

**PREPARED STATEMENT OF
THE FEDERAL TRADE COMMISSION**

on

“H.R. 2309, the Consumer Credit and Debt Protection Act”

Before the

**COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMERCE, TRADE, AND
CONSUMER PROTECTION
UNITED STATES HOUSE OF REPRESENTATIVES**

**Washington, D.C.
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I. Introduction

Chairman Rush, Ranking Member Radanovich, and members of the Subcommittee, I am Eileen Harrington, Acting Director of the Bureau of Consumer Protection of the Federal Trade Commission (FTC or Commission).¹ I appreciate the opportunity to appear before you today to discuss the Commission's efforts to protect consumers of financial services.

The current economic crisis has had a devastating impact on consumers of financial services. As we have previously testified, the FTC has a long history of consumer protection efforts in the financial services area, and substantially increased its law enforcement efforts to protect consumers of financial services to respond to this crisis.

The Commission is using its new authority under the Omnibus Appropriations Act of 2009 to expeditiously promulgate rules prohibiting or restricting unfair or deceptive acts and practices concerning mortgage servicing, loan modification and foreclosure rescue services, and other mortgage-related conduct.² The Consumer Credit and Debt Protection Act would allow the FTC to expeditiously promulgate rules prohibiting or restricting unfair or deceptive acts and practices relating to the broader consumer credit and debt marketplace. Under both the Omnibus Appropriations Act of 2009 and the proposed Consumer Credit and Debt Protection Act, violators of the FTC's implementing rules will be subject to civil penalties. Because giving the FTC the ability to issue such rules would be beneficial to consumers, the Commission strongly supports the enactment of such legislation.

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 Omnibus Appropriations Act 2009, Pub. L. No. 111-8, § 626, __ Stat. __ (Mar. 11, 2009).

New statutes and rules, however, do little to protect consumers unless they are enforced. The FTC is primarily a law enforcement agency. The agency will vigorously enforce any new rules that it issues. The Commission will continue to aggressively enforce the Federal Trade Commission Act (FTC Act) as well as the other statutes and rules for which it has enforcement responsibility. For example, the Commission filed an action last week alleging that a mortgage lender violated the Equal Credit Opportunity Act by unlawfully charging Hispanic consumers higher prices for mortgage loans than non-Hispanic white consumers.³ Through such law enforcement as well as its consumer education and research activities,⁴ the Commission believes that it can provide more robust protection in the future for consumers of financial services.

This testimony updates testimony from earlier this year before this Subcommittee about the Commission's consumer protection authority and activities related to financial services.⁵ The testimony also describes the FTC's rulemaking currently underway pursuant to the Omnibus

³ *FTC v. Golden Empire Mortgage, Inc., et al.*, cv-09-03227 CAJ (SHx) (C.D. Cal. May 8, 2009) (complaint filed).

⁴ For example, the Commission recently announced a new website – www.ftc.gov/MoneyMatters – to provide information to people dealing with debt, struggling to find a job, or trying to create a budget, save and spend wisely during these challenging economic times. Money Matters offers practical tips, videos, and links to reliable resources for more information on topics like credit repair, debt collection, job-hunting and jobs scams, vehicle repossession, managing mortgage payments, and foreclosure rescue scams. The Spanish version of the site is available at www.ftc.gov/asuntosdedinero.

⁵ See Prepared Statement of the Federal Trade Commission on Consumer Protection in the Used and Subprime Car Market before the House Committee on Energy and Commerce Subcommittee on Commerce, Trade, and Consumer Protection, March 5, 2009, (“FTC Used Automobile Testimony”) available at <http://www.ftc.gov/os/2009/03/P064808usedcarstestimony.pdf>; Prepared Statement of the Federal Trade Commission On Consumer Credit and Debt: The Role of the Federal Trade Commission in Protecting the Public before the House Committee on Energy and Commerce Subcommittee on Commerce, Trade, and Consumer Protection, March 24, 2009, (“FTC Role Testimony”) available at <http://www.ftc.gov/os/2009/03/P064814consumercreditdebt.pdf>.

Appropriations Act of 2009. Finally, it offers views as to how the Consumer Credit and Debt Protection Act, if enacted, would make the agency more effective.

