PREPARED STATEMENT OF

THE FEDERAL TRADE COMMISSION

on

CIVIL RIGHTS ISSUES EMERGING FROM THE MORTGAGE CRISIS

Before the

UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D.C.
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I. Introduction

I am Eileen Harrington, the Acting Director of the Bureau of Consumer Protection at the Federal Trade Commission.[1] I am very pleased to have this opportunity to speak to you today at this important briefing on civil rights issues emerging from the mortgage crisis, and on this panel focusing on predatory lending.[2] As you are no doubt aware, unfair, deceptive, discriminatory, or otherwise unlawful lending practices result in significant injury to consumers every year. These illegal practices, especially in connection with subprime lending, have a powerful adverse effect on lower-income and minority communities.[3]

The Federal Trade Commission ("Commission" or "FTC") is the nation's consumer protection agency. To fulfill its consumer protection mission, the FTC engages in law enforcement, consumer education, and policy research to protect consumers of financial services. This testimony will focus on the FTC's activities to protect mortgage borrowers, including minorities, from illegal lending practices.

During today's testimony, the FTC would like to emphasize the following points:

- Since the late 1990s, the Commission has focused its enforcement efforts on the most egregious illegal lending practices of nonbank lenders.

- In the past decade, the FTC has brought 26 actions related to the mortgage lending industry, with particular attention to entities in the subprime market, alleging that mortgage lenders and servicers engaged in unfair or deceptive acts and practices. Through these cases, the FTC has returned nearly $345 million to consumers.

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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 are my own, however, and do not necessarily reflect the views of the Commission or any Commissioner.

[2] The invitation letter for this briefing also requests views on the effects of the Community Reinvestment Act and the Department of Housing and Urban Development's lending goals for Fannie Mae and Freddie Mac on the mortgage crisis. Given that the Federal Trade Commission neither enforces these standards nor has conducted research on them, the Commission offers no views on these issues.

[3] *See* Comptroller of the Currency, *Economic Issues in Predatory Lending,* OCC WORKING PAPER, July 30, 2003, at 2; *see also The Future of Fair Housing,* Report of the National Commission on Fair Housing and Equal Opportunity, Henry Cisneros and Jack Kemp, Co-Chairs (December 2008), *available at* http://www.civilrights.org/publications/reports/fairhousing/future_of_fair_housing_report.pdf.

- The Commission also has an active law enforcement program directed at discrimination in mortgage lending. The FTC has brought dozens of cases against lenders alleging discrimination in violation of the Equal Credit Opportunity Act ("ECOA"), most recently settling charges last December of discrimination against minority borrowers in pricing mortgage loans. The FTC continues to investigate and target additional lenders that may be unlawfully charging higher prices or denying loans at greater rates to minority borrowers.

- To empower consumers to better protect themselves from potentially harmful conduct, the FTC also engages in extensive consumer education related to mortgage lending. The FTC has developed educational materials in English and Spanish to provide information about deceptive mortgage advertisements, buying a home, mortgage discrimination, and steps borrowers can take to avoid foreclosure and protect themselves from foreclosure rescue scams.

- The Commission also engages in research and policy development to understand consumer behavior and protect consumers in the mortgage marketplace. The FTC has researched the efficacy of mortgage disclosure documents, and provided comments to the Federal Reserve Board and Department of Housing and Urban Development recommending reform of current federal mortgage disclosures.

- The FTC is committed to continuing its efforts to protect consumers, including those in lower-income and minority communities, from harm.

II. Overview of the Commission's Authority

The Commission has wide-ranging responsibilities regarding consumer financial issues. As part of its mandate to protect consumers, the Commission enforces Section 5 of the FTC Act, which prohibits unfair or deceptive acts or practices in or affecting commerce.[4] This authority has provided the principal basis for much of the Commission's mortgage lending enforcement.

The Commission also enforces three credit statutes specifically governing mortgage lending. The ECOA[5] 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")[6] requires disclosures and establishes certain substantive requirements in connection with consumer credit transactions. The Home Ownership and Equity Protection Act

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[4] 15 U.S.C. § 45(a).

[5] 15 U.S.C. § 1691. To implement the ECOA, the Federal Reserve Board issued Regulation B, 12 C.F.R. § 202.

