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CONSUMER PROTECTION AND THE CREDIT CRISIS

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

FEBRUARY 26, 2009

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ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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CONSUMER PROTECTION AND THE CREDIT CRISIS

THURSDAY, FEBRUARY 26, 2009

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 10:03 a.m. in room SR–253, Russell Senate Office Building, Hon. Senator John D. Rockefeller, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER IV, U.S. SENATOR FROM WEST VIRGINIA

The CHAIRMAN. We'll come to order. As I think I've said before to Members, I will give an opening statement and Senator Wicker will give an opening statement if he wishes to. But that will be all because the whole philosophy is to get to the witnesses, and to listen to the witnesses and hear what they have to say.

Then we'll go into a period of questions. The questions will be based upon first come, first serve, so to speak. The people who have statements can work that into their questions. Then we'll have as many rounds of questions as we need, except for a vote which is coming up at 10:30. And we'll handle that.

So we're having our first policy and oversight hearing of the 111th Congress today in the Commerce Committee. What we're going to do is to highlight and to uncover what I think are abusive practices that take advantage of American families.

I decided to hold the first hearing on this topic as the new Chairman for a very specific reason. We have a lot of huge subjects that we look at in terms of aviation, transportation, oceans, atmosphere, climate change, all kinds of things. But the most important aspect of what's going on in America right now is the suffering of the American people.

And that's true in my State of West Virginia. It's true in your state. It's true in your state, Senator. We have to be sensitive to that. We want to expose that and see what we can do about that.

In spite of our broad jurisdiction I want the American people to know that what is going to be a big part under my Chairmanship is people. People in trouble. People that are hurting and how we can help them. We've got to do that as we do all the other large NASA-like subjects that we have to do very thoroughly as well.

Families are hurting all across the country. We all know that. They're counting on Congress to help them out. I sincerely hope that this committee will always focus attention on that, on people who are just hurting. There are just so many and it's going to get worse before it gets better.

It sickens me to say that during these extremely difficult times there are really some outrageous, from my point of view, fraudulent practices happening every single day to people that aren't necessarily prepared to combat them. We have identified some of the worst offenders operating under the guise of providing consumers with assistance, with the intention, in fact, of doing anything but that. Deceitful fraudsters are aggressively working to attract consumers with false promises, offering misleading credit repair, credit counseling, debt management and mortgage rescue services. It's really quite stunning in fact.

As the financial crisis increases by the day and families do all they can just to survive and individuals, what I would say are people with criminal instincts who are looking to make big dollars through illegal channels, they also increase. When more people are in distress, more people want to take advantage of the people in distress. The plummeting markets have encouraged many with ill will to create multiple opportunities for both sophisticated institutions and criminal, in my judgment, activity to take advantage of people in desperate situations. Nothing concerns me more than the cold, hard reality that hard-working Americans are being swindled.

Imagine a family where the parents are working two or three jobs just to make ends meet. The money coming in just barely covers the cost of food, cost of the mortgage, cost of clothing while the debt in the meantime is piling up as they struggle to pay for prescriptions, the broken appliance or other things which they have to do. Can't avoid but doing, but can't do.

And all of a sudden the phone rings. Someone on the other line is promising a chance for a way out. They use slick advertising, lots of it, television, radio.

Confusing language and rushed tactics to lure these folks in. But it's all a lie. The family is swindled. Swindled. They could lose it all and many do because they're innocent of what these tactics entail and how they can counter them. And they feel alone and helpless.

During this period of unfathomable uncertainty families are thinking more thoughtfully about their spending habits. They're seeking out advice from experts if they know them to help them manage their finances. Often these financial services help keep families afloat. It works. Sometimes they do not.

That's why we're here today—to weed out the good from the bad and discuss ways that we can protect as many consumers as possible in the months and years to come. So we've gathered an expert panel of witnesses, as always, to discuss what's happening to families once they pay for services to help them manage their debt, repair their credit scores or to try to or refinance their homes.

We have a West Virginia witness here today, I'm very proud to say, whose testimony will typify the type of abuse that we aim to tackle. I look forward to hearing her testimony in person and working with my colleagues to consider what steps we might take to make sure that these kinds of things don't happen again.

You know, the Committee has the authority to help people have real opportunities to participate in the American dream. The question is are we using it? Do we wish to use it? Do we have the will to use it and to live healthier and safer lives? With today's eco-

nomic circumstances it's even more important that the Congress step in, speak up and protect those who need it most.

Ms. Nancy Dix from Ansted is here today to testify about a foreclosure rescue scam that nearly cost her, her home. And I'm anxious to hear it. Mrs. Dix, thank you for appearing before this committee.

We're also going to hear from Professor Prentiss Cox of the University of Minnesota Law School. Where's Professor Cox? OK, good. He is one of the preeminent experts in the land on mortgage fraud and consumer protection and is the former head of consumer protection for the Minnesota State Attorney General's Office.

Following Professor Cox will be Travis Plunkett, Legislative Director for the Consumer Federation of America. Mr. Plunkett is an expert on issues involving credit counseling and the debt management market and has been doing significant work in this area.

Finally, we will hear then from—don't worry, Madam Chairperson, I haven't forgotten you. We'll hear from Bill Himpler, Executive Vice President of the American Financial Services Administration.

I thank all of you for agreeing to testify.

First, however, I'd like to call on FTC Commissioner Pamela Jones Harbour. The FTC is the Federal Government's agency charged with protecting consumers from these scams. I know the Commission has been actively trying to protect consumers from these abuses. I look forward to hearing what Commissioner Harbour's perspective is on the scope of the problem and what the FTC is doing about it.

What I'd like to do is to have all the witnesses come to the table. Let's listen to all of the witnesses' testimony; there are not so many of them, and they'll be talking about things which have common threads. Then we can ask them questions.

So Commissioner Harbour, I turn it over to you.

STATEMENT OF HON. PAMELA JONES HARBOUR, COMMISSIONER, FEDERAL TRADE COMMISSION

Ms. HARBOUR. Good morning. Thank you, Mr. Chairman, Senator Wicker, and Members of the Committee. I am Pamela Jones Harbour, a Commissioner at the Federal Trade Commission. And I appreciate the opportunity to appear before you today to discuss the FTC's efforts to protect consumers in this time of financial distress.

I would first like to emphasize that although the views expressed in my written testimony represent the views of the Commission, my oral presentation and responses to your questions will be my own views and not necessarily those of the Commission or any individual Commissioner. As Members of the Committee are well aware, many American consumers are now struggling financially. With the downturn in the economy the national unemployment rate last month was 7.6 percent. The highest it has been in many years.

Consumers also are sinking further and further into debt. In the third quarter of 2008, the percentage of borrowers who are 60 or more days past due on their mortgage loans increased for the seventh straight quarter. Similarly in January 2009 late payments on

credit cards in the United States topped record levels. And defaults rose sharply.

Unfortunately experience teaches that some bad actors will seek to take advantage of consumers when they are down. These bad actors make false promises to consumers about the credit they can obtain, the home foreclosures they can avoid and the debt burden they can ease. Our mission at the FTC is to protect the consumer from being harmed by these false promises, a mission that has increased relevance and poignancy when consumers are in financial distress.

At the FTC we protect consumers at every stage of the credit life cycle, from when debt is first advertised to when debts are collected. The Commission does this by enforcing Section Five of the FTC Act which prohibits unfair and deceptive acts or practices as well as by enforcing a number of special statutes governing financial services including the Truth in Lending Act, the Fair Debt Collection Practices Act and the Credit Repair Organizations Act.

Pursuant to these statutes the FTC investigates and brings law enforcement actions against brokers, lenders and others who deceptively and unfairly advertise or offer credit, creditors and servicers who misrepresent fees and amounts owed and abusive debt collectors, credit repair companies, debt settlement firms and mortgage foreclosure scam artists who target delinquent consumers or those who are in default. Responding to the current financial crisis the FTC has increased its focus on preventing harm to consumers who are already in debt by stepping up its law enforcement activities relating to foreclosure rescue scams, debt relief services, credit repair and debt collection. We also have created and distributed extensive consumer education materials about these and other financial services topics to assist consumers in taking steps to protect themselves.

The Commission has conducted cutting edge, empirical research on mortgage disclosures as well as engaged in comprehensive policy development activities relating to debt collection and debt settlement. In particular, the FTC today is issuing its debt collection workshop report. This report takes a comprehensive look at how the debt collection industry has changed in the last 30 years and recommends a number of changes in the law to modernize into reform the debt collection regulatory system.

The FTC believes that its past efforts have provided important protections to the American consumer in financial distress. The Agency recognizes, however, that it must do more. To allow the Commission to perform a greater and more effective role in protecting consumers in financial distress, the Agency recommends that Congress permit the FTC to employ notice and comment rulemaking procedures to declare acts and practices relating to financial services to be unfair or deceptive in violation of the FTC.

The CHAIRMAN. Can you repeat that sentence, please?

Ms. HARBOUR. The Agency, the FTC, recommends that Congress permit us, permit the FTC, to employ notice and comment rulemaking procedures. That's APA rulemaking authority, to declare acts and practices relating to financial services to be unfair or deceptive in violation of our FTC Act.

The Agency also recommends that Congress authorize broader civil penalty authority for the Federal Trade Commission and authorize it to bring, in Federal court, suit to obtain civil penalties.

The Agency also recommends that Congress authorize the FTC to promulgate rules to implement the Fair Debt Collection Practices Act.

And the Agency also recommends that Congress provide us with substantial additional resources to assist the FTC in increasing its law enforcement activities relating to consumer financial services and expanding its critical empirical work on the efficacy of mortgage disclosures.

With your help the FTC can and will do more to help consumers in financial distress. I would like to take this opportunity to thank you, Mr. Chairman and other Members of the Committee for the opportunity to speak today. And I would be very pleased to answer your questions.

[The prepared statement of Ms. Harbour follows:]

PREPARED STATEMENT OF HON. PAMELA JONES HARBOUR, COMMISSIONER, FEDERAL TRADE COMMISSION

I. Introduction

Chairman Rockefeller, Ranking Member Hutchison, and Members of the Committee, I am Pamela Jones Harbour, a Commissioner 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 help consumers in financial distress.

The Commission protects consumers from harmful acts and practices at every stage of the credit life-cycle, from when credit is first advertised to when debts are collected. At the early stages of the cycle, the FTC protects consumers from the unfair, deceptive, or otherwise unlawful acts and practices of brokers, lenders, and others who advertise or offer credit. The agency also protects consumers at the middle stages of the credit life-cycle from the unlawful conduct of creditors and servicers who collect payments from consumers who are current on their debts. At the later stages of the cycle, the Commission protects consumers who are delinquent or in default on their debts from the unlawful acts and practices of debt collectors, credit repair companies, debt settlement firms, and mortgage foreclosure scam artists.

Although the agency protects consumers throughout the credit life-cycle, the FTC recently has increased its focus on preventing harm to consumers who are already in debt. Consumer debt is now at historic levels.[2] Moreover, the recent economic downturn has made it even more difficult for consumers with high debt levels to remain current on their mortgages, credit cards, and other types of debts.[3] In short, many American consumers are now in financial distress.

Consumers in financial distress are particularly vulnerable to unfair, deceptive, and otherwise unlawful business practices. Some debt collectors use unfair, decep-

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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 other Commissioner.

[2] Between 1985 and 2007, outstanding household debt in the United States increased from approximately 60 percent of annual disposable income to more than 125 percent, a jump due mostly to increased mortgage debt. See Federal Trade Commission, "Collecting Consumer Debts: The Challenges of Change, A Report by the Federal Trade Commission," at 16 (Feb. 26, 2009). The ratio of household indebtedness to annual disposable income peaked at 126 percent in the third quarter of 2007. Since that time, the latest available data indicate that, as of the third quarter of 2008, the ratio has declined slightly to 123 percent. This remains well above typical indebtedness levels in the past two decades. *See id.*

[3] For example, the percentage of borrowers 3 who are 60 or more days past due on their mortgage loans increased for the seventh straight quarter in the third quarter of 2008, reaching a national average of 3.96 percent. Press Release, TransUnion, Mortgage Loan Delinquency Rates Rise for Seventh Straight Quarter (Dec. 8, 2008), available at *http://newsroom.transunion.com/index.php?s=43&item=502.* This figure is approximately 54 percent higher than the figure for the third quarter of 2007. *Id.* Similarly, in January 2009 late payments on credit cards in the United States topped record levels, and defaults rose sharply to just below all-time highs. Al Yoon, *U.S. Credit Card Delinquencies at Record Highs—Fitch, Reuters,* Feb. 4, 2009, available at *http://www.reuters.com/articlePrint?articleId=USN0428871920090204.*

tive, or abusive practices such as threats of imprisonment or harassing calls to try to compel consumers to pay their debts. Some debt settlement firms promise for a fee to negotiate settlements with creditors that will result in consumers owing less than the full amount of the balance on their credit cards, but in fact these firms do not negotiate the promised reductions. Some credit repair companies promise for a fee to be able to remove delinquencies, bankruptcies, and other negative information from the credit reports of consumers, but these companies cannot remove such information if it is truthful and accurate. Finally, some scam artists target consumers facing home foreclosure and promise that for a fee they will be able to negotiate a deal with lenders or servicers that will allow the consumers to stay in their homes. However, consumers later learn that no one has taken steps to save their homes from foreclosure, resulting in many consumers losing both the fee and their homes.

The Commission has used all the tools at its disposal to increase its protection of consumers in the later stages of the credit life-cycle. The FTC has brought law enforcement actions against those who engage in unfair or deceptive acts and practices in violation of Section 5 of the FTC Act, as well as against those who violate specific credit statutes, such as the Fair Debt Collection Practices Act ("FDCPA") and the Credit Repair Organizations Act ("CROA"). The agency has created and distributed extensive consumer education materials about debt collection, debt relief services, credit repair, foreclosure rescue scams, and other financial services topics to assist consumers in financial distress in taking steps to protect themselves.[4] The Commission has conducted cutting-edge empirical research on how to improve mortgage disclosures and engaged in comprehensive policy development activities related to debt collection and debt settlement.

The FTC believes that its past efforts have provided important protections to American consumers in financial distress. The agency, however, also recognizes that it must do more. To allow the Commission to perform a greater and more effective role in protecting consumers in financial distress, the agency recommends the enactment of legislation that would:

- permit the FTC to employ notice and comment rulemaking procedures to declare acts and practices relating to financial services to be unfair or deceptive in violation of the FTC Act;
- authorize the FTC to obtain civil penalties for unfair or deceptive acts and practices related to financial services, and authorize the FTC to bring suit in Federal court to obtain civil penalties;
- authorize the FTC to promulgate rules to implement the FDCPA; and
- provide additional resources to assist the FTC in increasing its law enforcement activities related to consumer financial services and expanding its critical empirical work on the efficacy of disclosures.

This testimony will provide an overview of the FTC's consumer protection authority related to financial services, describe how the Commission has used its consumer protection tools on behalf of consumers throughout the credit life-cycle, and recommend changes in the law and resources to enable the FTC to do more to protect consumers in financial distress.

II. Overview of Commission Authority

The Commission has law enforcement authority over a wide range of acts and practices related to financial services. The agency enforces Section 5 of the Federal Trade Commission Act,[5] which prohibits unfair or deceptive acts or practices in or affecting commerce. In addition, among other specific financial services statutes,[6] the FTC enforces the FDCPA,[7] which prohibits unfair, deceptive, or abusive debt collection practices by third-party debt collectors. It also enforces the CROA,[8] which prohibits credit repair firms from making false statements about their ability to im-

[4] The FTC also participates in the governmental Financial Literacy and Education Commission and has contributed its expertise to the production of *MyMoney.gov* and *Taking Ownership of the Future: The National Strategy for Financial Literacy.*

[5] 15 U.S.C. § 45(a).

[6] The FTC enforces numerous consumer protection statutes that govern financial services providers, including the Truth in Lending Act (15 U.S.C. §§ 1601–1666j), the Consumer Leasing Act (15 U.S.C. §§ 1667–1667f), the Fair Credit Reporting Act (15 U.S.C. §§ 1681–1681x) ("FCRA"), the Equal Credit Opportunity Act (15 U.S.C. §§ 1691–1691f), the Electronic Funds Transfer Act (15 U.S.C. 1693–1693r), and the privacy and pretexting provisions of the Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801–6809).

[7] 15 U.S.C. §§ 1692–1692p.

[8] 15 U.S.C. §§ 1679–1679j.

prove the credit rating of consumers and from charging an advance fee before providing credit repair services. The FTC Act, as well as the FDCPA and CROA, provide the fundamental authority that the Commission uses to take law enforcement action against those whose acts and practices harm consumers in the later stages of the credit life-cycle.

Although the Commission has the authority to take action against a wide array of acts and practices in the financial services arena, some financial service providers are exempt from the FTC's jurisdiction. Banks, thrifts, and Federal credit unions are specifically exempt from the Commission's jurisdiction under the FTC Act.[9] The FTC's jurisdiction under the FTC Act extends only to non-bank financial companies, including non-bank mortgage companies, mortgage brokers, and finance companies. Similarly, under the FDCPA and CROA, the Commission has jurisdiction over non-bank entities covered by these statutes, including debt collectors and credit repair organizations, respectively.[10]

In conducting its law enforcement and other activities, the FTC often cooperates with other agencies, such as the Federal agencies who have authority over banks, thrifts, and Federal credit unions. Even more significant in the context of assisting consumers in financial distress, the FTC has a history of close cooperation with many state attorneys general and state banking departments on issues such as debt collection, foreclosure rescue scams, and credit repair.

III. The FTC's Protection of Consumers During the Credit Life-Cycle

A. Marketing and Advertising of Consumer Credit

A consumer's credit life-cycle begins when he or she initially shops for a mortgage, credit card, auto loan, or any other form of credit. In the area of marketing and advertising of credit, the FTC has brought numerous enforcement actions challenging deceptive or illegal marketing by lenders, brokers, or other advertisers of consumer credit in violation of the FTC Act or the Truth in Lending Act.[11] In mortgage advertising, for example, the Commission has brought actions against mortgage lenders or brokers for deceptive marketing of loan costs[12] or other key loan terms, such as the existence of a prepayment penalty[13] or a large balloon payment due at the end of the loan.[14] Most recently, the Commission announced settlements with three mortgage lenders charged with using ads that touted low interest rates and low monthly payments, but failing to adequately disclose that the low rates and payment amounts would increase substantially after a limited period of time.[15]

The FTC has also brought enforcement actions against credit card marketers and advertisers. In June 2008, the FTC sued a credit card marketing company, CompuCredit Corporation, for allegedly deceptively marketing its credit cards to subprime consumers nationwide, primarily through solicitations that misrepresented the amount of available credit and failed to adequately disclose the cost of that credit.[16] Last December, CompuCredit agreed to settle this case for an estimated $114 million in credits as redress to consumers.[17]

The Commission believes the CompuCredit case provides valuable insight into consumers' experiences in procuring credit and going into debt. Deceptively marketing the costs of a credit product can have long-lasting consequences for many

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[9] *See* 15 U.S.C. § 45(a)(2).

[10] *See* 15 U.S.C. § 1692a(4), (6); 15 U.S.C. § 1679b(4).

[11] *See, e.g.,* FTC v. *Mortgages Para Hispanos.Com Corp.,* 11 No. 06–00019 (E.D. Tex. 2006); *FTC* v. *Ranney,* No. 04–1065 (D. Colo. 2004); *FTC* v. *Chase Fin. Funding,* No. 04–549 (C.D. Cal. 2004); *FTC* v. *Diamond,* No. 02–5078 (N.D. Ill. 2002); *United States* v. *Mercantile Mortgage Co.,* No. 02–5079 (N.D. Ill. 2002); *FTC* v. *Associates First Capital Corp.,* No. 01–00606 (N.D. Ga. 2001); *FTC* v. *First Alliance Mortgage Co.,* No. 00–964 (C.D. Cal. 2000).

[12] *See, e.g., FTC* v. *Associates First Capital Corp.,* No. 01–00606 (N.D. Ga. 2001); *FTC* v. *First Alliance Mortgage Co.,* No. 00–964 (C.D. Cal. 2000).

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

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

[15] *See, e.g, In the Matter of American Nationwide Mortgage Company, Inc.,* FTC Dkt. No. C–4249 (Feb.17, 2009); *In the Matter of Shiva Venture Group, Inc.,* FTC Dkt. No. C–4250 (Feb. 17, 2009); *In the Matter of Michael Gendrolis,* FTC Dkt. No. C–4248 (Feb. 17, 2009).

[16] Although the credit cards were issued by 16 various FDIC-regulated banks, CompuCredit created, designed, and distributed the credit card marketing materials that the Commission alleged were deceptive. As discussed above, the Commission does not have jurisdiction over banks, which issue nearly all credit cards in the United States. The FTC, however, does have jurisdiction over non-bank entities that market or advertise credit cards. The Commission worked closely on this case with the FDIC, which brought a parallel action challenging this deceptive conduct.

[17] *FTC* v. *CompuCredit Corp. and Jefferson Capital Systems,* LLC, No. 1:08–CV–1976–BBM–RGV (N.D. Ga. 2008).

consumers. In this case, for instance, the deceptive marketing led many consumers to believe they would receive $300 in available credit, but instead they were charged $185 in fees and therefore initially received only $115 in credit. Many consumers were pushed over their credit limits almost immediately because they did not have as much credit as they thought they would have. These consumers were sent into a debt spiral from which they could not recover, and as a result, their debts were charged off by CompuCredit, in turn worsening their credit scores and further limiting their financial options.

The CompuCredit case also highlights what happens as more and more consumers face growing debt. Debt collectors are developing innovative approaches to collecting charged-off debt. CompuCredit and Jefferson Capital, its debt collection subsidiary, allegedly marketed a credit card specifically to consumers with charged-off debt. This type of program encourages consumers to enroll in a debt repayment plan in order to obtain a credit card. Once a consumer pays down a specific amount of his or her outstanding debt, the consumer is eligible for a credit card with a minimal amount of available credit. These debt repayment offers may be marketed to consumers whose debts were discharged in bankruptcy or whose debts are no longer reportable pursuant to the FCRA.[18] As a consequence, consumers who receive debt-transfer credit card offers may be induced to re-validate an old debt, for which collection action might not otherwise have been possible. Because of its impact on consumers in financial distress, the FTC will continue to monitor the marketplace for this type of debt collection practice.

B. Mortgage Servicing

In the mortgage market, servicers collect payments for lenders and other owners of mortgage loans. The FTC has challenged deceptive and unfair practices in the servicing of mortgage loans, addressing core issues such as failing to post payments upon receipt, charging unauthorized fees, and engaging in deceptive or abusive debt collection tactics. For example, in September 2008, the FTC settled charges that EMC Mortgage Corporation and its parent, The Bear Stearns Companies, LLC, violated Section 5 of the FTC Act, the FDCPA, and the FCRA in servicing consumers' mortgage loans, including debts that were in default when EMC obtained them.[19] Among other practices, the complaint alleged that the defendants: (1) misrepresented the amounts consumers owed; (2) assessed and collected unauthorized fees; and (3) misrepresented that they had a reasonable basis to substantiate their representations about consumers' mortgage loan debts. The complaint further alleged the defendants made harassing collection calls; falsely represented the character, amount, or legal status of consumers' debts; and used false representations and deceptive means to collect on mortgage loans.

The EMC settlement required the defendants to pay $28 million in consumer redress, barred them from future law violations, and imposed new restrictions on their business practices. In particular, it required EMC to establish and maintain a comprehensive data integrity program to ensure the accuracy and completeness of data and other information about consumers' loan accounts before servicing those accounts.

In addition to law enforcement, the Commission provides mortgage borrowers with tools to protect themselves. For example, the FTC distributes consumer education materials on mortgage servicing,[20] what to do if you are having trouble making your mortgage payments,[21] and how to manage your mortgage if your lender closes or files for bankruptcy.[22] The Commission also uses innovative approaches to reach out to consumers in other ways. This January, the FTC included a bookmark, "Numbers to Know & Places to Go," with contacts for more information about assistance with financial services along with the redress checks sent to over 86,000 consumers as a result of the Commission's settlement with EMC.

C. Debt Collection

Consumer credit is a critical component of today's economy. Credit allows consumers to purchase goods and services for which they are unable or unwilling to pay the entire cost at the time of purchase. By extending credit, however, creditors

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[18] 15 U.S.C. §§ 1681–1681x. Section 605(a)(4) of the FCRA prohibits credit reporting agencies from reporting charge-offs that are more than 7 years old. 15 U.S.C. § 1681c.

[19] *FTC* v. *EMC Mortgage Corp.,* No. 4:08–cv–338 (E.D. Tex. Sept. 9, 2008). *See* Press Release, Federal Trade Commission, Bear Stearns and EMC Mortgage to Pay $28 Million to Settle FTC Charges of Unlawful Mortgage Servicing and Debt Collection Practices (Sept. 9, 2008), available at *http://www2.ftc.gov/opa/2008/09/emc.shtm.*

[20] *http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea10.shtm.*

[21] *http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea04.shtm.*

[22] *http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea12.shtm.*

take the risk that consumers will not repay all or part of the amount they owe. If consumers do not pay their debts, creditors may become less willing to lend money to consumers, or may increase the cost of borrowing money. Creditors typically use independent or third-party collectors to try to recover on debts to decrease the amount of their lost revenues. Debt collection thus helps keep credit available and its cost as low as possible.

Some debt collection activities, however, also may harm consumers. In 1977, Congress passed legislation to protect consumers from harmful debt collection practices and to protect ethical collectors from competitive disadvantage. The result was the landmark Fair Debt Collection Practices Act, which established specific standards of conduct for the collection industry. Consumer groups, labor groups, state and Federal enforcement officials, and collection industry trade associations supported the law's passage. The Commission is the primary governmental enforcer of the FDCPA. Consumers also may file their own actions against debt collectors.

The FDCPA prohibits abusive, deceptive, and unfair debt collection practices, and specifies numerous practices that are barred. The FTC receives more complaints about debt collectors than any other industry.[23] The consumer complaints include demands for payments that are not owed or larger than owed, harassment, false threats of legal or other action, impermissible calls to the consumer's place of employment, revealing debts to third parties, and other law violations.

Since 1999, the FTC has brought 21 lawsuits for illegal debt collection practices. In these cases, the Commission has obtained strong permanent injunctive and equitable relief, including substantial monetary judgments and, for some defendants, bans on collecting debts.[24] In addition, the FTC has held more individuals, rather than just companies, liable for unlawful debt collection practices. As an example of the FTC's current approach to law enforcement, in November 2008, Academy Collection Service, Inc. ("Academy") and its owner, Keith Dickstein, agreed to pay $2.25 million in civil penalties to settle charges that they violated the FDCPA and Section 5 of the FTC Act.[25] This is the largest civil penalty that the Commission has ever obtained in an FDCPA case.[26]

Although the Commission has provided effective protection for consumers within the current confines of the law, the FTC recognized that the law may need to be modified to provide consumers with even stronger protection against abusive debt collectors. In October 2007, the Commission therefore hosted a two-day workshop, entitled "Collecting Consumer Debts: The Challenges of Change," to explore changes in the debt collection industry and examine their impact on consumers and businesses since the FDCPA was enacted in 1977.

The FTC is releasing its debt collection workshop report today. Based on the workshop record and its experience, the Commission concludes that debt collection law needs reform and modernization to reflect changes in consumer debt, the debt collection industry, and technology. The Report discusses these changes and sets forth the modifications to the law the FTC believes are needed to provide better consumer protection without unduly burdening debt collection.

Among other things, the Report concludes that major problems exist in the flow of information within the debt collection system. The law needs to be changed to require that debt collectors have better information, making it more likely their attempts to collect are for the right amount and are directed to the correct consumers. The Report also recommends that collectors be required to provide consumers with better information explaining their rights under the FDCPA.

The Commission also concludes that debt collection laws must be modernized to take account of changes in technology. The Report recognizes that the law generally should allow debt collectors to use all communication technologies, including new and emerging technologies, to contact consumers. However, it is important that the law be carefully crafted and applied to avoid collectors' use of communication tech-

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[23] *See* Federal Trade Commission Annual Report 23 2008: Fair Debt Collection Practices Act at 4, available at *http://www2.ftc.gov/os/2008/03/P084802fdcpareport.pdf*. Note that, although the FDCPA generally does not cover the conduct of creditors collecting on their own debts, Section 5 of the FTC Act's prohibition on unfair and deceptive acts and practices does apply to such conduct.

[24] *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).

[25] *United States* v. *Acad. Collection Serv., Inc.,* No. 2:08-CV–1576 (D. Nev. Nov. 18, 2008). See Press Release, Federal Trade Commission, Nationwide Debt Collector Will Pay $2.25 Million to Settle FTC Charges (Nov. 21, 2008), available at *http://www.ftc.gov/opa/2008/11/academy.shtm*.

[26] Previously, the highest civil penalty judgment in an FDCPA case was $1.375 million, entered in *United States* v. *LTD Financial Services,* No. H–07–3741 (S.D. Tex. Nov. 5, 2007).

nologies in a manner that causes consumers to incur charges, or otherwise subjects them to unfair, deceptive, or abusive acts and practices.

The workshop record also revealed that certain debt collection litigation and arbitration practices appear to raise substantial consumer protection concerns. Because the workshop record does not contain adequate information for the FTC to determine the nature and extent of these concerns, the Report announces that the agency will convene regional roundtables this year with state court judges and officials, debt collectors, collection attorneys, consumer advocates, arbitration firms, and other interested stakeholders to obtain more information about these concerns and develop possible solutions. The participation of state officials in these roundtables will be critical, because debt collection litigation and arbitration involve many issues of state as well as Federal law.

