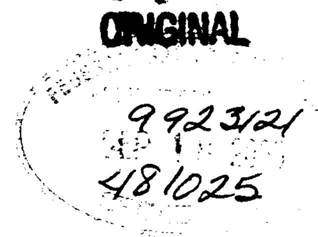
CONSUMER MORTGAGE COALITION

September 18, 2000



The Honorable Donald S. Clark
Secretary
Federal Trade Commission
Room 159
600 Pennsylvania Ave. N.W.
Washington, D.C. 20580

Re: File No. 992 3121 (FirstPlus Financial Group, Inc., Proposed Consent Agreement, 65 Fed. Reg. 51321 [August 23, 2000])

Dear Mr. Clark:

The Consumer Mortgage Coalition ("CMC"), a trade group of national residential mortgage lenders and servicers, appreciates the opportunity to submit its views concerning the Federal Trade Commission's ("Commission's") proposed consent agreement with FirstPlus Financial Group, Inc. ("FirstPlus"), which the Commission published in the *Federal Register* on August 23, 2000 (65 Fed. Reg. 51321). The proposed consent agreement would settle charges that FirstPlus violated federal law in connection with its marketing of debt-consolidation loans. FirstPlus is the parent company of a now-bankrupt high-loan-to-value ("HLTV") mortgage lender.

The complaint filed by the Commission in conjunction with the proposed consent agreement alleges that FirstPlus engaged in various deceptive practices in violation of the Federal Trade Commission Act ("FTC Act") and also violated the credit advertising provisions of the Truth in Lending Act ("TILA"). The CMC is filing this comment in an effort to ensure that other lenders can continue to engage in legitimate advertising practices that communicate valuable information to consumers.

Debt-consolidation home equity loans can benefit many consumers, allowing them to reduce substantially their annual interest costs. Many borrowers can achieve further savings because of the tax-deductibility of most mortgage interest. Although we share the Commission's concern that debt-consolidation loans not be marketed deceptively, it is also important that lenders be allowed to communicate the advantages of such loans to the public.

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Our particular concern with the FirstPlus matter is with Count I of the Complaint and the corresponding provisions of the Consent Order, Section I.A. According to the Complaint, FirstPlus promoted its mortgage loan products by comparing consumers' monthly payments under hypothetical current credit obligations with what their payments would be with a FirstPlus loan. Count I of the Complaint alleges that FirstPlus misrepresented that—

- "Consumers, in general, will save money when consolidating existing debts into a FirstPlus home equity loan"; and
- "The examples shown in [FirstPlus's] advertisements accurately illustrate the potential monthly savings of consolidating existing credit card balances and other loans into a FirstPlus home equity loan."

The Complaint goes on to allege that,

"[I]n truth and in fact,

> "A. Consumers, in many instances, will not save money when consolidating existing debts into a FirstPlus home equity loan. For many types of existing debts, depending on the interest rate and/or repayment terms of the existing debt, consumers will pay more per month *and/or pay more over time* when consolidating existing debts into a FirstPlus loan.
>
> "B. The examples shown in respondent's advertisements do not accurately illustrate the potential monthly savings of consolidating existing debts into a FirstPlus loan. Based on generally available interest rates and repayment terms on credit card balances and other loans, consumers would save far less than the illustrated savings, *or pay more per month following the original expiration date of the existing debt.*"
>
> (Emphasis added.)

Allegations of Deceptive Practices

The highlighted language in the Complaint could be read to suggest that it is deceptive to assert that a consumer will save on monthly payments if he or she will pay more over the full term of the loan than under the existing debts that are being refinanced. In other words, it is unclear whether the Complaint and Order take into account the time value of money. To take a simplified example, assume that a consumer currently has a typical credit card account with a current balance of $10,000, an interest rate of 18%, and a minimum monthly payment of the greater of 4% of the outstanding balance or $10.00. She is able to replace that account with a 15-year home equity loan at 12%. Although the consumer will pay slightly more in total finance charges over the life of the home equity loan than he or she would have paid on the credit card loan, few would deny that, from an

economic perspective, the home equity loan is less expensive. The difference in finance charges reflects the time value of money, because the consumer will have the use of more money for a longer time under the home equity loan than under the credit card plan.

Under the home equity plan, in addition to the lower APR, the consumer's monthly payments will decline dramatically, from an initial $400 to about $120. It would take four years of making the minimum payment of 4% of the outstanding balance before the consumer's payment on the credit card equaled the payment on the home equity loan. During that time, the borrower could invest the difference or use it to meet living expenses.

In any meaningful sense, the consumer will save money by replacing a relatively high-interest obligation with a lower-interest one, and it is not misleading for an advertisement to emphasize that fact. In fact, the Commission has accepted a consent order in which it found deception in an analogous economic situation, in which a creditor allegedly asserted that consumers could save money by borrowing at a high interest rate in order to fund a lower-rate certificate of deposit. *Automatic Data Processing, Inc.*, File No. 892 3107 (August 30, 1991) (proposed consent order), Docket No. C-3399 (August 27, 1992) (final consent order).

