PREPARED STATEMENT OF

THE FEDERAL TRADE COMMISSION

on

CONSUMER PROTECTION IN FINANCIAL SERVICES:
SUBPRIME LENDING AND OTHER FINANCIAL ACTIVITIES

Before the

HOUSE COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEE ON FINANCIAL SERVICES
AND GENERAL GOVERNMENT

Washington, D.C.
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I. INTRODUCTION

Chairman Serrano, Ranking Member Regula, and Members of the Committee, I am Lydia B. Parnes, Director of the Bureau of Consumer Protection at the Federal Trade Commission ("FTC" or "Commission").[1] I appreciate the opportunity to appear before you today to discuss the Commission's wide range of activities to protect consumers of financial services, particularly in the subprime market.

The FTC deals with issues that touch the economic life of nearly every American. It is the only federal agency with both consumer protection and competition jurisdiction in broad sectors of the economy. In consumer protection, the Commission's mandate is to protect consumers from unfair and deceptive practices. That broad mandate brings the Commission's work into areas as varied as children's online privacy, false claims for foods, drugs, and dietary supplements, weight-loss advertising, scholarship scams, pyramid schemes, and identity theft, to name just a few. The Commission's actions to protect consumers of financial services are a very important part of its consumer protection work.

The Commission protects consumers at every stage of the consumer credit life cycle, from the advertising and marketing of financial products to debt collection and debt relief. The Commission assists consumers in obtaining the information they need to make better informed financial decisions and protects them from unlawful acts and practices that are likely to cause them harm.

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

- The FTC's recent law enforcement actions in the financial services marketplace have

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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 individual Commissioner.

targeted deception and illegal practices in: (1) subprime and prime mortgage lending and servicing; (2) payday lending and other forms of unsecured consumer credit; (3) payment cards; (4) gift cards; (5) payment processing; (6) debt collection; and (7) debt negotiation and credit repair.

- In the past decade, the Commission has brought 21 actions focused on 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. These cases have collectively returned more than $320 million to consumers.

- Most recently, the FTC warned over 200 mortgage brokers and lenders, and media outlets that carry their advertisements for home mortgages, that their advertising claims may violate federal law. The Commission has ongoing investigations of mortgage advertisers and is continuing to monitor mortgage advertising claims.

- With the recent rapid increase in mortgage delinquencies and foreclosures, the FTC also has intensified its focus on protecting consumers from mortgage foreclosure rescue scams. The Commission will shortly file three law enforcement actions against defendants allegedly engaged in mortgage foreclosure fraud, and has additional matters under investigation.

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

- In the area of unsecured consumer credit, such as payday loans, the FTC takes legal action when lenders deceive consumers about their credit terms or otherwise fail to provide disclosures or other information that the law requires. The FTC also focuses on consumer education, alerting consumers to the importance of comparison shopping among short-term credit alternatives, and to information they should consider in evaluating credit offers.

- In the area of payment cards, the FTC brings legal actions against nonbank entities under its jurisdiction that use deceptive or unfair means to market debit and credit cards, such as by charging consumers advance fees to obtain credit, or by failing to adequately disclose the existence of fees associated with a payment card.

- In the area of gift cards, the FTC has brought cases against Kmart Corp. and Darden Restaurants, Inc. for failure to adequately disclose gift card fees and expiration dates. Evidence suggests that large gift card retailers nationwide recently have changed their practices.

- The FTC also brings law enforcement actions against non-bank payment processors, alleging unfair practices or violations of the FTC's telemarketing rules. In an ongoing action, the FTC has charged a payment processor with debiting, or attempting to debit, over $200 million from consumers' bank accounts on behalf of fraudulent merchants.

- The FTC also protects consumers in financial distress. For example, in the past decade, the FTC has brought 21 lawsuits for illegal debt collection practices, and has obtained both tough permanent injunctive relief and substantial monetary judgments.

- The FTC also acts aggressively against "credit repair" scams, in which marketers promise to cleanse individual credit reports of negative information, and debt reduction services that charge hidden fees and make false promises to lower consumers' debts.

- The FTC budget request for FY2009 contains additional funding to support this work as well as the other important work of the agency. To accomplish the agency's consumer protection and competition missions in FY 2009, the FTC requests $256,200,000 and 1,102 Full Time Equivalents (FTEs). Of the requested amount, Hart-Scott-Rodino pre-merger filing fees and Do Not Call fees will provide the Commission with an estimated $189,800,000 in FY 2009. Thus, the FTC anticipates that the remaining funds needed for its operations will come from a direct appropriation of $66,400,000 from the General Fund in the United States Treasury.

This testimony will discuss: (1) the Commission's authority and mission related to financial services; (2) the FTC's efforts to protect mortgage borrowers, especially subprime mortgage borrowers; (3) the agency's activities to protect consumers of non-mortgage financial services, such as payday loans and payment cards; and (4) the Commission's efforts to help consumers in financial distress.

II. THE FTC'S ROLE IN FINANCIAL SERVICES

The Commission has responsibilities regarding many financial services affecting consumers. The Commission enforces Section 5 of the Federal Trade Commission Act ("FTC Act"), which broadly prohibits unfair or deceptive acts or practices in or affecting commerce.[2] The Commission also enforces statutes that address specific aspects of lending practices,

[2] 15 U.S.C. § 45(a).

including the Truth in Lending Act ("TILA"),[3] and the Home Ownership and Equity Protection Act ("HOEPA").[4] In addition, the Commission enforces a number of other consumer protection statutes that govern financial service providers, including the Consumer Leasing Act,[5] the Fair Debt Collection Practices Act ("FDCPA"),[6] the Fair Credit Reporting Act ("FCRA"),[7] the Equal Credit Opportunity Act ("ECOA"),[8] the Credit Repair Organizations Act ("CROA"), and the privacy provisions of the Gramm-Leach-Bliley Act ("GLB").[9]

The Commission's legal authority does not extend to all entities that provide financial services to consumers. The FTC Act and the credit statutes that the FTC enforces specifically exempt banks, thrifts, and federal credit unions, among other types of entities, from the Commission's jurisdiction.[10] The FTC, however, has jurisdiction over nonbank financial companies, including nonbank mortgage companies, mortgage brokers, and finance companies.

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[3] 15 U.S.C. §§ 1601-1666j (requiring disclosures and establishing other requirements in connection with consumer credit transactions).

[4] 15 U.S.C. § 1639 (providing additional protections for consumers who enter into certain high-cost refinance mortgage loans). HOEPA is a part of TILA.

[5] 15 U.S.C. §§ 1667-1667f (requiring disclosures, limiting balloon payments, and regulating advertising in connection with consumer lease transactions).

[6] 15 U.S.C. §§ 1692-1692p (prohibiting abusive, deceptive, and unfair debt collection practices by third-party debt collectors).

[7] 15 U.S.C. §§ 1681-1681x (imposing standards for consumer reporting agencies and information furnishers in connection with the credit reporting system and placing restrictions on the use of credit reporting information).

[8] 15 U.S.C. §§ 1691-1691f (prohibiting creditor practices that discriminate on the basis of race, religion, national origin, sex, marital status, age, receipt of public assistance, and the exercise of certain legal rights).

[9] 15 U.S.C. §§ 6801-6809 (imposing requirements on financial institutions with respect to annual privacy notices, procedures for providing customers an opt-out from having certain information shared with nonaffiliated third parties, and safeguarding customers' personally identifiable information).

[10] *See, e.g.,* 15 U.S.C. §45(a)(2).

The agency also coordinates regularly on financial practices matters with federal banking agencies, the Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD"). The FTC also engages in cooperative efforts with many state attorneys general and state banking departments to protect consumers.