D. Debt Relief Services and Credit Repair

Foreclosure Rescue Scams

With the rapid increase in mortgage delinquencies and foreclosures, the FTC has intensified its efforts to protect consumers from mortgage foreclosure rescue scams.[27] There are many varieties of mortgage foreclosure rescue fraud, but in most cases the perpetrator makes misleading promises that a consumer's home will be saved from foreclosure and that the consumer's loan can be modified. These scams share at least two common characteristics. First, the fraudulent schemes target consumers who are facing foreclosure or delinquency on their mortgage and who have limited time and resources to save their homes. Second, these schemes falsely promise that they can save consumers' homes from foreclosure or obtain a loan workout or modification chiefly by negotiating directly with the mortgage lender or servicer. Many consumers, however, ultimately lose both their homes and the money they paid to scammers.

In the past year, the Commission has brought six cases targeting mortgage foreclosure rescue scams,[28] including a case announced earlier this month.[29] In these cases, the Commission alleged that the defendants promise to stop foreclosure in exchange for an up-front consumer payment, ranging from $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 to avoid foreclosure, including with the assistance of a non-profit housing counselor. In one case, the Commission alleged that the defendants enticed 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.[30]

In tandem with its recent law enforcement actions against alleged foreclosure rescue scams, the Commission initiated a stepped-up outreach initiative on foreclosure rescue fraud. The FTC is involved in Federal, state, and local task forces in several regions where foreclosures are most prevalent both to coordinate enforcement and develop consumer outreach strategies. In addition, to warn consumers about the red flags for scams and inform them about the legitimate resources available to them, the Commission has undertaken a variety of other outreach initiatives. The FTC submitted a series of radio public service announcements, in English and Spanish, to stations in cities hardest hit by mortgage foreclosures. The Commission also distributed an article adapted from its mortgage foreclosure scam consumer education brochure to a national syndicated news service, which in turn, sent it to more than 10,000 community newspapers across the Nation for inclusion in their publications.

2. Debt Settlement

With historically high levels of consumer credit card debt, many consumers are looking for ways to manage or reduce their debt. For decades, credit card debt relief was almost exclusively the province of non-profit credit counseling agencies ("CCAs"). Beginning in the mid-1960s, creditor banks initiated the current model of non-profit credit counseling to reduce personal bankruptcy filings. Under this model,

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[27] On February 13, 2008 the FTC testified before the Senate Special Committee on Aging about foreclosure rescue fraud. The FTC's testimony is available at *http://www.ftc.gov/os/testimony/P064814foreclosure.pdf*.

[28] *FTC* v. *United Home Savers, LLP,* No. 8:08–cv–01735–VMC–TBM (M.D. Fla. Sept. 3, 2008); *FTC* v. *Foreclosure Solutions, LLC, and Timothy A. Buckley,* No. 1:08–cv–01075 (N.D. Ohio April 28, 2008); *FTC* v. *Mortgage Foreclosure Solutions, Inc.,* No. 8:08–cv–388–T–23EAJ (M.D. Fla. Feb. 26, 2008); *FTC* v. *National Hometeam Solutions, Inc.,* No. 4:08–cv–067 (E.D. Tex. Feb. 26, 2008).

[29] *FTC* v. *National Foreclosure Relief, Inc.,* No. SACV09–117 (C.D. Cal. Feb. 2, 2009) (temporary restraining order issued pending hearing on FTC's motion for preliminary injunction).

[30] *FTC* v. *Safe Harbour Foundation,* No. 08 C 1185 (N.D. Ill. Feb. 25, 2008).

CCAs work with consumers and creditors to negotiate a repayment plan of principally credit card debt (a "debt management plan" or "DMP") and also assist the consumer in developing a manageable budget and educational tools to avoid debt problems in the future.[31] If the consumer cannot afford a repayment plan, the credit counselor explores other options, including referral to a bankruptcy attorney.

The historic levels of consumer debt necessarily have affected the services CCAs can provide. Non-profit credit counselors have told the Commission that the number of consumers contacting them about debt has increased by over a third. However, they also have said that the number of consumers who meet the income requirements to enroll in debt management plans has decreased substantially, which means that there are more consumers in debt who are looking for relief but cannot obtain that relief from non-profit credit counseling services. These reports from credit counselors are consistent with what the Commission has observed in the marketplace as part of its law enforcement activities related to debt settlement.[32]

The increased demand for debt relief options resulted in the recent growth of *for-profit* debt settlement companies. The term "debt settlement" refers to services for-profit companies market that promise to obtain lump sum settlements of consumers' unsecured debt—principally, credit card debt. These companies typically promise that they will negotiate with creditors to obtain settlements in amounts less than the full balance owed by the consumer. The for-profit debt settlement business model typically encourages consumers, even those who are current on their payments, to become delinquent on credit card debt to encourage creditors to accept less than full payment of principal as a form of loss mitigation. Unlike DMPs, debt settlement companies do not consolidate credit card debt or arrange a monthly payment plan to pay off the debt over a period of years. Rather, the goal of debt settlement is to save enough cash, while not paying creditors, so that the creditors will offer to take a fraction of the balance owed as settlement in lieu of the full debt.

Since 2001, the Commission has brought 14 cases against both sham non-profit credit counseling agencies and for-profit debt settlement companies.[33] In these cases, defendants allegedly deceive consumers who are seeking workout options for credit card debt into paying large upfront fees for debt relief services which, for many consumers, are nonexistent. Other allegations include deceptive promises that debt collectors will stop trying to collect from consumers enrolled in their programs and that stopping payments to creditors under their program will not hurt consumers' creditworthiness.

Earlier this month, the Commission brought a contempt action against an alleged sham non-profit credit counseling company and its principal for violations of an order a Federal court entered against them in 2008.[34] The defendants, Express Consolidation and Randall Leshin, misrepresented their non-profit status, charged hidden fees, and misled consumers about the benefits of enrolling in a debt management plan, according to the Commission's underlying action.[35] The 2008 order prohibited them from the illegal conduct and from operating in states where they were not qualified to do business. Notwithstanding being subject to a Federal court order, the defendants continued to do business in states where they were unqualified and to collect fees from consumers who had canceled their debt management plans. On

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[31] To negotiate a DMP, the credit counselor first obtains the consumer's full financial profile. Then, the credit counselor contacts each of the consumer's creditors. Based principally on the consumer's debt load and available income, the creditor then determines what, if any, repayment options to offer the consumer. Repayment options, or concessions, include reductions of the interest rate on the credit card and elimination of late or over-limit fees. After negotiations with all of the consumer's creditors, the credit counselor calculates a consolidated and reduced monthly payment to enable the consumer to repay the balance in full over a period of years, typically three to 5 years. The consumer sends the payment to the credit counselor, which then distributes payments to each of the consumer's creditors.

[32] Federal Trade Commission, Debt Settlement Workshop (Sept. 25, 2008), Transcript at 6 (remarks of Lydia B. Parnes, then-Director of the Bureau of Consumer Protection), available at *http://www.ftc.gov/bcp/workshops/debt settlement/OfficialTranscript.pdf*

[33] *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); *United States* 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. *AmeriDebt, Inc.,* No. 03–3317 (D. Md. 2003); *FTC* v. *Jubilee Fin. Servs., Inc.,* No. 02–6468 (C.D. Cal. 2002).

[34] *FTC* v. *Randall L. Leshin d/b/a Express Consolidation,* No. 0:06–CV–61851–WJZ (S.D. Fla. 2008).

[35] *FTC* v. *Express Consolidation,* No. 06–CV–61851 (S.D. Fla. Dec.11, 2006).

February 17, 2009, the court found the defendants in contempt based on this conduct. The Commission currently is seeking an order reimbursing consumers for any fees collected in violation of the 2008 order.

As part of its research and policy development initiatives, the Commission convened a public workshop in September 2008 to examine the debt settlement industry, including the role of creditors, and the consumer protection issues that the for-profit business model raises. As a result of this workshop and the FTC's law enforcement experience, the Commission is considering what initiatives, in addition to continued aggressive enforcement, are needed to further protect consumers from deceptive and unfair practices by purported debt relief companies.

3. Credit Repair

Another consumer protection challenge exacerbated by the economic downturn is the effect of delinquencies, bankruptcy, or other negative credit information on a consumer's credit report. Fraudulent credit repair companies falsely promise to be able to remove for a fee accurate, negative information from consumers' credit reports. This false promise particularly appeals to consumers with poor credit histories who are seeking a job, a car loan, or a mortgage.

Consistent with its efforts to combat other types of financial fraud, the Commission has acted aggressively against such "credit repair" scams. Since 1999, the FTC has brought 42 cases against defendants that allegedly misrepresented the credit-related services they would provide. Most recently, in October 2008, the Commission and 24 state agencies announced a crackdown on 33 credit repair operations—entities that deceptively claimed they could remove negative information from consumers' credit reports, even if that information was accurate and timely.[36] The law enforcement sweep included ten FTC actions charging companies with violating the FTC Act and the CROA by making false and misleading statements, such as claiming they could substantially improve consumers' credit reports by removing accurate, negative information from credit reports. The agency also alleged that the defendants violated the CROA by charging an advance fee for credit repair services. The sweep included 26 state actions alleging violations of state laws and the CROA. Our partnerships with state authorities have increased significantly the reach of the Commission's law enforcement efforts to promote broader compliance with the law.

IV. Enhancing FTC Consumer Protection Efforts

As described above, the FTC has used a vigorous program of law enforcement, consumer education, and research and policy development to protect consumers of financial services. The current economic crisis, however, demonstrates that more needs to be done. As the Nation's consumer protection agency, the Commission is well-positioned to provide the additional protection that is needed. The FTC can provide greater protection to consumers in financial distress through enhanced and streamlined authority to promulgate rules, including rules to implement the FDCPA, increased monitoring and oversight to assess compliance with the law, expanded authority to obtain civil penalties against those who violate the law, and increased policy-oriented research on financial services subjects. To exercise these responsibilities in the robust manner necessary to confer greater consumer protection, the Commission will need substantial additional authority and resources.

A. Rulemaking Authority

The Commission would be able to be develop rules concerning financial services more quickly and effectively if the procedures required for issuing such rules were streamlined; that is, if the FTC were permitted to use standard government-wide notice and comment rulemaking procedures under Section 553 of the Administrative Procedures Act ("APA")[37] to declare acts and practices to be unfair or deceptive. The FTC currently must use the burdensome, complicated, and time-consuming procedures of Section 18 of the FTC Act ("Magnuson-Moss rulemaking procedures") to promulgate such rules.[38] Commission rulemakings subject to Magnuson-Moss rulemaking procedure requirements typically take anywhere from three to 10 years to

[36] See Press Release, FTC's Operation "Clean Sweep" Targets "Credit Repair" Companies, available at *http://www.ftc.gov/opa/2008/10/cleansweep.shtm*.

[37] 5 U.S.C. § 553.

[38] Section 18, for example, includes requirements that the FTC must publish an advance notice of proposed rulemaking and seek public comment before publishing its notice of proposed rulemaking; it must provide an opportunity for a hearing before a presiding officer at which interested persons are accorded certain cross-examination rights; and, where there are numerous interested parties, the FTC must determine which have similar interests, have each group of persons with similar interests choose a representative, and make further determinations about representation for those interests in the cross-examination process. 15 U.S.C. § 57a(b).

complete. For example, the proceeding to promulgate the FTC's Credit Practices Rule[39] took almost 10 years.

The cumbersome requirements of Section 18 of the FTC Act do not apply to other Federal agencies when they promulgate rules to protect consumers of financial services from unfair and deceptive acts and practices. Most significantly, under the FTC Act itself, the Board of Governors of the Federal Reserve System ("FRB"), the Office of Thrift Supervision ("OTS"), and the National Credit Union Administration ("NCUA") may use notice and comment rulemaking to promulgate such rules for banks, thrifts, and Federal credit unions, respectively.[40] The FTC, by contrast, must use the onerous and lengthy Magnuson-Moss rulemaking procedures to address the exact same unfair and deceptive acts and practices by financial entities within the Commission's jurisdiction. Changing the law to allow the Commission to use the same process under the FTC Act as used by the Federal banking agencies would promote expedition and consistency in the promulgation of rules to protect consumers of financial services.

Similarly, expeditiously promulgating rules to address the acts and practices of debt collectors would be very beneficial in protecting consumers in financial distress. Section 814 of the FDCPA specifically prohibits the FTC from promulgating rules concerning the collection of debts by debt collectors.[41] In the debt collection workshop report that the Commission is issuing today, the agency concluded that the debt collection legal framework should be changed to enable the FTC to issue rules to implement the FDCPA to respond better to changes in technology and the marketplace. As with the rules under the FTC Act that address unfair and deceptive acts and practices related to financial services, the Commission would be able to issue rules to implement the FDCPA quickly and effectively if the agency were able to use notice and comment rulemaking procedures under the APA to promulgate them.

B. Expand FTC Ability to Obtain Civil Penalties for Law Violations

Civil penalties and other forms of monetary relief are vital to the effectiveness of the Commission's law enforcement program, because they punish noncompliance and deter future violations. The FTC, however, does not have the authority to seek civil penalties for violations of some of the laws that it enforces, most notably, the FTC Act.[42] Even in circumstances in which civil penalties are available to the FTC, the agency may not bring an action in Federal court seeking penalties without first referring it to the Department of Justice (DOJ) to file on behalf of the Commission.[43]

First, in the context of financial services, enhanced civil penalty authority would increase deterrence of would-be violators within the FTC's jurisdiction.[44] Equitable monetary remedies, such as redress and disgorgement, may not be appropriate or sufficient in certain cases, and the availability of civil penalties against the wrongdoers would likely achieve greater deterrence.

The Commission's recent settlements with mortgage advertisers discussed above,[45] for example, contained no monetary relief. The FTC did not seek redress or disgorgement because of the difficulty in quantifying and proving consumer injury attributable to the particular ads challenged in those cases. Deterrence of unlawful conduct likely would be increased in these types of cases if civil penalties were available as a remedy.

In addition to authorizing civil penalties for violations of all consumer protection laws related to financial services, changes to the process required to obtain those penalties would make law enforcement more effective. Giving the FTC independent litigating authority when it seeks civil penalties would allow the Commission—the agency with the greatest expertise in enforcing the FTC Act—to litigate some of its

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[39] FTC Credit Practices Rule, 16 C.F.R. § 444.

[40] *See* 15 U.S.C. § 57a(f).

[41] *See* 15 U.S.C. § 1692l(d).

[42] Currently, the FTC may seek civil penalties against any entity that knowingly violates a trade regulation rule promulgated by the FTC or that violates an FTC cease and desist order. See 15 U.S.C. §§ 45(l) and (m)(1)(A). In addition, recognizing the importance of civil penalties, Congress has specifically authorized the FTC to seek civil penalties for violations of certain statutes, *e.g.,* the FDCPA.

[43] 15 U.S.C. § 56.

[44] If the Commission brings an action in Federal court seeking civil penalties for violations of the laws it enforces, the agency should be permitted to obtain injunctive relief in such an action. In instances where there is a need to bring ongoing unlawful conduct by a financial services provider to a swift halt to protect consumers, and where both equitable relief and civil penalties are appropriate, the FTC should have the option of directly filing an action in Federal court seeking both equitable relief and civil penalties.

[45] See cases cited *supra,* n. 15.

own civil penalty cases, while retaining the option of referring appropriate matters to DOJ.[46] Conferring this authority on the Commission also would increase efficiency. Currently, if DOJ declines to participate in the name of the United States or otherwise fails to act within 45 days on such a referral, the Commission may file the case in its own name. This process requires extra time and delay, even under the best of circumstances. Moreover, once DOJ accepts a referral, the FTC normally assigns one or more of its staff attorneys, at DOJ's request, to assist in litigating the case. Despite excellent relations and coordination, the use of personnel at two agencies inevitably creates delay and inefficiencies. This is particularly true in cases where the FTC is simply referring to DOJ a civil penalty settlement to be filed in Federal court.

The FTC Act therefore should be amended to expand the agency's independent litigating authority to allow the FTC to bring actions for civil penalties in Federal court "in its own name by any of its attorneys," without mandating that DOJ have the option to litigate on the FTC's behalf, as is currently required in most cases.

C. Increase Vital Empirical Research

One of the most challenging current policy issues in consumer protection is under what circumstances the disclosure of information allows consumers to make adequately informed decisions about products, including financial goods and services. The FTC has long recognized that the disclosure of information often can empower consumers, but that such disclosures may not be effective in some circumstances. In particular, the agency has recognized the challenges of conveying information about complex products and topics via disclosures. This challenge is an especially important one to address in the financial services area, because mortgage and credit products have become much more complex in recent years.

Statutory and regulatory schemes related to financial services include a host of requirements mandating that information be disclosed to consumers. Some have questioned whether these disclosures provide consumers with the information they need to properly understand the financial services they are purchasing. Specifically, some have argued that current disclosure requirements are inadequate in light of the advent and expansion of new financial services, such as alternative mortgages.

The Commission has a long history of conducting empirical tests of the efficacy of disclosures in a wide variety of commercial contexts.[47] Most recently, in 2007, the FTC's Bureau of Economics published a seminal research report concluding that the current mortgage disclosure requirements do not work and that alternative disclosures should be considered and tested.[48] As policymakers assess the utility of disclosures for financial products and services, the FTC has an opportunity to play a pivotal role in the debate. The Commission has the experience needed to conduct reliable studies of disclosures and report the results of these studies to policymakers and the public to better inform the debate. Focusing more attention on and devoting more resources to such vital empirical work is needed so that the FTC can foster the development of sound consumer protection policy.

D. Increase in Resources

The FTC has a broad consumer protection mission that extends far beyond the financial services area, protecting consumers from identity theft, false advertising, malware, business opportunity frauds, telemarketing fraud, and more. Over the past few years, the Commission has responded to the need for more financial services

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[46] Other independent Federal agencies, such as the Securities and Exchange Commission and the Commodity Futures Trading Commission, are able to maximize the benefits of their own expertise by independently bringing administrative or judicial actions for civil penalties.

[47] In 2004, for example, the FTC released a study showing that broker compensation disclosures that the Department of Housing and Urban Development had proposed confused consumers, leading many of them to choose loans that were more expensive. *See* Federal Trade Commission, Bureau of Economics Staff Report, *The Effect of Mortgage Broker Compensation Disclosures on Consumers and Competition: A Controlled Experiment* (February 2004).

[48] *See* Federal Trade Commission, Bureau of Economics Staff Report, *Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current and Prototype Disclosure Forms (June 2007), available at http://www.ftc.gov/os/2007/06/P025505mortgagedisclosurereport.pdf.* In this empirical study, the FTC staff tested currently required mortgage cost disclosure documents, as well as developed and tested a prototype mortgage cost disclosure document. The FTC staff study concluded that the current document "failed to convey key mortgage costs to many consumers," while the prototype document "significantly improved consumer recognition of mortgage costs, demonstrating that better disclosures are feasible." *Id.* at ES–1 and ES–5. Following up on this research, in 2008 the FTC's Bureau of Economics convened a conference to evaluate how mortgage disclosures could be improved. *See* Federal Trade Commission, "May 15, 2008 Mortgage Disclosure Conference," available at *http://www2.ftc.gov/opa/2008/05/mortgage.shtm*.

enforcement by shifting consumer protection resources to the financial services area to the fullest extent possible. There is a great deal more that the FTC can accomplish in protecting consumers of financial services and we are prepared to do more. To accomplish this goal, the FTC needs significant additional professional staff.

V. Conclusion

The Commission is committed to protecting consumers throughout the credit lifecycle, including preventing harm to the many American consumers who struggle with mortgage, credit card, and other debt. The agency has used its traditional consumer protection tools of law enforcement, broad-based research and policy development, and consumer and business outreach to provide important protections for consumers of financial services. However, the Commission must do more. To enable the FTC to perform a greater and more effective role protecting consumers in financial distress, it recommends changes in the law and resources to enhance its authority to promulgate needed rules and prosecute cases against law violators. The Commission appreciates the opportunity to appear before you today to discuss the FTC's work and your consideration of its views.

The CHAIRMAN. Thank you. Thank you very much, Commissioner.

STATEMENT OF NANCY DIX, CONSUMER, ANSTED, WEST VIRGINIA

I'm very proud that Nancy Dix is here this morning. I really want to thank you for coming here, from coming up from West Virginia. It's not far away, but it's a long trip, isn't it?

Mrs. DIX. Yes, it is.

The CHAIRMAN. Yes, it is. From what I understand from your testimony is that you were in danger of losing your home and so you turned to a company called, Mortgage Rescue.

Mrs. DIX. Right.

The CHAIRMAN. Is that correct?

Mrs. DIX. Yes.

The CHAIRMAN. Well, it doesn't sound like this company rescued you from anything.

Mrs. DIX. They didn't.

The CHAIRMAN. In fact, it sounds like this mortgage rescue company just made your financial situation even worse. You paid this company $921 for their services.

Mrs. DIX. Right.

The CHAIRMAN. And their expert advice to you was to pay the lender a $5,000 deposit to stop the foreclosure. Is that correct?

Mrs. DIX. Yes.

The CHAIRMAN. Of course they knew that you couldn't afford to make this payment.

Mrs. DIX. Right. They knew it.

The CHAIRMAN. So Mrs. Dix, one of our responsibilities in this committee is to protect consumers against fraud, against people who call you up. They contacted you on the telephone?

Mrs. DIX. Through the mail.

The CHAIRMAN. Through the mail and you were looking for help and so you kind of, were eager to see what they had to say.

Mrs. DIX. Yes.

The CHAIRMAN. I don't know all of the facts about your case, but it sounds to me like this company promised you something it knew it could never deliver to you.

Mrs. DIX. Right.

The CHAIRMAN. Based on your experience can you give this Committee any guidance about what we can do to make sure that other families don't have to go through what you have gone through?

Mrs. DIX. Yes, sir. If they're not sure about a company like that they need to come talk to our Attorney General.

The CHAIRMAN. To the Attorney General?

Mrs. DIX. Yes, of their state.

The CHAIRMAN. Yes, and in this case that worked out for you, didn't it?

Mrs. DIX. Yes, it did. It kept me from losing my home.

[The prepared statement of Mrs. Dix follows:]

PREPARED STATEMENT OF NANCY DIX, CONSUMER, ANSTED, WEST VIRGINIA

Good morning, my name is Nancy Dix. I am sixty-seven years old. I live in a double-wide manufactured home in Ansted, West Virginia. After my husband died of a heart attack in 2001, I was contacted by lenders to refinance my home with promises of saving me money. My husband had always handled things like loans so I did not know much about mortgages and loans. I trusted the people I dealt with because I thought they were professionals looking out for my best interests. I later found out that I was actually being taken advantage of by predatory lenders.

In the spring of 2002 I spoke with a mortgage broker called Infinity, which told me it would save me money. Infinity sent an appraiser out to my house and valued the property for $97,000. I later learned that it was actually worth about $59,000.

After the appraisal, Infinity told me a man would be coming to my home with papers to sign. When the man came, I learned for the first time that my payments would be $800 a month. This is higher than what I was expecting and a lot for me to afford on my fixed income. I asked about the payments and was told that in a few months, they would lower my payments to $600. The signing was rushed, and no one explained the papers to me. I admit I was confused by all that paperwork and simply trusted that I was being treated honestly.

The loan ended up with a bank called Flagstar. The total amount of the loan was for $86,700.00 with an APR of 9.481 percent. Under the loan I was required to make payments of over $245,000.00 over thirty years.

After the signing I began making payments. I contacted Flagstar after a few months to lower my payments. Flagstar told me that I would have to come up with more than $8,000 out of my pocket before they would lower my payment—money I did not have. I struggled to make payments over the years and was forced ultimately into bankruptcy. When I tried to catch up my payments with Flagstar, they wanted me to pay large amounts that I could not afford on my fixed income. Flagstar wanted me to pay over $1,800 a month when my income was only about $2,000. Also, Flagstar force placed expensive insurance on my account, which made me further behind and increased my monthly payment.

In July 2005, Flagstar started sending my payments back to me. Eventually, my home was sent into foreclosure, with a sale set for December 15, 2005.

Around this time I was contacted by an outfit from Houston, Texas, called Mortgage Rescue. They told me to send them some information about my finances and $921 and they would stop the foreclosure. So on November 8, 2005, I sent them the information and money. They responded to me by a letter I received only days before the foreclosure. The letter said for me to call Flagstar and work out a forbearance agreement, but I would have to pay the total amount I was behind and a $5,000 deposit to Flagstar to stop the foreclosure. Mortgage Rescue knew I did not have this money. I could have worked out this deal with Flagstar at anytime, without sending Mortgage Rescue $921. Basically they took my money for nothing. I later found out that Mortgage Rescue was not even licensed to do business in West Virginia. I never got my money back from them.

Luckily, I was able to call the West Virginia Attorney General, who had the foreclosure put off. I was then sent to Mountain State Justice, a non-profit legal services office, and they worked it out so I could keep my home.

If I had not called the Attorney General or found Mountain State Justice, I would have lost my home. I would be in my late sixties, retired, widowed, with nowhere to live. I think at times about other people who sent their hard-earned money to scam artists like Mortgage Rescue. I hope you are able to do something to prevent these crooks from taking advantage of people who are desperate, like I was, because they are facing loss of their homes. Thank you.

The CHAIRMAN. Let me now go on to Professor Cox before my time runs out. Nothing is clicking here. Is the clock running?

MALE SPEAKER. I think they've reset it, Mr. Chairman.

The CHAIRMAN. Yes, that's not proper. Professor Cox according to your testimony, Mrs. Dix's experience is disturbingly common. You say it's difficult for consumers to get objective information when they fall behind on their loan payments. They're in danger of losing their homes.

Why is it so difficult for people to find the assistance that might keep them in their homes?

STATEMENT OF PRENTISS COX, ASSOCIATE PROFESSOR OF CLINICAL LAW, UNIVERSITY OF MINNESOTA LAW SCHOOL

Mr. COX. Thank you, Mr. Chairman. It is difficult because they get bombarded with solicitations promising the homeowner that the family will be safe from foreclosure by signing up with this white knight who is going to take care of the problem.

And if you're looking for an area where there's a problem with consumer protection? Try to find something where's there's lots of money, complexity of a transaction and/or vulnerability of the consumer. Foreclosure rescue fraud pins the meter on absolutely every one of those items.

So you've got desperate homeowners who are trying their best to save their homes, their largest investment, often all they have. And we're dealing with an extremely complex transaction. So it's difficult to sort out what's right and what's wrong when you're in that position.

The CHAIRMAN. OK. I went out of order there deliberately because I wanted to be able to ask Nancy some questions before I have to go down and vote at which point I will then turn it over to Senator Lautenberg. I will go vote and will come back. This happens often on the Committee. And it's not particularly wonderful, but it's the way at least we can keep the testimony going.

So maybe what I should do, Mr. Cox, is just to ask you to give your testimony.

Mr. COX. Thank you, Mr. Chairman. I'll be extremely brief. I understand the time pressures.

The CHAIRMAN. No, don't worry about that.

Mr. COX. OK.

The CHAIRMAN. We don't have that. We just have a vote. That's different. Small pressure.

Mr. COX. There are two types of scams here that we're dealing with. The one that Mrs. Dix was taken advantage of is called a foreclosure consultant and other similar names. That has become more popular with the change in the market lately.

The other kind is called a foreclosure reconveyance. And that's where the homeowner is in foreclosure and has equity in their home and they are convinced to give a title to the property to a scam artist who is going to save the house. The scam artist then gives back some sort of interest to the homeowner, typically a land sale contract or a lease with purchase option. That's called a foreclosure reconveyance scam.

I had the privilege of doing all the major predatory lending cases with the state attorney generals in the national leadership, wheth-

er it was First Alliance Mortgage, Household or Ameriquest, for 10 years. During that time, about 2002–2003, we began to see homeowners who were coming in who were in foreclosure and didn't know why they were being told that they could be evicted from the home they thought they owned. Well, these were reconveyance scams.

The market, if you will, for that kind of reconveyance scam in the early 2000s existed because there was a historic, incredible appreciation of home values, which meant that the majority of people in foreclosure had equity in their homes, sometimes really substantial equity in their homes. And these scams flourished during that period. Since that time I don't think you need to look at the graphs that were attached to my testimony to know that home values have plummeted.

I hope you do look at the foreclosure graph because even though you all know it, it is unbelievable. It looks like a hockey stick.

And when you look at it on isolated, regional areas, you're just floored. In Hennepin County, which is the county including Minneapolis and the suburbs, there was a very steady 20-year average. It's up nine times. I mean we're talking an unbelievable explosion in foreclosures that has devastated communities.

As the market shifted and housing values plummeted, the equity disappeared from many of those transactions. So even though we have nine times more homeowners than foreclosure, the number of people with equity is much lower, but still exists. And those reconveyance scams are still going on.

During the last year or two, there is an increasing prominence of the kinds of scams that Mrs. Dix fell victim to, which is these foreclosure consultant scam. In 2004 in Minnesota, we got ahead of this curve and passed a state law dealing with the foreclosure consultants, which was modeled on an old California law. And we invented from scratch a law to attempt to regulate reconveyance transactions.

It has been very successful. And it has been adopted in almost 20 states now. And another 15 states have it pending.

These state laws work. In my experience working on predatory lending, back when I had to explain to people what subprime mortgages were, and back to when I was a really bad dinner table conversation because I was saying, you don't realize how bad this is, people. This is disaster brewing. It was like, yes, yes, shut up.

Back in those days, at the state level we were doing almost all the work on this. We got some support from agencies like the FTC. But we actually had to fight the Federal Government and particularly the OCC, the Office of Controller of the Currency, the OTS—the depository regulatory agencies. In fact, I had a case where they filed an *amicus* brief against us where the data was overwhelming about the fraud.

So the first thing I would say in terms of what the Federal Government can do here is don't preempt the states. The states are working really hard on this. We were way out in front on this.