[6] 15 U.S.C. §§ 1601-1666j.

(“HOEPA”),[7] part of the TILA, provides enhanced protections for consumers with certain high-cost refinance loans secured by their homes.

Although the FTC has broad authority over mortgage lending practices, it does not have jurisdiction over all mortgage lenders. The FTC Act and the other statutes that the FTC enforces specifically exempt banks, thrifts, and federal credit unions from the agency’s jurisdiction.[8] The Commission does, however, have jurisdiction over nonbank financial companies, including nonbank mortgage companies, mortgage brokers, finance companies, and subsidiaries of bank holding companies.

III. FTC Enforcement Efforts Relating to Unfair, Deceptive and Discriminatory Practices in the Mortgage Lending Market

The Commission has pursued law enforcement actions focusing on all aspects of mortgage lending -- including advertising and marketing, approval and pricing, and servicing -- by mortgage lenders, brokers, and loan servicers.[9] Several of these landmark cases have resulted in large monetary judgments, collectively returning approximately $345 million to consumers.

A. Unfair and Deceptive Practices in Lending

In approximately the last decade, the FTC has brought 26 actions alleging deceptive or unfair practices against companies in the mortgage lending industry, focusing in particular on the subprime market.[10] In particular, the FTC has brought numerous enforcement actions

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[7] 15 U.S.C. § 1639.

[8] *E.g.,* 15 U.S.C. § 45(a)(2).

[9] With the recent rapid increase in mortgage delinquencies and foreclosures, the FTC has intensified its efforts to protect consumers in financial distress, including protecting them from mortgage foreclosure rescue scams. The Commission’s activities to assist consumers in financial distress are described fully in the agency’s recent testimony before the United States Senate Commerce Committee. The Commission’s statement is available at http://www.ftc.gov/os/2009/02/P084800creditcrisis.pdf.

[10] *In re American Nationwide Mortgage Company, Inc.*, FTC Docket No. C-4249 (Feb.17, 2009); *In re Shiva Venture Group, Inc.*, FTC Docket No. C-4250 (Feb. 17, 2009); *In re Michael Gendrolis*, FTC Docket No. C-4248 (Feb. 17, 2009); *FTC v. EMC Mortgage Corp. & The Bear Stearns Cos., LLC,* No. 4:08-cv-338 (E.D. Tex. 2008); *FTC v. Safe Harbour Found. of Fl., Inc.,* No. 08-1185 (N.D. Ill. 2008); *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*

challenging deceptive or illegal marketing by lenders, brokers, or other advertisers of consumer credit in violation of the FTC Act or the TILA.[11] In mortgage advertising, for example, the Commission has brought actions against mortgage lenders and brokers for deceptive marketing of loan costs[12] or other key loan terms, such as the existence of a prepayment penalty[13] or a large balloon payment due at the end of the loan.[14] Because many subprime borrowers were minorities, the FTC's cases have provided redress to many minority borrowers who were victims of unfair or deceptive practices.

In Capital City Mortgage Corp. ("Capital City"), the FTC alleged that the defendant had engaged in unfair and deceptive origination and loan servicing practices.[15] 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 loans, which put them at high risk of foreclosure. According to the Commission's complaint, Capital City included phony charges in monthly statements, added 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. The complaint also alleged that Capital City violated the ECOA in several ways, including 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 notices of adverse action. 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.[16]

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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).

[11] *See, e.g.*, *FTC v. Mortgages Para Hispanos.Com Corp.,* 11 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).

[12] *See, 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).

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

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

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

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

In a case against Associates First Capital Corp. and Associates Corporation of North America ("the Associates") involving deceptive practices in subprime lending, the FTC alleged that the defendants marketed mortgage loans through false and misleading statements about loan costs.[17] The complaint charged that the Associates represented that consumers would save money when consolidating their existing debts, but these "savings claims" did not take into account the loan fees and closing costs the company typically added to consumers' loan amounts. Further, according to the complaint, the claims did not disclose that, for certain Associates loans, consumers would pay only interest and still would owe the entire principal amount in a "balloon" payment at the end of the loan term. The complaint also alleged that the Associates deceptively sold single-premium credit insurance with its mortgage loans. The defendants paid a record $215 million in consumer redress to settle the FTC's complaint allegations.[18]

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.[19] The alleged conduct was egregious: the lender conducted business with his clients almost entirely in Spanish, and then at closing provided loan documents in English with less favorable terms.