II. The FTC's Jurisdiction over Financial Services

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 FTC Act, which prohibits unfair or deceptive acts or practices in or affecting commerce.⁶ The Commission also enforces many other consumer protection statutes that govern financial services providers.⁷

Although the Commission has authority over a wide range of acts and practices related to financial products and services, financial service providers that are 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 Fair Debt Collection Practices Act and the Credit Repair Organization Act, the Commission has jurisdiction over non-bank entities, including debt collectors and credit repair organizations, respectively.

The Commission recognizes that more must be done to protect consumers of financial services. Several bills have been introduced and proposals offered under which there would be

⁶ 15 U.S.C. § 45(a).

⁷ The FTC enforces the Truth in Lending Act, the Home Ownership and Equity Protection Act, the Consumer Leasing Act, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, the Equal Credit Opportunity Act, the Credit Repair Organizations Act, the Electronic Funds Transfer Act, and the privacy provisions of the Gramm-Leach-Bliley Act.

changes in federal oversight of financial services.⁸ There are differences in these bills and proposals, and there are numerous challenging issues that would have to be resolved to implement these concepts.

As these discussions about consumer financial services regulation continue, the Commission urges this Subcommittee and the Congress to consider how best to utilize the Commission's unparalleled expertise in consumer protection. The FTC has extensive experience enforcing consumer credit laws and a wide variety of other consumer protection laws, as well as working successfully with state law enforcers and regulators. The Commission is recognized as a leader in educating consumers and businesses on a wide range of financial services topics. The agency has conducted critical research and policy development in the financial services sector, including seminal research on mortgage and other disclosure issues.

Because of its unequaled and comprehensive focus on consumer protection, its independence from providers of financial services, and its emphasis on vigorous law enforcement, we ask you to ensure that the FTC is considered as Congress moves forward in determining how to modify federal oversight of consumer financial services.

III. Financial Services Law Enforcement

As the FTC has previously testified, the Commission has actively enforced the FTC Act and other consumer protection laws in the areas of mortgage advertising and marketing,

⁸ See, e.g., Financial Product Safety Commission Act of 2009, S. 566, 111th Cong. (1st Sess. 2009); Consumer Credit Safety Commission Act of 2008, S. 3629, 110th Cong. (2d Sess. 2008); Consumer Credit Safety Commission Act of 2008, H.R. 7258, 110th Cong. (2d Sess. 2008); Cong. Oversight Panel, "Special Report on Regulatory Reform: Modernizing the American Financial Regulatory System: Recommendations for Improving Oversight, Protecting Consumers, and Ensuring Stability," (Jan. 2009), at 34; U.S. Department of the Treasury, "Blueprint for a Modernized Financial Regulatory Structure," (Mar. 2008).

mortgage servicing, loan modification and foreclosure rescue, automobile finance, debt settlement and credit counseling, debt collection practices, and credit repair operations. In addition, the FTC has been active in the areas of mortgage discrimination and unsecured consumer credit, such as personal loans, payday loans, and credit cards. During the last five years, the agency has brought more than seventy consumer protection cases against those who violated the law in connection with offering or providing financial services.

Since our last testimony before this Subcommittee, the FTC, the Department of the Treasury, the Department of Justice, the Department of Housing and Urban Development, and state regulators, jointly announced several law enforcement actions and initiatives as part of a broader crackdown on fraud and deception by loan modification and foreclosure rescue entities.⁹ In connection with this effort, the Commission also sent warning letters to 71 companies for marketing potentially deceptive mortgage loan modification and foreclosure assistance programs. The FTC also joined forces with a wide array of government, non-profit, and mortgage industry members to launch a new consumer education campaign to help those in financial trouble avoid becoming victims of a loan modification or foreclosure rescue scam. The Commission issued a new consumer education publication on this topic, which several servicers have provided directly to consumers, including during loan counseling sessions, in monthly statements, in correspondence to delinquent borrowers, and on their websites.¹⁰

⁹ See Press Release, Federal and State Agencies Crack Down on Mortgage Modification and Foreclosure Rescue Scams (Apr. 6, 2009), *available at* <http://www.ftc.gov/opa/2009/04/hud.shtm>; Press Release, Federal, State Partners Announce Multi-Agency Crackdown Targeting Foreclosure Rescue Scams, Loan Modification Fraud (Apr. 6, 2009), *available at* <http://www.ftc.gov/opa/2009/04/loanfraud.shtm>.