We've passed laws. We're attempting to solve the problem. Federal preemption on the subprime mortgages was really, really not helpful in attacking that problem when we were trying to do it at the state level.

The second thing I would say in terms of what the Federal Government can do to help attack these scams is I support Commissioner Harbour's testimony. The FTC works very well with state attorney generals. In fact when I walked in I saw some familiar faces here from the FTC from those days.

But the FTC, to move quickly to attack scams as opposed to more delicate policy questions and established industries, needs swifter authority. They need to get more of a cop mentality when it's a scam, and it's not a complicated policy issue. And they need that APA rulemaking authority and not that cumbersome Magnuson-Moss authority.

And then finally two other quick things. First, fund of legal services. At our local level we established a committee of people that had a very effective public/private partnership. And the legal service attorneys were at the fore in taking cases like Mrs. Dix and others and resolving the problems.

And second, there is a possibility to adopt an analogous federal law to the state foreclosure consultant laws that would set a floor, not a ceiling, a floor, to protect consumers who are subject to that type of solicitation. I appreciate the opportunity to testify, Mr. Chairman and Members of the Committee.

[The prepared statement of Mr. Cox follows:]

PREPARED STATEMENT OF PRENTISS COX, ASSOCIATE PROFESSOR OF CLINICAL LAW, UNIVERSITY OF MINNESOTA LAW SCHOOL

Thank you, Chairman Rockefeller and Members of the Committee, including my home state Senator Amy Klobuchar, for the opportunity to testify on the Nation's consumer protection agenda in the wake of this great flood of foreclosures. While there is much to say about why we have a human-made disaster of this proportion, millions of American families are just desperately trying to cope with the reality of default or foreclosure on their mortgage loans, or are worried about looming difficulties in meeting their mortgage payments. I will try to address the unfair and deceptive practices targeting homeowners in foreclosure and how government can help protect these families in a time of intense distress.

Prior to joining the University of Minnesota Law School faculty in 2005, I had the privilege of working as an Assistant Attorney General and Manager of the Consumer Enforcement Division in the Minnesota Attorney General's Office. A primary focus of my work in that Office was combating mortgage fraud and attacking predatory conduct against homeowners in foreclosure. Along with my colleagues Giulia Palumbo and Julie Aoki-Ralston, I worked with homeowners in foreclosure who had succumbed to solicitations promising to save their homes. These homeowners often faced eviction as a result of complicated and frequently fraudulent transactions. In 2004, we helped draft legislation enacted by the Minnesota legislature designed to regulate these foreclosure rescue scams. Since that time, I have worked with numerous state legislators and consumer advocates seeking to pass similar legislation and with legal aid and other attorneys engaged in litigation to help foreclosed homeowners.

I also have been asked to appear before you on behalf of the National Association of Consumer Advocates (NACA), a non-profit association of consumer law attorneys and consumer advocates. NACA members include attorneys from a variety of types of practice, including the public sector, legal services, fee-generating attorneys and the academy. NACA is a remarkable efficient and strong advocate for the protection of consumers in the marketplace.

I. Anatomy of Foreclosure Rescue Scams

Foreclosure rescue scams target homeowners at their most vulnerable moment. Perpetrators of these scams use fraud and false promises to take desperately needed cash from these homeowners.

A. Experience of Homeowners Entering Foreclosure

If you want to find an area ripe for consumer fraud, look for one or more of the following three factors: substantial amounts of money at stake; complexity of trans-

actions; and vulnerability of the consumer. Families in foreclosure present all of these characteristics in one place. The largest and most important investment made by the typical American family is their home. It is almost impossible to find a consumer transaction more complex than the financing and legal obstacles facing a family in foreclosure. And these families often are desperate to save their homes.

Foreclosure rescue scams provide a ready-made opportunity for the perpetrators of scams because the potential victims appear in the public record of foreclosure filings, and critical information such as estimated home value and the amount of liens on the property also are readily available in the public record or on the Internet. As soon as a house enters the foreclosure process, the homeowner in foreclosure typically is subject to an avalanche of mail, phone calls and personal visits from people promising to help the homeowner.

It is difficult to describe the desperation felt by many homeowners with whom I have worked who were facing the loss of their homes through foreclosure. My colleagues and I worked with one family that had three small children and their home had been passed through two prior generations of the family. I recall another homeowner who had personally built most of his home. He and his wife and children were evicted by a foreclosure rescue buyer on Christmas Eve. We were eventually able to help them regain possession of the home. More than one homeowner with whom we worked succumbed to the stress of the foreclosure process.

B. Two Types of Foreclosure Rescue Operations

The individuals and companies that descend on homeowners in foreclosure have a common theme of purporting to help the homeowner "save your home" and ending the nightmare of foreclosure. Acquirers claim to have special expertise to help the homeowner resolve the foreclosure. A typical solicitation letter is as follows:

We lookout for your interests.

We can stop the foreclosure process.

We can help you restore your credit.

We can help you save your homestead.

. . . Let us try and help you figure out solutions so you can sleep at night.[1]

Many foreclosure rescue operations also rely heavily on affinity appeals, such as race or religious similarity.

Foreclosure rescue operations can be grouped into two broad categories: foreclosure reconveyance transactions and foreclosure "consultants."

1. Foreclosure Reconveyance Transactions

Foreclosure reconveyance transactions involve the transfer of title from the homeowner in foreclosure to a "purchaser" and an alleged second transfer, or reconveyance, of an ownership interest back to the homeowner. There are several variations of this type of reconveyance deal.[2] In some instances, the "purchaser" promises to return ownership to the homeowner through a land sale contract or a lease with purchase option. Other forms of the reconveyance scheme involve a third party "white knight" who takes title to the home and promises to complete the reconveyance to the homeowner.

A substantial number of these transactions involve outright fraud. Forged signatures on deeds, blatantly false representations about the character of documents presented for signature by the homeowner, and false statements that the deal is really a mortgage refinancing are common in these transactions. For example, I worked with a Saint Paul, Minnesota family in foreclosure who were told that they would receive a mortgage loan refinancing. The person soliciting them referred the family to a company representative who gave them a business card stating "loan administrator" and an appraiser was sent to the home. In reality, the person conducting the scam fraudulently obtained a warranty deed from the family by telling them that the documents they were being asked to sign were paperwork to get the refinancing loan started. Without the family's knowledge, the perpetrator of this scheme transferred the property to a third party who obtained a mortgage loan that

[1] *State* v. *HJE,* No. 03–cv–05554 (D.Minn.) (Complaint filed October 16, 2003). *For other example solicitations, see* Steve Tripoli and Elizabeth Renuart, National Consumer Law Center, Dreams Foreclosed: the Rampant Theft of Americans' Homes Through Foreclosure "Rescue" Scams (2005); available at *http://www.consumerlaw.org/news/content/ForeclosureReport Final.pdf.*

[2] For a detailed description of the types of foreclosure reconveyance scams, *see* Steve Tripoli and Elizabeth Renuart, *supra note* 1; Prentiss Cox, *Foreclosure Equity Stripping: Legal Theories and Strategies to Attack a Growing Problem,* Clearinghouse Review Journal of Poverty Law and Policy (Mar.–Apr. 2006).

provided cash to the perpetrator. The family was told the refinancing was complete and they even made a few payments to the perpetrator before they received a "rent" demand from the third party who purportedly held title to the home. After many difficult months for the family and countless hours of investigation and litigation, we were able to have the title restored to the family.

Many of these reconveyance transactions, however, do not involve such blatant fraud—the foreclosed homeowner knows that some sort of reconveyance transaction is occurring. But these deals are designed to fail for the homeowner. The perpetrators of the schemes use the desperate hopes of the homeowner combined with misleading promises about future refinancing opportunities, or the like, to obtain agreement to complex transactions that would be hard to grasp for most average homeowners even in the best of circumstances. Unlike the type of loan modification that makes sense for these homeowners, based on the principles of restructuring payments cognizant of the payment ability of the homeowner, foreclosure reconveyance almost invariably increase the homeowner's monthly payment over the payment amount that led to foreclosure. One missed payment means the deal is quickly canceled and the home is gone.

The loss of homeowner equity in these reconveyance transactions can be substantial. The typical loss in these deals exceeds $20,000, in my experience. Some victims, such as elderly homeowners with modest mortgages, have lost in excess of $100,000.

Foreclosure reconveyance transactions occur partly because these deals almost never involve cash investment by the "purchaser" in the foreclosed property. The "purchaser" simply takes title to the property from the homeowner, or arranges for a third party to take title. Once title is transferred, the "purchaser" or third party title holder obtains a mortgage refinance loan and pulls cash out of the property. So there is an up-front pay-off for these actors. After the homeowner is evicted, the perpetrators of the scheme sell the home and may profit from a "back-end" of the deal, as well.

2. Foreclosure Consultants

The other type of foreclosure rescue operation involves solicitation of foreclosed homeowners by "consultants" who promise to assist the homeowner in negotiating a resolution of the problem with the foreclosing lender. The foreclosed homeowner has to pay a substantial advance fee for these services, usually about a thousand dollars or more. While the monetary loss to these homeowners is not as substantial as with the reconveyance transactions, a four figure sum of money usually is a critical amount for homeowners trying to maintain control of their homes and pay other debts.

Unlike foreclosure reconveyance scams, there are many worthwhile providers of foreclosure prevention services who offer important help to homeowners attempting to evaluate the difficult choices presented by the initiation of a foreclosure proceeding. The non-profit organizations affiliated with the National Federation of Credit Counselors, for example, have an excellent reputation for providing advice and services to mortgagors and other consumers in debt.

Yet deceptive and unfair conduct is pervasive in this area.[3] As discussed below, state attorneys general have brought dozens of actions against foreclosure consultants since the onset of the foreclosure crisis. Some of these companies just disappear with the money. Even when the company is not a complete sham, the services provided often are of little use to the homeowner and the outcomes promised at the time of solicitation are illusory. Better, affordable services generally are available to foreclosed homeowners through legitimate non-profit counselors.

Foreclosure consultants thus present a very similar regulatory problem to debt settlement services. While the underlying service is useful, often vitally important, the degree of fraud and misleading promises in the industry make it likely that a homeowner who pays up-front for these services will be losing cash desperately needed to manage the foreclosure process or its aftermath.

II. The Changing Reality of Foreclosures and the Market For Rescue Scams

Consumer protection regulators and advocates began to see a sharp rise in foreclosure reconveyance scams in the early 2000s. A wave of problems with foreclosure consultants appeared later, rising concurrently with the foreclosure crisis that became apparent within the last 3 years. This shifting pattern is largely explained by the gyrations in the real estate market.

Attached as Exhibit A to this testimony is a graph of median home prices over the last twenty years. You probably don't have to look to know what it shows.

[3] John Leland, Swindlers Find Growing Market in Foreclosures, *New York Times* (January 15, 2009).

Steady but slow appreciation gave way in the late 1990s to an ahistoric, sharp rise in home prices, followed by a crash in values starting in mid-2006. This pattern, likely not coincidentally, closely mirrors the explosion and collapse of nonprime mortgage lending.[4]

The graph of foreclosures attached as Exhibit B, on the other hand, looks like a hockey stick. Foreclosures began a slow rise through the 1980s and 1990s, then rose exponentially starting in 2005. While we all understand this pattern, the rapidity and height of this foreclosure explosion is startling.

Putting this information together explains the change in the most common type of foreclosure rescue scam. The "market" for perpetrators of foreclosure reconveyance transactions was as ripe as it may ever be in the early to mid 2000s. Foreclosures were slightly higher than the historic average, but foreclosed homeowners owned properties that had substantially appreciated since the loan in foreclosure was originated, and their properties were continuing to appreciate almost by the month.

Therefore, the number of homeowners in foreclosure with substantial equity in the property was at an historic high during the early 2000s. This is the necessary condition for a foreclosure reconveyance transaction to yield proceeds to the perpetrator of the deal. The purchaser obtains an upfront payment from the deal only if there is sufficient equity to yield proceeds after the purchaser closes on his or her mortgage loan. During the high tide of foreclosure reconveyance transactions, the inappropriately loose underwriting criteria of most lenders and the failure of self-regulation by appraisers and others involved in real estate settlement services contributed to the ease of completing foreclosure reconveyance transactions.

Conversely, the current environment is ideal for foreclosure consultant schemes. Foreclosure consultants thrive when the number of foreclosures is high and when foreclosed homeowners feel that they have few options for dealing with the situation. Plummeting real estate values have left the overwhelming majority of homeowners in foreclosure with negative equity. Credit markets have tightened in many sectors, but have all but disappeared for foreclosed homeowners. Various public sector and industry pronouncements about purported loan modification programs have added to confusion on the part of foreclosure homeowners about their available options. In this situation, foreclosed homeowners are ripe for "consultants" promising big results while demanding upfront payment.

III. Consumer Protection Enforcement with Foreclosure Rescue Scams

Consumer protection regulation is not a one-size-fits-all proposition. It is essential to tailor the regulatory requirements to the problem at hand. The problem of foreclosure rescue scams presents a challenge of drafting appropriate substantive restrictions on the conduct and ensuring that enforcement of those laws is effective and efficient. State legislatures and state attorneys general have already taken significant steps in addressing these issues.

A. The Right Tool for This Job: State Laws Attacking Foreclosure Rescue Scams

The Federal Trade Commission ("FTC") and multiple states have used their broad UDAP (unfair and deceptive acts and practices) authority to attack the problem of foreclosure rescue scams. Starting in the early 2000s, state attorneys general brought a series of UDAP actions against entities engaged in foreclosure reconveyance schemes.[5] When the foreclosure crisis spawned a flood of foreclosure consultants, state attorneys general brought UDAP cases against these parties.[6] More recently, the FTC has initiated multiple legal actions against deceptive foreclosure consultant conduct.[7]

One disadvantage of UDAP cases is that they usually require extensive investigation and resources to prosecute. States have tackled this problem by enacting legislation to restrict the conduct of foreclosure purchasers in reconveyance transactions

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[4] Ellen Schloemer, Wei Li, Keith Ernst, and Kathleen Keest, *Losing Ground: Foreclosures in the Subprime Market and Their Cost to Homeowners,* Center for Responsible Lending, Dec. 2006, available at *http://www.responsiblelending.org/pdfs/ CRL-foreclosure-rprt–1–8.pdf.*

[5] *See generally* Steve Tripoli and Elizabeth Renuart, *supra note* 1.

[6] *See* Testimony of Federal Trade Commission on Foreclosure Rescue Fraud, U.S. Senate Special Committee on Aging (2/13/08) at p. 7 n.29; *infra* note 9.

[7] *Federal Trade Commission* v. *National Foreclosure Relief, Inc. et al.,* No. SACV09–117 (C.D.Calif 2/2/09), available at *http://www.ftc.gov/os/caselist/0823067/090211nfrcmpt.pdf; Federal Trade Commission* v. *United Home Savers, LLP, et al.,* No. 8:08 CV 01735 (M. D.Fla. 9/3/08), available at *http://www.ftc.gov/os/caselist/0723251/080903unitedhomesaverscomplaint .pdf; Federal Trade Commission* v. *National Hometeam Solutions, LLC.* (E.D.Tex 2/29/08), available at *http://www.ftc.gov/os/caselist/0823076/080229nationalfinancialsolutionscmplt.pdf; Federal Trade Commission* v. *Foreclosure Solutions, LLC.* (N.D.Ohio 4/28/08), available at *http://www.ftc.gov/os/caselist/0723131/080428complaint.pdf.*

and restrict the behavior of foreclosure consultants. In 2004, Minnesota enacted a law regulating both types of foreclosure rescue scams. Maryland enacted this law in 2005, followed by New York and Illinois in 2006. Massachusetts and the District of Columbia have regulations prohibiting foreclosure reconveyance transactions. Today, more than 20 states have laws regarding foreclosure rescue scams, the vast majority based on the Minnesota model. *See* Exhibit C (listing state foreclosure rescue scam laws).

The key to the Minnesota model law regulating foreclosure reconveyance transactions is substantive restrictions on the deals. The foreclosure purchaser must have verified proof that the homeowner in foreclosure has the ability to pay for the land sale contract or purchase option required for the reconveyance end of the transaction. If the deal fails to result in the return of title to the property to the foreclosed homeowner, the law requires payment by the purchaser to the foreclosed homeowner if total consideration paid to the homeowner is 82 percent or less of the home's value. The law has numerous other protections, including a required formal closing of the transaction and an extended right to cancel the deal.[8]

State foreclosure consultant laws also attack the core of that problem. The crucial protection in this part of the state foreclosure rescue scam laws is a prohibition on the foreclosure consultant receiving ". . . any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented he or she would perform." This requirement obviously provides simple recourse against the scammer who just takes money and never promises the service. This requirement also puts the homeowner in control of whether to pay foreclosure consultants who perform far fewer or less effective services than promised.

These state foreclosure rescue scam laws provide state attorneys general and other state enforcement entities with an efficient and swift means of attacking the rescue scam problem. States that have brought actions against foreclosure rescue scams in the last few years have relied primarily on violations of the express requirements of these statutes rather than having to prove UDAP violations.[9]

Enacting these laws clearly did not eradicate the problem of foreclosure rescue scams. Enforcement resources rarely are sufficient to stop every violator of the law. Of course, the entities conducting these scams purposefully or inadvertently find loopholes in the law, which has led states to evolve these laws to adapt to the changing patterns of the rescue perpetrators. Yet the laws put the right tools in the hands of state consumer protection enforcement authorities to efficiently pursue most foreclosure rescue fraud scams. State attorneys general retain UDAP authority as a basis for action against any exceptional conduct.

In addition to public enforcement actions, numerous private attorneys have contributed substantially to helping foreclosed homeowners caught in rescue scams. Most of these laws also include a private right of action so that homeowners in foreclosure have remedies to recover losses suffered in these transactions. The size of the loses with foreclosure reconveyance transactions, combined with the existence of an immovable asset that cannot be moved beyond the reach of the homeowner's attorney, have made it possible for private attorneys to effectively utilize these laws in many cases.[10] Legal services attorneys have been on the forefront of this work. Many of the earliest cases attacking foreclosure reconveyance transactions, for example, were brought by local legal aid offices attempting to help seniors and other homeowners who had lost control of their homes and their home equity.

In Minnesota, we have established a highly successful collaborative approach to attacking these scams. The Minnesota Equity Stripping Task Force was organized in 2003 by the Volunteer Lawyer's Network (VLN) and Mid-Minnesota Legal Services. Task Force membership includes local legal services attorneys, pro bono attorneys, private attorneys handling cases for a fee and representatives of public agen-

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[8] Minn.Stat. §§ 325N.10–.18 (2008).

[9] *See, e.g.,* Press Release, Missouri Attorney General's Office, *Madigan Sues Seven Companies For Mortgage Rescue Fraud* (11/18/08), available at *http://www.illinoisattorneygeneral.gov/pressroom/2008_11/20081118.html;* John Rebchock, *Suthers Cracks Down on Mortgage Fraud,* Rocky Mountain News (11/18/08), available at: *http://www.rockymountainnews.com/news/2008/nov/18/suthers-cracks-down-mortgage-fraud;* Press Release, Minnesota Attorney General's Office, *Lori Swanson Sues Two More Out-Of-State Mortgage "Foreclosure Consultants"—Bringing To A Total Of Ten Such Companies Her Office Has Now Sued In This Area,* available at *http://www.ag.state.mn.us/Consumer/PressRelease/080821ForeclosureConsultants.asp;* Press Release, Maryland Attorney General's Office, *Attorney General Gansler Announces Consumer Protection Division Files Complaint Against Operators of Alleged Foreclosure Rescue Scam* (7/10/08), available at *http://www.oag.state.md.us/Press/2008/071008.htm.*

[10] Kristen Siegesmund and Leah Weaver, Minnesota Statutes Chapter 325N: A model For Substantive Consumer Protection, 33 Wm. Mitchell L. Rev. 223 (2006).

cies. Cases are accepted by an appropriate Task Force member based on legal aid income eligibility, the potential for fee generation and the concerns of public enforcement agencies. The 2004 Minnesota foreclosure rescue scam law has been used effectively by attorneys on the Task Force to assist homeowners victimized by predatory foreclosure reconveyance deals.

B. A Lesson from Federal and State Consumer Protection Enforcement Relating to Mortgage Origination

An analysis of the past failure of the regulatory system to control problems in mortgage origination is beyond the scope of this testimony. But one lesson from this failure is directly relevant to confronting the problems for consumers resulting from the current credit crisis. We need to use all the resources, talents and creativity of both state and Federal authorities. Accordingly, there is no place for Federal preemption of state consumer protections and state enforcement efforts.

The explosive rise of abusive nonprime mortgage lending in 1998 was not accompanied by a substantial enforcement reaction from public regulatory authorities. The exception was a small group of state attorneys general and state financial regulators who pursued a series of cases against the largest of the nonprime mortgage originators—First Alliance Mortgage Corporation (state actions from 1998–2005), Household International (state investigations and action in 2001–2002) and Ameriquest Mortgage Corporation (state investigations and actions in 2003–2006).

It is not a coincidence that state entities with a central consumer protection focus were the only public agencies that made substantial efforts to identify and address rampantly imprudent mortgage lending practices in the period from 1998 through 2006. These consumer protection enforcement actions typically arise from observations and reflected experience of individuals who work closely with consumers who are in distress. In the case of nonprime lending, consumer protection regulators received complaints showing a pattern of mortgage loans whose terms revealed a disconnection between cost and risk, and in which homeowners repeatedly expressed misperception of the actual terms of the mortgage. These state entities receive and evaluate large volumes of complaints by borrowers, and have expertise in analyzing such data for patterns of conduct. The more aggressive state agencies also have close ties to credit counselors, legal aid organizations and other public interest organizations who reflect the experience of an even larger number of borrowers. State actions against nonprime mortgage lenders were brought despite limited resources, limited legal authority, and a wide range of competing consumer protection concerns.

Federal entities with authority to establish rules for residential mortgage origination, especially the Federal Reserve Board, made little or no contribution to attacking the problems in nonprime origination. Federal banking regulators were worse than idle. They actively impeded state actions by expansively interpreting their authority to preempt state consumer protection laws and declaring that state agencies had no authority to enforce non-preempted state laws as to federally-chartered financial institutions or even operating subsidiaries of those institutions.[11]

The FTC, which has a positive history of cooperating with state attorneys general in UDAP enforcement, did not take a leadership role in confronting mortgage origination abuse by nonbank institutions.

A constructive Federal role in tackling consumer problems arising from the credit crisis should recognize the importance of fully empowering state consumer protection enforcement efforts and the creative learning potential from allowing states to experiment with varied approaches to regulating unfair and deceptive practices.

C. Possible Federal Action on Foreclosure Rescue Scams

There are numerous options for Federal action related to this problem. Examining the problem of foreclosure rescue scams offers an opportunity to review the tools and resources available to the FTC. While FTC UDAP authority can be and has been brought to bear on the problem, the experience of the states is that regulation aimed directly at this conduct is more efficient than treating each case as a new UDAP investigation. The FTC began to bring actions against these scams substantially after state attorneys general had attacked the problem and after state legislatures had developed statutory restriction on their operation.

Current FTC rule-making on UDAP matters is restricted to cumbersome and slow Magnuson-Moss procedures. Foreclosure rescue scams are prolific in number and often rapidly adapt solicitation strategies. Reform of FTC rule-making authority to

[11] Amanda Quester and Kathleen Keest, *Looking Ahead After Watters* v. *Wachovia Bank; Challenges for Lower Courts, Congress and the Comptroller of the Currency,* 27 Review of Banking and Financial Law 187 (2008).

make it more flexible and prompt would allow for a stronger and more effective Federal response to this and similar consumer protection problems.

The Federal Government also can support proven, effective work by legal services attorneys that have been the front line of defense for embattled homeowners. Unwinding or otherwise providing remedies for individual homeowners subject to foreclosure rescue scams, especially reconveyance transactions, can require substantial legal resources. In many situations, these are not cases that fee-generating attorneys are likely to undertake. Legal services attorneys have been a reliable source of assistance for victims of rescue scams. A substantial number of the early warning cases in this area were brought by legal services attorneys.

Congressional legislation could assist with controlling foreclosure rescue scams in at least two areas. First, a Federal law patterned on the state laws that have addressed these issues could be helpful for both FTC enforcement actions and by providing recourse for state enforcement agencies and individuals in states lacking a foreclosure rescue regulatory scheme. It may prove more difficult, though not impossible, to enact Federal foreclosure reconveyance restrictions because they are more closely tied to state real property regimes. Foreclosure consultant regulation, however, is clearly amenable to Federal action. In terms of coordinated Federal and state regulations, this type of law could be similar to the relationship between the Federal Credit Repair Organizations Act (CROA) and state credit services laws. As noted above, it would be crucial to ensure that any Federal law sets a floor on the conduct of foreclosure consultants, rather than preempting in any way state protections or enforcement efforts.

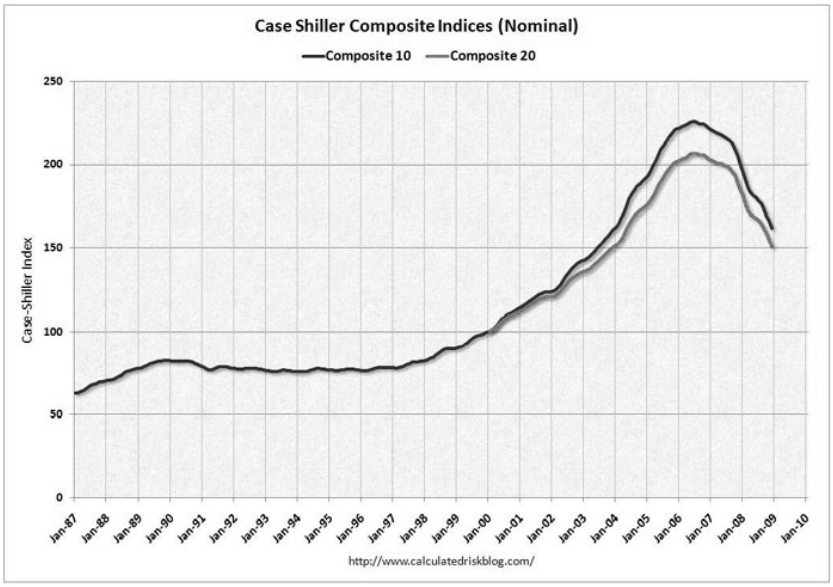
Second, and of less current importance, Congress could consider clarifying that foreclosure reconveyance transactions, including sale-leaseback arrangements, are clearly within the scope of the Home Ownership Equity Protection Act ("HOEPA"). Current HOEPA language and rules make this result possible, but not certain, depending on the structure of the reconveyance transaction.

IV. Conclusion

Foreclosure rescue scams can be constrained by concerted efforts at the Federal and state level. Distressed homeowners deserve a government response to rescue scams better than the largely unregulated approach to mortgage lending that helped create the reality of an extraordinary number of foreclosures facing America today.

EXHIBIT A

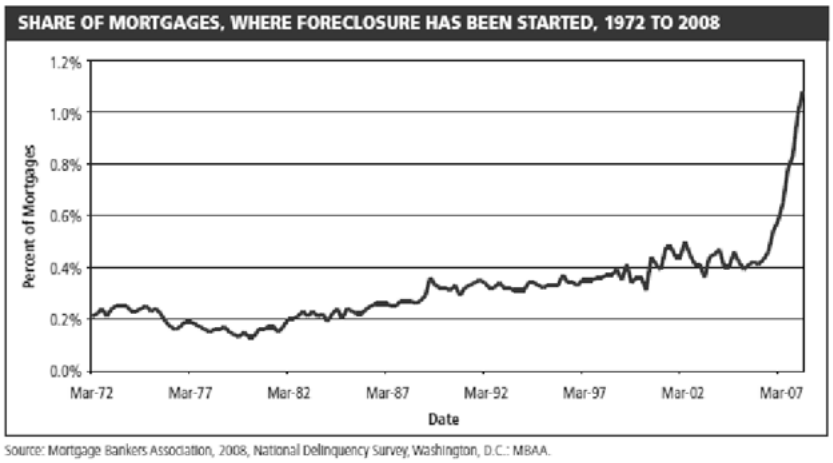
HOUSING PRICE APPRECIATION, 1987–2008



Data from Case-Schiller Index Composite 10 represents the housing prices in the following metropolitan areas: Boston, Chicago, Denver, Las Vegas, Los Angeles, Miami, New York, San Diego, San Francisco, and Washington DC. Composite 20 includes the Composite 10 cities plus the following metropolitan areas: Atlanta, Charlotte, Cleveland, Dallas, Detroit, Minneapolis, Phoenix, Portland, Seattle, and Tampa.

EXHIBIT B

MORTGAGE FORECLSOURES



Graph Source: Center for American Progress, Economic Data for September 2008. *http://www.americanprogress.org/issues/2008/09/econ_snapshot.html*

EXHIBIT C

STATE LAWS REGULATING FORECLOSURE RESCUE SCAMS

I) STATES WITH FORECLOSURE PURCHASER/RECONVEYANCE LAWS

A) Older Laws:

California: CAL. CIV. CODE §§ 1695.6, 1695.13.
Colorado: COLO. REV. STAT. ANN. § 6–1–1117.
Georgia: GA. CODE ANN. § 44–14–180.