Based on the facts as presented in the Complaint, it appears that FirstPlus's promotional materials could be challenged as being deceptive for two reasons—

- The materials referred to "saving money," rather than "saving on monthly payments," without clearly and conspicuously disclosing the extended term of the new loan.

- The examples of current obligations that FirstPlus used may have been unrealistic, in that they did not reflect commonly available terms.

Count V of the Complaint alleges that FirstPlus also violated the TILA "trigger terms" provisions, which require a clear and conspicuous disclosure of the APR and loan term in an advertisement that states the monthly payment. We believe, and would like the Commission to confirm, that an advertisement for a debt-consolidation loan that (1) only promotes savings on monthly payments in comparison to hypothetical existing monthly payments, and (2) complies with the TILA trigger terms rules, is not deceptive. Under those circumstances, the TILA disclosures alert the consumer to the length and cost of the replacement loan, so that the consumer can put the lower monthly payments on the proposed new loan in proper perspective.

Order Provisions

The proposed Order includes two provisions that appear to be aimed at FirstPlus's allegedly deceptive claims of total cost savings. Under Section I of the order, FirstPlus "shall not, in any manner, expressly or by implication":

> "D. State the dollar value of the cost savings or benefits of a FirstPlus loan, as compared to other consumer credit transactions, whether actual or hypothetical, without disclosing accurately, clearly and conspicuously, all material information needed to evaluate the comparison, such as loan amount(s), terms of repayment, and annual percentage rate(s) on the balances of the credit transactions purportedly to be paid off with the FirstPlus loan.
>
> "E. Use any example of the cost savings or benefits of a FirstPlus loan, compared to other consumer credit transactions, whether actual or hypothetical, unless such example is based on reasonable assumptions regarding average annual percentage rates and repayment terms for comparable credit transactions, such as, but not limited to, those published in the Federal Reserve Board's Statistical Release G.19 ('Consumer Credit')."

If these requirements were applied generally to all advertising of debt-consolidation loans, they would discourage lenders from providing non-deceptive information to consumers about the benefits of such loans. Paragraph I.D would require an extensive disclosure of the underlying terms of the hypothetical existing transactions. The need to include those disclosures could make it difficult for lenders to promote the advantages of debt-consolidation loans in media in which time or space is limited, such as radio and television commercials and postcards.

Where an advertisement simply compares the monthly payments on existing obligations with those on the proposed new loan and does not assert that the consumer will achieve overall cost savings, it is unnecessary to include all the details of the hypothetical existing obligations. The consumer can easily compare the actual monthly payments on his or her own existing loans with those used in the examples. For that reason, the Commission should clarify that a lender will not be viewed as engaging in a deceptive practice if it advertises monthly savings (with no claims of total cost savings) without also stating the detailed information required under Paragraph I.D.

Moreover, by requiring the use of average, rather than realistic, APRs and terms for the hypothetical existing transactions, Paragraph I.E goes beyond what is necessary to prevent deception. As noted in the example above, a borrower who is currently paying an APR of 18% on a credit card balance can benefit from a debt-consolidation loan, but a consumer who is paying higher rates can benefit even more. Many borrowers who are good candidates for debt-consolidation loans are paying APRs that are significantly higher than the "average." There is no reason that a lender should not be able to use a realistic rate that exceeds the reported average as the basis for the hypothetical existing credit card payment.

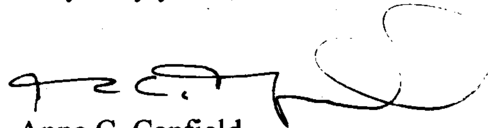
Requiring the use of an average rate and terms for comparative purposes also conflicts with the policy behind the provision of Regulation Z that allows creditors to advertise any credit terms that are, or will be, actually available. 12 C.F.R. § 226.24(a).

As the Official Staff Commentary to Regulation Z states, the Regulation Z provision "is not intended to inhibit the promotion of new credit programs, but to bar the advertising of terms that are not and will not be available." Regulation Z Official Staff Commentary § 226.24(a)-1. The Regulation Z provision allows creditors to advertise various credit programs that they actually offer, not only their "average" rates and terms. The policy behind the Regulation Z provision should also apply to advertisements of hypothetical existing loans—creditors should be allowed to use realistic examples, even if they represent loans at higher-than-average-rates.

In summary, we urge the Commission to clarify the FirstPlus Complaint and Consent Order so that they do not have the effect of discouraging lenders from conveying truthful, valuable information to consumers. We believe that our suggestions would meet the Commission's objectives without interfering with legitimate advertising and promotional practices.

We appreciate the opportunity to comment on the proposed consent agreement.

Very truly yours,



Anne C. Canfield
Executive Director