The Commission employs a multi-faceted approach to protect consumers of financial services. The Commission brings enforcement actions against entities that violate the law, educates consumers and businesses as to their rights and responsibilities under the law, and engages in research to adapt its policies to protect consumers more effectively. The testimony below discusses how the FTC is using its multi-faceted approach to protect consumers of mortgage and non-mortgage financial services in the marketplace.

III. PROTECTING SUBPRIME AND PRIME MORTGAGE BORROWERS

The Commission is committed to using all means at its disposal to protect mortgage borrowers against those who would prey on their financial turmoil, and to provide information to help them confront the challenges they face.

A. Law Enforcement

In the past decade, the Commission has brought 21 actions focused on 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.[11] Several of

[11] *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.,*

these landmark cases have resulted in large monetary judgments, collectively returning more than $320 million to consumers.

Most of the Commission's enforcement actions have challenged the deceptive advertising or marketing of subprime loans. For example, the FTC's complaint against Associates First Capital Corp. and Associates Corporation of North America ("the Associates") alleged that the defendants marketed subprime mortgage loans through false and misleading statements about loan costs.[12] 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, 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.[13]

Mortgage brokers also have been the subject of substantial FTC law enforcement activity in recent years. The FTC has brought enforcement actions against brokers for allegedly deceiving consumers about key loan terms, such as the existence of a prepayment penalty[14] or a

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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).

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

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

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

large balloon payment due at the end of the loan.[15] In some of these cases, the Commission also has charged brokers with falsely promising consumers low fixed payments and rates on their mortgage loans.[16]

In a recent case, the Commission alleged that a mortgage broker misrepresented numerous key loan terms to Hispanic consumers who sought to refinance their homes.[17] The complaint alleged that the broker conducted business with his clients almost entirely in Spanish, then provided at closing English-language documents with less favorable terms. The settlement of the case provided for, among other things, a $240,000 suspended judgment against the broker, required that an independent settlement agent conduct the closing for each mortgage the defendant brokered, and imposed a permanent injunction prohibiting the broker from misrepresenting loan terms.[18]

In the Commission's most recent law enforcement initiative attacking potentially deceptive marketing by mortgage lenders, the FTC last fall warned over 200 mortgage brokers and lenders, and media outlets that carry their advertisements for home mortgages, that their advertising claims may violate federal law.[19] The ads, including some in Spanish, were identified during a nationwide review focused on claims for very low monthly payment amounts or interest

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

[16]*FTC v. Chase Fin. Funding*, No. 04-549 (C.D. Cal. 2004); *FTC v. Ranney*, No. 04-1065 (D. Colo. 2004); *FTC v. Diamond,* No. 02-5078 (N.D. Ill. 2002).

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

[18]*FTC v. Mortgages Para Hispanos.Com Corp.*, No. 06-00019 (E.D. Tex. Sept. 25, 2006) (Stipulated Final Judgment and Order of Permanent Injunction) (entering suspended judgment of $240,000 and ordering payment of $10,000 based on documented inability to pay full judgment amount).

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

rates that were not accompanied by an adequate disclosure of other important loan terms. The Commission currently is conducting several investigations of mortgage advertisers and will continue to monitor the claims made in mortgage advertising.

In addition to law enforcement related to mortgage advertising, the FTC plays an important role in preventing unlawful mortgage discrimination.[20] Since the ECOA was enacted, the Commission has brought over three dozen cases against large subprime lenders, major non-mortgage creditors, and smaller finance companies alleging ECOA violations. About two dozen of these cases have alleged substantive discrimination on the basis of race, marital status, sex, age, and the receipt of public assistance.[21]

The FTC closely coordinates its fair lending investigations with those of other federal law

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[20]The Commission's July 25, 2007 testimony before the Subcommittee on Oversight and Investigations of the House Committee on Financial Services detailed the Commission's fair lending program. The testimony is available at www.ftc.gov/os/testimony/P064806hdma.pdf.

[21]*See, e.g., United States v. Delta Funding Corp.,* No. CV 00 1872 (E.D.N.Y. 2000) (sex, race); *United States v. Ford Motor Credit Co.,* No. 99-75887 (E.D. Mich. 1999) (marital status); *United States v. Franklin Acceptance Corp.,* No 99-CV-2435 (E.D. Pa. 1999) (sex, marital status); *United States v. Money Tree, Inc.,* No. 6-97-CV-7 (M.D. Ga. 1997) (age, receipt of public assistance); *FTC v. CIT,* No. 94-4092 (D. N.J. 1994) (marital status); *United States v. Shawmut Mortgage Co.,* No. 93CC-2453 (D. Conn. 1993) (race, national origin); *United States v. Academic Int'l,* No. 1:91-CV-2738 (N.D. Ga. 1991) (race); *United States v. Barclays Am.,* No. C-C-91-14 (W.D.N.C. 1991) (sex, marital status); *United States v. Blake,* No. 90-1064 (W.D. Okla. 1990) (sex, marital status); *United States v. Chesterfield,* No. 90 C 0347 (N.D. Ala. 1990) (age, sex, marital status)*; United States v. City Fin.,* No.1:90-cv-246 (N.D. Ga. 1990) (age, sex, marital status); *United States v. Tower Loan of Mississippi,* No. J90-0447 (S.D. Miss. 1990) (age); *United States v. GECC,* No. N89-483 (D. Conn. 1989) (age, sex, marital status); *United States v. Wanamakers,* No. 89-1466 (E.D. Pa. 1989) (sex, marital status); *United States v. William Lee Moore III,* No. N89-2531 (N.D. Tex. 1989) (age, sex, marital status); *United States v. ITT CFC,* 816 F. 2d 487 (9th Cir. 1987) (sex, marital status); *FTC v. Green Tree Acceptance,* No. CA 4 86 468 (N.D. Tex. 1986) (age); *United States v. Allied Fin.,* No. CA3-85-1933F (N.D. Tex. 1985) (age, sex, marital status); *United States v. Fid. Acceptance,* No. 3-85-1588 (D. Minn. 1985) (age); *United States v. Landmark Fin.,* No. N-84-5310 (D. Md. 1984) (age); *United States v. Aristar,* No. 83-0719 (S.D. Fla. 1983) (age); *United States v. Sec. Pac.,* No. 832 647 N (CM) (S.D. Ca. 1983) (sex, marital status); *United States v. Georgia Telco,* No. 80-1217A (N.D. Ga. 1982) (sex); *United States v. Amoco Oil Co.,* No. 80-1071 (D. D.C. 1980) (race, national origin, sex, marital status, receipt of public assistance); *United States v. Federated Dep't Stores,* No. C-1-78-730 (E.D. Va. 1979) (sex, marital status, age, receipt of public assistance); *In the Matter of Westinghouse Credit Corp.,* 94 FTC 1280 (1979) (marital status); *In the Matter of Alden's, Inc.,* 92 FTC 901 (1978) (sex, marital status).

enforcement agencies.[22] A major component of the Commission's investigations is a statistical analysis of the data that companies within the FTC's jurisdiction have produced pursuant to the Home Mortgage Disclosure Act ("HMDA").[23] At this time, the Commission is conducting several non-public investigations of mortgage originators for possible violations of fair lending laws.