In September 2007, after an extensive review of mortgage advertisements, the Commission issued warnings to mortgage brokers and lenders, and media outlets that carry their advertisements for home mortgages, that some of their advertising claims may violate federal law.[20] In the warning letters, the agency advised over 200 advertisers and media outlets that their mortgage ads may be deceptive in violation of Section 5 of the FTC Act or may violate the TILA. The ads, including some in Spanish, were identified in June 2007 during a nationwide review focused on claims for very low monthly payment amounts or for interest rates without adequate disclosure of other important loan terms. Just last month, the Commission announced settlements with three mortgage lenders charged with using ads that touted low interest rates and low monthly payments, but failed to adequately disclose that the low rates and payment amounts would increase substantially after a limited period of time.[21]

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

[18] *FTC v. Associates First Capital Corp.,* No. 01-00606 (N.D. Ga. Jan. 26, 2002) (Order Preliminarily Approving Stipulated Final Judgment and Order).

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

[20] FTC Press Release, *FTC Warns Mortgage Advertisers and Media That Ads May Be Deceptive* (Sept. 11, 2007), *available at* http://www.ftc.gov/opa/2007/09/mortsurf.shtm.

[21] *See, e.g, In re American Nationwide Mortgage Company, Inc.*, FTC Docket No. C-4249 (Feb.17, 2009); *In re Shiva Venture Group, Inc.*, FTC Docket No. C-4250 (Feb. 17, 2009); *In re Michael Gendrolis*, FTC Docket No. C-4248 (Feb. 17, 2009).

In addition to these actions involving mortgage advertising and marketing practices, the FTC has challenged acts and practices in the servicing of mortgage loans, including failing to post payments upon receipt, charging unauthorized fees, and engaging in deceptive or abusive debt 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 Fair Debt Collection Practices Act[22] in servicing mortgage loans, including debts that were in default when EMC obtained them. Among other things, the complaint alleged that the defendants: (1) misrepresented the amounts consumers owed; (2) assessed and collected unauthorized fees; and (3) misrepresented that they had a reasonable basis to substantiate their representations about consumers' mortgage loan debts.[23] The EMC settlement required the defendants to pay $28 million in consumer redress, barred them from future law violations, and imposed new restrictions on their business practices. In particular, it required EMC to establish and maintain a comprehensive data integrity program to ensure the accuracy and completeness of data and other information about loan accounts before servicing them.

B. Mortgage Discrimination

1. Fair Lending Investigations and HMDA Data

Another significant focus of FTC law enforcement in the mortgage lending arena is discrimination.[24] 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 Home Mortgage Disclosure Act ("HMDA").[25] 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 law enforcement officials and the public.

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[22]15 U.S.C. §§ 1692-1692p.

[23]The complaint further alleged the defendants made harassing collection calls; falsely represented the character, amount, or legal status of debts; and used false representations and deceptive means to collect on mortgage loans.

[24]The Commission's July 25, 2007 testimony before the House Committee on Financial Services, Subcommittee on Oversight and Investigations, addressed in detail the Commission's activities to combat discrimination in financial services. The Commission's statement is available at http://www.ftc.gov/os/testimony/P064806hdma.pdf.

[25]12 U.S.C. § 2801. HMDA is implemented by the Federal Reserve 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).

Since its enactment, HMDA has undergone significant changes that reflect the dramatic changes in mortgage lending.[26] Lenders subject to the Commission's jurisdiction began reporting data in 1989. At that time, HMDA'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.

In the late 1990s, this focus began to expand with the growth of subprime mortgage lending. Subprime mortgage lending was part of a broader trend of the increasing availability of credit to populations that in the past could not qualify for it. 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 were considered too risky, fair lending concerns became more focused on whether lenders were unlawfully discriminating on the basis of race or national origin in their pricing decisions.

