, the Anti-Phishing Working Group, TRUSTe, i-SAFE, AARP, the Direct Marketing Association, WiredSafety.org, the SANS Institute, the National Consumers League, the Better Business Bureaus, and others.

H.R. 3461 would direct the Commission to implement a national education campaign on Internet safety, and authorize funding for such a campaign. If H.R. 3461 were passed, the FTC would expand efforts it already has underway to educate novice and intermediate home computer users about basic computer security. In addition, the FTC would expand the scope of topics beyond those covered by OnGuard Online. The bill defines Internet safety to include "threats to juveniles, including cyber-predators and material that is inappropriate for minors." Such threats to children constitute criminal activity beyond the FTC's authority. However, the Commission recognizes the value in having all of the federal government's Internet safety information under one umbrella. To fulfill this directive, the FTC would partner with government agencies active in protecting children from cyber-crime, such as the Federal Bureau of Investigation and the U.S. Postal Inspection Service, and with prominent non-governmental organizations, such as the National Center for Missing and Exploited Children.

III. Proposed Amendment to the FTC Act

Chairman Frank of the House Financial Services Committee has proposed legislation that would expand the number of bank regulatory agencies that could issue rules under the FTC Act. The FTC has a particular interest in this area, both because of its expertise on interpretation of the FTC Act, and because of its broad interest in consumer protection in the financial services area. Financial issues affect all consumers – whether they are purchasing homes, trying to establish credit and improve their credit ratings, or managing rising debt. The FTC has been very active in protecting consumers in the financial services marketplace. For example, the FTC has targeted deceptive or unfair practices in mortgage lending – from advertising and marketing through loan servicing. In the past decade, the Commission has brought 21 such actions, focusing in particular on the subprime market.[20] As a result of these actions, courts collectively have ordered more than $320 million to be returned to consumers. Currently, the Commission is engaged in several ongoing non-public investigations involving mortgage lending practices.

Pursuant to Section 18(a)(1)(B) of the FTC Act, the Commission also has the authority to

[20] *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).

issue rules prohibiting unfair or deceptive acts or practices by financial services providers, except for banks, thrifts, and federal credit unions.[21] In promulgating such rules, the FTC must use the rulemaking procedures set forth in Section 18 of the FTC Act, which are much more cumbersome and time-consuming than the Administrative Procedure Act ("APA") rulemaking procedures.

Pursuant to Section 18(f) of the FTC Act, the Federal Reserve Board ("Board"), the Office of Thrift Supervision ("OTS"), and the National Credit Union Administration ("NCUA") may issue rules prohibiting unfair or deceptive acts or practices by banks, thrifts, and federal credit unions, respectively.[22] In promulgating such rules, the Board, OTS, and NCUA use their ordinary rulemaking procedures, that is, the standard notice and comment rulemaking procedures under the APA.[23]

H.R. 3526 proposes two primary changes to the framework under Section 18 of the FTC Act relating to the acts and practices of financial services providers. First, the bill would give "each federal banking agency," as defined in the Federal Deposit Insurance Act,[24] the authority to promulgate rules prohibiting unfair or deceptive acts or practices for depository institutions within its jurisdiction. This amendment would give the Federal Deposit Insurance Corporation ("FDIC") and the Office of the Comptroller of the Currency ("OCC") the power to issue rules

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21 45 U.S.C. § 57a(a)(1)(B).

22 15 U.S.C. § 57a(f)(1). This provision also requires that the Board, OTS, and NCUA promulgate substantially similar regulations whenever the FTC promulgates a rule defining unfair or deceptive practices under subsection 18(a)(1)(B) of the FTC Act, unless certain exceptions are met. *Id.*

23 5 U.S.C. § 553.

24 12 U.S.C. § 1813.

under Section 18 of the FTC Act with respect to the depository institutions they regulate, along with the Board, OTS, and NCUA. Second, the bill would require that all regulations the federal banking agencies issue "be prescribed jointly by such agencies to the extent practicable."[25]

The FTC supports amending Section 18 of the FTC Act to give the FDIC and the OCC authority to issue rules prohibiting lenders from engaging in unfair or deceptive acts or practices, but recommends two modifications. First, the federal banking agencies and the NCUA should be required to consult with the Commission in any rulemaking they undertake under Section 18 of the FTC Act. The FTC is the expert agency responsible for ensuring appropriate and consistent interpretation and application, in accordance with a substantial body of jurisprudence, of the prohibition against unfair and deceptive practices in the FTC Act – across nearly all industries in the United States. While recognizing that regulators of depository institutions have specialized expertise as to the entities they regulate, it is also essential that regulations for depository institutions be in harmony with the broad principles of the statute and its implementation by the Commission. The Commission therefore should have a consultive role.

Second, the FTC suggests that the bill be modified so that whenever the federal banking agencies and NCUA commence rulemaking under the FTC Act for the entities they regulate, the Commission has the option to promulgate consistent and comparable rules for the entities that it regulates, using APA rulemaking procedures. In other words, the FTC should be able to use the relatively streamlined and expedited notice and comment procedures of the APA that are used by the other agencies, rather than the more onerous and lengthy rulemaking procedures set forth in

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[25] H.R. 3526, Section 1(a)(2).

Section 18 of the FTC Act.[26] Differences in rulemaking procedures may result in different regulatory requirements for financial service providers selling the same goods. To avoid the application of inconsistent standards, to improve interagency coordination on rulemakings, and to ensure that any FTC rulemaking does not lag years behind other financial regulators, the FTC recommends that the bill be amended to allow the FTC to use notice and comment rulemaking under the APA to promulgate rules whenever the banking agencies and NCUA commence rulemaking under the FTC Act.

The Commission looks forward to working with the Subcommittee on all of these legislative initiatives.

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[26] Without a change to the FTC Act, the Commission would have to satisfy considerable procedural hurdles before promulgating a rule under Section 5. 15 U.S.C. § 57a(b-e); 16 C.F.R. §§ 1.9-1.14. For example, the FTC must publish an advance notice of proposed rulemaking and seek public comment before publishing its notice of proposed rulemaking, and must provide an opportunity for a hearing before a presiding officer at which interested parties are accorded certain cross-examination rights. 15 U.S.C. § 57a(b); 16 C.F.R. §§ 1.10-1.13. It is likely that it would take the FTC much longer to issue rules covering financial services entities under its jurisdiction than it would take federal banking agencies without a change in the law.