¹⁰ See FTC Publication, A Note to Homeowners, *available at* <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/real6.pdf>; FTC Publication, Foreclosure

A. Mortgage Discrimination

A significant FTC focus in the mortgage lending area is preventing and deterring unlawful discrimination. The FTC enforces the Equal Credit Opportunity Act, which prohibits discrimination in credit decisions. Since the ECOA was enacted, the Commission has brought over three dozen cases alleging that large subprime lenders, major non-mortgage creditors, and smaller finance companies violated that statute. The FTC recently has increased its fair lending law enforcement activities. Last week, the Commission filed an action alleging that Golden Empire Mortgage and its owner violated the ECOA by charging Hispanic consumers higher prices for mortgage loans than non-Hispanic white consumers. Similarly, 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.¹¹ 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 monitoring and training program. The FTC is using the settlement funds to redress African-American and Hispanic consumers who were harmed by Gateway's practices.

B. Unsecured Credit

Many consumers obtain and use unsecured credit to purchase goods and services. Some

Rescue Scams: Another Potential Stress for Homeowners in Distress, *available at* <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre42.shtm>.

¹¹ *FTC v. Gateway Funding Diversified Mortgage Services, L.P.*, No. 08-5805 (E.D. Pa. Dec. 17, 2008).

common examples are small personal loans, payday loans, and credit cards. The FTC has taken action to protect consumers of unsecured credit products from unfair, deceptive, and other unlawful acts and practices.

The Commission recently increased its law enforcement activities relating to payday loans. The FTC has challenged companies that allegedly violated the Truth in Lending Act by failing to disclose the annual percentage rate (APR) in their advertisements for payday loans, making it harder for consumers to comparison shop for credit. For example, in the last year, the Commission settled three cases against online payday lenders and two cases against lead generators for payday lenders for allegedly failing to disclose the APR in their advertisements in violation of the TILA.¹² Similarly, the FTC filed an enforcement action against a United Kingdom-based online payday lender for violating the TILA by allegedly failing to disclose in writing to consumers, prior to consummation of the transaction, the key terms of their loan, including the APR, the payment schedule, the amount financed, the total number of payments, and any late payment fees.¹³

With regard to credit cards, the Commission has jurisdiction over very few issuers, most of which are banks.¹⁴ The FTC, however, does have jurisdiction over the non-bank entities that

¹² *In the Matter of We Give Loans, Inc.*, FTC Dkt No. C-4232 (Sept. 5, 2008) (final consent order); *In the Matter of Aliyah Associates, LLC d/b/a American Advance*, FTC Dkt No. C-4229 (Sept. 5, 2008); *In the Matter of CashPro*, FTC Dkt No. C-4220 (June 6, 2008) (final consent order); *In the Matter of American Cash Market, Inc.*, FTC Dkt No. C-4221 (June 6, 2008) (final consent order); *In the Matter of Anderson Payday Loans*, FTC Dkt No. C-4222 (June 6, 2008) (final consent order).

¹³ *FTC and State of Nevada v. Cash Today, Ltd.*, No. 3-cv-00590 (D. Nev. Nov. 6, 2008) (complaint filed).

¹⁴ 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

market credit cards. In June 2008, the FTC sued CompuCredit Corporation for allegedly deceptively marketing its credit cards to subprime consumers nationwide.¹⁵ Last December, CompuCredit agreed to settle this case for an estimated \$114 million in credits and cash refunds to consumers.¹⁶

IV. Mortgage Rulemaking under the Omnibus Appropriations Act of 2009

Pursuant to the Omnibus Appropriations Act of 2009 (Omnibus Act), the FTC has new rulemaking authority to prohibit or restrict entities within the Commission's jurisdiction under the FTC Act from engaging in unfair or deceptive acts or practices with respect to mortgage loans. The Omnibus Act directed the Commission to commence such a rulemaking proceeding within ninety days of its March 11, 2009 enactment. The Omnibus Act allows the FTC to use the relatively streamlined notice and comment rulemaking procedures under Section 553 of the Administrative Procedure Act (APA) in promulgating these rules.¹⁷ By enabling the Commission to use the APA notice and comment procedures, Congress ensured that the FTC will be able to act more quickly than it would have under the onerous and time-consuming Magnuson-Moss rulemaking procedures set forth in Section 18 of the FTC Act.¹⁸ Any violation of a rule the FTC adopts pursuant to the Omnibus Act will be treated as a violation of a rule

issued.