The FTC also fights unfair and deceptive practices in the mortgage servicing area. For example, in 2003, along with the HUD, the Commission charged Fairbanks Capital Corp. (now called Select Portfolio Servicing, Inc.) with violating federal law in connection with mortgage servicing.[24] The Commission alleged that Fairbanks, then one of the country's largest third-party subprime loan servicers, failed to post consumers' payments upon receipt, charged unauthorized fees, used dishonest or abusive tactics to collect debts, and reported consumer payment information that it knew to be inaccurate to credit bureaus. The settlement agreement included a $40 million redress fund for consumers, as well as strong injunctive provisions, including specific safeguards to prevent the company from foreclosing on consumers without cause.[25] Last

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[22] For more than a decade, the FTC has been a member of the Interagency Task Force on Fair Lending, a joint undertaking with the Department of Justice, the Department of Housing and Urban Development, and the federal banking regulatory agencies. Task Force members meet often to share information on lending discrimination, predatory lending enforcement, and policy issues.

[23] 12 U.S.C. § 2801. HMDA requires certain mortgage lenders located in metropolitan areas to collect and report to the government data about their housing-related loans and applications for such loans. The data include pricing data for higher-priced loans made in 2004 or later. Of the 8,886 institutions that reported HMDA data in 2006, 2,004 institutions are nondepository institutions subject to FTC jurisdiction. Robert B. Avery, Kenneth P. Brevoort, and Glenn B. Canner, *The 2006 HMDA Data*, 93 FEDERAL RESERVE BULLETIN (Dec. 2007) at A73, *available at* www.federalreserve.gov/pubs/bulletin/2007/pdf/hmda06final.pdf. The remaining 6,882 institutions reporting data are depository institutions subject to federal banking agency jurisdiction.

[24] *United States v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. 2003).

[25] *United States v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. Nov. 21, 2003) (Order Preliminarily Approving Stipulated Final Judgment and Order as to Fairbanks Capital Corp. and

year, based on a compliance review of the company, the Commission negotiated modifications of the 2003 consent order that provided substantial benefits to consumers beyond those in the original order, including additional refunds of fees paid in certain circumstances.[26]

Finally, with the recent rapid increase in mortgage delinquencies and foreclosures, the FTC has intensified its focus on protecting consumers from mortgage foreclosure rescue scams.[27] There are many varieties of mortgage foreclosure rescue fraud but, in each case, the perpetrator makes misleading promises that a consumer's home will be saved from the pending foreclosure permanently.[28] Many consumers, however, ultimately lose their homes and lose the money they paid to scammers.

The Commission will shortly file three law enforcement actions against defendants allegedly engaged in mortgage foreclosure fraud. Although these cases and the additional cases currently under investigation are not yet public, speaking generally, it can be said that they share at least two common characteristics. First, the fraudulent schemes target consumers who face imminent foreclosure and who thus have limited time and resources to save their homes. Second, these schemes falsely promise consumers that their homes can be saved from foreclosure.

Fairbanks Capital Holding Corp.).

[26] *United States v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. Sept. 4, 2007) (Modified Stipulated Final Judgment and Order).

[27] In testimony on February 13, 2008 before the Senate Special Committee on Aging on foreclosure rescue fraud, the Commission set forth a more complete description of the FTC's efforts to address such fraud. The FTC's testimony is available at ftc.gov/os/testimony/P064814foreclosure.pdf.

[28] *See* Prentiss Cox, *Foreclosure Equity Stripping: Legal Theories and Strategies to Attack a Growing Problem,* CLEARINGHOUSE REV. J. OF POVERTY LAW AND POL'Y, Mar.-Apr. 2006 at 607, 608.

In two of these cases, the Commission alleges that the defendants promise to stop foreclosure in exchange for a consumer's up-front payment of $500 to $1,200. After a consumer makes the payment, the defendants do little or nothing to stop the foreclosure. This fraud deprives consumers not only of much-needed funds but also of the opportunity to explore realistic options. In the third case, the Commission alleges that the defendants entice consumers into a second mortgage or home equity line of credit on very unfavorable terms without fully disclosing the costs, risks, and consequences of doing so.

In addition to its own law enforcement, the Commission is working with state and local partners in law enforcement and consumer outreach. More specifically, the FTC staff is leading or participating in seven federal-state-local task forces across the country. Task force members share information about mortgage foreclosure scams and coordinate their prosecutions.

As described above, the Commission has a vigorous law enforcement program to protect consumers in connection with many aspects of their mortgage loans. The FTC continues to explore ways to enhance the effectiveness of its law enforcement activities related to mortgage financing. For example, through the Interagency Pilot Project to Review Subprime Lender Conduct, the FTC, the Federal Reserve Board ("FRB"), the Office of Thrift Supervision ("OTS"), and two associations of state regulators have combined forces in undertaking an innovative law enforcement project. The agencies are jointly conducting consumer protection compliance reviews and investigations of certain nonbank subsidiaries of bank holding companies with significant subprime mortgage operations.[29]

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[29] *See* Press Release, FTC, Federal and State Agencies Announce Pilot Project to Improve Supervision of Subprime Mortgage Lenders (July 17, 2007), *available at* www.ftc.gov/opa/2007/07/subprime.shtm.

B. Consumer Education

Law enforcement is the primary means that the Commission uses to combat mortgage lending acts and practices that harm consumers. Although law enforcement is vital, consumers are, of course, better off if they are not injured in the first place. To empower consumers to better protect themselves from potentially harmful conduct, the FTC engages in extensive consumer education related to mortgage lending.

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.[30] To help consumers facing possible foreclosure, the Commission also released an alert offering guidance on steps borrowers can take to avoid foreclosure. In conjunction with its impending law enforcement actions alleging foreclosure rescue schemes, the Commission also is planning a stepped-up consumer outreach initiative on foreclosure rescue fraud. Among other things, the FTC will submit a series of radio public service announcements, in English and Spanish, to stations in cities hardest hit by mortgage foreclosures, as well as publish classified advertisements in English- and Spanish-language community newspapers.[31] All of the Commission's consumer protection materials, including many released in Spanish as part of the

[30] 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 and Loans: Mortgages/Real Estate, www.ftc.gov/bcp/menus/consumer/credit/mortgage.shtm. In Spanish, the materials are available from the FTC's webpage, Crédito y Préstamos: Hipotecas/Propiedades, www.ftc.gov/bcp/menus/consumer/credit/mortgage_es.shtm.

[31] The Commission also will send information to community libraries, unions, and other organizations warning consumers about foreclosure rescue scams.

Commission'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.[32]

The Commission also 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.[33] The FTC continues to participate in the governmental Financial Literacy and Education Commission, contributing its expertise to subcommittees that produced *MyMoney.gov* and *Taking Ownership of the Future: The National Strategy for Financial Literacy.*[34]

C. Research and Policy Development

The mortgage marketplace in the United States is dynamic. The Commission therefore 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 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

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[32]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 ¡OHO! Mantente alerta contra el fraude: Infórmate con la FTC, *available at* www.ftc.gov/ojo.

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

[34]*See* www.mymoney.gov. In addition, each April, the FTC participates in Financial Literacy Month. Activities include presentations to students on the importance of responsible credit card use and safeguarding personal information, and exhibits at Financial Literacy Day on Capitol Hill, where agency representatives distribute free consumer education materials.

to consumers under the Real Estate Settlement Procedures Act ("RESPA") and TILA.[35] 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 in November 2007 submitted comments to the federal banking agencies in response to their request for comments on proposed illustrations to disclose information to consumers about subprime mortgages.[36] The comments 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 comments also

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[35] 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 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.

[36] *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.

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.[37]

In other mortgage-related policy work, the FTC staff late last year shared with the OTS the Commission's experience in challenging unfair or deceptive acts and practices in the financial services context. The FTC staff filed a public comment with the OTS in response to a request for information about whether the OTS should issue regulations to expand its prohibitions against thrifts engaging in unfair or deceptive acts and practices in mortgage and non-mortgage lending.[38] The FTC staff comment set forth the general principles of unfairness and deception under the FTC Act, and described how the Commission has applied these principles over the course of many decades to protect consumers of financial services. The comment recommended that the OTS consider the FTC's experience in determining whether to use its authority to issue new rules that prohibit or restrict thrifts from engaging in unfair or deceptive practices related to mortgages and other types of lending.