In response to mortgage loan pricing concerns, the Federal Reserve Board amended HMDA's implementing Regulation C to require the reporting of additional information for home loans.[27] In 2005, lenders were required to report specific pricing information for each higher-priced loan made in 2004 based on pricing thresholds set by Regulation C. This new information allows for improved monitoring and understanding of lending activity in the higher-priced segment of the home loan market.

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 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. 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 the FTC's fair lending investigations is to determine whether the differences in outcomes between groups persist after legitimate underwriting criteria are taken into account.

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[26] 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 Financial Services, U.S. House of Representatives, June 13, 2006, *available at* http://www.federalreserve.gov/newsevents/testimony/Olson20060613a.htm.

[27] 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.*

2. Fair Lending Law Enforcement

Since the ECOA was enacted, the Commission has brought over three dozen cases against large subprime lenders, major nonmortgage creditors, and smaller finance companies alleging ECOA violations.[28] 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[29] and the record-keeping requirements necessary for law enforcers to determine fair lending compliance in the first instance[30] to discrimination on the basis of race,[31] marital status,[32] sex,[33] age,[34] and receipt of public assistance.[35]

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[28]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 $16,000 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 seeking to obtain 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).

[29]*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-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).

[30]*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).

[31]*FTC v. Gateway Funding Diversified Mortgage Services, L.P & Gateway Funding, Inc.,* No. 08-5805 (E.D. Penn. 2008)*; 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).

[32]*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 (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. Barclays American*, No. 91-14 (W.D.N.C. 1991); *United States v. Blake*, Nos. 90-1064 (W.D. Okl. 1990)

Although most of the FTC's lending discrimination cases have involved the unlawful denial of credit, recently the FTC has focused its enforcement on illegal pricing of mortgage loans. In December 2008, the FTC reached a settlement with Gateway Funding Diversified Mortgage Services, L.P., and its general partner, Gateway Funding Inc. ("Gateway").[36] The Commission alleged that Gateway violated the ECOA by charging African-American and Hispanic consumers higher prices for mortgage loans than non-Hispanic white consumers. The alleged pricing disparities resulted from the discretion given to loan officers to determine the amount in discretionary charges and fees – called "overages" – to charge borrowers above and beyond the price they were charged based on their underwriting risk and credit characteristics. According to the FTC's complaint, Gateway paid loan officers a percentage of these overages and failed to monitor whether African-American and Hispanic consumers were paying higher overages than non-Hispanic white borrowers. The alleged price disparities were substantial, statistically significant, and could not be explained by factors related to underwriting risk or credit characteristics of the applicants.

The settlement bars Gateway from discriminatory lending practices and requires it to implement a fair lending training program, a comprehensive data integrity program designed to ensure accuracy and completeness of loan data, and a fair lending monitoring program that includes a system for performing periodic analyses to monitor for disparities in loan prices. The settlement imposed a judgment of $2.9 million, all but $200,000 of which was suspended based on inability to pay. The FTC is using this money to redress African-American and Hispanic consumers who were harmed by Gateway's practices.

As part of its fair lending efforts using HMDA pricing data, the FTC also investigated Homecomings Financial, LLC ("Homecomings"), a wholly-owned subsidiary of Residential Funding Company, LLC, and an indirect wholly-owned subsidiary of Residential Capital, LLC and GMAC LLC. Homecomings was a wholesale mortgage lender that originated the vast majority of its loans through independent brokers. The FTC staff's statistical analyses showed that, on average, Homecomings charged African-American and Hispanic borrowers substantially more for home purchase and refinance loans than similarly-situated non-Hispanic whites. According to the FTC staff's analysis, these price differences could not be explained by any legitimate underwriting or credit characteristics. Based on its analysis, the FTC staff further

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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).

[34] *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).

[35] *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).

[36] *FTC v. Gateway Funding Diversified Mortgage Services, L.P & Gateway Funding, Inc.,* No. 08-5805 (E.D. Penn. 2008).

determined that these disparities were caused by Homecomings' policy and practice of allowing its brokers broad discretion in determining the amount of discretionary fees charged to borrowers. The FTC staff closed its investigation in January of this year, however, because Homecomings ceased originating mortgage loans and stated it has no intention of resuming mortgage lending.[37]

Additionally, for more than a decade, the FTC has been a member of the Interagency Task Force on Fair Lending, a joint undertaking with DOJ, HUD, and the federal banking regulatory agencies. The purpose of the task force is to work together to share information on lending discrimination, other lending practices that harm consumers, and related policy issues. The Task Force has published a Policy Statement on Lending Discrimination[38] and meets frequently to discuss fair lending issues. Task Force members also share information about developments in the law and marketplace, including the mortgage lending marketplace, and trends in consumer complaints.