B) Minnesota Model (2004 and after):

Arizona: ARIZ. REV. STAT. § 44–7701
Delaware: 6 D. Code ch. 24B
Florida: FL. STAT. § 501.1377
Hawaii: Act 137 (to be codified at title 26)
Iowa: IOWA CODE ANN. § 714F
Illinois: 765 ILL. COMP. STAT. ANN. 940/50
Indiana: IND. CODE ANN. § 24–5.5.
Maine: ME REV. STAT ch. 80–B
Maryland: MD. CODE ANN., REAL PROP § 7–310
Minnesota: MINN. STAT. § 325N.10–.18
New Hampshire: N.H. REV. STAT. ANN. § 479–B
New York: N.Y. REAL PROP. LAW § 265–a
Oregon: HB 3630 (to be codified)
Rhode Island: R.I. GEN. LAWS § 5–80–8.
Washington: RCW § 61.34.020

C) Bans on Foreclosure Reconveyance Transactions:

Massachusetts: By Order of the Attorney General
District of Columbia: Act A17–0205

D) Other Recent Laws/Actions:

Idaho: ID CODE § 45–1601
Nebraska: LB123
Nevada:—NEV. REV. STAT. ANN. § 645F.300

II) STATES WITH FORECLOSURE CONSULTANT LAWS

Arizona: ARIZ. REV. STAT. 44–7701
Delaware: 6 D. Code ch. 24B
Florida: FL. STAT. ch. 79
California: CAL. CIV. CODE § 2945(a)(1).
Colorado: COLO. REV. STAT. ANN. § 6–1–1101(4)(a).
Hawaii: Act 137 (to be codified at title 26)
Iowa: IOWA CODE ANN. § 714E.
Illinois: 765 ILL. COMP. STAT. ANN. 940.
Indiana: IND. CODE ANN. § 24–5.5
Maryland: MD. CODE ANN., REAL PROP. § 7–305
Minnesota: MINN. STAT. §§ 325N.01–.09
Missouri: MO. ANN. STAT. § 407.935(2)(a).
Nevada:-NEV. REV. STAT. ANN. § 645F.300
New Hampshire: N.H. REV. STAT. ANN. § 479–B
Oregon: HB 3630
Rhode Island: R.I. GEN LAWS § 5–79–1(a).
Virginia § 59.1–200.1
Washington: RCW § 61.34.020

The CHAIRMAN. Thank you very much. Mr. Travis Plunkett?

STATEMENT OF TRAVIS B. PLUNKETT, LEGISLATIVE DIRECTOR, CONSUMER FEDERATION OF AMERICA ON BEHALF OF THE CONSUMER FEDERATION OF AMERICA, THE NATIONAL CONSUMER LAW CENTER (ON BEHALF OF ITS LOW-INCOME CLIENTS), AND U.S. PIRG

Mr. PLUNKETT. Thank you very much, Mr. Chairman and Members of the Committee.

The CHAIRMAN. Consumer Federation of America, for those who've come in.

Mr. PLUNKETT. Travis Plunkett. I'm the Legislative Director at the Consumer Federation of America. I'd like to move now from a discussion about debt reduction scams involving secured credit mortgage and home mortgage lending to unsecured credit, so primarily credit card loans.

And of course Consumer Federation of America and many others have expressed great concern about irresponsible and aggressive lending practices by credit card companies which have run up the amount of debt that people have taken on and left them vulnerable to these scams. And when we're talking about unsecured credit, two primary forms of assistance short of bankruptcy, traditional credit counseling and a newer and much more harmful variant called debt settlement. So I'll mention both of those separately.

Credit counseling can be very effective if it's delivered by legitimate non-profit counselors and credit unions. The good news about credit counseling is that thanks to the efforts of the Federal Trade Commission and the IRS and state regulators, we aren't seeing the kinds of abuses that we saw at the turn of the century. Consumers who see a non-profit credit counselor can now be pretty certain that the agency isn't going to overcharge them, isn't going to try to sell them harmful ancillary products and isn't going to try to funnel their fees to for-profit affiliates. That's the very good news about credit counseling.

The bad news is that the value of the assistance, the effectiveness of the assistance that credit counselors offer and this is primarily a consolidated credit card payment plan, is less helpful now because creditors, the credit card companies, have not been as aggressive as they should have been in lowering the interest rates that consumers pay to credit counselors in credit counseling. So we have a lot of people who are showing up with very high debt loads who simply can't be helped in credit counseling. So they're turning elsewhere. And this is the great concern.

You probably have seen advertisements for debt settlement outfits that don't offer to help you pay your loan off over 3 to 5 years like credit counseling. They say that they're going to get you a settlement, a one shot, lump sum payment. That they're going to bring your credit card companies to their knees. And they're going to lower what you owe your credit card company by 50 or more percent. If you, like me, occasionally are watching late night cable television, you know what I'm talking about.

The business model used for these companies is fatally flawed and very harmful to consumers. Let me just tick off a couple of problems. They often mislead consumers about the likelihood of a settlement.

Once again, the Federal Trade Commission is out front here. They shut down a settlement organization called the National Consumer Council in 2004. We discovered that under 2 percent of the consumers that were being supposedly helped by this company, under 2 percent of those consumers were settling their debts, were actually reaching settlements with credit card companies.

A second problem. Unlike credit counseling agencies, these firms have no arrangements with creditors. In fact some credit card com-

panies won't even deal with them. So they can't guarantee a settlement despite their advertisements. That puts them right on the brink of fraudulent advertising at the very beginning of the process.

Third, settlement firms often mislead consumers about the effect on their credit worthiness of the plans they're offering. It's a long process. You have to save up money to offer a settlement.

Meanwhile your creditors are still trying to collect. Your debts are piling up. They may go to court. Your credit worthiness deteriorates.

And these outfits, these debt settlement companies are telling people, don't worry. We're going to take care of this. We're going to get you a really good deal. And in the long run that will improve your credit worthiness.

Fourth problem. These firms charge such high fees the consumers can't save money. Remember these are people in really serious debt trouble.

Fifth. Consumers targeted by these companies are the least likely to benefit. These are the folks facing serious hardship with very high debts. They can't afford these high, upfront fees or high back end settlement fees. These are the fees they charge as a percentage of what they save you.

So we have a number of policy recommendations, starting with some good state laws that aren't being enforced. So our first recommendation is the states that have good laws should enforce them.

Second recommendation is that Congress should consider a minimum standards law. Sticking with what Mr. Cox just said, the states are doing some good work. There are some gaps and some states don't have the resources to enforce the law. So let's put a minimum standards law on the book that does not preempt the deals with a number of these abuses.

Fourth, we need some help from banking regulators to create a legitimate alternative to debt settlement. There clearly is demand here. Consumers want something that gives them more assistance in credit counseling that stops short of bankruptcy. And right now we have some regulatory hurdles that have not allowed credit card companies to create that legitimate alternative.

And finally the card companies themselves have to immediately work to provide more benefits, more concessions they're called, lower interest rates to consumers in credit counseling. So they can get some help and aren't turning to these debt settlement firms that can hurt them.

Thank you very much.

[The prepared statement of Mr. Plunkett follows:]

PREPARED STATEMENT OF TRAVIS B. PLUNKETT, LEGISLATIVE DIRECTOR, CONSUMER FEDERATION OF AMERICA ON BEHALF OF THE CONSUMER FEDERATION OF AMERICA, THE NATIONAL CONSUMER LAW CENTER (ON BEHALF OF ITS LOW-INCOME CLIENTS), AND U.S. PIRG

Chairman Rockefeller, Ranking Member Hutchison and Members of the Committee, my name is Travis Plunkett and I am the legislative director of the Con-

sumer Federation of America (CFA).[1] I am testifying today on behalf of CFA, the National Consumer Law Center,[2] on behalf of its low-income clients, and U.S. PIRG.[3] I commend the committee for investigating the adequacy of consumer protections for families with distressed finances. The number of Americans who cannot afford their consumer or mortgage loans is increasing sharply. Many of these families are desperately seeking debt reduction assistance short of bankruptcy.

Effective assistance that helps some consumers reduce their unsecured debts is available from legitimate, non-profit credit counselors and credit unions. However, some creditors have reduced the value of the "concessions" they will allow agencies to offer to debtors in credit counseling at a time when debt problems are increasing. Meanwhile, scam artists (including some calling themselves credit counselors) are promising to quickly and painlessly reduce the amount of credit card debt that consumers owe through a variety of expensive, harebrained and harmful schemes. Much more needs to be done by state and Federal policymakers to stop these abusive debt reduction practices and, in conjunction with creditors, create legitimate, effective debt management alternatives to these harmful "services."

Background: Reckless and Irresponsible Lending Practices Have Caused Household Debt Levels to Skyrocket and Left Consumers Vulnerable to Debt Reduction Scams

For fifteen years, CFA and many others have warned that credit card issuers were irresponsibly pushing cardholders to take on more debt than they could afford, and then using unfair and deceptive tactics to increase debt loads and issuer profits. There is considerable evidence linking the rise in bankruptcy in recent years to the increase in consumer credit outstanding, and, in particular, to credit card debt. For example, research by Professor Ronald Mann of Columbia University has found that an increase in credit card spending in the U.S. and four other countries has resulted in higher credit card debt, which is strongly associated with an increase in bankruptcy filings.[4] To make matters worse, credit card companies have become far more aggressive in implementing questionable fees and interest rate practices in recent years.[5] The upshot of these practices is that penalty interest rates, high and accumulating fees, and interest on fees can push consumers with high debts into the hands of debt reduction scam artists or into bankruptcy.[6] In fact, consumers in debt trouble sometimes owe as much or more in fees and penalty interest charges as in principal.

The growth of revolving debt in this country to $964 billion[7] has obviously not affected all Americans equally. The extraordinary expansion of the credit card in-

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[1] The *Consumer Federation of America* (CFA) is a nonprofit association of some 300 pro-consumer groups, which was founded in 1968 to advance consumers' interests through research, advocacy and education.

[2] The *National Consumer Law Center, Inc.* (NCLC) is a non-profit corporation, founded in 1969, specializing in low-income consumer issues, with an emphasis on consumer credit. On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes and regularly updates a series of sixteen practice treatises and annual supplements on consumer credit laws, including Truth In Lending, Cost of Credit, Consumer Banking and Payments Law, Foreclosures, and Consumer Bankruptcy Law and Practice, as well as bimonthly newsletters on a range of topics related to consumer credit issues and low-income consumers. NCLC attorneys have written and advocated extensively on all aspects of consumer law affecting low income people, conducted training for tens of thousands of legal services and private attorneys on the law and litigation strategies to deal predatory lending and other consumer law problems, and provided extensive oral and written testimony to numerous Congressional committees on these topics. NCLC's attorneys have been closely involved with the enactment of the all Federal laws affecting consumer credit since the 1970s, and regularly provide comprehensive comments to the Federal agencies on the regulations under these laws.

[3] The *U.S. Public Interest Research Group* (U.S. PIRG) is the national lobbying office for state PIRGs, which are non-profit, non-partisan consumer advocacy groups with half a million citizen members around the country.

[4] Mann, Ronald J., "Credit Cards, Consumer Credit and Bankruptcy," Law and Economics Research Paper No. 44, The University of Texas School of Law, March 2006.

[5] Testimony of Travis B. Plunkett, Legislative Director, on Behalf of the Consumer Federation of America, Center for Responsible Lending, Consumer Action, Consumers Union, National Consumer Law Center (on Behalf of its Low-Income Clients) and U.S. PIRG before the Banking, Housing and Urban Affairs Committee of the U.S. Senate. regarding Strengthening Credit Card Protections, February 12, 2009, *http://www.consumerfed.org/pdfs/TESTIMONY_Travis_Plunkett_Senate_Banking_Feb_12_2009.pdf*

[6] Day, Kathleen and Caroline E. Mayer, "Credit Card Penalties, Fees Bury Debtors," *Washington Post,* March 6, 2005.

[7] According to the Federal Reserve Board, the amount of revolving debt held by Americans at the end of 2008 was $963.5 billion. In the 7-year period from the beginning of 2000 through 2007 consumer revolving debt grew by 50 percent from $627.5 billion to $941.4 billion. Federal

dustry in the 1990s was fueled by the marketing of credit cards to populations that had not had widespread access to mainstream credit, including lower- and moderate-income households, consumers with seriously blemished credit histories, college students, older Americans and minorities. For example, U.S. PIRG reported last year that the amount of debt held by students who carry credit card debt more than doubles between their freshman year and senior year in college, from $1,301 to $2,623.[8]

In a practice widely known as risk-based pricing, creditors charged riskier consumers more to cover potential losses, usually in the form of higher interest rates. To make the assumption of debt more attractive to these households—and to entice them into carrying debt for longer periods—creditors lowered minimum payment balances from around 5 percent of principal to just over 2 percent. As a result, an estimated eighty percent of all households now have at least one card.[9] According to the Federal Reserve Board, about 42 percent of cardholding households pay their credit card bill in full every month,[10] which means that the remaining 50 million or so families that carry debt owe an average of about $17,000.[11]

Moderate and lower income households that are more financially vulnerable shoulder a higher level of debt relative to their incomes. In the current economic climate, these households are also under financial pressure from many external factors, such as flat wages, rising unemployment, skyrocketing home foreclosures and increasingly unaffordable health insurance. In other words, the "democratization of credit" has had serious negative consequences for many Americans, putting them one unexpected financial emergency away from bankruptcy.

As the economy has worsened and home foreclosures have increased to record levels, consumers are increasingly having serious difficulty paying their credit card bills. One widely watched measure of financial health, the amount of credit card debt paid off by Americans monthly, is now at one of the lowest levels ever recorded.[12] Credit card charge-offs, the percentage of the value of credit card loans removed from the books (net of recoveries), or "written off," have been persistently high for most of the last thirteen years and are now approaching the highest levels on record. During the decade between the end of 1995 and the start of 2006, credit card charge-offs were not below 4 percent in a single quarter.[13] They increased to more than 4 percent in the fourth quarter of 2006 and broke 4 percent again during the latter half of 2007. Since then, charge-offs have escalated sharply to 5.62 percent in the third quarter of 2008. There is a very good chance that charge-offs will keep rising because the number of delinquent credit card payments—an early sign of payment difficulty—are also approaching historically high levels. Thirty-day credit card delinquencies are now at their highest point in 6 years, since the last economic recession ended.[14] Moreover, a number of major issuers have reported fourth quarter charge-offs that indicate that borrower defaults and issuer losses will exceed

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Reserve, Statistical Release, "Consumer Credit Outstanding," Table G.19. Although this figure is often used as a proxy for credit card debt, most experts believe that outstanding credit card debt is slightly lower. First, approximately 5 percent of consumer revolving credit is not on credit cards. Second, between 4 to 9 percent of the debt does not truly revolve. It is repaid to the credit card issuer before the next billing cycle starts. Taking these two factors into account, outstanding credit card debt at the end of 2008 was between $829 and $877 billion.

[8] Mierzwinski and Lindstrom, "The Campus Credit Card Trap: A Survey of College Students and Credit Card Marketing," March 2008, U.S. PIRG, available at *http://www.truthaboutcredit.org, last visited 25 February 2009.*

[9] *Cardweb.com.*

[10] Bucks, Brian K., Arthur B. Kennickell and Kevin B. Moore, "Recent Changes in U.S. Family Finances: Evidence from the 2001 and 2004 Survey of Consumer Finances," Federal Reserve Bulletin, vol. 92, February 2006, pg. 31.

[11] CFA calculation based on estimated credit card (as opposed to revolving) debt of $850 billion. If a conservative estimate of 75 percent of 114.4 million households have credit cards, and only 58 percent of these households carry debt, then the remaining 49.7 million households have an average of $17,103 in debt.

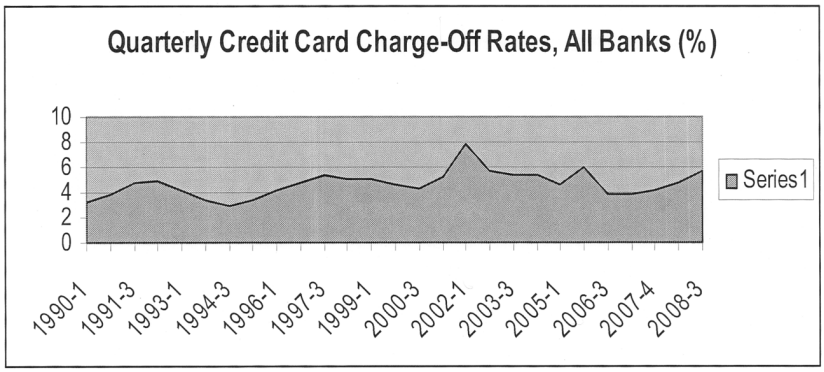
[12] Chu, Kathy, "November Credit-Card Payoff Rate Fell Sharply," *USA Today,* February 8, 2009. The monthly payment rate fell by 2.5 percentage points to 16.1 percent in November 2008, according to CardTrak.com.

[13] Federal Reserve Board, "Charge-Off and Delinquency Rates on Loans and Leases at All Commercial Banks," available at *www.Federalreserve.gov/release/chargeoff.* Most experts attribute lower charge-offs in 2006 to the surge of bankruptcy filings (and corresponding increase in charge-offs) that occurred in the third and fourth quarters of 2005.

[14] 30-day credit card delinquencies during first three quarters of 2008 were between 4.79 and 4.88 percent, the highest levels since 2002. Federal Reserve Board, "Charge-Off and Delinquency Rates on Loans and Leases at 100 Largest Commercial Banks" "U.S. Credit Card Delinquencies at Record Highs—Fitch," *Reuters,* February 4, 2009.

those of the last two recessions.[15] The difficulty that many families are having affording their credit card bills has been exacerbated by the mortgage crisis. As home values have dropped sharply, Americans have been unable to use home equity loans and home refinancing to pay off their credit card debts.[16] Moreover, some families in financial trouble are continuing to use their credit cards to pay for essential purchases and are therefore attempting to stay current on their credit card loans but not their mortgage payments, a shift in behavior from past economic crises that will likely lead to further deterioration of their financial condition.[17]

QUARTERLY CREDIT CARD CHARGE-OFF RATES, ALL BANKS (%) [18]



Growing problems with the affordability of unsecured debt has not only led to an increase in the number of consumers who are seeking personal bankruptcy protection. Consumer demand for debt reduction or debt management assistance has increased too, especially in the last 2 years as the economy has deteriorated.[19] Many non-profit organizations and for-profit businesses have jumped in to "help," including non-profit credit counseling agencies and for-profit debt settlement companies.

Credit Counseling: Abuses Have Declined, but so has Value of the Debt Reduction Offered

The credit counseling industry was created in the mid–1960s by credit card companies, which saw an opportunity to recover overdue debts. Creditors initially provided the bulk of the funding needed to keep the agencies in business.[20] At first, most of the agencies were nonprofit. Debt management plans or DMPs were the feature service offered by credit counseling agencies, which also provided financial and budget counseling and community education sessions. With DMPs, a consumer sends the credit counseling agency a lump sum, which the agency then distributes to the consumer's creditors. In return, the consumer is supposed to receive a break in the form of creditor agreements to waive fees and lower interest rates. Consumers also gain the convenience of making only one payment to the agency rather than having to deal with multiple creditors on their own. Through a creditor policy known as "fair share," DMPs provided substantial revenue for the agencies. Creditors returned to the agency a set percentage of the funds that are disbursed to them. Over the years, creditors have reduced the amount of fair share funding they offer or moved away from it entirely by distributing grants that are not explicitly tied to the amount of DMP funding collected. In response, agencies curtailed some

[15] Terris, Harry, "Credit Card Losses Seen Surpassing Levels of Last Two Recessions," *American Banker,* January 28, 2009.

[16] Westrich, Tim and Weller, Christian E., "House of Cards, Consumers Turn to Credit Cards Amid the Mortgage Crisis, Delaying Inevitable Defaults," Center for American Progress, February 2008.

[17] Chu, Kathy, "More Americans Using Credit Cards to Stay Afloat," *USA Today,* February 28, 2008.

[18] Federal Reserve Board, "Charge-Off and Delinquency Rates on Loans and Leases at All Commercial Banks," available at *www.Federalreserve.gov/releases/chargeoff/chgallsa.htm* , accessed April 14, 2008.

[19] "Look Out for That Lifeline, Debt-Settlement Firms are Doing a Booming Business—And Drawing the Attention of Prosecutors and Regulators," *Business Week,* March 6, 2008.

[20] For an excellent history of the credit counseling industry, see David A. Lander, *Recent Developments in Consumer Debt Counseling Agencies: The Need for Reform,* American Bankruptcy Institute Journal, Feb. 2002.

tied to the amount of DMP funding collected. In response, agencies curtailed some free counseling services and raised consumer fees for DMPs.

The National Consumer Law Center, the Consumer Federation of America, and U.S. PIRG were among the first to warn that the nature of credit counseling had also begun to dramatically shift in ways that were very harmful to debtors. In the late 1990s, a new class of agencies emerged that aggressively marketed DMPs and related services, dramatically raised consumer fees, and had extensive relationships with for-profit vendors and consultants. Complaints about deceptive practices, improper advice, excessive fees and abuse of non-profit status sharply increased.[21] Federal and state regulators and policymakers, who had largely ignored the rise of these new agencies, and the problems they had created, began to investigate.[22]

By late 2006, the IRS had investigated 63 agencies that brought in more than half the revenue of the entire credit counseling industry for violating their non-profit status.[23] The Federal Trade Commission had begun taking legal action against AmeriDebt and other phony non-profit agencies for a variety of deceptive practices (see Addendum B). State attorneys general had launched a number of similar investigations and state lawmakers were putting new laws on the books to stop deceptive practices and prevent excessive charges.[24]

In July of 2006, Congress created a new section 501(q) of the Internal Revenue Code that imposed standards on non-profit agencies, including the following:

- Agencies may not refuse to provide credit counseling services due to a consumer's inability to pay or unwillingness to enroll in a DMP.
- Agencies must have reasonable fees.
- Agencies must have a governing body that is not dominated by agency employees or those who benefit financially from agency activities.
- Agencies must not exceed a phased in cap of 50 percent of revenues on creditor fair share contributions by 2011. (The cap for the 2009 tax year is 70 percent.)

About the same time, the Executive Office of the United States Trustees (EOUST) began implementing a requirement of the new bankruptcy law that required those who wish to enter personal bankruptcy to receive credit counseling prior to filing and a debtor education course before being discharged.[25] Consumer groups have serious questions about the efficacy and necessity of a credit counseling session for debtors on the verge of bankruptcy, many of whom have suffered a severe reduction in income or a sharp increase in medical expenses not covered by insurance. However, the EOUST has done a good job of setting standards to help ensure that debtors headed to bankruptcy are counseled by legitimate, non-profit agencies that will not harm them or delay their bankruptcy filing.

An initial phase of research directed by the Consumer Federation and American Express has found that credit counseling can be effective in helping consumers to improve their credit worthiness over time.[26] Consumer groups often advise consumers that a DMP could be helpful in reducing some unsecured debts, depending on whether the financial condition of the debtor is stable or deteriorating, and on the interest rate reduction offered by creditors.

However, CFA has also found that some major creditors have actually increased the interest rate they charge in credit counseling, while others have kept these in-

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[21] Loonin, Deanne; Plunkett, Travis; "Credit Counseling in Crisis: The Impact on Consumers of Funding Cuts, Higher Fees and Aggressive New Market Entrants;" National Consumer Law Center and Consumer Federation of America; April 2003; *http://www.consumerfed.org/pdfs/credit_counseling_report.pdf*.

[22] "Profiteering in a Non-Profit Industry: Abusive Practices in Credit Counseling," Report Prepared by the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs, U.S. Senate, April 13, 2005, *http://frwebgate.access.gpo.gov/cgibin/getdoc.cgi?dbname=109_cong_reports&docid=f:sr055pdf*.

[23] *http://www.irs.gov/charities/article/0,,id=156827,00.html*. The IRS has since reported that it has "revoked, terminated or proposed revocation of over half of the organizations examined, representing 41 percent of revenue in the industry," *http://www.irs.gov/charities/article/0,,id=156829,00.html*.

[24] Some states used the Uniform Debt Management Services Act proposed in 2005 by the National Conference of Commissioners on Uniform State Laws as a model and others acted independently to adopt standards regarding business practices and fees.

[25] Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, 11 U.S.C. § 109, 11 U.S.C. § 11(c)(2)(E), 11 U.S.C. § 111(c)(1).

[26] Staten, Michael E., Barron John M., "Evaluating the Effectiveness of Credit Counseling," May 31, 2006; *http://www.consumerfed.org/pdfs/Credit_Counseling_Report061206.pdf*. Consumers who were recommended for a DMP by agencies and chose to start payments had a significantly lower incidence of bankruptcy, as well as improved bankruptcy and delinquency risk scores, over the two years following counseling than did those who were recommended for a DMP and chose not to start.

terest rates high for many consumers. For example, when CFA surveyed interest rates in credit counseling in 1999 and 2003,[27] Bank of America was a model for the rest of the industry, charging 0 percent APR for those in a DMP. Now, they have a range of interest rates from 1 percent all the way up to 16 percent. There is not a single major credit card issuer right now that charges less than 5 percent APR for all of its clients in DMPs. (JP Morgan Chase comes the closest, at 6 percent.) Capital One charges a 15.9 percent rate, unless the client enters counseling with a lower rate. Discover charges a range of rates that go as high as 15.9 percent as well.

As more consumers struggle to continue to pay their credit card loans, it is becoming increasingly clear that the DMP is a less viable tool in helping consumers significantly reduce their unsecured debt because creditors have kept interest rates too high. While some credit card issuers appear to have increased the reductions they offer customers in individual "workout" plans, such reductions can only be helpful in stabilizing a consumer's finances if the person does not have multiple credit card debts, as many people in debt trouble do. Credit counseling executives are now openly acknowledging that creditor concessions have not kept pace with growing indebtedness, ". . . given the high levels of unsecured debt outstanding, bankruptcy will be the only option available to many of these families—unless the credit card industry provides relief through better concessions, so that a greater number of consumers can qualify for Debt Management Plans."[28]

The refusal by credit card issuers to significantly lower interest rates for consumers in credit counseling is perplexing because there are signs that the industry does realize that if it moves aggressively to significantly reduce what consumers owe them, it such assistance would likely benefit card issuers in the long run by keeping consumers from discharging much or all of their credit card debt in bankruptcy. As mentioned above, some issuers appear to be offering greater unilateral concessions to customers who enter workout programs. Moreover, the Financial Services Roundtable has recently collaborated with CFA in an effort to reduce or eliminate regulatory hurdles that currently inhibit issuers from authorizing DMPs that significantly reduce the principal (not just the interest charges) that consumers owe.[29] CFA hopes to work with Congress and the Office of the Comptroller of the Currency (OCC) to quickly create a regulatory path that would allow and encourage issuers to offer reduced principal DMPs. Such a pathway would also need to eliminate or reduce the tax liability that consumers must pay on reduced principal settlements. Reduced principal DMPs could not only help many families in debt trouble stay solvent, but also create a legitimate, pro-consumer alternative to debt settlement scams (see next section.)

Debt Settlement: Business Model is Inherently Harmful to Vulnerable Consumers

Debt settlement involves negotiating with creditors to reduce the principal amount the consumer owes and to pay this reduced amount over a fairly short period, usually in one or two lump sum payments. Unlike most credit counseling agencies, debt settlement and debt negotiation companies are usually for-profit businesses. Settlement services are different from credit counseling (or debt management) mainly because settlement companies do not send regular monthly payments to creditors. Instead, these agencies generally maintain a consumer's funds in separate accounts—or direct consumers to deposit savings in an account that they can observe but do not control—until the company believes it can settle the consumer's debts for less than the full amount owed. Typically, debtors can only afford to pay off their creditors sequentially, saving up enough money (after upfront fees are paid) to make an offer to one creditor, then saving again until there is enough to offer a second settlement, and so on.

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[27] Consumer Federation of America, "Large Banks Increase Charges To Americans In Credit Counseling, New Practices Will Hurt Consumers On The Brink Of Bankruptcy, July 28, 1999. National Consumer Law Center, Consumer Federation of America, "First-Ever Study of Credit Counseling Finds High Fees, Bad Advice and Other Abuses by New Breed of 'Non-Profit' Agencies," April 9, 2003; *http://www.consumerfed.org/releases2.cfm?filename=040903ccreport.txt*.

[28] Keating, Susan C., President and CEO, National Foundation for Credit Counseling, "2008 State of the Credit Counseling and Financial Education Sector Address."

[29] The OCC and other financial regulatory agencies rejected a request made by CFA and the Financial Services Roundtable on October 29, 2008 to permit a pilot project that would allow some credit counseling agencies to offer some consumers reduced principal DMPs over a period of up to 60 months. Current guidance requires that reduced principal "settlements" must generally be paid in full within three to 6 months. Multi-year, reduced principal payment plans are not allowed unless the issuer charges off the entire loan before offering the settlement.

Many companies have advised consumers to stop paying debts as a condition of participation in the program. Debtors pay a variety of fees for this service, including enrollment fees, monthly maintenance fees and a settlement fee, which is usually a percentage of the forgiven amount of debt.

The Federal Trade Commission and attorneys general in at least six states have begun legal action against debt settlement firms throughout the country. Addendum A provides significant details about the range of deceptive, fraudulent, and harmful practices that these companies used that the FTC has uncovered, which can be summarized as follows:

1. *Settlement firms often mislead consumers about the likelihood of a settlement.* Evidence from debt settlement investigations indicate that a large number of consumers never complete a debt settlement program. One North Carolina assistant attorney general estimates that 80 percent of consumers drop out of debt settlement plans within the first year.[30] A receivers' report on the National Consumers Council, a purported non-profit debt settlement organization that was shut down by the FTC in 2004, found that only 1.4 percent of NCC customers settled with all their creditors. 43 percent of their clients canceled the program after incurring fees of 64 percent of the amount remitted to NCC.[31]

2. *Unlike credit counseling agencies, settlement firms cannot guarantee to consumers that the creditor will agree to a reduced payment if certain conditions are met.* In fact, some creditors insist that they won't negotiate with settlement firms at all,[32] or that they will initiate a collections action if they learn that a debt settlement company is negotiating on behalf of a consumer.