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[37]Similarly, in a comment filed with the FRB, the Commission stated that, as consumers shop for a mortgage, it is important that they receive timely and understandable information about the loan terms and costs of the particular products they are trying to analyze and compare. Moreover, for many mortgage products with payment schedules that likely will increase substantially in future years, it is important that consumers receive information about their future payments at a time when they can readily use the information in selecting their preferred loan and terms. *See* FEDERAL TRADE COMM'N, COMMENT BEFORE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, DOCKET NO. OP-1253: UNFAIR AND DECEPTIVE PRACTICES IN THE MORTGAGE LENDING MARKET, ALTERNATIVE MORTGAGE PRODUCTS, AND INFORMED CONSUMER CHOICE IN THE MORTGAGE MARKETPLACE (September 2006), *available at* www.ftc.gov/os/2006/09/docketop-1253commentfedreserve homeeqlenditextv.pdf. The comment was based, in part, on information learned at a May 2006 workshop the Commission sponsored on consumer protection issues associated with nontraditional mortgage products. *See* Protecting Consumers in the New Mortgage Marketplace, 71 Fed. Reg. 15,417 (Mar. 28, 2006); *see also* www.ftc.gov/bcp/workshops/mortgage/index.html.

[38]FEDERAL TRADE COMM'N, STAFF COMMENT TO JOHN E. BOWMAN, CHIEF COUNSEL, REGULATION COMMENTS, OFFICE OF THRIFT SUPERVISION, REGARDING SECTION 5 POLICY ISSUE FOR FINANCIAL PRACTICES (December 2007), *available at* www.ftc.gov/os/2007/12/P084800anpr.pdf.

IV. PROTECTING CONSUMERS OF NON-MORTGAGE FINANCIAL SERVICES

The Commission's actions to protect consumers of financial services extend beyond mortgage lending to a wide range of non-mortgage financial services. As in mortgage financing, the Commission uses all tools at its disposal – law enforcement, consumer education, and research and policy development – to prevent consumers from being deceived as well as to assist them in obtaining the information they need to make better informed decisions about financial services.

A. Unsecured Consumer Credit

Nonbank entities extend credit to consumers, sometimes in the form of cash loans, and sometimes in the form of merchandise or services that consumers receive and then pay for over time. The FTC provides consumers with information to help them make better informed choices about unsecured consumer credit, including enhancing their ability to comparison shop among the credit alternatives available to them. The Commission also takes legal action when lenders deceive consumers about their credit terms or otherwise fail to provide the disclosures or other information that the law requires.[39]

Payday loans are small, high-cost, short-term loans, usually based on a deferred presentment of a borrower's check or electronic access to his or her bank account. Payment is due on the borrower's next payday, which is usually in two weeks. Typical finance charges on

[39] *See, e.g., FTC v. Stewart Finance Company Holdings, Inc.*, No. 03-2648 (N.D. Ga. Jan. 10, 2006) (Stipulated Final Judgment and Order, imposing $10.5 million judgment against subprime lender that the FTC alleged deceptively marketed small personal loans).

payday loans range from $15 to $30 per $100 borrowed,[40] which results in annual percentage rates ("APR") ranging from 390 to 780 percent.[41] Payday lending has expanded rapidly over the past decade. Today, the industry's loan volume is estimated to be $28 billion a year.[42]

TILA, and its implementing Regulation Z, mandate that creditors who state an interest rate or other triggering term in an advertisement for a loan also must disclose the loan's APR.[43] The purpose of requiring that an APR be disclosed is to promote comparison shopping. Consumers may use APRs to compare the cost of a loan from one payday lender to the cost of a loan from another payday lender. Consumers also may use APRs to compare the cost of a loan from a payday lender to the cost of a loan from a cash advance on a credit card or from some other short-term credit source.

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[40] *See* JEAN ANN FOX & PATRICK WOODALL, CONSUMER FEDERATION OF AMERICA , CASHED OUT: CONSUMERS PAY STEEP PREMIUM TO "BANK" AT CHECK CASHING OUTLETS 2 (November 2006), *available at* www.consumerfed.org/pdfs/CFA_2006_Check_Cashing_Study111506.pdf.

[41] Congress has taken action on payday loans made to members of the military. In the John Warner National Defense Authorization Act of Fiscal Year 2007, § 670, "Limitations on Terms of Consumer Credit Extended to Service Members and Dependents," Congress restricted the annual percentage rate on "consumer credit" to military personnel to a maximum of 36 percent. The Department of Defense ("DOD") issued a final rule to implement this law, defining "consumer credit" to include payday loans, title loans, and refund anticipation loans. *See* Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 72 Fed. Reg. 50,580 (Aug. 31, 2007) (to be codified at 32 C.F.R. Part 232). In June of this year, the FTC filed a comment supporting the DOD's decision to focus its regulation on these three types of loans. FEDERAL TRADE COMM'N, BEFORE THE DEPARTMENT OF DEFENSE, IN THE MATTER OF REQUEST FOR COMMENT ON PROPOSED REGULATION IMPLEMENTING LIMITATIONS ON TERMS OF CONSUMER CREDIT EXTENDED TO SERVICE MEMBERS AND DEPENDENTS, DOCKET NO. DOD-2006-OS-0216 (June 2007), *available at* www.ftc.gov/os/2007/06/070614dodcomm.pdf.

[42] *See* KING URIAH, LESLIE PARRISH AND OZLEM TANIK, CENTER FOR RESPONSIBLE LENDING, FINANCIAL QUICKSAND: PAYDAY LENDING SINKS BORROWERS IN DEBT WITH 4.2 BILLION IN PREDATORY FEES EVERY YEAR 1, 3 (2006), *available at* www.responsiblelending.org/pdfs/rr012-Financial_Quicksand-1106.pdf.

[43] TILA, 15 U.S.C. § 1664; Regulation Z, 12 C.F.R. § 226.24(c).

To promote compliance with the law and facilitate comparison shopping for short-term credit, the Commission is investigating several Internet payday lenders for failing to disclose their APRs in their advertisements. Enforcement actions in those cases are directed at requiring the respondents to disclose their APRs in their future advertisements, as well as comply with all of the requirements of TILA and Regulation Z.[44]

The Commission also has focused its educational efforts on alerting consumers to the importance of comparison shopping and what information they should consider in evaluating short term credit alternatives. Specifically, the FTC's consumer education bulletin relating to payday loans emphasizes possible short-term credit alternatives to payday loans. It also stresses the importance of considering the APR in choosing between payday loans and other forms of credit.[45]

Other personal loans of concern to the Commission include refund anticipation loans ("RAL"), which are high-interest, short-term loans, generally issued by banks and generally offered to consumers in connection with tax preparation services. The Department of the Treasury and the Internal Revenue Service recently announced a new initiative under which they are considering issuing rules to limit the ability of tax preparers to market RALs to consumers.[46]

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[44]The Commission also has brought law enforcement actions against payday lenders for engaging in deceptive or unfair acts and practices. *See, e.g., FTC v. Consumer Money Markets, Inc., and FTC v. Continental Direct Services, Inc.,* No. CVS001071 (D. Nev. Sept. 5, 2000) (consent judgments requiring, among other things, defendants to disgorge over $350,000 and forgive over $1.6 million in consumer debts).

[45]*See Payday Loans – Costly Cash, available at* www.ftc.gov/bcp/conline/pubs/alerts/pdayalrt.shtm (English), and www.ftc.gov/bcp/conline/spanish/alerts/s-pdayalrt.shtm (Spanish).