IV. FTC Non-Law Enforcement Activities in the Mortgage Lending Market

A. FTC's Consumer Education Program

Law enforcement is the primary means that the Commission uses to combat mortgage lending acts and practices that harm consumers. Well-informed consumers are the first line of defense against deception. To empower consumers to better protect themselves from potentially harmful conduct in the first instance, the FTC engages in extensive consumer education related to mortgage lending.[39] All of the Commission's consumer protection materials, including many released in Spanish as part of the FTC's Hispanic Outreach Program, are available to the public on the FTC's website or by calling the FTC's Consumer Response Center toll-free at 1-877-FTC-HELP.[40]

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[37]The FTC staff's closing letter in the Homecomings matter is available at http://www.ftc.gov/os/closings/090122homecomingfinancialclosingletter.pdf.

[38]*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).

[39]The Commission's consumer education materials are available from the FTC's website, www.ftc.gov. The FTC publishes many of its materials in both English and Spanish. Educational materials on mortgage and real estate issues are directly accessible from the FTC's webpage, Credit & Loans: Mortgages/Real Estate, www.ftc.gov/bcp/menus/consumer/credit/mortgage.shtm. The mortgage-related materials are available in Spanish from the FTC's webpage, Crédito y Préstamos: Hipotecas/Propiedades, www.ftc.gov/bcp/menus/consumer/credit/mortgage_es.shtm.

[40]The Commission's Spanish-language publications are available from its webpages, Información de la FTC para Consumidores, *available at* www.ftc.gov/bcp/consumer_es.shtm, and ¡OJO! Mantente alerta contra el fraude: Infórmate con la FTC, *available at* www.ftc.gov/ojo.

The Commission has implemented extensive programs to educate consumers about financial literacy generally, and subprime borrowing specifically, including a brochure called "Mortgage Discrimination" that sets forth consumer rights under the fair lending laws. The brochure is available in both English and Spanish.[41] In 2007, the Commission released several new mortgage-related consumer brochures, including brochures on deceptive mortgage advertisements; buying a home; how to manage a mortgage if the mortgage lender goes out of business or files for bankruptcy; and high-rate, high fee mortgages. To help consumers facing possible foreclosure, the Commission also released alerts offering guidance on steps borrowers can take to avoid foreclosure and protect themselves from foreclosure rescue scams.[42]

In addition, the Commission regularly partners with other agencies to educate consumers. Partnering with other agencies has proven to be an effective technique because it taps the respective expertise and distribution channels of the agencies involved. The FTC has jointly published with the banking regulators, the DOJ, and HUD brochures addressing key lending issues.[43] The FTC continues to participate in the governmental Financial Literacy and Education Commission, and has contributed its expertise to the subcommittees that produced *MyMoney.gov* and *Taking Ownership of the Future: The National Strategy for Financial Literacy.*

B. FTC Research and Policy Development

The Commission engages in public workshops and other research efforts so that it may better understand particular consumer protection issues in the changing marketplace, and advocate for policies that promote protections for consumers, such as policies that foster better informed mortgage borrowing.

For example, in June 2007, the FTC staff released an empirical study assessing the effectiveness of mortgage disclosure documents that mortgage originators are required to provide to consumers under TILA and the Real Estate Settlement Procedures Act ("RESPA").[44]

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[41] www.ftc.gov/bcp/conline/pubs/homes/mortgdis.pdf (English version); www.ftc.gov/bcp/conline/spanish/homes/s-mortgdis.shtm (Spanish version).

[42] "Mortgage Payments Sending You Reeling? Here's What to Do", *available at* www.ftc.gov/bcp/edu/pubs/consumer/homes/rea04.shtm and "Foreclosure Rescue Scams: Another Potential Stress for Homeowners in Distress," *available at* http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre42.shtm.