3. *Settlement firms often mislead consumers about the effect of the settlement process on debt collection and their credit worthiness.* Withholding payment to settle multiple debts is a very long process. Meanwhile, additional fees and interest rates continue to buildup, creditors continue to try to collect on unpaid debts, and consumers' credit worthiness continues to deteriorate. Some firms still advise consumers not to pay debts, either implicitly or explicitly. Others firms say they never tell consumers not to pay their debts but only accept clients who have already done so. Moreover, many settlement firms have not followed through with promises that they will stop collection calls. In fact, under the Fair Debt Collection Practices Act, consumers can only request that third party collection efforts stop, not collection attempts by a credit card company on its own behalf.

4. *Settlement firms charge such high fees that consumers often don't end up saving much to make settlement offers, which is why so many drop out of settlement programs.* Debt settlement firms typically require consumers to pay fees of between 14 and 20 percent upfront (and as high as 30 percent) before they receive a settlement. It is often not made clear to consumers that a hefty portion of the payments they make in the first year will go to the firm, not to their reserve fund or creditors. Many firms also charge monthly fees to maintain accounts as well as a "settlement fee" of between 15 and 30 percent of the amount of debt that has been forgiven.

5. *As a result of high fees, consumers targeted by debt settlement companies are generally the least likely to benefit.* Some firms will work only with insolvent consumers who are unemployed or those in a hardship situation. Many have minimum debt requirements of $10,000 to $12,000. Consumers facing serious hardship with very high debts are, of course, the least likely to be able to afford the hefty payments that are charged. Settlement firms also appear to make no distinction, as a good attorney would, between consumers in these hardship situations who are vulnerable to legal judgments to collect and those who are not.

6. *It is unclear what professional services most debt settlement companies offer to assist debtors while they save money to pay for a settlement.* Serious negotiation with creditors cannot commence until a significant settlement amount is saved, which could take years once high fees are paid. A persistent complaint by consumers is that settlement companies do not contact creditors at all in some cases.

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[30] "Look Out for That Lifeline, Debt-Settlement Firms are Doing a Booming Business—And Drawing the Attention of Prosecutors and Regulators," *Business Week,* March 6, 2008.

[31] Robb Evans and Associates LLC, "Report of the Temporary Receiver, May 3, 2004–May 14, 2004, First report to the Court."

[32] "Look Out for That Lifeline, Debt-Settlement Firms are Doing a Booming Business—And Drawing the Attention of Prosecutors and Regulators," *BusinessWeek,* March 6, 2008.

The combined impact on consumers of these practices can be devastating. To get a sense of the impact on the many indebted borrowers for whom the debt settlement business model does not work, CFA examined some of the thousands of debt settlement complaints that are on various consumer review websites. Here are a few summaries of the stories we found (all from the past 5 months):

- One (anonymous) consumer was convinced by a debt settlement company that it had strong relationships with major creditors and that its services would be a good alternative to bankruptcy. After she signed up with the settlement company, she was instructed to stop making payments to creditors. She later found out that the extent of the settlement company's involvement amounted to sending "power of attorney" letters to the creditors. Without help from the company she hired, she is now facing at least two collections lawsuits alone.
- One woman was persuaded to stop paying her creditors and to start paying the debt settlement company over $800 a month with the promise that her creditors would stop their collections calls and that she could reach a good settlement on her credit card balance. The settlement company took the money, but no settlements ever took place, and creditors never stopped calling. After 7 months of no progress with her accounts, she stopped paying the company's fees. Without being able to get a refund of the more than $5,000 she paid in fees, she is now saving money for a bankruptcy lawyer. After a legal firm later acquired her accounts, she discovered that the original settlement company routinely dealt with other customers in the same way.
- After hearing nothing from his debt settlement company for several months, Chris from Maryland attempted to respond personally to a credit card collections letter. The debt settlement company later scolded and threatened him because he contacted the creditor directly. He realized that the company was not keeping up its end of the bargain, and he decided that the $300/month he was paying in fees was not money well spent. He has tried to sever his ties with the settlement company, but they continue to ignore his requests.
- "T" from Arizona regularly saw television advertisements for a particular debt settlement company and thought they appeared legitimate. He called the company and was promised that his payments would be only $300 a month. The company collected his personal financial information and instructed him to stop paying his creditors. After 4 months and over $1,500 in fees being automatically drawn from his bank account, the consumer found out that no creditors had been paid. He eventually had to put a "stop payment" order on his bank account to prevent the settlement company from automatically withdrawing what they pleased. The consumer is now stuck with a damaged credit report, excessive fees, and no debt settlements.
- Frank from New York was directly contacted by a debt settlement company after visiting the company website. After a promise that the company would settle his debts, he decided to accept the $250 per month fee. Nearly a year later, with no progress in debt settlements, he stopped hearing from them. After many unanswered calls and e-mails, he finally received a response from the company that he would get a partial refund. Since then the company has ignored his efforts to receive the refund and his debts remain unsettled.

Creditors obviously must share some responsibility for the growth of the debt settlement industry. For one thing, some credit card issuers are knowingly doing business with these firms. For another, there clearly is consumer demand for a *legitimate* debt reduction approach that offers more relief than traditional credit counseling but is not as far reaching as bankruptcy. As stated above, creditors have not lowered interest rates in credit counseling. On a positive note, as mentioned above, creditors have now taken steps to get permission from Federal regulators to offer reduced principal, multi-year payment plans. The 2005 bankruptcy act attempted to provide an incentive to creditors to offer "60/60" plans (60 percent of what the borrower owes paid off over 60 months.)[33]

Ultimately, it appears clear that the business model for debt settlement is structurally flawed. The essential promise made by debt settlement firms to the public, that they can settle most debts for significantly less than what is owed, is often fraudulent. There is a general consensus that credit counseling, if done well, can provide significant benefits for some financially distressed consumers. No such consensus exists for debt settlement. Debt settlement firms should have to prove that,

[33] 11 U.S.C. § 502(k).

in the face of significant evidence to the contrary, their business model can and does actually help more than a few financially distressed consumers.

Recommendations

Congress, the Federal Trade Commission, and the States

Debt settlement is regulated primarily at the state level. Seven states have banned debt settlement.[34] Four more have adopted limited restrictions on the practice proposed by the National Conference of Commissioners on Uniform State Laws.[35] A number of other states have restrictions on debt management or adjustment that do not explicitly pertain to the practice of for-profit debt settlement, but cover it. States can also deploy laws regarding credit repair, the unauthorized practice of law, and unfair and deceptive practices (UDAP) against selected debt settlement practices.[36]

Regarding laws at the Federal level, some debt settlement firms appear to have violated the Federal Credit Repair Organizations Act by claiming that they will improve consumers' credit. The Federal Trade Commission has used the FTC Act well to pursue settlement firms that have used unfair and deceptive practices.

We recommend that state and Federal policymakers, regulators and enforcement offices consider taking the following steps:

1. The Federal Trade Commission and state attorneys general should continue to enforce UDAP laws. We also urge the FTC to immediately use its subpoena power to examine the records of the largest debt settlement firms in the country to determine if these firms are or are not making fraudulent claims about their ability to deliver large settlements for most of their customers.

2. UDAP prosecutions can be time-consuming and costly, so it is essential that state lawmakers in particular begin to more aggressively enforce debt management and other laws that regulate the practice of debt settlement, including tight limits on what firms are allowed to charge.

3. Congress should consider the enactment of a Federal law setting a strong minimum standard based on the best state laws directed specifically at debt settlement, which states could exceed if local conditions warrant such a move. This would bring the power and reach of the Federal Government in enforcing tough standards throughout the country. At the very least such minimum standards should:

- Prohibit debt settlement firms from collecting any fees from consumers until debts are settled, except for a small enrollment fee.
- Prohibit firms from misrepresenting the settlement process' impact on the credit worthiness of consumers.
- Place a cap on back end settlement fees, based on the settlement services actually rendered rather than the amount of debt that was forgiven.
- Require that any debt serviced by a settlement firm must be settled within 12 months.

4. In order to help facilitate the creation of a legitimate alternative to third-party debt settlement, banking regulatory agencies should take steps to allow creditors to offer multi-year, reduced principal payment plans, consistent with sound accounting principals. If regulators cannot agree on a solution that achieves this goal quickly, Congress should step in to offer one.

5. As it has done in the mortgage lending context, Congress should consider waiving or reducing the tax liability that consumers must pay for the forgiven amount of any debt settlement (above $600).

Creditors

Credit card issuers should act to immediately lower interest rates charged to consumers in credit counseling and should continue to consider methods that might be

[34] "Look Out for That Lifeline, Debt-Settlement Firms are Doing a Booming Business—And Drawing the Attention of Prosecutors and Regulators," *BusinessWeek,* March 6, 2008.

[35] Uniform Law Commissioners, "A Few Facts about the Uniform Debt-Management Services Act of 2005, *http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-udmsa.asp*. The National Consumer Law Center and Consumer Federation of America opposed including provisions regulating debt settlement firms in the same law that regulated debt management and credit counseling because the businesses are so different. The highly questionable debt settlement business model necessitates a different and more stringent regulatory framework that does not legitimize the debt settlement.

[36] Loonin, Deanne, National Consumer Law Center, "An Investigation of Debt Settlement Companies: An Unsettling Business for Consumers," March 2005.

acceptable to regulators to allow consumers to pay back a reduced amount of principal over a 3 to 5 year period of time.

ADDENDUM A: RECENT FTC DEBT SETTLEMENT CASES

1. Edge Solutions, Inc. and Money Cares, Inc. aka The Debt Settlement Company and The Debt Elimination Center; Pay Help, Inc.; Miriam and Robert Lovinger
Press release on August 5, 2008 at: *www.ftc.gov/opa/2008/08/edge.shtm*
Complaint filed on October 3, 2007
Complaint alleged that the defendants:

- Promised that they could reduce consumers' debts so they would only pay 55 cents for each dollar of debt.
- Told consumers that their payments would cover both negotiated debts and fees.
- Told consumers to stop making payments to and have no further contact with their creditors, and that this would place them in a "hardship condition," making negotiations possible.
- Promised that debts would be begin to be paid to creditors within several weeks and would ultimately be paid in a shorter time, and for a reduced amount, than if consumers continued to pay.
- Required consumers to set up direct debit from their bank accounts to a bank account controlled by the company, from which their fees and debts would be paid.
- Promised one-on-one financial counseling, which in most cases was never provided.
- Buried in the agreement the fact that consumers must pay 45 percent of total fee upfront before any payments would begin to creditors and that this might take several months.
- Failed to negotiate with and pay creditors as promised.
- Caused consumers to incur late fees, finance charges, overdraft charges, and negative information on their credit reports, and to face various types of legal action by creditors, leaving them in worse financial condition than before.

Status: Settlement

2. Debt-Set, William Riggs, Leo Mangan, Resolve Credit Counseling, Inc., and Michelle Tucker Press release on February 14, 2008 at: *www.ftc.gov/opa/2008/02/debtreduct.shtm*
Complaint filed on March 27, 2007
Complaint alleged that the defendants:

- Falsely promised that they could significantly reduce consumers' credit card interest rates to between 0 and 9 percent or reduce the amount of their unsecured debt to 50 percent or 60 percent.
- Encouraged consumers who called in response to ads to enroll in a "debt consolidation program" if their unsecured consumer debt was up to 1 month overdue, or in a "debt settlement program" if they were overdue by a longer period.
- Misrepresented that they would not charge consumers any upfront fees before obtaining the promised debt relief and buried inadequate fee information in the agreement, when in fact they generally charged 8 percent of the total debt before they would contact the creditors.
- Sent consumers documents to sign that were described as "not contracts" but "just information" but in fact were agreements that, among other things, authorized the companies to make withdrawals from consumers' bank accounts.
- Misrepresented that participation in their program would stop creditors from calling or suing consumers to collect debts.
- Failed to negotiate with and pay creditors as promised.
- Caused consumers to incur late fees, finance charges, overdraft charges, and negative information on their credit reports, and to face various types of legal action by creditors, leaving them in worse financial condition than before.

Status: Settlement

3. Homeland Financial Services, National Support Services LLC, United Debt Recovery LLC, Freedom First Financial LLC, and USA Debt Co, LLC, Financial Liberty Services, and their principals, Dennis Connelly, Richard Wade Torkelson, and Joanne Garneau (doing business as Prosper Financial Solutions)

Press release on September 21, 2006 at: *www.ftc.gov/opa/2006/09/nationwide.shtm* Complaint filed on September 21, 2006

Complaint alleged that the defendants:

- Falsely claimed that, for a non-refundable fee of up to 15 percent of a consumer's unsecured debt, they could reduce all of their unsecured debts, including credit card balances and medical bills, by as much as 40 percent to 60 percent.
- Falsely represented that they would contact consumers' creditors immediately.
- Charged a nonrefundable fee of 12–15 percent of the total debt.
- To the extent that they initiated negotiations with creditors, these settlements typically began only after a consumer paid 30 percent to 40 percent of the fee. This could take up to 3 months after a consumer followed the advice of the settlement firm and stopped making payments to creditors.
- Rarely negotiated settlements with all of a consumer's creditors, and even when they have successfully negotiated an account, in many cases, the settlement amount is significantly more than 60 percent of what consumers owe.
- Caused most consumers, who typically left the program within 6 months of enrolling without completing it, to incur larger debt as a result of penalties, fees, interest, and other charges.
- Failed to adequately disclose the likelihood that consumers would be sued if they took the defendants' advice and stopped making payments to creditors.
- Falsely advised consumers that negative information that appeared on their credit report as a result of participating in the defendants' program would be removed upon completion of the program.

Status: Settlement for some of the defendants, injunctions still in place on others.

4. Innovative Systems Technology, Inc., dba Briggs & Baker; Debt Resolution Specialists, Inc., Todd A. Baker; and Jack Briggs, aka John Briggs

Press release on July 19, 2005 at: *http://www.ftc.gov/opa/2005/07/briggsbaker.shtm*

Complaint filed February 13, 2004

Complaint alleged that:

- Innovative Systems Technology, Inc., which did business as Briggs & Baker and Debt Resolution Specialists, Inc., falsely told consumers they could negotiate with their creditors and reduce their debt.
- Consumers were told to end all contact with their creditors and to stop making payments on their accounts.
- However, Innovative Systems Technology, Inc., never did negotiate with the consumers' creditors and consumers often ended up deeper in debt and incurred further damage to their credit ratings.

Status: Settlement. Both companies are now currently in Chapter 7 bankruptcy and barred from selling any debt negotiation services in the future.

5. National Consumer Council, London Financial Group; National Consumer Debt Council, LLC; Solidium, LLC; J.P. Landis, LLC; Financial Rescue Services, Inc.; Signature Equities, LLC; M&L Springfield Trust; PC Hailey Trust; Via Lido Trust; and United Consumers Law Group

Press release on March 30, 2005 at: *www.ftc.gov/opa/2005/03/creditcouncel.shtm* Complaint filed April 23, 2004

Complaint alleged that:

- National Consumer Council, a purported nonprofit organization, solicited customers through an aggressive telemarketing and direct mail advertising campaign that falsely promised free debt counseling.
- In fact, NCC's role in the scheme was simply to generate leads for the other defendants who then charged consumers thousands of dollars in fees to enroll in their debt negotiation programs.
- The defendants deceptively claimed these programs were an effective way to stop creditors' collection efforts and eliminate debts.
- The defendants failed to disclose important information to consumers before they enrolled, including the fact that very few people were able to reduce their debts through the debt negotiation programs; consumers would suffer late fees, penalties, and other charges; and that participation in the program might hurt their credit rating.

- Very few consumers were helped; a court-appointed receiver determined only 1.4 percent of the consumers who enrolled in the defendants' debt negotiation programs—638 out of 44,844 consumers—actually completed them. 43 percent of NCC's clients canceled the program after incurring fees of 64 percent of the total amount remitted to NFCC.

Status: Settlement

6. Jubilee Financial Services, Jabez Financial Group, Gustavsen Learning Centers, Inc., and Debt Relief Counselors of America, P.C. et al
Press release on January 26, 2005 at: *www.ftc.opa/2005/01/jubilee.shtm*
Complaint filed August 19, 2002
Complaint alleged that defendants:

- Lured consumers with false promises that consumers who enrolled in their debt negotiation program would be able to pay their debts at a reduced amount of 40 to 60 percent and that consumers would stop receiving collection calls from creditors.
- Told consumers to stop making payments to creditors so that they would be in a "hardship condition" that would make it easier to negotiate.
- Misled consumers about the effects of the Jubilee program on their credit report and failed to tell consumers that, as a result of using the defendants' services, negative information would appear on consumers' credit reports and stay there for 7 years.
- Falsely told consumers that money sent to the Jubilee companies would be held in a trust account to be used by defendants to pay off consumers' debts at a reduced rate, when instead the companies withdrew the funds to pay operating expenses.
- Failed to negotiate with and pay creditors as promised.
- Caused consumers to incur late fees, finance charges, overdraft charges, and negative information on their credit reports, and to face various types of legal action by creditors, leaving them in worse financial condition than before.

Status: Permanent injunctions against defendants

7. Better Budget Financial Services (BBFS) and its principals, John Colon, Jr. and Julie Fabrizio-Colon
Press release on November 15, 2004 at: *www.ftc.gov/opa/2004/11/bbfs.shtm*
Complaint filed November 15, 2004
Complaint alleged that the defendants:

- Falsely claimed that they could negotiate with consumers' creditors to reduce their debt by as much as 50 to 70 percent.
- Promised to negotiate with consumers' creditors for a non-refundable retainer fee, monthly administrative fees of $29.95 to $39.95, and 25 percent of any savings realized by a debt settlement, resulting in consumers paying hundreds or even thousands of dollars in fees.
- Told consumers to stop paying their creditors directly, claiming that consumers' failure to pay their creditors will demonstrate a "hardship condition" that will enable BBFS to negotiate on their behalf and instructed them to set a bank account into which to deposit a specific amount each month to cover the fees and negotiated debt amounts.
- Claimed that they would settle each creditor's account once the consumer saves half the amount owed on each debt.
- Told consumers to sign power of attorney forms, claiming that the forms would enable BBFS to contact creditors on the consumers' behalf and instruct debt collectors to stop calling consumers directly.
- Instructed consumers not to talk to any creditors who contacted them directly.
- Told consumers that negative information may appear on their credit reports while they worked with BBFS, but that the information was temporary and that BBFS would direct consumers to a company to get assistance repairing their credit.
- Failed to negotiate with consumers' creditors or to contact debt collectors as promised, even after consumers called to let them know that they had sufficient funds set aside to pay a settlement.
- Caused consumers to incur late fees, finance charges, overdraft charges, and negative information on their credit reports, and to face various types of legal

action by creditors or to file for bankruptcy, leaving them in worse financial condition than before.

Status: Settlement

ADDENDUM B: RECENT FTC CREDIT COUNSELING AND OTHER DEBT MANAGEMENT CASES

1. AmeriDebt, Inc., DebtWorks, Inc., Andris Pukke, and Pamela Pukke, also known as Pamela Shuster

Press release on September 10, 2008 at: *http://www.ftc.gov/opa/2008/09/ameridebt.shtm* Complaint filed on November 19, 2003

Complaint alleged that:

- AmeriDebt falsely claimed they were a non-profit corporation operating for charitable purposes.
- Despite its claims to the contrary, AmeriDebt did not teach clients how to handle debt. Instead, they sold them into "debt management plans" (DMPs) which had monthly fees.
- AmeriDebt falsely claimed that there were no up-front fees. When they collected these fees, they held onto them and did not disburse them to creditors.

Status: Settlement. It was one of the biggest debt management/credit counseling deception cases brought by the FTC ever, ultimately $12.7 million was returned to more than 280,000 customers.

2. Select Personnel Management, Inc., an Ontario, Canada, corporation d/b/a Select Management Solutions, and James Stewart, individually and as an officer or director of Select Personnel Management, Inc., d/b/a Select Management Solutions

Press release on August 19, 2008 at: *http://www.ftc.gov/opa/2008/08/smsomax.shtm*

Complaint filed on: February 2, 2007

Complaint alleged that:

- The Canadian telemarketer, Select Personnel Management, Inc., falsely told U.S. consumers that they could reduce their credit card interest rates and that they were affiliated with the consumers' credit card companies, violating Section 5 of the FTC Act and the FTC's Telemarketing Sales Rule (TSR).
- The telemarketer promised consumers to effect credit card rates between 4.75 percent and 9 percent, thus saving consumers at least $2,500, and that if consumers did not save that amount their money would be refunded.
- Consumers paid $675 (plus $20 for shipping) for promotional materials that eventually resulted in three-way telephone calls with the telemarketer, consumers and their credit card companies where the companies were asked to lower their interest rates. The requests were usually denied and that was often the extent of the services provided.
- Consumers who did not receive the promised savings, did not receive a refund despite claims to the contrary.

Status: Ongoing, complaint recently amended.

3. Randall L. Leshin, Randall L. Leshin, P.A. also d/b/a Express Consolidation, Express Consolidation, Inc., Consumer Credit Consolidation, Inc., and Maureen A. Gaviola

Press release on May 8, 2008 at: *http://www.ftc.gov/opa/2008/05/express.shtm*

Complaint filed on: January 8, 2007

Complaint alleged that:

- Express Consolidation, Inc. illegally tele-marketed millions of consumers under the guise of a non-profit that only charged a monthly administrative fee.
- Instead, Express Consolidation, Inc. charged a fee equal to the monthly payment in addition to a monthly administrative fee.
- Despite their claims, Express Consolidation, Inc.'s services did not reduce the consumer's total debt and did not provide any services to improve the customer's credit history, record, or rating.

Status: Settlement. The settlement included a $40 million judgment, based on the money the defendants received through the scam. However, the payment was drastically reduced because of the defendants' inability to pay.

4. Debt Solutions, Inc., a Florida corporation, also doing business as DSI Financial, Inc., and Accelerated Financial, Inc.; DSI Financial, Inc., a Florida corporation, also doing business as Accelerated Financial, Inc.; DSI Direct, Inc., a Florida corporation; Pacific Consolidation Services, Inc., a Washington corporation, also doing business as DSI Financial, Inc., and Accelerated Financial, Inc.; Kenneth Schwartz, individually and as an officer of Debt Solutions, Inc., DSI Financial, Inc., and DSI Direct, Inc.; Jennifer Ruth Whalen, aka Jennifer Ruth Krizan, individually and as an officer of Pacific Consolidation Services, Inc., and DSI Direct, Inc.; David Schwartz, individually and as a manager of Pacific Consolidation Services, Inc.; and GREG MOSES, individually and as a manager of Pacific Consolidation Services and DSI Direct, Inc.

Press release on May 23, 2007 at: *http://www.ftc.gov/os/caselist/0523002/0523002.shtm*

Complaint filed on: March 21, 2006

Complaint alleged that:

- Debt Solutions Inc. charged consumers hundreds of dollars for a "debt elimination program" that, despite its claims to the contrary, did not greatly reduce interest rates and result in thousands of dollars in savings.
- Through unsolicited phone calls and online marketing, the defendants falsely told consumers upon enrolling in the program they would be assigned a financial consultant who would help them to greatly lower their interest rates.
- Instead, most consumers who did enroll did not receive lower interest rates and those that did only saw reductions of around 1 percentage point.
- Very few consumers received the promised refund.
- Consumers were not told that the promised savings would take decades to achieve and that the majority of savings would result from increasingly paying more every month, not reduced interest rates.

Status: Settlement

5. Credit Foundation Of America, a California Corporation; TTT Marketing Services, Inc., a California Corporation; Credit Defenders Of America, Inc., a California Corporation; Credit Shelter Of America, Inc., a California Corporation; Sure Guard Credit Corporation, Inc., a California Corporation; ANTHONY P. CARA, individually and as a director or officer of Credit Foundation of America and TTT Marketing Services, Inc., WALTER F. VILLAUME, individually and as a director or officer of TTT Marketing Services, Inc. and Sure Guard Credit Corporation, Inc.; TODD A. RODRIGUEZ, individually and as a director or officer of TTT Marketing Services, Inc., and Sure Guard Credit Corporation, Inc.; ROBERT BROWN, individually and as a director or officer of Credit Defenders of America, Inc.; and BRYAN TAYLOR, individually and as a director or officer of Credit Shelter of America, Inc.

Press release on June 15, 2006 at: *http://www.ftc.gov/opa/2006/06/cfa.shtm*

Complaint filed on June 15, 2006

Complaint alleged that:

- The Credit Foundation of America, Inc. sold debt management services by falsely claiming that consumers were pre-approved for a service to consolidate their credit card debts to single monthly payment at a much lower interest rate (sometimes as low as zero percent).
- Consumers' individual circumstances were not taken into consideration when they were being recruited to enroll. Many enrollees lost the large enrollment fees they paid.
- Credit Foundation of America, Inc. claimed it was exempt from the do-not-call requirements of the FTC's Telemarketing Sales Rule (TSR) because of its tax-exempt status with the IRS. However, it primarily generated profits for for-profit companies.

Status: Settlement. Credit Foundation of America, Inc. ultimately agreed to pay $926,754 in consumer redress and civil penalties.

6. Integrated Credit Solutions, Inc.; Flagship Capital Services Corp.; Lighthouse Credit Foundation, Inc.; Mary H. Melcer; and J. Steven McWhorter, Defendants, and Jeffrey E. Poorman; and Daniel M. Melgar, Sr.,

Press release on: May 3, 2006 at: *http://www.ftc.gov/opa/2006/05/lighthouse.shtm*

Complaint filed on May 3, 2006

Complaint alleged that:

- Lighthouse Credit Foundation Inc. falsely advertised itself as a non-profit enterprise that could assist consumers with debt management plans.
- The Foundation misled consumers when they told them they could dramatically lower their interest rates, they would provide financial counseling, and that their monthly administrative fee was tax-deductible.

Status: Settlement. The Lighthouse Credit Foundation Inc. and its co-defendants were ultimately ordered to pay more than $2.4 million in consumer redress.

Senator LAUTENBERG [presiding]. Just for the comfort level of the witnesses you are being heard, even though we're looking at empty chairs. So don't be discouraged. The work that you've done is appreciated.

And we'll see the testimony is there. I appreciate the fact that you've done that. That we have your words in print and I have a chance to look it over.

The situation you describe is of a serious emergency nature. And just adds fuel to the fire that this country is now in front of us. So please, Mr. Himpler, we'd like to hear from you.

And you don't have to be concerned about where you're glancing. It's—I am now the acting Chairman. So I'll try to act patiently and listen very keenly. Thank you. Please.

STATEMENT OF BILL HIMPLER, EXECUTIVE VICE PRESIDENT, AMERICAN FINANCIAL SERVICES ASSOCIATION

Mr. HIMPLER. Thank you, Mr. Acting Chairman. My name is Bill Himpler. I'm the Executive Vice President at the American Financial Services Association, the national trade association for the consumer credit industry protecting access to credit and consumer choice.

We want to commend the members of this Committee for convening this important hearing to explore what can be done about unscrupulous actors who exploit consumers' fears about their debt obligations and worse still, the fear of the possibility of losing their home. I appreciate the opportunity to testify on consumer protections for people with distressed finances who are trying to negotiate to avoid bankruptcy. Let me state at the outset that AFSA shares the concerns of Congress and the members of this committee about the growing number of consumers who are having difficulty making payments on a variety of debts and organizations that scam consumers with fraudulent credit repair and rescue programs.

Not only do these scams affect individual borrowers like Mrs. Dix. They also affect creditors and the broader market to the extent that they promote the removal of accurate and timely information from consumer credit reports. This results in inaccurate assessments of the true credit standing of consumers and thereby undermines the legitimate efforts to assist consumers in resolving their credit difficulties.

We believe instances of these scams can be reduced through four measures.

The continued availability of legitimate counseling and hardship plans that Mr. Plunkett testified to.

Consumer education.

The enhancement of the FTC's initiatives to crack down on bad actors.

And more widespread enactment of the Uniform Debt Management Services Act.

And I'd like to touch on each of these.

AFSA member companies routinely cooperate with legitimate consumer educators and advocates such as the National Foundation for Consumer Credit Counseling Services. In conjunction with various CCCS organizations, most creditors offer a variety of standardized, in-house hardship plans and work out programs to assist troubled consumers in dealing with temporary and permanent situations. These programs require no third-party involvement and no negotiation. All the consumer has to do is contact his or her creditor, explain his or her situation and ask what options are available to him or her.

Getting the consumer to admit that they are in trouble in the first place and make the initial call remains our chief obstacle. Minimizing this problem requires education of consumers about their options and promoting financial literacy. Along these lines AFSA is a long-time advocate for personal finance education that helps people make informed decisions as well as avoid scams.

Today that need for consumer education is greater than ever before as products are more complex. Our association's education foundation has developed an array of financial literacy brochures in English and Spanish in partnership with other trade organizations, regulatory groups and governmental agencies. All of these brochures are provided at no cost to the consumer.

We also want to bring to your attention the fine work of the FTC in developing an excellent series of simple, informative pamphlets. These pamphlets educate consumers on how to help themselves, explain their rights as consumers and describe various financial products and how various financial products and credit reports operate. These pamphlets also warn consumers about scams and specifically advise them on how to spot scams and how to avoid become victims of them.

Equipping consumers with the information they need to obtain legitimate help is clearly the most effective method for preventing harm to consumers. Yet because some consumers cannot resist the promises of easy solutions like the ones that my good friend, Travis mentioned on late night cable that are very alluring, effective enforcement must also continue.

AFSA fully supports the government's efforts to crack down on fraudulent consumer assistance scams and lauds the FTC's work in this area. A prime example is the FTC's Operation Clean Sweep announced last October which cracked down on 33 credit repair organizations. The FTC partnered with 22 states to pursue organizations engaging in activities such as claiming the ability to permanently remove negative information from consumers' credit reports, even when that information is accurate and non-obsolete, requiring advance payment for such services and failing to provide the mandated Federal and state notices. Operation Clean Sweep sought to enjoin these fraudulent and illegal practices and force these organizations to repay consumers.