[46]*See* INTERNAL REVENUE BULL. NO. 2008-5, ANNOUNCEMENT 2008-7: GUIDANCE REGARDING MARKETING OF REFUND ANTICIPATION LOANS (RALS) AND CERTAIN OTHER PRODUCTS IN CONNECTION

In appropriate circumstances, the FTC also may take law enforcement action against refund anticipation lenders who engage in unfair or deceptive acts and practices in violation of the FTC Act or who violate other laws the Commission enforces. The FTC is monitoring the progress of the Treasury Department's promising initiative as it considers how it can be most effective in using its law enforcement and other activities to prevent harm to consumers of refund anticipation loans.

The Commission also acts against merchants that violate the law in connection with offering unsecured credit to consumers. This week, the Commission announced a settlement with BlueHippo Funding, LLC, and BlueHippo Capital, LLC ("BlueHippo"), which advertised high-end electronics to consumers with poor credit.[47] Consumers paid for these items by making a down payment and agreeing to allow BlueHippo to deduct installment payments directly from their bank accounts. The FTC alleged that BlueHippo failed to deliver merchandise as promised, causing many consumers to cancel their contracts. The FTC also alleged that Blue Hippo often failed to inform consumers that it would not refund installment payments, even if consumers never received their merchandise, resulting in thousands of consumers losing between $99 and several hundred dollars each when they cancelled their contracts before they received the promised goods. The Commission's settlement agreement with BlueHippo requires the company to pay between $3.5 million and $5 million for consumer redress, prohibits the company from

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WITH THE PREPARATION OF A TAX RETURN 379 (FEB. 4, 2008), *available at* www.irs.gov/pub/irs-irbs/irb08-05.pdf.

[47] *FTC v. BlueHippo Funding, LLC,* No. 08-cv-1819 (S.D.N.Y. 2008) (alleging violations of the FTC Act, TILA, the Electronic Fund Transfer Act, 15 U.S.C. §§ 1693-1693r, and the Mail and Telephone Order Rule, 16 C.F.R. Part 435).

misrepresenting its finance terms when offering any consumer electronic product for sale, or offering any product for sale on an installment payment basis, and requires the company to affirmatively disclose any policy of not refunding installment payments to consumers who cancel their contracts before receiving merchandise.

B. Payment Cards – Debit and Credit Cards

More and more, consumers are relying on debit and credit cards in their daily financial transactions. A recent Federal Reserve study found that in 2006, consumers used debit cards to make 25.3 billion payments, 10 billion more payments than in 2003.[48] The same study found that in 2006, consumers used credit cards to make 21.7 billion payments, almost 3 billion more payments than in 2003.[49] Although the Commission does not have jurisdiction over the banks and other financial institutions that generally issue payment cards,[50] the FTC can and does bring legal actions against nonbank entities that use deceptive or unfair means to market debit and credit cards.[51]

For example, the FTC alleged in a recent case that the online marketers of pre-paid debit cards that were issued by banks charged a $159.95 "application and processing" fee to

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[48] *See* Press Release, Fed. Reserve Bd., Federal Reserve Study Shows That More Than Two-Thirds of Noncash Payments Are Now Electronic (Dec. 10, 2007), *available at* www.federalreserve.gov/newsevents/press/other/20071210a.htm.

[49] *Id.*

[50] *See* 15 U.S.C. §45(a)(2).

[51] For example, the FTC has sued fraudulent marketers of advance-fee credit cards in over 60 cases since 1998, alleging that they charged advance fees but did not provide consumers with credit as promised. The Commission's June 13, 2007 testimony before the House Committee on Financial Services described the FTC's recent advance-fee credit card cases. The Commission's statement is available at www.ftc.gov/os/2007/06/070613statement.pdf.

consumers' bank accounts without authorization.[52] The FTC also alleged that the defendants failed to disclose adequately the existence of the fee, and that consumers' personal financial information would be used to impose the fee. A settlement required the defendants to pay more than $2.2 million for consumer redress. It also mandated that the defendants clearly and conspicuously disclose key information to consumers when marketing any prepaid card, or debit or credit card, disclose that they will use consumers' personal information to impose costs, and disclose that such information will be sold or transferred to third parties for marketing purposes.

The FTC supplements its payment card law enforcement activities with consumer education. The Commission's materials explain in plain language the meaning of loan terms such as "annual percentage rate," describe methods by which payment card issuers compute interest, explain fees that can be added to a payment card bill, alert consumers to other important credit terms, and warn consumers about advance-fee loan schemes and other possible fraudulent activities.[53]

C. Other Payment Cards – Gift Cards

The past few years have brought tremendous growth in the sale of gift cards. By one estimate, gift cards generated $26.3 billion in sales in the 2007 holiday season, compared to $24.8 billion in 2006.[54] Some gift cards, however, have imposed conditions upon their use and

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[52] *FTC v. Edebit Pay, L.L.C.,* No. 07-04880 (C.D. Cal. 2007).

[53] The Commission's consumer education materials on non-mortgage consumer credit are directly accessible from the FTC's webpage, Credit and Loans: Credit Cards and Consumer Loans, *available at* www.ftc.gov/bcp/menus/consumer/credit/loans.shtm. In Spanish, the materials are accessible from the FTC's webpage, Crédito y Préstamos: Tarjetas de Crédito y Préstamos, *available at* www.ftc.gov/bcp/menus/consumer/credit/loans_es.shtm.

[54] Press Release, Nat'l Retail Fed'n, Gift Cards More Popular Than Ever, According to NRF (Nov. 13, 2007), *available at* www.nrf.com/modules.php?name=News&op=viewlive&sp_id=410; *see*

either an expiration date or a potential fee, known as a dormancy fee, for not using the card within a certain time period. Consumers are entitled to know when conditions and fees exist.

The Commission brought cases against gift card retailers Kmart Corp. and Darden Restaurants, Inc., owner of the restaurant chains Olive Garden, Red Lobster, Smokey Bones, and Bahama Breeze.[55] The cases alleged that Kmart and Darden failed to adequately disclose fees and expiration dates associated with their gift cards. Settlements reached last year prohibited the companies from marketing cards without clearly and prominently disclosing the existence of any fees and expiration dates on the front of the gift cards. The settlements also required the companies to disclose other material gift card terms to consumers before the consumers purchased the gift cards, and mandated that each company implement a program to reimburse eligible consumers whose cards previously were charged fees. Evidence suggests that large gift card retailers nationwide recently have changed their practices.[56]

In conjunction with the Kmart and Darden cases, the Commission also released consumer education materials with tips for consumers who purchase or receive gift cards.[57] The materials

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also MONTGOMERY COUNTY, MARYLAND, DIVISION OF CONSUMER AFFAIRS, GIFT CARDS 2007: BEST AND WORST RETAIN CARDS; A DEEPER VIEW OF BANK CARDS DOESN'T IMPROVE THEIR LOOK, *available at* www.montgomerycountymd.gov/content/ocp/giftcards2007final.pdf.

[55] *In re Kmart Corp.*, FTC Docket No. 0623088 (Aug. 14, 2007); *In re Darden Restaurants, Inc.*, FTC Docket No. C-4189 (Apr. 3, 2007).

[56] *See* MONTGOMERY COUNTY, MARYLAND, DIVISION OF CONSUMER AFFAIRS, GIFT CARDS 2007: BEST AND WORST RETAIL CARDS; A DEEPER VIEW OF BANK CARDS DOESN'T IMPROVE THEIR LOOK, at 7, *available at* www.montgomerycountymd.gov/content/ocp/giftcards2007final.pdf.