[43] *See, e.g., Looking for the Best Mortgage? Shop, Compare, and Negotiate, available at* www.ftc.gov/bcp/edu/pubs/consumer/homes/rea09.shtm.

[44] JAMES M. LACKO & JANIS K. PAPPALARDO, FEDERAL TRADE COMM'N, BUREAU OF ECONOMICS STAFF REPORT, IMPROVING CONSUMER MORTGAGE DISCLOSURES: AN EMPIRICAL ASSESSMENT OF CURRENT AND PROTOTYPE DISCLOSURE FORMS (2007), *available at* www.ftc.gov/os/2007/06/P025505mortgagedisclosurereport.pdf. FTC staff previously conducted empirical studies of mortgage disclosures. *See* JAMES M. LACKO & JANIS K. PAPPALARDO, FEDERAL TRADE

RESPA and its implementing regulations govern settlement services for most home mortgage transactions. The study found that these disclosures were not very effective in helping consumers of subprime and prime mortgages understand the terms of mortgages and their implications. The study also demonstrated that consumers could benefit from changes in current disclosure requirements. Significantly, the study suggested that, in actual market transactions, subprime borrowers may face even greater difficulties understanding the terms of their mortgages than they did in the study and, therefore, these borrowers may benefit the most from improved disclosures.

Based in part on its mortgage disclosure study, the FTC staff submitted a public comment to the federal banking agencies on proposed illustrations to disclose information to consumers about subprime mortgages.[45] The comment stated that consumers likely would benefit from one clear disclosure document that alerts them to the major costs and features of a mortgage. Such a document would significantly reduce the cost of obtaining accurate information about the value of different mortgage options, be noticeable and easy to read and understand, feature up-front summaries of key loan features, and make clear what a consumer is getting before signing legal documents. The comment also noted the importance of consumer research and expressed the FTC staff's readiness to participate with the FRB and HUD in a more comprehensive effort to improve mortgage disclosures.

As part of its continuing efforts to promote improved mortgage disclosures, in June 2008 the FTC staff filed a comment with HUD concerning proposed amendments to regulations implementing RESPA.[46] The FTC staff's comment stated that some of HUD's proposed modifications could help consumers better understand and compare loan terms and closing costs. For example, the FTC staff supported HUD's proposed rule making it easier for consumers to compare the estimated settlement costs on the Good Faith Estimate with the actual costs on the HUD-1 Settlement Statement provided at closing. The comment noted, however, that some of the proposed rule changes also may have the unintended consequence of further complicating the already complex mortgage process. The comment stated that consumers would benefit most if the federal government commenced a comprehensive effort to reform federal mortgage disclosures, and recommended that HUD collaborate with the FRB to consolidate and reform

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COMM'N, BUREAU OF ECONOMICS STAFF REPORT, THE EFFECT OF MORTGAGE BROKER COMPENSATION DISCLOSURES ON CONSUMERS AND COMPETITION: A CONTROLLED EXPERIMENT (2004), *available at* www.ftc.gov/os/2004/01/030123mortgagefullrpt.pdf.

[45] *See* FEDERAL TRADE COMM'N, STAFF COMMENTS TO JENNIFER J. JOHNSON, SECRETARY, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM (October 2007), *available at* www.ftc.gov/be/v080000.pdf.

[46] *See* FEDERAL TRADE COMM'N, STAFF COMMENTS IN THE MATTER OF REQUEST FOR COMMENT ON PROPOSED AMENDMENTS TO THE REGULATIONS IMPLEMENTING THE REAL ESTATE SETTLEMENT PROCEDURES ACT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (June 2008), *available at* http://www.ftc.gov/os/2008/06/V080012respa.pdf.

federal mortgage disclosures. The FTC also once again noted its willingness to work with the FRB and HUD on such an effort.

V. Conclusion

The Commission is concerned about fair lending and about unfairness and deception in the mortgage marketplace, particularly in the midst of a mortgage crisis and economic downturn. As described above, the FTC's law enforcement, consumer education, and research and policy activities are designed to prevent injury to consumers, including minority consumers. The Commission will maintain its efforts to identify, prosecute, and prevent unlawful practices in the mortgage lending market.