The FTC has also pursued mortgage foreclosure rescue companies which have falsely claimed the ability to stop foreclosure in return for a fee. As you can imagine this has rarely happened. In-

stead consumers, like Mrs. Dix, were put in worse financial position, deprived of options and made to suffer avoidable injury to their credit standing because of delays in starting negotiations. AFSA has supported the FTC in these efforts and last year the FTC held a workshop entitled, "Consumer Protection and Debt Settlement Industry." We submitted comment letters in response to the FTC noting that debt settlement companies often block or discourage consumer communication with lenders. However, in many cases a debt settlement company can't even be reached leaving lenders without a means to resolve the debt with the borrower.

Additionally AFSA believes that states should be encouraged to enact the Uniform Debt Management Services Act. It provides the states with a comprehensive act governing these services, and will mean a national administration of debt counseling and management in a fair and effective way.

In closing, Mr. Chairman, AFSA believes the availability of legitimate credit counseling services and consumer education can reduce incidence of scams targeting vulnerable consumers. We believe that the FTC in conjunction with state law enforcement officials is best equipped to address the need to protect consumers against these unscrupulous actors. AFSA supports allocating additional resources to the FTC to continue its enforcement actions such as Operation Clean Sweep.

In addition, we encourage the FTC to utilize its authority to promulgate a trade rule against deceptive and misleading ads that promise secret programs that will reduce a consumer's obligation by 60 to 80 percent. With that, Mr. Chairman, I'd be happy to answer any questions.

[The prepared statement of Mr. Himpler follows:]

PREPARED STATEMENT OF BILL HIMPLER, EXECUTIVE VICE PRESIDENT, AMERICAN FINANCIAL SERVICES ASSOCIATION

Chairman Rockefeller, Ranking Member Hutchison and Members of the Committee, good morning. My name is Bill Himpler, and I am the Executive Vice President at the American Financial Services Association (AFSA). AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. The association encourages and maintains ethical business practices and supports financial education for consumers of all ages. AFSA has provided services to its members for over 90 years. AFSA's 350 member companies include consumer and commercial finance companies, "captive" auto finance companies, credit card issuers, mortgage lenders, industrial banks, and other financial service firms that lend to consumers and small businesses.

Mr. Chairman, AFSA commends you and your colleagues for convening this important hearing to explore what can be done about unscrupulous actors who exploit consumers' fears about their debt obligations, or worse still, the possibility of losing their homes. I appreciate the opportunity to provide testimony to the Members of the Committee on consumer protections for people with distressed finances who are trying to negotiate mitigation strategies so that they can avoid bankruptcy.

Let me state at the outset that AFSA members share Congress' concern about the growing number of consumers who are having difficulty making payments on a variety of debts and organizations that scam consumers with fraudulent credit repair and rescue programs. Not only do such scams affect individual borrowers, but they also affect creditors and the broader market to the extent that, among other things, they promote the removal of accurate and timely information from consumer credit reports. This results in inaccurate assessments of the true credit standing of consumers, promoting inaction and delay, thereby undermining legitimate efforts to assist consumers in resolving credit difficulties.

We believe instances of these scams can be reduced through four measures: (1) the continued availability of legitimate counseling and hardship plans, (2) consumer

education that helps people make wise financial decisions, (3) enhancement of the Federal Trade Commission's initiatives to crack down on bad actors and (4) more widespread enactment of the Uniform Debt- Management Services Act (UDMSA). In the time that I have, I'll touch upon each of these areas.

Credit Counseling and Hardship Plans

Distressed consumers are particularly susceptible to rosy claims of fraudulent credit repair and mortgage rescue organizations. They are lured by too-good-to-be-true claims of easy solutions to tough problems and empty promises of help when they feel overwhelmed. As the Federal Trade Commission has observed, "only time, a conscious effort, and a personal debt repayment plan" can improve a consumer's credit report. Similarly, only time, a conscious effort and commitment to a personal debt repayment plan can resolve a difficult financial situation.

AFSA member companies routinely cooperate with legitimate consumer educators and advocates such as the National Foundation for Credit Counseling (NFCC) and Consumer Credit Counseling Services (CCCS). For example, assistance plans are pre-negotiated between individual creditors and various CCCS organizations. Distressed consumers can easily participate in these plans with little or no negotiation necessary. The consumer simply needs to show eligibility by explaining the source and extent of distress.

Most creditors offer a variety of standardized in-house hardship plans and work-out programs to assist troubled consumers in dealing with temporary and permanent situations. These programs require no third-party involvement and no negotiation. As established programs, again, all a consumer has to do is contact his or her creditor, explain his or her situation and ask what options are available. Getting consumers to admit that they are in trouble and make the first call or engage a creditor's customer service or collections personnel can be problematic. Minimizing this problem requires educating consumers about their options and promoting financial literacy.

Consumer Education

AFSA is a long-time advocate for personal finance education that helps people make informed decisions as well as avoid scams. Today, that need for consumer education is greater than ever before, as products are more complex with variable rate loans, adjustable rate mortgages, credit card loans, various derivatives and the like.

The AFSA Education Foundation has developed an array of financial literacy brochures in English and Spanish in partnerships with other trade organizations, regulator groups and government agencies for use by adult consumers and AFSA members in the areas of vehicle financing, mortgage loans, personal loans, and personal financial management. All of these brochures are provided at no cost to consumers upon request, as well as downloadable online at *www.afsaef.org*.

Each educational piece includes information on what to do if a person encounters difficulties in meeting financial obligations. First, you should contact your creditor, explain your situation and work out a repayment schedule. Second, if your situation requires addition help, contact a non-profit budget and credit counseling agency, often called a consumer credit counseling service. These agencies can work directly with consumers and their creditors to help resolve debt problems.

We also want to bring to your attention the fine work of the Federal Trade Commission (FTC) in developing an excellent series of simple, informative pamphlets. These pamphlets:

- Educate consumers on how to help themselves (again, third party involvement is not necessary, even if occasionally helpful);
- Explain consumers' rights; and
- Describe how various financial products and credit reports operate.

The pamphlets also directly warn consumers about scams—specifically advising them on how to spot scams and how to avoid becoming victims of them. These resources are freely available from the FTC on its Website and can be printed and distributed as educational handouts and pamphlets by various organizations. Equipping consumers with the information they need to obtain legitimate help and avoid becoming victims is clearly the most effective method of preventing harm to consumers.

Enhancement of Ongoing FTC Initiatives

Nonetheless, because some consumers cannot resist promises of easy solutions, effective enforcement must also continue. AFSA fully supports government efforts to crack down on fraudulent consumer assistance scams, and lauds the FTC's work in this area.

A prime example is the FTC's "Operation Clean Sweep," announced last October, which cracked down on 33 "credit repair" organizations. The FTC partnered with 24 state agencies in 22 states to pursue organizations engaging in activities such as: (i) claiming the ability to permanently remove negative information from consumers' credit reports, even when the information is accurate and not obsolete, (ii) requiring advance payment for credit repair services, and (iii) failing to provide mandated Federal and state notices. "Operation Clean Sweep" sought to enjoin these fraudulent and illegal practices, prohibit further violations and force these organizations to pay reparation to consumers and forfeit ill-gotten gains. Other similar efforts were announced before and after this particular operation.

The FTC has also pursued mortgage foreclosure "rescue" companies which have falsely claimed the ability to stop foreclosure in return for a fee. In many instances, these "rescue" companies promised a refund of all fees if unsuccessful in avoiding foreclosure. This rarely happened. Instead, consumers were put in a worse financial position, deprived of options and made to suffer avoidable injury to their credit standing because of delays in starting negotiations and poor or nonexistent follow-through with negotiations when begun. The FTC's actions have sought to prohibit further deceptive behavior and to compel such companies to pay consumer redress and forfeit fraudulently obtained funds.

AFSA has supported the FTC in these efforts. In September 2008, the FTC held a workshop entitled, *Consumer Protection and the Debt Settlement Industry,* to explore the growth of the for-profit debt settlement industry and to analyze how its model is affecting consumers and businesses. AFSA submitted two comment letters in response to the FTC's request. In the first letter, we noted that many debt settlement companies actually do harm to both consumers and creditors by engaging in questionable practices, abusing the Fair Credit Reporting Act, abusing the power given to them by consumers, perpetrating fraud, delaying in remitting payment, engaging in deceitful actions, and facilitating false complaints.

AFSA staff attended the workshop and learned that the FTC was looking for specific information from lenders on debt settlement companies. In response, we submitted a follow-up letter, which is included as part of this testimony. During discussions with its members, AFSA learned that debt settlement companies often block or discourage consumer communication with the lender. However, in many cases the debt settlement company cannot be contacted and no further communication is received from them. Thus, the lenders are left without a means to resolve the outstanding debt.

One of AFSA's members noted that, with the exception of one debt settlement company, once customers got involved with a debt settlement company, generally one of two things will happen: (1) They realize that their credit is being affected and the debt settlement company is not doing anything but taking their money and they will start making payments again; or (2) the lender never hears from the customer again and the account is written off to bad debt.

Greater Enactment of the UDMSA

In addition to the measures I've discussed so far, AFSA believes that the states should be encouraged to enact the Uniform Debt-Management Services Act (UDMSA), which was promulgated by the Uniform Law Commissioners. It provides the states with a comprehensive act governing these services that will mean national administration of debt counseling and management in a fair and effective way. UDMSA also provides fairer and better services to debtors. Four states have, to date, adopted the UDMSA. In March 2008, several important amendments were made to the Act; with these amendments, up to 20 states are expected to introduce the Act in 2009.

In closing, AFSA believes the availability of legitimate credit counseling services and consumer education can reduce incidents of scams targeting vulnerable consumers. We believe that the FTC, in conjunction with state law enforcement officials, is best equipped to address the need to protect consumers against these unscrupulous actors. AFSA supports allocating additional resources for the FTC to continue its enforcement actions, such as Operation Clean Sweep. In addition, we encourage the FTC to utilize its authority to promulgate a trade rule against deceptive and misleading ads that promise "secret programs" that will reduce consumer obligations by 60 to 80 percent.

Thank you, Mr. Chairman. I would be happy to answer any questions.

The CHAIRMAN [presiding]. Mr. Himpler, sorry for the inconvenience everybody. People are going back and forth and voting, and

lots of major committees are meeting right now, so it just makes it complicated.

Mr. Himpler, I would think it would be safe to assume that your organization was involved in lobbying for the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005?

Mr. HIMPLER. That's correct.

The CHAIRMAN. There are several provisions of that legislation that bother me greatly. I'd like to ask you about them. But I want to discuss one in particular that puts consumers at great risk.

A number of your members offer credit cards with significant credit lines to people that have just emerged from personal bankruptcy. This makes no sense to me especially when you look at the bankruptcy bill which prevents a person emerging from bankruptcy from having credit card debt discharged again for 8 years. It's the law.

You now have a truly captive market of consumers who would get no relief if they get into trouble again. By not handling this credit wisely, no fault of their own, adding to the people susceptible to be swindled. So my question is in light of predatory behavior engaged in by some of your credit card issuers which creates more desperate people susceptible to financial fraud, would you support making these card issuers bear the risk of their lending decisions and let these debts be discharged if the consumer needs bankruptcy protection again?

Mr. HIMPLER. I do believe that the Act affords consumers that very protection. But obviously we would support that.

The CHAIRMAN. You would support that. Commission Harbour and Mr. Himpler both, I would like to ask you both to respond to the following questions. Both the FTC and the AFSA, your organizations are engaged in education and fraud prevention activities where your message has reached limited audiences.

On the other hand, you know, you're trying to make your statements for whatever reason but if people don't have Internet, you're targeting fraudulent advertising to people who need your help and advice but may not have the means to receive it. So my questions are, to each of you, if the fraudsters have the ability to reach the broadcast scope of distressed consumers why can't your organizations?

Ms. HARBOUR. I would like to respond to that. The Federal Trade Commission has a three-prong approach to reaching consumers and eradicating fraudulent behavior. We have targeted law enforcement. We have our consumer education and outreach and we have our research and empirical policy studies.

You're speaking to the education and outreach prong. We disseminate information to consumers in many ways. And I understand a keen issue of yours, Mr. Chairman, is the digital divide. Not everyone has access to high speed broadband. And your concern is, is our information reaching your constituents?

Well, we deliver and disseminate information, not only through the FTC website but we send it to consumers who call our toll-free help line. We also do it through the media.

The CHAIRMAN. How do they know about that?

Ms. HARBOUR. May I go through everything we do to reach the American consumer? I believe that we are unparalleled in reaching

out to the American consumer to inform them about ways to help them in this area. We have a network of over 1,000 community-based organizations that link to our materials or can order our materials.

We do have limited resources. But our strategy is to be wholesalers of the information rather than retailers. And because of this we work through 10,000 community-based groups that distribute information to members, to clients and to constituents.

We also use very innovative approaches to reach out to consumers. For instance in January when we settled the Bear Stearns case for $28 million, we sent redress checks back to 86,000 consumers. And in those redressed checks we put an educational bookmark about mortgage servicing in each one of those envelopes with checks.

Another thing that we have done is develop a series of educational materials that are unparalleled in this area on how to manage a mortgage if the lender files for bankruptcy. We have a real estate market glossary on how to talk the talk for consumers who may not be as versed in that area. We've developed a number of educational materials regarding deceptive mortgage advertising.

The CHAIRMAN. Commissioner, I hate to say this, but I've got——

Ms. HARBOUR. OK.

The CHAIRMAN.—minus 2 seconds left. And I want Mr. Himpler to answer also.

Mr. HIMPLER. Mr. Chairman, welcome back. Our association agrees with you that more needs to be done. The Commissioner hit the nail on the head in terms of resources being limited. We also, through our Education Foundation, produce pamphlets that are similar to the ones that the FTC does. And we like the ones that the FTC does that our companies use in terms of their transactions with consumers.

At the end of the day, however, going back to something that Mr. Plunkett said regarding in particular cable TV and late-night TV where these ads are bombarding consumers. That is a heck of a lot of resources to go up against. We would fully endorse Congress appropriating additional funds for the FTC to increase its enforcement, and to also promulgate a trade rule in terms of deceptive and misleading advertising in this area, particularly in the state of the economy that we're in right now.

The CHAIRMAN. My time is up. And there's nobody else. So I'll go right ahead.

[Laughter.]

The CHAIRMAN. Increase the resources. Now it's sort of my impression you've got what, about 1,100 to 1,400 people working for you including 40 full-time lawyers.

Ms. HARBOUR. We have 1,094 employees at the Federal Trade Commission.

The CHAIRMAN. So the question in my mind is that everybody says well, we need more resources. As one of our Senators said earlier, maybe what's needed is there has to be a different mentality. I mean, there's obviously not a shortage of people.

If we gave you another 300 people what would be the chance or the promise that we would get a big result? I mean, maybe being more of a cop and less of a monitor mentality is better.

Ms. HARBOUR. When I gave you the figure of 1,094 I believe that is lawyers and non lawyers. In the consumer protection area, the area we're speaking about now, we have 270 lawyers. But in that area we have a very large footprint, and financial services is one of our many important areas where we protect the American people. We have advertising practices, health fraud, Do Not Call, telemarketing, rebates, business opportunity scams.

This is a small, but very important area which we enforce. So what we're asking for, Mr. Chairman, is not only additional resources, we are asking for streamlined APA rulemaking authority so that we can strategically go in there and stop this, so that we can have rules and standards so that people and fraudsters understand where and what and what they cannot do.

We are asking for expanded civil penalty authority so that we can get monies from these wrongdoers. And that would serve as a deterrent. We are asking for rules to implement the Fair Debt Collection Practices Act.

We are also asking to expand the authority, independent litigating authority, so that we can go into district court and ask for our own civil penalties against these wrongdoers. It's not just the additional FTEs and funding. It's the additional authority so that we can be more effective at what we do.

The CHAIRMAN. OK. How many—there have not been a great many cases that you have solved. There's something like, you're averaging about 1.5 cases a year. Correct me if I'm wrong.

Ms. HARBOUR. The Chairman is never wrong, but that one doesn't sound quite accurate to me.

[Laughter.]

Ms. HARBOUR. 1.5 in what area, sir, in?

The CHAIRMAN. 25?

Ms. HARBOUR. Let me just say this. In the area of financial services, what we're talking about today, we have been active in this area for decades.

Now it is true. I know, Mr. Chairman, you had some concerns about the number of cases that have been brought in the mortgage rescue foreclosure area. Understand, the—and I want to say that we feel that we should be bringing more cases and we are bringing more cases. In fact, in the credit repair area right now we have nine pending litigations, four confidential investigations going on in the mortgage foreclosure rescue area. We have 16 confidential investigations going on.

The CHAIRMAN. Aren't there a couple million people out there who are facing these kinds of problems? I'm just trying to figure out what the bulk of the problem is out there, and then how many folks that you're working on.

Ms. HARBOUR. It is true. There are millions of consumers who are in need of help. And there are many bad actors out there.

But let me put this in context, Mr. Chairman. The downturn in the economy happened——

The CHAIRMAN. Yes, that's just going to increase the number of people.

Ms. HARBOUR. Yes, in 2008, we saw the trends coming. And we have been increasing our cases in litigation in this area. But what that means when we see that there's more of a need in the finan-

cial services area, we shift some of our work from the ad practices area, from the Do Not Call area, that's necessary. And it is being done.

So there are even more cases in the pipeline now. Last year, in 2008, in the area of credit repair we brought nine cases. But we now have 13 cases pending. We will have more. We are on the lookout. We are being vigilant.

But what it means is we are moving resources from some of the other areas to this very important increase——

The CHAIRMAN. But how do I deal with—you've got 13 cases pending. The recession is getting worse. That means there are going to be more people in trouble, more people, therefore, getting scammed. As the people in trouble go up, the number of fraudsters will go up.

So why am I meant to be impressed by 13?

Ms. HARBOUR. Well I'm definitely not trying to impress you because I said we certainly could do——

The CHAIRMAN. However you interpret the question.

Ms. HARBOUR.—Can do more here. But as I had said earlier, we approach these cases in a three-prong manner. We do it by targeted law enforcement. We also do it by consumer outreach and education. And we try to do it with policy and where the law needs to be changed so we can be more prophylactic.

In the area of foreclosure rescue scams we have a task force that we have joined with. We have seven task forces that we have either joined or created with state and local officials. We are in some of the areas that are hardest hit. And we're trying to be strategic in that way.

We have a task force in Atlanta, Tampa, Cleveland, Michigan. We're working with the local enforcers on trying to see trends. And work to identify solutions.

Yes, we will be increasing some of the cases that we bring in this area. But as I was saying, this acute downturn in the economy happened September 2008. We saw this trend coming. We immediately started shifting more resources to this area.

We have a large footprint. And when we shift resources to this area, we bring resources from some of the other areas. We're saying we would like a little more resources. And we would like greater authority under the law to be more——

The CHAIRMAN. I hear your words. The Chairman of the Consumer Protection Subcommittee is here, Senator Pryor. And you may have some questions. I'm sure you do.

STATEMENT OF HON. MARK PRYOR,
U.S. SENATOR FROM ARKANSAS

Senator PRYOR. Thank you, Mr. Chairman. Thank you for your leadership.

The CHAIRMAN. Take your time.

Senator PRYOR. Thank you. As you know we all had to rush over and vote. And we appreciate the panel for being here.

Ms. Harbour, let me ask you if I may about the state and Federal relationship. It's my understanding, I've been in contact with my state's Attorney General, Dustin McDaniel. It's our understanding that there is a good working relationship there.

I'd like to get your thoughts on that relationship with all the state attorneys general and other state agencies and entities out there that you work with. And also would like your ideas on how to improve it if it needs to be improved.

Ms. HARBOUR. Senator, you're asking the right person. I was a state enforcer for 13 years. And I believe I was in the New York Attorney General's office when you were Attorney General. So I think the Federal/State relationship is just swell.

We work together very well. In fact in the area of mortgage foreclosure rescue scams, as I was telling the Chairman, we are working with a number of state attorneys general and local and state officials on our task force where we're trying to fight mortgage rescue scams. We have done this in some of the areas that are hardest hit—Atlanta, Tampa, Cleveland.

I believe we have a Southeast regional office that is working with a state attorney general to investigate and prosecute. I think that we should always keep the door open for joint, parallel Federal/state investigations. I think it helps the American consumer.

You have more cops on the beat looking out for their interests at the state level and at the Federal level. And I am in favor of a strong and healthy working relationship between state and Federal Government.

Senator PRYOR. Let me ask this. You talked about how when you saw the recession and the financial crisis happening in late last year you shifted resources. Do you need more resources in your agency?

Ms. HARBOUR. Absolutely, Senator. Absolutely. As I was telling the Chairman, we have a very large footprint at our agency. We do quite a bit.

We have 270 lawyers in the Consumer Protection area. And we—financial services is one of many areas that we enforce. And just to name a few, telemarketing, business opportunity, pretexting, Do Not Call, our data security and identity theft cases. We all have—these are very important areas as well.

But in order to respond to the unprecedented number of consumers who are at risk, in harm's way, we just need more resources. It is frustrating that we cannot bring 100 cases to help consumers in foreclosure. We don't have the resources to bring 100. We try to be targeted in—well, maybe I shouldn't say that. Maybe we can.

We're looking. But we know that we want to be even more vigilant. And we are looking to bring more cases. And we feel that we will do more and we want to do more in this area.

Senator PRYOR. Let me ask on the resource issue. Do you see the states as part of your resources, kind of an extension of what you can do out there in the states?

Ms. HARBOUR. Absolutely. In fact, in the mortgage foreclosure rescue area what we've seen is that a lot of these companies are local and regional in nature. In fact some of the scammers are operating in actual neighborhoods. And the state attorneys general, you guys are the cops on the beat. You're the closest to the scammers.

And when we partner I think it provides more effective law enforcement to the American consumer. So I would advocate for hav-

ing an even closer relationship with the state attorneys general in this area.

Senator PRYOR. You mentioned the task force that you have on financial—mortgage foreclosure rescue scams task force. And I assume you have a pretty healthy representation of states there on that task force. Has that been working well? I mean, are there lessons learned there? Things we need to be doing better?

Ms. HARBOUR. I think the task force is working very, very well. As I said it's operating in Atlanta and Tampa, Cleveland, Michigan, Northern California, Los Angeles and Illinois. Perhaps there is even room to expand it. It is a seven-region task force, but if there is interest by the attorneys general in other regions. I can say that the FTC would be interested in joining those as well. One of the most important things is getting the word out to the American consumer about some of these scams. Also bringing targeted law enforcement and working with the state attorneys general.

Senator PRYOR. The Chairman has mentioned that one of the things that the Committee should be working on is the FTC Reauthorization bill this year. Do you feel like the FTC needs more statutory authority in this area or do you have enough? It's just a matter of resources.

Ms. HARBOUR. It's both. What we'd like? We would like streamlined APA rulemaking authority. We would like expanded civil penalty authority. We would like rules to implement the Fair Debt Collection Practices Act. And we would also like to expand the FTC's independent litigating authority.

This way we could go into court, district court, and we could seek injunctive equitable relief and we could seek civil penalties. This would give us more enforcement tools to help the American consumer. Even if we were to get a lot more resources today without this additional APA rulemaking authority and civil penalty authority, we would not be as effective as if we got the whole package.

Senator PRYOR. I know that I have other colleagues waiting. But I did just have one last question for you Madam Commissioner. And that is that, as an example, West Virginia and Arkansas and other states have large rural areas. And Internet access is hard and sometimes getting information in those areas is harder than it is in more urban, densely populated areas.

How do you feel your outreach is going with regard to rural areas and with people who don't have access to the Internet or can't afford access to the Internet?

Ms. HARBOUR. And just to address that question briefly. The Commission gets information out to consumers in a number of ways. And in states that perhaps are not—where the digital divide is in play and there is not high-speed broadband and other Internet access for your consumers, we can actually send our pamphlets to consumers or they can call our help line, our toll-free help line. But we also work with community-based groups. 10,000 community-based groups that distribute our information to members, to clients and to constituents.

We also work with libraries all across the Nation. And if you have an idea that we haven't thought of to help disseminate the word to your constituents and to your consumers, we would be very happy to hear it. Our education and outreach at the Federal Trade

Commission is award-winning. Our information reaches consumers and it helps them.

The CHAIRMAN. The Committee appreciates Senator Pryor. I want to call on Senator Lautenberg.

STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM NEW JERSEY

Senator LAUTENBERG. Thanks, Mr. Chairman. It's so discouraging when we look at what's happening to our people by the forces at work in terms of the losses of homes and property and assets and spirit. It's a terrible dilemma for us.

And among the worst things is to perpetuate the abuse by having these scoundrels take advantage of our people. And Mr. Plunkett, you don't have to just see the tube at night. I don't watch a lot of television but during the day we kind of watch the news and even there the advertisements really kind of had me scratching my head and say how are you going to do it? You've got all these things and just one thing and we'll take care of it and get you up to date and so forth.

And Mrs. Dix, we heard what you had to say. It was very important that you brought that experience here.

And Mr. Chairman, I'm delighted to welcome to this panel Commissioner Pamela Jones Harbour. We've worked together. And I know how concerned and industrious you are about trying to stem the tide of these fraudulent happenings.

So the witnesses were valuable. And it seemed like we weren't listening. But we will be reading. And we did listen also.

It's difficult I know, Commissioner Harbour, for most consumers to know the difference between a scam and a legitimate program. People are desperate. They're reaching out for help however they can get it. And to watch their obligations mount in front of them while their opportunities for income decline. So I'm pleased that the FTC has implemented outreach programs to try to tell people about the legitimate resources available to them and warning them about these possible scams.

When did the outreach efforts begin? When did the FTC start to be alert to this?

Ms. HARBOUR. We are always reaching out to consumers. Now in the financial services area we have always had educational materials. When the scams shift and when we learn about other aspects of fraudulent behavior going on out in the marketplace then we tailor our educational brochures to those activities.

In fact, I believe that we are going to update all of our relevant written materials, and develop what is called a micro-site on our website. And this is going to focus on very extensive tips on saving, spending, budgeting, dealing with debt, debt collection, debt negotiations, settlement repair, advance fee loans, and your home. It's going to be very, very comprehensive.

Senator LAUTENBERG. Has the volume of effort picked up substantially or has this been an ongoing program that——

Ms. HARBOUR. Our consumer education is ongoing. In fact I think the more we do it, the better we get at it. And we've won awards for this.

And as I said, we're small but mighty. We only have staff in seven states. Yet, we disseminate absolutely nationwide. And I think maybe even outside of our borders as well.

Senator LAUTENBERG. How effective do you think it's been? How do you measure something like that?

Ms. HARBOUR. Well I don't have the stats about how many awards my staff has won on their education and outreach. But I know that they've won some major awards for the substance, the effectiveness and the thoroughness of our education and our outreach to the American consumer.

Senator LAUTENBERG. Your testimony talks about the FTC's distribution of educational materials. And it recommends steps that consumers can take if they have trouble meeting their mortgage payments. How do you distribute these things? How do you get widespread coverage?

Ms. HARBOUR. Again, we have relationships with 10,000 community-based groups that will distribute our information to members and constituents and clients. In fact we also have a relationship with Members of Congress, I believe. We make our materials available for your newsletters.

Senator LAUTENBERG. I don't want to keep you on this but perhaps you could give us, send in a report about how you measure effectiveness because those are the things we talk about constantly.

Mr. Chairman, if I might. I have a question for Mrs. Dix. May I do that?

The CHAIRMAN. You may.

Senator LAUTENBERG. Mrs. Dix, you testified that if you had not called your state's attorney general to find a company to help you, your home would have been lost?

Mrs. DIX. Yes, it would have.

Senator LAUTENBERG. Had you heard of this company before, this Mountain State Justice before calling the attorney general?

Mrs. DIX. No, sir. I didn't.

Senator LAUTENBERG. Did you get any material from your mortgage lender suggesting that you try to contact a legitimate foreclosure rescue company?

Mrs. DIX. No, I didn't.

Senator LAUTENBERG. So you felt like you were left hopeless out there?

Mrs. DIX. Yes, until somebody told me about the attorney general.

Senator LAUTENBERG. We're happy that you did finally get some relief there. I ask unanimous consent that my opening statement be included in the record.

The CHAIRMAN. So ordered.

[The prepared statement of Senator Lautenberg follows:]

PREPARED STATEMENT OF HON. FRANK R. LAUTENBERG,
U.S. SENATOR FROM NEW JERSEY

Mr. Chairman, thank you for holding today's hearing on consumer protection.

Let me begin by welcoming our witnesses, particularly Commissioner Pamela Jones Harbour, whose home is in New Jersey and understands how tough the credit crunch and economic slowdown have been on our state.

Commissioner Harbour is a strong advocate for consumers at the FTC and I want to thank the Chairman for bringing her here to testify today. This is clearly a critical time for our government to be standing up for consumers.

The unemployment rate in our country is the highest it's been in 16 years. And those men and women who do have a job are working longer, working harder—and after getting less for their labor. That means more Americans are struggling to pay their mortgages, which is one reason New Jersey's foreclosure rate increased 75 percent from 2007 to 2008.

It means more Americans are struggling to pay their expenses, from credit cards to utilities, which means bills are piling up and collection agencies are calling. And because they're vulnerable and will take any help they can get, Americans are more susceptible to scams.

Scam artists that have no problem taking advantage of anyone, anywhere, anytime—the. people running foreclosure scams, for example—are coming out of the woodwork. Some companies have demanded illegal up-front payments from consumers for their services—and then never deliver what they promised or what the cash-strapped consumer paid for.