[57] *See Buying, Using, and Giving Gift Cards, available at* http://ftc.gov/bcp/edu/pubs/consumer/alerts/alt010.shtm (English), and http://ftc.gov/bcp/edu/pubs/consumer/alerts/salt010.shtm (Spanish).

encourage consumers to ask whether a card they intend to buy has any expiration date or fees, and provide information for consumers who have had a problem with a gift card.

D. Unauthorized Debits From Bank Accounts

Consumers are injured when money is taken from their bank, credit card, or debit card accounts without their authorization. The Commission has a long history of bringing successful legal actions against fraudulent merchants and other actors who use deception to obtain consumers' account numbers.[58] These scam artists, however, generally need help to secure the proceeds of their fraud. Payment processors serve as intermediaries between merchants and banks, and their role is to submit merchants' demands for payments to banks. Merchant demands for payment may be made either in the form of Automated Clearinghouse ("ACH") system debits or through the use of unsigned, remotely created checks that payment processors submit to banks.[59] While payment processors generally perform an important function and make the payment system more efficient, they also can assist scam artists in defrauding consumers if they submit unauthorized charges to banks for these fraudulent actors.

In recent years, the Commission has filed seven enforcement actions against non-bank payment processors, alleging that they have committed unfair practices or violated the FTC's

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[58]Since 1991, the Commission has brought more than 350 telemarketing cases, the vast majority of which involved alleged fraud in the marketing of investment schemes, business opportunities, sweepstakes pitches, and the sales of various goods and services.

[59]A recent Federal Reserve study found that 14.6 billion ACH payments were made in 2006, an increase of almost 6 billion payments from 2003. *See* Press Release, Fed. Reserve Bd., Federal Reserve Study Shows That More Than Two-Thirds of Noncash Payments Are Now Electronic (Dec. 10, 2007), *available at* www.federalreserve.gov/newsevents/press/other/20071210a.htm.

telemarketing rules when processing payments for fraudulent merchants.[60] Most recently, the Commission joined forces with seven state attorneys general in an action charging payment processor Your Money Access, LLC, and related entities and individuals with debiting, or attempting to debit, consumers' bank accounts on behalf of numerous fraudulent telemarketers and Internet-based merchants.[61] The FTC's complaint alleged that the merchants used deception to obtain consumers' account information, then transmitted the information to the defendants, who processed debits to the consumers' bank accounts. The complaint alleged that from June 2004 to March 2006, the defendants processed more than $200 million in debits and attempted debits to consumers' bank accounts, even though they had notice that they were processing payments for which consumers had not given their consent.

In addition to taking law enforcement action, the Commission works with trade associations and bank regulators to protect consumers from payment processing abuses. For example, in April 2007, the FTC staff submitted a comment to NACHA – The Electronic Payments Association ("NACHA"), the organization that develops and maintains operating rules for certain electronic payments, expressing its support for NACHA's proposed rule changes to adopt stronger self-regulatory measures to prevent payment processing fraud.[62] The FTC staff

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[60] *FTC v. Your Money Access,* No. 07-5147 (D. Pa. 2007) (accounts debited through remotely created checks and ACH debits); *FTC v. Interbill Ltd. et al.,* No. 2:06-CV-01644 (D. Nev. 2007) (remotely created checks); *FTC v. Global Mktg. Group, Inc., et al.,* No. 8:06-CV-02272 (M.D. Fla. 2006) (ACH debits); *FTC v. Universal Processing, Inc.*, No. CV-05-6054 (C.D. Cal. 2005) (ACH debits); *FTC v. First Am. Payment Processing, Inc., et al.,* No. CV-04-0074 (D. Ariz. 2004) (ACH debits); *FTC v. Elec. Fin. Group, et al.,* No. W-03-CA-211 (W.D. Tex. 2003) (ACH debits); *FTC v. Windward Mktg., Ltd., et al.,* No. 1:06-CV-615 (N.D. Ga. 1997) (remotely created checks).

[61] *FTC v. Your Money Access,* No. 07-5147 (D. Pa. 2007).

[62] FEDERAL TRADE COMM'N, COMMENTS OF THE FEDERAL TRADE COMMISSION BUREAU OF CONSUMER PROTECTION TO NACHA - THE ELECTRONIC PAYMENTS ASSOCIATION, CONCERNING

comment noted that NACHA's proposals would help stop the processing of unauthorized debits from consumers' bank accounts.

The Commission also moves proactively to protect consumers from payment processing abuses by staying abreast of new payment mechanisms that evolving technologies are making available. For example, in November 2006, the FTC held hearings to learn about changing technology, including new payment methods, and develop policy responses to them.[63] Panelists focused on several new payment technologies, such as new features for automated teller machines, contact-less payment cards, and mobile telephone payments. Panelists expressed concern that consumer rights in disputing charges or debits vary among the different payment types, and that the new payment methods raise certain privacy and security concerns.[64] The Commission has published consumer education materials about consumers' rights when using various payment methods,[65] and continues to be vigilant in working to protect consumers' privacy and security when using all types of payment methods.

NACHA'S NETWORK ENFORCEMENT RULE PROPOSAL (April 2007), *available at* www.ftc.gov/os/opinions/070423staffcommenttonacha.pdf.

[63]*See* Protecting Consumers in the Next Tech-Ade, *available at* www.ftc.gov/bcp/workshops/techade/who.html. Additional information about the hearings is available at www.ftc.gov/bcp/workshops/techade/index.html.

[64]Transcript, November 8, 2006, at 14, 16, 49-50, *available at* www.ftc.gov/bcp/workshops/techade/transcripts.html.

[65]*See, e.g., Check 21: Substitute Checks, Electronic Processing, and What It Means to You, Electronic Check Conversion,* and *Credit, ATM, and Debit Cards: What to Do If They're Lost or Stolen,* These and other educational materials are directly accessible from the FTC's webpage, Credit and Loans: Credit Cards & Consumer Loans, www.ftc.gov/bcp/menus/consumer/credit/loans.shtm. Information in Spanish is available from the FTC's webpage, Crédito y Préstamos: Tarjetas de Crédito y Préstamos, *available at* http://www.ftc.gov/bcp/menus/consumer/credit/loans_es.shtm. The FTC also publishes *Automatic Debit Scams, available at* www.ftc.gov/bcp/conline/pubs/tmarkg/debit.shtm.

V. PROTECTING CONSUMERS IN FINANCIAL DISTRESS

Among the most vulnerable consumers are those who find themselves overwhelmed by debt. A consumer's financial crisis may be caused by personal or family illness, the loss of a job, or overspending. Regardless of the cause, the Commission is committed to using the law enforcement, consumer education, and policy development tools at its disposal to protect consumers from those who may seek to profit unlawfully from their financial distress, and to provide consumers with information they can use to gain control of their finances.

A. Debt Collection

Protecting consumers from debt collection abuses is a critical part of the Commission's mission. The agency receives more complaints about third-party debt collectors than any other single industry, with nearly 70,000 complaints in 2006. Although not all consumers who complain to the Commission about collection problems have experienced law violations, many complain of conduct that, if accurately described, clearly violates the FDCPA.[66] Since 1998, the FTC has brought 21 lawsuits for illegal debt collection practices.[67] In these cases, the

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[66]The Commission does not verify the consumer complaints it receives, but uses them for various purposes, such as determining whether a collector's alleged improper conduct warrants further investigation and possible enforcement action.