¹⁵ *FTC v. CompuCredit Corp.*, No. 1:08-CV-1976-BBM-RGV (N.D. Ga. 2008). The Commission worked closely on this case with the Federal Deposit Insurance Corporation, which brought a parallel action challenging this deceptive conduct.

¹⁶ 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>.

¹⁷ 5 U.S.C. § 553.

¹⁸ 15 U.S.C. § 57a.

promulgated pursuant to Section 18 of the FTC Act.¹⁹ Therefore, the Commission may seek civil penalties as a remedy for such rule violations.²⁰

As part of its rulemaking proceeding, the Commission intends to address unfair or deceptive acts and practices that occur in connection with mortgage loan modification and foreclosure rescue scams. The FTC also intends to address unfair and deceptive acts and practices related to mortgage servicing, in addition to other mortgage lending activities. The Commission appreciates this new authority and believes that it will be instrumental in increasing consumer protections for mortgage borrowers, especially those in financial distress.²¹

V. Non-Mortgage Consumer Credit and Debt Services Rulemaking: The Consumer Credit and Debt Protection Act

Earlier this year, the Commission testified before this Subcommittee and recommended that the FTC be allowed to use APA notice and comment procedures to promulgate rules concerning financial services and to obtain civil penalties for violations of such rules.²²

¹⁹ *Id.*

²⁰ 15 U.S.C. § 45(m)(1)(A). In addition, pursuant to Section 626(b) of the Omnibus Appropriations Act, a state may bring a civil action, in either state or federal court, to enforce the FTC mortgage loan rules and obtain civil penalties and other relief for violations. Before initiating an enforcement action, the state must notify the FTC, at least 60 days in advance, and the Commission may intervene in the action.

²¹ The FTC will have a vigorous program of law enforcement to enforce any mortgage rules it issues to implement the Omnibus Appropriations Act of 2009. In addition, the FTC will enforce new mortgage rules that the Federal Reserve Board issued last year pursuant to TILA that prohibit a variety of unfair, deceptive, and abusive home mortgage advertising, lending, appraisal, and servicing practices. *See Truth in Lending, Final Rule*, 73 Fed. Reg. 44,522 (July 30, 2008), *available at* <http://edocket.access.gpo.gov/2008/pdf/E8-16500.pdf>. The Board's rules generally take effect in October 2009, and the FTC will be able to enforce them as to non-bank financial companies, including mortgage lenders, mortgage brokers, and finance companies.

²² *See* FTC Role Testimony, *supra* n. 5 at 3 and 21-23.

The Consumer Credit and Debt Protection Act would change the law consistent with the Commission's recommendation. The FTC would like to thank Chairman Rush for his support in introducing this bill.

The FTC strongly supports proposed legislation that would allow the Commission to issue rules prohibiting or restricting unfair or deceptive acts and practices relating to consumer credit or debt services. The Commission currently may promulgate rules prohibiting or restricting unfair or deceptive acts and practices related to such non-mortgage consumer credit or debt services only if the agency follows the aforementioned Magnuson-Moss rulemaking procedures set forth in Section 18 of the FTC Act. Under Section 2(a) of the proposed bill, however, the FTC would be able to promulgate such rules using the notice and comment procedures under the APA that most federal agencies are permitted to use in promulgating rules. Section 2(a) thus would allow the Commission to act quickly and effectively in developing and issuing rules in response to consumer protection problems that arise in connection with consumer credit and debt services. In addition, Section 3 of the bill is intended to give the Commission authority to obtain civil penalties for violations of rules that the agency promulgates with regard to consumer credit or debt. The Commission believes that having this civil penalty authority would increase deterrence of would-be violators and allow it to protect consumers more effectively.

VI. Conclusion

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. The Commission appreciates Congress' recent efforts to enhance our ability to protect consumers of financial services. In particular, the Commission believes that its new authority

under the Omnibus Appropriations Act of 2009 to issue rules regarding unfair or deceptive mortgage loan practices will enable it to more effectively protect mortgage borrowers and financially distressed homeowners.

The Commission strongly supports proposed legislation that would allow the FTC to issue rules to protect consumers in the broader consumer credit and debt marketplace and to obtain civil penalties for violations of these rules. Such authority would strengthen the Commission's ability to address unfair and deceptive practices that are causing the greatest harm to consumers in the financial services marketplace.