We must crack down on these crooks and the scams they are running.

I know this Committee will do its part. Mr, Chairman, I look forward to working with you in partnership with Commissioner Harbour and the FTC to protect Americans from these criminal scams.

The CHAIRMAN. Senator Klobuchar?

STATEMENT OF HON. AMY KLOBUCHAR, U.S. SENATOR FROM MINNESOTA

Senator KLOBUCHAR. Thank you very much, Mr. Chairman. Thank you for holding this hearing. Thank you to all of you for being here.

Thank you, Mrs. Dix, for sharing your story. And Commissioner Harbour, it's good to see you again. And Mr. Cox, from Minnesota, thank you. He actually has done several forums in Minnesota on consumer issues with me. And is a renowned expert in our state. So thank you for doing that.

I actually wanted to ask you, Mr. Cox, as my home state guy a few questions about your work. When you look at the relationship between the—I know you've done a lot of work in the foreclosure area, between foreclosure rescue fraud and other types of fraud we've been discussing today such as credit repair scams and credit and debt management. What is the relationship between those that you see, the foreclosure fraud and some of the other kinds of credit repair scams that we see?

Mr. COX. Thank you, Senator Klobuchar. I thought as Minnesota's only Senator you might get more time.

Senator KLOBUCHAR. That's right. And I am asking the Chairman for 10 minutes. I'm actually considering amending the D.C. Voting Rights bill to give me two votes.

[Laughter.]

Senator KLOBUCHAR. Because we sort of have taxation without representation. But please, go on, Mr. Cox.

Mr. COX. Alright. Foreclosure rescue scams really fall into two categories. And almost all of them you can put into these archetypes and it works. Even though market values are tanking, there are people, particularly elderly people, who are still in foreclosure who have equity in their homes and the reconveyance scams are still occurring.

That doesn't have much relationship to these debt settlement and credit repair problems. That's its own unique thing and re-

quires legal services attorneys and others who can help individuals as well as these state laws. The foreclosure consultant scam is a very parallel problem from a consumer protection regulatory perspective to the debt settlement, debt management problem.

It's a vital service. People need foreclosure prevention services. And the National Federation of Consumer Counselors groups do a fantastic job. I've worked with those people for many, many years in helping borrowers in foreclosure.

The problem is that the complexity of the transaction and the difficulty of getting accurate information to people makes it so that there's also going to be these scams. So the foreclosure consultant scams, and the debt settlement scams are very similar. I think that we need the kinds of swift rulemaking and standard setting in order to address that.

Senator KLOBUCHAR. What do you think the best, briefly, what are the best provisions you think in Minnesota law or other laws around the country that would be helpful for Federal law?

Mr. COX. Well the foreclosure consultant law has one key provision. You don't get to take anyone's money up front. You have to provide the service before you can get the money because almost all the legitimate counselors are non-profit that doesn't affect the legitimate service providers.

It, however, prevents people from getting their money taken because at the end of the process they just won't pay if they're in a situation like Mrs. Dix. So that's the key provision.

Senator KLOBUCHAR. That's not in the Federal law right now? This idea of having—that you wouldn't have to pay up front for services?

Mr. COX. There is no Federal law specifically related to that.

Senator KLOBUCHAR. Yes. OK. Another idea that you would like to see?

Mr. COX. Well, there was a provision in the, I believe one of the states passed a law that I thought added an interesting provision which made these organizations fiduciaries, which again makes it easier to bring these legal actions. And also we need to redefine what foreclosure is to bring in people who are in distress, which those laws did as well which brings more of the services within the context.

Senator KLOBUCHAR. OK. Very good. Thank you. Mrs. Dix, just from your practical experience what do you think would be the best way to get information out to people both so they're not—I mean we've heard a lot from our leaders here of how they think it should be done. But if you think about your circumstance and other people you know, what's the easiest way to try to get that information so you call the right person?

Mrs. DIX. I think maybe going out to the public, TVs, more advertising, a little bit more.

Senator KLOBUCHAR. So that you can actually see it. You're watching a show and you see a commercial. Hey, if you're in this kind of trouble watch out and call this number?

Mrs. DIX. Right.

Senator KLOBUCHAR. Because I haven't seen that much of that.

Mrs. DIX. I haven't either.

Senator KLOBUCHAR. I've seen a lot of like prescription drug commercials, but I haven't seen a lot of this trouble that people have. Alright. Good.

Mr. Himpler, AFSA is the—I know the work that you do, your national trade association for the consumer credit industry. I believe that my staff talked to you about this before. But could you talk about how you're good actor people that work with you that haven't done bad stuff, how they've been impacted by the bad actors? And how you think you solve that?

Mr. HIMPLER. Thank you, Senator. I think everything that both Mrs. Dix and the Commissioner and Mr. Cox have mentioned is right on the money because when these scam artists take advantage of consumers like Mrs. Dix and often times they encourage consumers to end all communications with lenders. Then as lenders, the lenders can't find these organizations to work out anything.

So the lender is left without any way to do any sort of work out with the consumer. Everybody loses. The consumer's credit falls into disrepair. And a true accurate depiction of what their credit standing is left disabled by this entire transaction with credit repair organizations like these.

So we do need to do a better job of getting the information out to the consumers, PSAs, the brochures that the FTC and other organizations and our education foundation put out. But in these tough economic times, not enough can be done in this area.

Senator KLOBUCHAR. Alright. Very good. Thank you, all of you.

The CHAIRMAN. Thank you, Senator. Senator Begich? And then Senator Warner.

STATEMENT OF HON. MARK BEGICH,
U.S. SENATOR FROM ALASKA

Senator BEGICH. Thank you very much, Mr. Chairman. Is that on there? There we go.

Thank you all very much. And I get the bird's eye view here. I'm at the little kids table.

[Laughter.]

Senator BEGICH. The Chairman did offer me to move up. And I appreciate that.

The CHAIRMAN. Can you see the witnesses?

Senator BEGICH. I like this. I feel like I could be a witness or ask questions. So it depends on what's going on.

[Laughter.]

Senator BEGICH. So that's a real little kids table. That's very good.

Let me ask. And Mr. Chairman we rode on the train just a second ago. And I'm going to give this for the record. This is an interesting—this is one of those promotional cards from a very reputable organization, a company. And the effective annual percentage rate is 51.65 percent.

I mean, you know, most people would look at this company and not consider them, you know part of the scam. But the fact is that you have that kind of interest rate is a loan shark rate. I mean, it's outrageous.

So I'll give this if I can to the record. It's just an unbelievable, you know, I consider it a scam. But I'm sure the company that associated with the credit card company didn't think it was. It was a promotional 51 percent.

The CHAIRMAN. The information will be included in the record.

[The information referred to follows:]

Pier 1 imports

Opening/Closing Date:	12/21/08 - 01/20/09
Payment Due Date:	02/14/09
Minimum Payment Due:	$1.00

CUSTOMER SERVICE

In U.S.	1-800-767-3662
Español	1-800-500-0346
TDD	1-800-955-8060
Pay by phone	1-800-436-7958
Outside U.S. call collect	1-480-350-7998

ACCOUNT SUMMARY **Account Number:** [redacted]

Previous Balance	$54.61	Total Credit Line	$3,000
Payment, Credits	-$54.61	Available Credit	$2,999
Finance Charges	+$1.00		
New Balance	$1.00		

ACCOUNT INQUIRIES
P.O. Box 15298
Wilmington, DE 19850-5298

PAYMENT ADDRESS
P.O. Box 94012
Palatine, IL 60094-4012

VISIT US AT:
www.chase.com/pier1card

Please Note: The remaining balance on your statement is interest and/or fees incurred from the date of the last statement until your payment was received.

Your account is closed. Please continue to make monthly payments by the due date until your balance is paid in full.

PIER 1 REWARDS SUMMARY

Points earned on Pier 1 purchases	0
New total points balance	0
Total points unavailable for redemption	1,082

1,082 to expire on statement date in July, 2010

Earn a $20 Pier 1 Rewards Certificate every time you reach 2,000 points.

TRANSACTIONS

Trans Date	Reference Number	Merchant Name or Transaction Description	Amount Credit	Amount Debit
01/03	10040030800006392104128	Payment - Thank You	$54.61	

FINANCE CHARGES

Category	Daily Periodic Rate 31 days in cycle	Corresp. APR	Average Daily Balance	Finance Charge Due To Periodic Rate	Transaction Fee	Accumulated Fin Charge	FINANCE CHARGES
Purchases	V .06093%	22.24%	$23.23	$1.00	$0.00	$0.00	$1.00
Total finance charges							$1.00

Effective Annual Percentage Rate (APR): 51.65%

Please see Information About Your Account section for balance computation method, grace period, and other important information.

The Corresponding APR is the rate of interest you pay when you carry a balance on any transaction category.
The Effective APR represents your total finance charges - including transaction fees such as cash advance and balance transfer fees - expressed as a percentage.

Information About Your Account

Lost or Stolen Cards: Please report your lost or stolen card immediately by calling the Customer Service number found on the front of your statement. Advisors are always available to assist you. You can reach an Advisor by pressing 0 after you enter your account number.

Crediting of Payments: For payments by regular U.S. mail, send at least your minimum payment due to our post office box designated for payments shown on this statement. Your payments by mail must comply with the instructions on this statement, and must be made by check or money order, payable in U.S. Dollars, and drawn on or payable through a U.S. financial institution or the U.S. branch of a foreign financial institution. Do not send cash. Write your account number on your check or money order. Payments must be accompanied by the payment coupon in the envelope provided with our address visible through the envelope window; the envelope cannot contain more than one payment or coupon; and there can be no staples, paper clips, tape or correspondence included with your payment. If your payment is in accordance with our payment instructions and is made available to us on any day except December 25 by 1:00 p.m. local time at our post office box designated for payments on this statement, we will credit the payment to your account as of that day. If your payment is in accordance with our payment instructions, but is made available to us after 1:00 p.m. local time at our post office box designated for payments on this statement, we will credit it to your account as of the next day. If you do not follow our payment instructions or if your payment is not sent by regular U.S. mail to our post office box designated for payments, crediting of your payment may be delayed for up to 5 days. Payments made electronically through our automated telephone service, Customer Service advisors, or our web site will be subject to any processing times disclosed for those payments.

Account Information Reported to Credit Bureaus: We may report information about your account to credit bureaus. Late payments, missed payments or other defaults on your account may be reflected in your credit report. If you think we have reported inaccurate information to a credit bureau, you may write to us at the Cardmember Service address listed on your billing statement. Notice About Electronic Check Conversion: When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution. Call the customer service number on this statement if you have questions about electronic check collection or do not want your payments collected electronically.

Conditional Payments: Any payment check or other form of payment that you send us for less than the full balance due that is marked "paid in full" or contains a similar notation, or that you otherwise tender in full satisfaction of a disputed amount, must be sent to Card Services, P.O. Box 15049, Wilmington, DE 19850-5049. We reserve all our rights regarding these payments (e.g., if it is determined there is no valid dispute or if any such check is received at any other address, we may accept the check and you will still owe any remaining balance). We may refuse to accept any such payment by returning it to you, not cashing it or destroying it. All other payments that you make should be sent to the appropriate payment address.

Annual Renewal Notice: If your account has an annual fee, it will be billed each year or in monthly installments, whether or not you use your account, and you agree to pay it when billed. The annual fee is non-refundable unless you notify us that you wish to close your account within 30 days of the date we mail your statement on which the annual fee is charged and at the same time, you pay your outstanding balance in full. Your payment of the annual fee does not affect our rights to close your account and to limit your right to make transactions on your account. If your account is closed by you or us, we will continue to charge the annual fee until you pay your outstanding balance in full and terminate your account relationship.

Explanation of Finance Charges: We calculate periodic finance charges, using the applicable periodic rates shown on this statement, separately for each feature (e.g., balance transfer/convenience checks and cash advance checks ("check transaction"), purchases, balance transfers, cash advances, promotional balances or overdraft advances). Please consult your Cardmember Agreement for the features that are applicable to your card. These calculations may combine different categories with the same daily periodic rates. If there is a "V" next to a periodic rate on this statement, that rate may vary, and the index and margin used to determine that rate and its corresponding APR are described in your Cardmember Agreement, as amended. There is a minimum finance charge in any billing cycle in which you owe any periodic finance charges, and a transaction finance charge for each balance transfer, cash advance, or check transaction, in the amounts stated in your Cardmember Agreement, as amended.

To get the daily balance for each day of the current billing cycle, we take the beginning balance for each feature, add any new transactions or other debits (including fees, unpaid finance charges and other charges), subtract any payments or credits, and make other adjustments. Transactions are added as of the transaction date, the beginning of the billing cycle in which they are posted to your account, or a later date of our choice (except that check transactions are added as of the date deposited by the payee or a later date of our choice). Fees are added either on the date of a related transaction, the date they are posted to your account, or the last day of the billing cycle. This gives us that day's daily balance. A credit balance is treated as a balance of zero. If a daily periodic rate applies to any feature, we multiply the daily balance by the daily periodic rate to get your periodic finance charges for that day. We then add these periodic finance charges to your daily balance to get the beginning balance for the next day. (If more than one daily periodic rate could apply based on the average daily balance, we will use the daily periodic rate that applies for the average daily balance amount at the end of the billing cycle to calculate the daily periodic finance charge each day.)

To get your total periodic finance charge for a billing cycle when a daily periodic rate(s) applies, we add all of the daily periodic finance charges for all features. To determine an average daily balance, we add your daily balances and divide by the number of the days in the applicable billing cycle(s). If you multiply the average daily balance for each feature by the applicable daily periodic rate, and then multiply each of these results by the number of days in the applicable billing cycle(s), and then add all of the results together, the total will also equal the periodic finance charges for the billing cycle, except for minor variations due to rounding. To get your total periodic finance charge for a billing cycle when a monthly periodic rate(s) applies, multiply the average daily balance for each feature by the applicable monthly periodic rate and add the results together. The total will equal the periodic finance charges for the billing cycle, except for minor variations due to rounding.

Grace Period (at least 20 days): We accrue periodic finance charges on a transaction, fee, or finance charge from the date it is added to your daily balance until payment in full is received on your account. However, we do not charge periodic finance charges on new purchases billed during a billing cycle if we receive both payment of your New Balance on your current statement by the date and time your payment is due and also payment of your New Balance on your previous statement by the date and time your payment was due. There is no grace period for balance transfers, cash advances, check transactions, or overdraft advances.

In addition, if there is a "Qualifying Promotional Financing" section on this statement, you will not incur periodic finance charges on any Remaining Balance that appears in that section if you pay that balance in full by the applicable Expiration Date. However, if you default under the terms of your Cardmember Agreement or any Qualifying Promotional Financing offer, the applicable periodic finance charges will accrue on any Remaining Balance as soon as the billing cycle in which the default occurs. To avoid finance charges on new purchases when your New Balance includes any Remaining Balance(s) in the Qualifying Promotional Financing section, pay your full New Balance minus the total of those Remaining Balance(s) by the date and time your payment is due. However, if your statement shows that a minimum payment is due, we must receive at least that minimum payment by the date and time specified on your statement, even if your New Balance consists only of Qualifying Promotional Financing balances.

For "deferred interest" Qualifying Promotional Financing, periodic finance charges accrue during the promotional period but are not added to your account balance. Instead, they accumulate from billing cycle to billing cycle. If a deferred interest Qualifying Promotional Financing balance is not paid in full by the applicable Expiration Date, the deferred finance charges will be added to your account as soon as the first day after the Expiration Date.

Further, if you default under the terms of your Cardmember Agreement, the deferred finance charges will be added to your account as soon as the date of default.

For "fixed payment" Qualifying Promotional Financing that permits you to pay for a purchase in a designated number of payments, you will not have a grace period for that balance as each payment includes a portion of the interest owed over the repayment term for that purchase. However, you will have a grace period on other new purchases as described above.

BILLING RIGHTS SUMMARY

In Case of Errors or Questions About Your Bill: If you think your bill is wrong, or if you need more information about a transaction on your bill, write Cardmember Service on a separate sheet at P.O. Box 15299 Wilmington, DE 19850-5299 as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights. In your letter, give us the following information.

- Your name and account number
- The dollar amount of the suspected error
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

You do not have to pay any amount in question while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. While we investigate your question, we cannot report you as delinquent or take action to collect the amount you question. If you have authorized us to pay your credit card bill automatically from your savings or checking account, you can stop the payment on any amount you think is wrong. To stop the payment, your letter or call (using the Cardmember Service address or telephone number shown on this statement) must reach us at least three business days before the automatic payment is scheduled to occur.

Special Rule for Credit Card Purchases: If you have a problem with the quality of goods or services that you purchased with a credit card (excluding purchases made with a check), and you have tried in good faith to correct the problem with the merchant, you may not have to pay the remaining amount due on the goods or services. You have this protection only when the purchase price was more than $50 and the purchase was made in your home state or within 100 miles of your mailing address. These limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services.

MA030708

Senator BEGICH. There we go. Thank you. And I'll give this for the record.

Does the FTC have kind of the, for the financial advisors or the people that are helping folks get out of the non-profits, do you have almost like a Good Housekeeping seal, someone that you can turn to? You know, when I buy a toaster I know a UL is a good product. Without the UL it's a piece of junk. If you have that I'm going to be frank with you, I never hear it.

And so do you have something that a consumer can say, you know, if you're not this than I'm not even going to waste my time talking to you as a work-out person.

Ms. HARBOUR. Senator, you don't hear about it because we don't have that. We do not put a Good Housekeeping-type stamp of approval on businesses or on brokers or on lenders.

Senator BEGICH. I'm more interested in the people that are trying to help out folks to get out of the situations they're in. You know you hear all the advertisements. Come to us, we'll solve all your credit problems then sometimes they're scamming you or they're not.

And then there are some of the good ones, the non-profit organizations that I'm familiar with are very good organizations. But you know, how does the consumer—I mean, I heard an ad a couple days ago. And I thought, wow, this is a good company. Then I find out it really is another business trying to take your money.

Ms. HARBOUR. No, that's an excellent question. And as I was preparing for this hearing I asked myself that. As a consumer how would the American consumer know whether these companies are legitimate or not? And then I thought about it and I went over some things and I came up with three ways.

First is you contact your state attorney general.

Senator BEGICH. Assuming that a consumer knows that.

Ms. HARBOUR. Assuming, that's right.

Senator BEGICH. It's not a high likelihood.

Ms. HARBOUR. Or you contact the Better Business Bureau and see if there were any complaints about that particular business or you could go to your local consumer protection agency. But the issue is that we need to educate the American consumer about these options. Otherwise they will fall prey to these scam artists. And they will fall prey in greater numbers because the American consumer really is in financial straits now.

Senator BEGICH. But do you think that you have a role?

Ms. HARBOUR. Absolutely.

Senator BEGICH. To create that kind of list? Because the consumer——

Ms. HARBOUR. Oh.

Senator BEGICH. I mean, you know, the consumer is busy. I mean, Mrs. Dix your whole issue. I mean you were dealing every minute of your life trying to figure out how to solve this problem and by a chance and circumstance you were able to be told to call the AG.

The average consumer——

Ms. HARBOUR. Senator, my absolutely was, absolutely we have a role, but not absolutely creating that list.

Senator BEGICH. Why not?

Ms. HARBOUR. I would push back on that.

Senator BEGICH. I know more about toys and what's good and bad from the Federal Government than I do about what consumer organizations.

Ms. HARBOUR. Well how I would answer that question? Through our outreach and our education, we can get at that through the back door. For instance, with the fraudulent mortgage foreclosure rescue scams we have some red-flag pieces of advice that we have available to every consumer in America telling them what to watch out for. For instance we say avoid any business that guarantees to

stop foreclosure processes, no matter what. Usually they're going to be fraudulent if they say 100 percent certain.

We say avoid any businesses that are going to instruct you, the consumer, not to pay your lender or your lawyer or your housing counselor. Any business, that collects a high, upfront fee before they do anything for you between $300 to $5,000, that's the way we reach the American consumer.

Senator BEGICH. Let me ask you something. I have to watch your clock there because I don't have one. So I think I have about 30 seconds left.

So let me try to ask. I know you mentioned the success of your education was measured by awards you've received. But how do you measure from the consumer end, the real consumer?

How do you know it's reaching them other than, you know, you've got some awards for good advertisements and so forth? What data can you show me? What data can you show me that consumers who needed this information actually got it in their hands?

Ms. HARBOUR. That's a very good question. And what it sounds like you're asking for do we have any empirical research that has actually seen the effect of our work. I want to get back to you on that.

That could be a study that we do. How do we measure how effective we are? Certainly our desire and our, you know and our zeal to help the American consumer is there, but you need more of a metric than that.

Senator BEGICH. Right.

Ms. HARBOUR. And that's a very good question. And let me get back to you.

Senator BEGICH. OK. I'd be very curious. I know that we do a lot of that. I'm a former mayor and we, you know, just figure out effectiveness of the products and delivery of information. It's all about which consumer group we're trying to hit. And then what result we get out of it.

And again that would be very interesting. I have some other questions, but I know my time is up. And I'll just wait if there's another round.

Ms. HARBOUR. Thank you.

Senator BEGICH. Thank you very much.

The CHAIRMAN. Thank you, Senator Begich. Senator Warner?

STATEMENT OF HON. MARK WARNER,
U.S. SENATOR FROM VIRGINIA

Senator WARNER. Thank you, Mr. Chairman. And panel, I'm sorry I missed the first half of this hearing. But I want to follow up on some of my colleagues' comments, Senator Begich and Senator Klobuchar.

Commissioner Harbour, I understand that you've got a report coming out today based off some workshops you've been doing about the Fair Debt Collection Practices Act.

Ms. HARBOUR. That's correct.

Senator WARNER. And as we talk about how we inform consumers of what assistance is out there, the flip side of that is oftentimes how do some of these debt collection groups actually legally check the box that they've notified the consumer? And one of the

things I saw or at least referenced to in the testimony that you were talking about using new technologies. And I've heard some kind of wild stories about people saying they've, the debt collection folks have met the notification requirements by using Facebook and using, you know, some technologies that might not be traditional.

Have you all thought through from both a kind of an outreach-to-consumer standpoint and then how you're going to use these new technologies, particularly web-based. And from the reverse standpoint of what would qualify as legal notice going back out from the debt collectors to the consumer how robust these organizations can be in using these new technologies on the outward contacting?

Ms. HARBOUR. Our report that issued today was a result of a two-day workshop that we held last year. And the report contains a number of recommendations, legislative recommendations to protect consumers. What we found from our workshop, we found two problems.

Well, we found more than that, but the two problems I want to identify are that debt collectors have inadequate information when they try to collect from consumers. So in our report what we're recommending is that the Fair Debt Collection Practices Act be amended regarding those validation notices. Those are the notices that are required to be sent out by the collectors.

But what we're recommending is that those notices should disclose the name of the original creditor because a lot of times there's inadequate information that's being given to the consumers by the original creditor. We recommend that the debt be broken down by principal, by interest and by any other charges. This way the consumer knows what it is that they're being asked to provide, we think that this would solve the inadequate information problem.

The second issue that I wanted to talk about that was raised in the workshop was that debt collectors generally don't provide adequate information to consumers about their rights under the Fair Debt Collection Practices Act. So what our report is recommending is that the notices that are sent should include the two rights that consumers have under the Fair Debt Collection Practices Act. And that is, first, and a lot of consumers do not know this, the right to demand that the debt collector cease communicating with them. And then second, the right to be free of attempts until the debt is verified. And consumers can—they have to ask for that in writing.

But as far as the specific part of your question that talks about new technologies. We also recommend that the FDCPA is amended to prohibit debt collectors from collecting—contacting consumers by way of their mobile phones unless the consumer says, yes, you may contact me by this way of new technology. And the reason we believe this is important is because a lot of times the debt collectors will call up or text the consumer and the consumers have to pay for the text.

Senator WARNER. Right.

Ms. HARBOUR. It doesn't make any sense. So unless a consumer wants to be solicited by a debt collector and wants to pay for the charge on the mobile phone we're recommending that it not happen. And I guess that's with all the other new technologies——

Senator WARNER. Well think about it if you, you know, the ramifications if you were to make a posting on Facebook or a posting on some of these community-based sites. It seems to me that this should be a relationship between the debt collector and the consumer. And until it is fully verified, all the debt, you don't need it to be, in effect, broadcast widely and distributed widely over some of the common shared sites like Facebook.

Ms. HARBOUR. And also, Senator, the——

Senator WARNER. So have you looked at how you might restrict the use of some of these technologies. It might be good communication devices but actually might be sharing this information on a broader level or a more inappropriate——

Ms. HARBOUR. Well, I think that that's an area that we are looking at. And if we were able to amend the Fair Debt Collection Practices Act that is something that we certainly would be giving a lot of thought to and coming up with something legislatively.

Senator WARNER. Great.

Ms. HARBOUR. Also there are statutory penalties that have not been amended since 1977. So we would want to look at that as well and recommend that they're upgraded.

Senator WARNER. Great new tools, but they can be abused in terms of some of these new technology communication devices.

Ms. HARBOUR. Yes.

Senator WARNER. So I'd love to hear back some more on that. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Warner. Senator Thune?

STATEMENT OF HON. JOHN THUNE,
U.S. SENATOR FROM SOUTH DAKOTA

Senator THUNE. Thank you, Mr. Chairman for holding the hearing on a topic that's often overlooked and is a consequence of the economic recession and that's consumer protection laws and how those impact people out there who are struggling. I think anybody in this economy whether you're a factory worker or a senior citizen, somebody who is trying to live on a reduced income, trying to continue to make a mortgage payment. Everyone feels the effects of the recession.

And I think one of the consequences of that or affects of that is and we're seeing that is the historically high number of home foreclosures, increasing number of consumers and small businesses who are filing for bankruptcy. And any time you have those kinds of things going on, a record number of consumers who are facing financial distress, the risk of fraud and abuse is greatly elevated. And so particularly in these times it's important that consumer protection laws are in force as intended by the Congress.

I think it's important that consumers be aware of the protections that are afforded them under the law. And that those who seek debt counseling and financial management services are not victim to the fraudulent activities of bad actors that are out there in the debt servicing sector. And I guess what I would like to come back to is something the Senator from Alaska was talking about and that is if there isn't this sort of gold-standard list that exists out there of good actors is it possible to work with some of the people

at the table and based on some of the testimony this morning to put together a series of sort of voluntary standards?

Not something that we would necessarily legislate, but that people could go to and say, OK, if you meet these certain standards you get on this list. You get on this—you become someone who is recognized as being a legitimate, high quality actor with regard to this industry. And is that something that might be considered?

I mean I think there has been some good testimony this morning about some of the suggestions of things that could be a part of those included in that list of standards. Is that something that would make sense?

Ms. HARBOUR. My response to that is I would like to work with or speak to the Better Business Bureau. My sense is that is more in line with what they perhaps would do. Would that be helpful to the American consumer to know, which businesses are legitimate and which businesses are not? Absolutely, especially in this climate of economic downturn, absolutely.

And perhaps, you know, that's something we can look into and see if it's not our agency who comes up with that list if there is an agency that can do that. So we can get back to you on that, Senator.

Senator THUNE. OK.

Well and I don't know. Even if it's not—I'm not saying it necessarily, the Better Business Bureau is good too. And they maybe can compile some of that type of data already.

But if the FTC, which is the agency of government that most consumers look to for these types of protections were to compile a list based upon a sort of agreed upon set of standards that are considered to be, the gold standard, so to speak and again, based upon recommendations from people like those who have testified this morning. That I guess was I'm just throwing that out there as an idea because I'm not trying to suggest that Congress ought to get in and legislate those standards. But that there are things based upon industry input that say these are good actors and these are the things that good actors do, you know, just a thought.

Ms. HARBOUR. So you're saying a best practices list?

Senator THUNE. Yes. Yes. Exactly.

Ms. HARBOUR. In a way. That's certainly something that is more in our footprint.

Senator THUNE. Right.

Ms. HARBOUR. And I will definitely look into that.

Senator THUNE. OK.

Mr. PLUNKETT. Senator, could I throw out a thought on your question? I'm Travis Plunkett, the Legislative Director of the Consumer Federation of America. And I've worked with, in the credit counseling area in particular, a number of legitimate operators on the issue of voluntary standards.

And one thing we encountered and one risk I see for the Federal Trade Commission there is the question of, you know you may be a good actor today. You change your business practices and in 6 months you're not. So it's the question of keeping up with and monitoring the situation.

I mean if you're talking about individual companies as opposed to general principles you offer to consumers, you know, avoid this

kind of company. But if you're saying here's the list of good guys and if you're not on the list you're a bad guy then boy, what an enforcement trick that is to try and keep up with month to month. Who's on and who's off and are they complying and did they comply 6 months ago, but they're not now. That could be an enforcement drain.

Senator THUNE. Well I don't disagree with that. I guess the only suggestion I would make is that there are, it is not like if you're on the list you fall off the list because you've fallen into the bad actor category or you're doing something that is fraudulent out there. To me, it would be more of an incentive for inducement for companies if you had a set of these.

These are recommendations that you do this, this, this and this. And obviously if it's a fairly straightforward list of things that companies would do to stay on that list, sure, I mean, companies that could fall off the list. I suspect it's going to be somewhat self-policing. People are going to find that out fairly quickly.

And it may not be 100 percent, entirely current, 100 percent of the time. But I think it would at least present for a consumer some sort of indication of which companies out there are going about this in the right way and following these practices and those that aren't.

Ms. HARBOUR. Another way to approach that Senator; we had asked for rules to implement the Fair Debt Collection Practices Act. And if were allowed to implement rules in a sense that is best practices and if they fell short we could actually go after them.

So rules in this area might achieve the objective that you're speaking of.

Senator THUNE. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Thune. I'm going to ask that some graphs be passed out to the witnesses and also to the two Senators if they wish to have this.