[67]*FTC v. Tono Records,* No. 07-3786 (C.D. Cal. 2007); *FTC v. Rawlins & Rivera, Inc.,* No. 07-146 (M.D. Fla. 2007); *United States v. LTD Financial Services, L.P.,* No. 07-3741 (S.D. Tex. 2007); *United States v. Whitewing Fin.,* No. 06-2102 (S.D. Tex. 2006); *FTC v. Check Investors, Inc.,*2005 U.S. Dist. LEXIS 37199 (D.N.J. July 18, 2005), *aff'd,* 503 F.3d 159 (3d Cir. 2007), *petition for reh'g denied,* Nos. 05-3558, 05-3957 (3d Cir. Feb. 6, 2008); *United States v. Capital Acquisitions and Mgmt. Corp.,* No. 04-50147 (N.D. Ill. 2004); *FTC v. Capital Acquisitions and Mgmt. Corp.*, No. 04-7781 (N.D. Ill. 2004); *In re Applied Card Sys., Inc.,* FTC Docket No. C-4125 (Oct. 8, 2004); *United States v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. 2003); *FTC v. Associates First Capital Corp.*, No. 01-00606 (N.D. Ga. 2002); *United States v. DC Credit Servs., Inc.*, No. 02-5115 (C.D. Cal. 2002); *United States v. United Recovery Sys., Inc.*, No. 02-1410 (S.D. Tex. 2002); *United States v. North American Capital Corp.*, No. 00-0600 (W.D.N.Y. 2000); *United States v. National Fin. Sys., Inc.*, No. 99-7874 (E.D.N.Y. 1999); *Perimeter Credit, L.L.C.*, No. 99-0454 (N.D. Ga. 1999); *In re Federated Dep't Stores,*

Commission has obtained tough permanent injunctive and equitable relief, including substantial monetary judgments and, for some defendants, bans on collecting debts.[68]

In a pending case, the Commission obtained a preliminary injunction halting the operations and freezing the assets of defendants that targeted Spanish-speaking consumers who had purchased, or inquired about, English-language training courses. The complaint alleged that company agents, often posing as third-party debt collectors, called consumers repeatedly and misrepresented that the consumers owed large amounts relating to the training courses.[69] The complaint also alleged that the defendants, sometimes posing as attorneys, threatened consumers with lawsuits, seizure of their property, and even arrest. The FTC is seeking permanent injunctive relief and consumer redress in the case.

The Commission also recently announced settlements in two other debt collection cases, including one in which a large Texas debt collector agreed to pay more than $1.3 million in civil penalties,[70] and another that imposed a $3.4 million judgment on the defendants, who were

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Inc., FTC Docket No. C-3893 (Aug. 27, 1999); *FTC v. Capital City Mortgage Co*., No. 98-00237 (D.D.C. 1998); *United States v. Nationwide Credit, Inc.*, No. 98-2920 (N.D. Ga. 1998); *United States v. Lundgren & Assocs., P.C.*, No. 98-1274 (E.D. Cal. 1998); *In re May Dep't Stores Co.,* FTC Docket No. C-3848 (Nov. 2, 1998); *In re General Elec. Capital Corp.,* FTC Docket No. C-3839 (Dec. 23, 1998).

[68] *See, e.g., FTC v. Check Investors, Inc.*, 2005 U.S. Dist. LEXIS 37199 (D.N.J. July 18, 2005) (ban on debt collection and $10.2 million judgment), *aff'd,* 503 F.3d 159 (3d Cir. 2007), *petition for reh'g denied,* Nos. 05-3558, 05-3957 (3d Cir. Feb. 6, 2008).

[69] *FTC v. Tono Records,* No. 07-3786 (C.D. Cal. 2007).

[70] *United States v. LTD Financial Services, L.P.,* No. 07-3741 (S.D. Tex. Nov. 13, 2007). The complaint alleged that the defendants misled, threatened, and harassed consumers by falsely threatening them with lawsuits, criminal action, wage garnishment, and property seizure, and by disclosing their debts to third parties. The civil penalty award was the highest ever in an FTC debt collection case. The settlement also imposed strong injunctive relief, including a bar prohibiting the individual owners and top company managers from future law violations.

required to sell personal property to satisfy the award.[71] In a third case, the Third Circuit Court of Appeals upheld a lower court decision that permanently banned a debt collection firm, its principal, and its attorney from engaging in debt collection activities, and imposed a $10.2 million judgment. This month, the appeals court denied the defendants' petition for a rehearing.[72]

The Commission's consumer outreach activities are an essential element of its consumer protection program in debt collection. The FTC advises consumers about their rights and responsibilities under the FDCPA by means including written materials and public addresses to consumer groups. The Commission's written materials explain the FDCPA in easily understandable language, provide information regarding debts so old that creditors and debt collectors may no longer sue to collect them, and offer consumers strategies for regaining control of their finances.[73]

The Commission also pursues research and policy initiatives focused on emerging issues in the $16 billion debt collection industry.[74] Last fall, the FTC staff hosted a two-day workshop

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[71] *FTC v. Rawlins & Rivera, Inc.*, No. 07-146 (M.D. Fla. Jan. 14, 2008). The complaint alleged the defendants falsely threatened consumers nationwide with lawsuits, seizure of property, and arrest. The $3.4 million judgment represented the total amount the defendants collected during the period that the Commission's complaint addressed.

[72] *FTC v. Check Investors, Inc.*, 503 F.3d 159 (3d Cir. 2007), *petition for reh'g denied,* Nos. 05-3558, 05-3957 (3d Cir. Feb. 6, 2008).

[73] Consumer education materials on debt collection and related issues are directly accessible from the FTC's webpage, Credit and Loans: In Debt?, *available at* www.ftc.gov/bcp/menus/consumer/credit/debt.shtm. In Spanish, the materials are available from the FTC's webpage, Crédito y Préstamos: ¿Endeudado?, *available at* www.ftc.gov/bcp/menus/consumer/credit/debt_es.shtm.

[74] *See* KAULKIN REPORT, THE FUTURE OF RECEIVABLES MANAGEMENT 10 (7th ed. Sept. 2007).

that examined technological, economic, and legal developments in debt collection and their impact on consumers and businesses. The workshop featured panel discussions on a range of topics such as the emergence of the debt buying industry, the impact of new communications and data storage technologies on debt collection methods, globalization of the industry, and the use of court processes and of the credit reporting system in furtherance of debt collection. The Commission expects to issue a report detailing the workshop discussions.[75]

B. Debt Negotiation and Credit Repair

The Commission has prosecuted about a dozen companies that it alleged falsely promised lifelines to consumers drowning in debt or falsely promised to clear consumers' credit reports of negative but accurate and timely information.[76] In its largest case, the FTC sued AmeriDebt, Inc., a purported credit counseling organization.[77] The Commission alleged that AmeriDebt deceived consumers with claims that it was a non-profit organization that provided bona fide debt

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[75] Also in the fall of 2007, the FTC issued an advisory opinion concluding that, after a consumer notifies a debt collector in writing that the consumer disputes a debt, the debt collector may, without violating the law, contact the consumer to tell him that the collector is halting its collection efforts. The Commission issued the opinion in response to ACA International, a debt collection trade association, that asked the FTC for clarification of the law. The FDCPA provides that if a debt collector contacts a consumer to collect a debt, and the consumer then disputes that debt in writing, the collector must stop collection efforts until it has sent the consumer written verification of the debt. The FTC's advisory opinion concluded that it would benefit consumers to receive notice that a debt collector has halted its collection efforts, and that such a notice would not violate the FDCPA.

[76] *FTC v. Debt-Set,* No. 07-558 (D. Colo. 2007); *FTC v. Select Personnel Mgmt., Inc.*, No. 07-0529 (N.D. Ill. 2007); *FTC v. Dennis Connelly,* No. 06-701 (C.D. Cal. 2006); *FTC v. Express Consolidation,* No. 06-61851 (S.D. Fla. 2006); *US v. Credit Found. of Am.,* No. 06-3654 (C.D. Cal. 2006); *FTC v. Debt Solutions, Inc.,* No. 06-0298 (W.D. Wash. 2006); *FTC v. Debt Mgmt. Found. Servs., Inc.*, No. 04-1674 (M.D. Fla. 2004); *FTC v. Integrated Credit Solutions, Inc.*, No. 06-00806 (M.D. Fla. 2006); *FTC v. National Consumer Council, Inc.,* No. 04-0474 (C.D. Cal. 2004); *FTC v. Better Budget Fin. Servs., Inc.,* No. 04-12326 (D. Mass. 2004); *FTC v. Innovative Sys. Tech., Inc., d/b/a Briggs & Baker*, No. 04-0728 (C.D. Cal. 2004); *FTC v. Jubilee Fin. Servs., Inc.*, No. 02-6468 (C.D. Cal 2002).

[77] *FTC v. AmeriDebt, Inc.,* No. 03-3317 (D. Md. 2003).

counseling services. In fact, the FTC alleged, AmeriDebt funneled profits to affiliated for-profit entities and individuals. The Commission also alleged that AmeriDebt deceived customers by claiming that it did not charge an up-front fee when, in fact, AmeriDebt kept its clients' first payments as a fee, rather than disbursing the money to their creditors as promised. On the eve of trial, AmeriDebt's founder agreed to a $35 million settlement.[78]

The Commission similarly has acted aggressively against "credit repair" scams, in which marketers promise to cleanse individual credit reports of negative information. The FTC has brought more than 50 cases since 1998 against defendants that the Commission alleged misrepresented the credit-related services they said they would provide.[79] For example, in February 2006, the Commission, along with federal and state law enforcement partners, announced a crackdown on 20 credit repair organizations.[80] As part of this effort, the FTC charged Bad Credit B Gone, LLC, with violating the FTC Act and the CROA by claiming it could improve most consumers' credit reports by removing negative information that was

[78]*See FTC v. AmeriDebt, Inc.,* No. 03-3317 (D. Md. Jan. 9, 2006) (Stipulated Final Judgment and Permanent Injunction as to DebtWorks, Inc. and Andris Pukke). Subsequently, the court-appointed receiver determined that primary defendant Andris Pukke had hidden assets from the FTC, and the court entered a judgment requiring him to turn over tens of millions of dollars' worth of additional assets. Because he resisted turning over his assets even after the court found him in contempt of court, the Court ordered his incarceration pending full cooperation, lasting almost a month.

[79]*See, e.g., FTC v. Sunshine Credit Repair, Inc.*, No. 05-20228 (S.D. Fla. 2005); *FTC v. Service Brokers Assoc., Inc.*, No. 05-60129 (S.D. Fla. 2005); *FTC v. ICR Services, Inc.,* No. 03-5532 (N.D. Ill. 2003); *FTC v. Cliff Cross, individually and d/b/a Build-It-Fast*, No. 99-018 (W.D. Tex. 2001); *FTC v. Patrick R. P.R.K. Enters.,* No. 99-562 (E.D.N.Y. 1999); *United States v. Cornerstone Wealth Corp.,* No. 98-0601 (N.D. Tex. 1998); *United States v. Jack Schrold,* No. 98-6212 (S.D. Fla. 1998); *FTC v. Midwest Mgmt. Assocs., Inc.,* No. 98-1218 (N.D. Ill. 1998).

[80]Press Release, FTC, "Project Credit Despair" Snares 20 "Credit Repair" Scammers (Feb. 2, 2006), *available at* www.ftc.gov/opa/2006/02/badcreditbgone.shtm.

accurate and not obsolete.[81] The court ruled that the defendants violated the law and ordered them to pay more than $322,000 in equitable monetary relief.

The Commission also has taken enforcement actions against debt reduction services that charge hidden fees and make false promises to lower consumers' debts. For example, in an ongoing action, the FTC has charged Express Consolidation, Inc., a nationwide debt consolidation business, with operating as a phony non-profit, misrepresenting the fees involved in its debt management programs, and violating the Do Not Call provisions of the Telemarketing Sales Rule.[82] The Commission's complaint also alleged that the company misrepresented that enrolling in its program would improve consumers' credit ratings. The FTC is seeking remedies, including consumer redress, in the case.

The Commission's consumer education effort in this area focuses on providing consumers with information to help them avoid becoming victims of deceptive operators. The Commission's written materials list questions for consumers to ask when considering working with a credit counselor, provide advice on what to do if a credit counselor goes out of business, and warn consumers to be wary of companies advertising debt relief.[83]

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[81] *FTC v. Bad Credit B Gone, LLC,* No. 06-0254 (N.D. Ill. 2006).

[82] *FTC v. Express Consolidation, Inc.,* No. 06-61851 (S.D. Fla. 2007).

[83] Consumer education materials on debt negotiation, credit repair, and related issues are directly accessible from the FTC's webpage, Credit and Loans: In Debt?, *available at* www.ftc.gov/bcp/menus/consumer/credit/debt.shtm. In Spanish, the materials are available from the FTC's webpage, Crédito y Préstamos: ¿Endeudado?, *available at* www.ftc.gov/bcp/menus/consumer/credit/debt_es.shtm.

VI. CONCLUSION

The Commission is committed to protecting consumers of financial services, including subprime borrowers. The FTC's law enforcement, consumer education, and policy research initiatives in financial services are part of the FTC's broad, vigorous, and continuing program to protect consumers from deceptive, unfair, and otherwise illegal practices.

The Commission appreciates the opportunity to appear before you today to discuss the FTC's work relating to financial services. The budget request recently submitted by the President for FY2009 contains additional funding to support this work, as well as the other important work of the agency. To accomplish the agency's consumer protection and competition missions in FY 2009, the FTC requests $256,200,000 and 1,102 Full Time Equivalents (FTEs). Of the $256,200,000 requested amount, Hart-Scott-Rodino pre-merger filing fees and Do Not Call fees will provide the Commission with an estimated $189,800,000 in FY 2009. Thus, the FTC anticipates that the remaining funds needed for its operations will come from a direct appropriation of $66,400,000 from the General Fund in the United States Treasury.

The FTC's 2009 request is an increase of $12,336,000 and 18 FTEs compared to FY 2008. It includes $7,989,000 in mandatory salary and contract expenses; $2,847,000 for the 18 additional FTEs;[84] and $1,500,000 for non-FTE programs.[85] The agency needs this level of

[84]The 18 FTE include: (a) 10 FTE for Consumer Protection to, among other things, protect consumers from unfair and deceptive practices in the financial services marketplace; protect consumers' privacy; improve compliance with FTC orders; pursue foreign-located evidence of fraud perpetrated against U.S. consumers; and provide support for the effective operation of this program; and (b) 8 FTE for Maintaining Competition to meet the increased workload required to challenge anticompetitive mergers and assure that the marketplace is free from anti-competitive business practices in the health care, pharmaceutical, energy, and technology sectors; promote convergence in competition policy of foreign enforcement practices; and provide support for the effective operation of this program.

[85]The $1,500,000 for non-FTE programs includes (a) $1,100,000 for Consumer Protection, consisting of $500,000 for "Green" marketing research, education campaign, and enforcement; $250,000 for high-tech tools to stop fraudsters; $250,000 for activities related to the marketing and advertising of

resources to continue to build on its past record of accomplishments in enhancing consumer protection and protecting competition.

food to children; and $100,000 for privacy and identity theft and deceptive and unfair practices in mobile marketing; and (b) $400,000 for Maintaining Competition to meet the challenges of an increased enforcement agenda and associated litigation and outreach efforts.