[The information referred to follows:]

Fraud or Scam	Time Interval	Total Actions Filed by the FTC	Case Example	Case Example
Foreclosure Rescue	Past 2 years	6	*FTC* v. *Mortgage Foreclosure Solutions, Inc.*—approx. 1,000 affected consumers	*FTC* v. *United Home Savers, LLP*—approx. 3,000 affected consumers
Credit Repair	Past 10 years	42	*FTC* v. *Hargrave & Associates Financial Solutions*—approx. 29,600 victims	*FTC* v. *Clean Credit Report Services, Inc.*—approx. 45,510 victims
Credit Counseling/ Debt Management	Past 6 years	14	*FTC* v. *AmeriDebt, Inc.*—287,000 affected consumers	*FTC* v. *Debt Management Foundation*—approx. 14,000 affected consumers

The CHAIRMAN. Commissioner, you've been doing most of the talking this morning. And that has been a little bit frustrating to me because I want to hear from Mrs. Dix, but I also want to say, to ask Professor Cox and Mr. Plunkett, who haven't had much chance to talk.

The figures we're looking at here show the FTC total actions filed by the FTC over a period on foreclosures over a period of 2 years, six. Over a period of 6 years, 14. Over a period of 10 years, 42. I mean it's just the credit repair—well you can see the thing before you.

You're saying how good things are going and if we had a little bit more money and we had some more lawyers and this and that, we could have a bigger footprint and do more things. But all I'm looking at, unless this is incorrect which I want you to tell me. There isn't much happening. There is not much happening. There are very few people being helped because I assume that, you know, total actions filed by the FTC is a fairly heavy statement. Now I'm finished.

Mr. Plunkett, I want to ask you too and Mr. Cox, if you feel that the FTC is as effective as they purport to be in what I've listened to this morning or are they not? Be frank.

Mr. PLUNKETT. Would you like me start, Senator?

The CHAIRMAN. Sure.

Mr. PLUNKETT. My area would be credit counseling and debt management. And the sort of model case is the one you cite here, the Ameridebt case. And my opinion is they've been effective on credit counseling. The numbers don't tell the whole game.

The Ameridebt case was huge. They were the poster child for bad credit counseling. And because of this case and the simultaneous enforcement efforts by the IRS to drive phony non-profits out of the business of credit counseling, the situation, as I testified to, is better. It's not perfect. There are still problems. Better on credit counseling.

On debt settlement the Federal Trade Commission has been playing a catch-up game. This business appears to have exploded in the last three, 4 years because there's such incredible demand by consumers for these services. They're looking for something that helps them more than credit counseling because credit counseling can't keep up, but is short of bankruptcy. And there really is nothing legitimate, so I'd like to see the Federal Trade Commission do more there.

I know these cases are expensive. But I think there's a lot to do. The ultimate problem though is they're playing a catch-up game and we need to get out front with strong bright-line laws that make their enforcement job easier.

They're not just looking at what's unfair or deceptive. They can go in and say, you are not complying with the law because you're offering a service and charging for that before you deliver on that service. And that's where Congress can help.

The CHAIRMAN. Mr. Cox?

Mr. COX. Thank you. One of the nice things about being a professor is you can say exactly what you think.

[Laughter.]

Mr. COX. I agree with everything Mr. Plunkett said. I'll tell you from having worked for more than a decade with the FTC, they were truly the shining light of Federal/state cooperation. You know, I had relationships with those people. You could call them. We'd work together. We'd say, you do this, I do that.

So it was the exact opposite of trying to work with bank regulatory agencies that were utterly hostile to consumer protection, in my experience, and to state cooperation. Having said that, I agree with Commissioner Harbour completely. The FTC needs better authority. They need to be able to move swiftly and they need to be able to pass rules without cumbersome Magnuson-Moss restrictions.

What I will also say is the FTC needs to differentiate more clearly, in my experience, between when they have a scam which is what Ameridebt was. I actually started that case and passed all our files over to the FTC many years ago in Minnesota along with another state. I believe it was Missouri.

You know, the FTC just needs to move more quickly and act like a cop when they need to act like a cop. And for instance we're talking about the education materials. Forget brochures.

I mean, that's really nice. That's fine. But you have to think like the bad guy. You have to figure out how you're going to get on TV and say, don't listen to the rest of these commercials if you want to do effective education.

So I just think you got to, you know, you've got to have a more aggressive mind set when it comes to these kinds of scams. And then you have to be sophisticated and understand when you're regulating in a more established industry where the businesses are mostly credible you have to have a different touch. And you have to think about where you are.

But when it comes to the things on this chart, just get out there. And get out in front of it. I mean, we're really, we're 5 years ahead of the FTC on the foreclosure rescue issues.

The CHAIRMAN. Ok. Thank you. With Senator Begich's permission, Mrs. Dix could you just kind of walk us through what you went through?

Mrs. DIX. Yes. I have a statement here. As you know my name is Nancy Dix. I'm 67 years old. I live in a double-wide manufactured home in Ansted, West Virginia.

After my husband died of a heart attack in 2001 I was contacted by a lender to refinance my home with promises of saving me money. My husband had always handled things like this one. So I didn't know much about it.

I trusted the people I dealt with because I thought they were professional, looking out for my best interest. I later found out that I'd actually been taken advantage of. In the spring of 2002 I spoke to a mortgage broker called Infinity which told me it would save me money.

Infinity sent an appraiser out to my house and valued my property at $97,000. I later learned that it was actually only worth $59,000. After the appraisal Infinity told me a man will be coming to my house to sign the papers.

When the man came I learned the first time that my payments would be $800 a month. This is higher than I expected and a lot for me to afford on a fixed income. I asked about the payments and was told that in a few months they could lower my payment to $600.

The signing was rushed and no one explained anything to me. And I signed the papers. And I was confused.

The loan ended up at the bank called Flagstar. The total amount of the loan was $86,700 with an APR of 9.48. Under this loan I was required to make payments of over $245,000 over 30 years.

After signing I began making payments. I contacted Flagstar after a few months to lower my payments. Flagstar told me that I would have to come up with $8,000 out of my pocket before they could lower my payments. Money I did not have.

I struggled to make payments over the years and was forced ultimately into bankruptcy. When I tried to catch up with my payments with Flagstar they wanted me to pay a larger amount than I could afford on my fixed income. Flagstar wanted me to pay $1,800 a month and my income was $2,000.

Also, Flagstar forced/placed expensive insurance on my account which made me further behind my monthly payment. On July 2005, Flagstar said it started sending my payments back to me. Eventually my home was sent to foreclosure with a sale for December 15, 2005.

Around this time I was contacted by an outfit from Houston, Texas called Mortgage Rescue. They told me to send them some information about my finances and $921. They would stop the foreclosure.

So on November 8, 2005, I sent them the information and the money. They responded to me by letter I received only days before the foreclosure. The letter said for me to call Flagstar and work out a forbearance agreement, but I would have to pay the entire amount I was behind and a $5,000 deposit to Flagstar to stop the foreclosure.

Mortgage Rescue knew I did not have this money. I could have worked out a deal with Flagstar at any time without sending Mortgage Rescue $921. Basically they took my money for nothing.

I later found out that Mortgage Rescue is not even licensed to do business in West Virginia. I never got my money back. Luckily I was able to call the West Virginia Attorney General who had the foreclosure put off. I was sent to Mountain State Justice, a nonprofit, legal service office. They worked it out so I could keep my home.

If I had not called the attorney general or found Mountain State Justice I would have lost my home. I would be in my late 60s, retired, widowed, with nowhere to live. I think at times about other people who have given their hard-earned money to scam artists like Mortgage Rescue.

I hope you are able to do something to prevent these crooks from taking advantage of people who are desperate like I was because they are facing loss of their homes. Thank you.

The CHAIRMAN. Thank you. Senator Begich, I thank you for your indulgence. When you have finished your line of questioning I'm going to ask Mr. Plunkett and Mr. Cox and Mr. Himpler to comment on what Mrs. Dix said because I think it's profound. I think it's all over this country. And I think it's horrible.

Senator BEGICH. Thank you, Mr. Chairman. And I didn't realize that she had not given her testimony. That was very——

The CHAIRMAN. That was my fault.

Senator BEGICH. No problem, Mr. Chairman. I read it. I thought it was very interesting because I have heard of Infinity before and some other actions.

But let me, I hate to keep banging on this issue. And I understand from the consumer folks that it might be difficult to manage and so forth. Now I come from the real estate industry. We know who the good characters are and the bad characters.

When I was Mayor of Anchorage we had people who were running B and B operations, (bed and breakfasts) and we sorted out the good and the bad. And we created a list. It's not complicated. And the consumer needs as much information as possible to know who's right.

So let me reverse it. This list here which, Mr. Chairman, I was going to ask a similar question. So thank you for this information. And I was asking your staff. I had them screwing around and I apologize.

I was asking another question was out of all these people who are still—or these people that have had claims or actions or in process of having actions. I'm assuming some of these probably are still in business. And that's my point.

If you've already started issues with them, consumers should know that. Because it's one more bit of information that they need to know who is—because how do you get information of all these folks that you have litigation on. How do you get that to the consumer?

Do you have it on a website that's not in the legalese? I'm not a lawyer. And you know, do you have a list that says these are the folks that we have pending actions against at this time, settled or not.

Ms. HARBOUR. We usually have press releases whenever we settle matters. It's up on our website.

Senator BEGICH. I understand. Do you have a list that a consumer could go to your website and say, ah, these are the people at the FTC are busy——

Ms. HARBOUR. Yes, we do. We do have a list.

Senator BEGICH. And are they written in this format, "FTC versus blah, blah, blah" or is it listed as "these are companies we," in very, simple, my language, English, not lawyer language, that says——

Ms. HARBOUR. Well, I'll get back to you on the lawyer language. But I know there are listed. I know it's listed. But I will definitely get back to you whether it's listed in lawyer-like language or whether it's in plain English.

Senator BEGICH. And then those groups that you associate with and I forget the numbers, thousands. Do you send them the list that says these are organizations that we are currently investigating or have had settlements with? So those organizations who actually do the work with consumers, do they know this?

Ms. HARBOUR. I will get back to you on that. I can't answer that question right now.

But if I could just address this paper which I suppose is pointing out what the FTC hasn't done enough of. I would like to say that we do have in the foreclosure rescue area, we do have 16 pending

investigations today. In the credit repair area, we have 13 matters today. In the debt counseling area, we have seven.

We get it. You know, we shift resources when the need occurs. The downturn happened September 2008. It was an acute economic downturn. We responded immediately. In fact we had been responding anyway because we saw the trend.

In 2007, credit issues were number 10 on the list of complaints in Consumer Sentinel. In 2007, number 10; I'm sure most of these cases have been started before then. We are always the cop on the beat. We're always pursuing these cases.

Your quibble with us is we didn't do enough of them. We have always been in this game. Once the economic downturn occurred we immediately shifted resources and the numbers that you don't see are the numbers of what we are doing confidentially.

I even had some push back to even mention what we're doing confidentially. But I knew Senator, Chairman, that it was very important to you to make sure that we are being responsive to the American consumer. So yes, there are 16 investigations right now in the foreclosure area. There are 13 in the credit area. There are 7 in the debt counseling and there are 10 in the Fair Debt Collection Practices Act.

As far as returning value to the American consumer. In the CompuCredit case we returned $114 million. This was settled in September 2008. Bear Stearns, $28 million. So this piece of paper does not——

The CHAIRMAN. You're using up all the Senator's time.

Ms. HARBOUR. Oh, I'm so sorry.

The CHAIRMAN. I mean——

Senator BEGICH. Let me—I appreciate it. My point is at any level trying to inform the consumer is what I—when I saw the hearing on the schedule, to me is very important. It's how the consumer, how would someone like Mrs. Dix know what to do and not to do, and not. And the first stage is who is a good character/bad character. That's my issue.

And then my flip-back is over to the Association. And I know I'm out of time. But to the Association, you have an obligation and a responsibility.

And I don't know what your procedures are. So if you could get to me at some point. I know we're going to run out of time.

The CHAIRMAN. No, go ahead.

Senator BEGICH. I would just want to know as an association, when you have like this, you know, Mortgage Rescue which may not have been part of your association. But if you have ones that have caused these issues what do you do to get them out? And get them out quick? And then how do you notify?

Mr. HIMPLER. We represent the lenders, not the debt collectors.

Senator BEGICH. Well your assumption is all lenders are good. I'm asking the broader question here. Today we have major problems. And I tell you in Alaska we just did a huge case against several lenders for fraud. So I'm just trying to let me broaden it then to lenders.

As an association how do you clear the deck?

Mr. HIMPLER. I think the basic point that both of you gentlemen have made—the Commissioner has tried to respond to in terms of

setting a minimum standard threshold above which the FTC and other regulatory agencies can say, these are good actors. We, as an association have a best practices voluntary standard that all of our companies have to meet to be members in good standing. Those are posted on our website.

Any consumer, any Senator or any regulatory body can take a look at those. And that is how we ensure that our lenders are above reproach.

Senator BEGICH. I will stop, Mr. Chairman.

The CHAIRMAN. What do you do when somebody goes from nonprofit to profit? Do you measure that? Do you say, you can't do that?

Mr. HIMPLER. I'm not sure I follow you, Senator.

The CHAIRMAN. Well the eight-year rule I was talking about in the beginning in my first question to you.

Mr. HIMPLER. I apologize. I'm not following you, Senator.

The CHAIRMAN. Alright. Let me get back to what I said I was going to do. And that is call on Mr. Plunkett and Mr. Cox and you to comment on Mrs. Dix's situation. How did that come to be? How could that have been stopped?

We'll start with you, sir.

Mr. PLUNKETT. Senator, we should, the entire consumer community and this includes the enforcement community, need to do a better job of educating consumers. But I'm appalled at what I heard from Mrs. Dix. I heard a lot about these scams.

And it's a losing battle unless we can get out front with strong laws that and good enforcement resources that agencies like the FTC can use to stop these scams before they start. Otherwise we're just playing catch-up. We're scrambling to inform consumers about businesses that they should never have had to deal with.

The CHAIRMAN. Please?

Mr. COX. Thank you, Mr. Chairman. I agree with Mr. Plunkett. You need bright lines because that allows for clear, efficient law enforcement. You have to bring everything as a UDAP case, it just takes way too long. And you need to get way out in front and enforce them.

And again, when you're dealing with scams, I think you need to arrest people and put them in jail. You just have to have a more aggressive mentality. Now that's not the FTC's job. But we need to, you know, we need to develop a comprehensive enforcement strategy where we take the worst of the worst, we put them in jail. We put them on TV. And we parade them.

In 2004–2005, I was screaming we should be doing that with subprime mortgage lending companies. And I think I was right about that. I mean, we just have to put the fear of God in people when they are doing that kind of level of bad practice. Mrs. Dix never should have been subjected to that.

The CHAIRMAN. Before I call on you, Mr. Himpler. I so relate to what you're saying, Mr. Cox. I think this is an "under the radar" world or an underworld, if you want to call it. Nobody knows about it except the victims who get clobbered by it.

In spite of all the words from the Commissioner and you're a very good Commissioner. I fully recognize that. I am just appalled by these figures. I mean, I'm just appalled by them.

This is over a ten-year period, six-year period, two-year period. And you've got—what do you have? How many do you have? Do you have 1,400 people working for you or is it 100?

Ms. HARBOUR. 270 consumer protection attorneys.

The CHAIRMAN. I'm not talking about attorneys. I'm talking about people.

Ms. HARBOUR. Oh, people, 1,094.

The CHAIRMAN. OK. So that's a lot of people. And we could give you more people. I don't know whether it would do any good.

I just, I so relate to what you're saying. It's like anything which is out of sight, but tremendously damaging to people. If you do not hold people accountable. If you do not send people to jail. If you do not hold somebody up for ridicule.

I won't get into some things I'd like to, but I think that's the only way it works. That's the only way it works because then the word begins to get around in that underworld that if you do this, you will go to jail. Because there is a combination of states who are doing a very good job working with the FTC which says it can't do that. States can.

You know, attorney generals can. I think that's got to happen. It has got to happen in order for people like Mrs. Dix not to have to go through what she went through.

It won't stop it because it's unfortunately the nature. It's human nature that when the crisis gets worse, more people are in trouble. More bad actors jump in to take advantage of them.

I mean America has that side of it which nobody. That's why we're having this hearing. We've never had a hearing like this before. It makes me very angry. It makes me very upset that Mrs. Dix had to go through this.

She wasn't particularly thrilled about coming up here to testify. In fact that was about the last thing in the world she wanted to do. And then Mr. Plunkett who has this enormous Consumer Federation of America says he shocked by what he hears. So we have to do something about that.

Mr. Himpler, what is your reaction to Mrs. Dix's situation?

Mr. HIMPLER. I am equally appalled. And Mrs. Dix, I'm truly sorry you faced this. I share the sentiments expressed by all of the witnesses.

But I will return to something that I think, Mr. Cox said. As much as we want to utilize written materials to get information into the hands of consumers and again, I commend the FTC for their fine work in this area, we are at a very critical stage with the current situation in our economy.

We need to get information to consumers on the airwaves, on the radio, on the TV. That has just got to happen because they're being inundated. And I'm sure going home at night listening to the radio, Senator, you probably here four or five every time you commute. I know I do. And they're very attractive ads.

But we need to pull out all the stops in this area. And if I could beg your pardon for just one moment, not necessarily right in the jurisdiction of this committee. But one of the things we're working on with the depository regulators that Mr. Cox mentioned, there's an effort to do loan modification with respect to mortgages.

We've also got a crisis, if you will, in the auto sector. And a number of our members that provide auto financing through lines of credit through banks are having trouble keeping those lines open, particularly when they try and do the same sort of work-outs that are being encouraged on the mortgage side.

I guess my last comment would be as we are trying to encourage lenders to do work-outs with consumers like Mrs. Dix, we need to make absolutely clear that working with your lender is absolutely important in terms of any sort of loan modification, rate reduction, payment reduction and the like. Because while folks read about it in the paper all of the fine work the Administration and Congress are doing to encourage lenders to do work-outs. It gets very confusing if they see ads late at night for people encouraging them to follow up on those initiatives and they're not the same people.

The CHAIRMAN. I'm not sure Congress is doing any particular fine work on that. But it's nice of you to say that.

Mr. HIMPLER. I want to be invited back.

[Laughter.]

The CHAIRMAN. We have a lot of work to do here. Let me ask the Commissioner this. Why can't we find a means to send the most vulnerable consumers, like consumers who have missed, let's say, one or two or maybe even three mortgage payments some information about the kinds of fraudsters who may be trying to seek and take advantage of them before they come under the spell of those fraudsters? There's got to be some mechanism to do that.

Do you keep track of people who are getting in this kind of trouble?

Ms. HARBOUR. There are millions of consumers now that are probably facing foreclosure. I am trying to think of some way we could warn them other than what we are doing. Perhaps television advertising, I don't think we've ever done that. Maybe that is something we can look into.

The CHAIRMAN. You probably can't afford that.

Ms. HARBOUR. Exactly. Let us give some careful thought to this and we will get back to you.

The CHAIRMAN. Please, please, please.

Ms. HARBOUR. We know how important this is to the American consumer and to this committee.

Mr. HIMPLER. Senator, to that point starting last fall the lending community worked with the Administration and formed a group called Hope Now that——

The CHAIRMAN. The former Administration?

Mr. HIMPLER. The former Administration. And one of the principles was identifying at-risk borrowers who were either on the verge of missing a payment or had missed a payment or two to take aggressive action in terms of the lenders reaching out to those borrowers to work with them to bring them current and work out the situation directly.

The CHAIRMAN. Well, you know, I don't know what it's going to take. But we're, on this committee, we're going to work. And nobody is sacred except you, Mrs. Dix.

[Laughter.]

Mrs. DIX. Thank you.

The CHAIRMAN. Nobody is sacred. We're not doing our jobs. You say Congress is doing its job. The Congress is not doing its job. This committee is not doing its job to be helpful.

This is a massive problem where people kind of disappear under the water silently. I remember watching my son when he was 2 years or a year and a half old, a year old or half a year old, sitting in a swimming pool, top of the steps, so it was up to about his throat. And my wife and I were sitting on opposite sides of the swimming pool reportedly each of us keeping an eye on him.

But for a moment we didn't. And then he suddenly just sort of floated down underwater. And fortunately I saw him and I went in and I got him and he was OK. But it was one of the scariest things I've ever been through in my life because you tend to love your children. And I have a feeling this is what Mrs. Dix brings to this hearing.

Didn't particularly want to come. Is probably angry as the dickens and doesn't know where to turn, happened to get bailed out by an attorney general. That might have been lucky.

How you two got together I don't know. But that was lucky. I'm really happy about that. But that is not happening to millions of people out there.

And in the meantime I'm still holding this up. And I'm absolutely shocked. And I appreciate the effort, but that doesn't count anymore.

It's like the Stimulus package or the Banking package or the Health Care Reform or energy. You've got to do it right. It has got to work or else it doesn't mean anything.

People will just keep slipping underwater and nobody will know about it because newspapers won't write about it and the press won't cover it because it's not a murder. It is a murder. It's just a murder without blood.

I don't know. So we're going to keep working on this thing. I want you to know that. We will be aggressive.

I thank all of you for coming here today. I think it's, frankly I think it's great that the Commerce Committee has this kind of committee. Commerce—everybody says well, that must be you do the economy of the United States. Well, we do hundreds of huge things from oceans to skies to aviation, transportation, railroads, all kinds of things. But we've got to focus on this too and maybe this foremost.

So for the information of all Senators who were not here, but their staff might be. We'll leave the record open until the close of business on Friday, March 6, 2009, for any questions or statements.

In the meantime we're going to try and figure out how we can put a fire under the FTC and under the American people and maybe get some public service TV going. Everybody's going broke. Radios are going broke. TV is going broke. Everybody is going broke. It's a great world and that doesn't matter.

We have an obligation to the Mrs. Dixes, we flat out do. And we're not fulfilling it. We're not even noticing it. We're not even noticing it.

And I'm interested in these states. Maybe more of this should go to the states. The problem is a lot of states wouldn't care. They wouldn't do a thing.

Minnesota would. A lot of other states wouldn't. So anyway, on that tender note, this hearing is adjourned.

[Whereupon, at 12:10 p.m. the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. KAY BAILEY HUTCHISON, U.S. SENATOR FROM TEXAS

Thank you, Chairman Rockefeller, for holding this morning's hearing. The effects of the troubled economy are being felt nationwide with rising unemployment rates, a distressed housing market, and depleted retirement savings. We are witnessing a visible increase in the number of consumers who have mounting unpaid bills and they are losing their homes. This is alarming in and of itself, but more disconcerting is the fact that some individuals may use this opportunity for their own gain and prey on those in trouble.

Financial distress—especially the worry of losing a house—can lead to desperation and it is imperative that disreputable companies not be allowed to profit from the misfortune of others. There are a number of Federal laws aimed at protecting the public from dishonest conduct in the financial services industry and the FTC is tasked with the responsibility of stopping such practices when the need arises. Besides shutting down bad actors, it is essential that consumers be knowledgeable from the start so they can make responsible, educated financial decisions, and know what their options are if they ever find themselves in trouble. They should know how to reach trustworthy help and be aware of the warning signs of any fraudulent companies that may promise to help them.

I want to thank all of the witnesses for agreeing to be here today and I look forward to a constructive conversation.

MICHAEL C. DILLON,
Manchester, NH.

Hon. JAY ROCKEFELLER,
Chairman,
Commerce, Science, and Transportation Committee,
Washington, DC.

RE: "CONSUMER PROTECTION AND THE CREDIT CRISIS" FEBRUARY 26, 2009

Dear Mr. Chairman,

Admittedly, I am at somewhat of an advantage in that I have been able to study previous testimony and address it at my leisure but I feel that I need to rebut some of the Commissioner Harbour's testimony given during this hearing.

I am nothing more than a consumer living in New Hampshire. However, I am one of the 281,1000 Federal Trade Commission-certified victims of mortgage servicer Fairbanks Capital Corp. n/k/a Select Portfolio Servicing Inc. as certified for *USA* v. *Fairbanks* in 2003/2004. My personal experience with and observance of Federal Trade Commission actions differs from the portrait that Commissioner Harbour painted for you during her testimony.

It is my personal experience, and that of many, many other Fairbanks/SPS victims, that the Federal Trade Commission did little to originally protect homeowners victimized by Fairbanks/SPS *or* to enforce the terms of the settlement of *USA* v. *Fairbanks.* While the class action was settled back in 2004, I hear from Fairbanks/SPS victims attempting to save their homes from illegal foreclosures via my website, *GetDShirtz.com,* literally to this day. Some of these victims have been dealing with Fairbanks/SPS' illegal and fraudulent servicing actions for ten or more years. One disturbing complaint that I hear more often than I care to is that Fairbanks victims never received notification of the class action and therefore were unable to preserve their legal rights by opting out of it.

Despite the fact that this has been brought to the Federal Trade Commission's attention on more than one occasion, the FTC has taken no apparent action. In fact, the Federal Trade Commission has received more than 500 *pages* of complaints from consumers/Fairbanks victims post *USA* v. *Fairbanks* settlement and, to the best of my knowledge, has only taken action to modify the original settlement to the benefit

of Fairbanks/SPS in September 2007. To this day, *no* action has been taken by the Federal Trade Commission to enforce the original settlement terms or protect consumers/homeowners harmed by Fairbanks/SPS' actions.

The Federal Trade Commission has, in its possession, approximately 60–100 boxes of information and/or evidence that it has collected through its investigation of Fairbanks/SPS. Yet, when asked, it is the Commission's position to deny the very victims it portends to protect and the public in general access to the vast majority of this information despite the fact that this information may very well assist homeowners/victims to prove their own cases of illegal foreclosure brought by Fairbanks/SPS against them. Through a Freedom Of Information Act request I have been granted access to a supposed total of six of those boxes of information. Much of what I have been given is simply consumer complaints. The remainder of the information is largely media coverage of the investigation and several private actions filed by consumers that have been redacted to "protect" victims' identities. How the Federal Trade Commission can legally redact publicly filed court actions I am not sure. But the bottom line is that it has been my personal experience that the Federal Trade Commission is, in fact, *not* doing everything it can to protect consumers or help consumers protect themselves.

Commissioner Harbour stated that the Federal Trade Commission needed additional authority to bring actions against corporations for violations of The FTC Act, FDCPA, TILA, and the CRO Act. The fact is that the Commission already has this authority and has used it many times in the past against those corporations that choose to violate the acts. Unfortunately, for whatever reason, the Commission does not seem to want to enforce these laws and regulations to their fullest capacity. In 2008 the Commission waived all but $8,000.00 of a $1.2 million civil penalty levied against a mortgage XXX because of "the defendants inability to pay" the fine. This is an extremely disturbing trend that can be tracked via the Commission's own website at *www.ftc.gov*. A search of the phrase "defendants inability to pay" at the FTC site reveals approximately 280 instances where defendants have been given waivers of civil financial penalties because of the defendants inability to pay them. How could civil action from the Federal Trade Commission serve as any kind of deterrent of "bad acts" if corporations can expect to have the financial penalties waived by the Commission?

Commissioner Harbour cites *FTC* v. *EMC/Bear Stearns* as one of the Commission's "success stories" in informing consumers/victims of the Commissions actions. Based on my own limited knowledge of the case, combined with conversations that I have had and comments that I have read by EMC victims, *FTC* v. *EMC/Bear Stearns* should be considered an embarrassment to the Commission as opposed to anything even remotely resembling victory or evidence of the Commission's efficacy in protecting consumers. I say this because *FTC* v. *EMC/Bear* took place more than 4 years after the settlement of *USA* v. *Fairbanks*. If *USA* v. *Fairbanks* had been any kind of deterrent to the mortgage servicing industry, the Commission never should have had to bring charges against EMC/Bear Stearns to begin with. The fact of the matter is that *USA* v. *Fairbanks* was viewed by the servicing industry as nothing more than the cost of doing business in the United States. The lack of enforcement of the Fairbanks/SPS settlement did absolutely nothing to deter other servicers from committing virtually identical illegal practices in their own business models.

The Commission brought virtually identical charges in *FTC* v. *EMC/Bear* to those brought against Fairbanks/SPS. There may actually have been more charges brought in *FTC* v. *EMC/Bear* than were brought in *USA* v. *Fairbanks*. But, for some reason, the Federal Trade Commission chose to settle EMC/Bear for nearly *half* of the $40 million settlement obtained in *USA* v. *Fairbanks.* Additionally, EMC/Bear was settled before the actual number of victims involved in the case was even determined. The day after the EMC/Bear settlement was announced, I received a return telephone call from FTC Attorney Lucy Morris' office as I had inquired about the number of victims involved in EMC/Bear. I was told that that number had not been determined as of that time but the FTC was expecting "tens of thousands" of victims to be included in the action. How could the Commission accurately determine the amount of restitution and/or redress that needed to be extracted from EMC/Bear if the Commission had no idea how many victims were actually affected by EMC/Bears' illegal actions?

Commissioner Harbour cited the fact that the fact that the Commission used the redress checks from *FTC* v. *EMC/Bear* as a measure of "reaching out" to the 86,000 consumers eventually determined to be victims of EMC/Bear Stearns. There are several serious problems in utilizing this method of informing consumers/victims. I have personally heard from at least one EMC victim that, to this day, has not been notified of the action or received any kind of restitution. This despite EMC's attempt

to literally rewrite her chain of title at her county registry of deeds. This victim has provided evidence of this action taken by EMC to me so I do not state this in any kind of uninformed or speculative manner. If the Commission failed to inform one victim, how many others did the Commission miss?

Secondly, the 280,000 victims certified in *USA* v. *Fairbanks* were required to give up any legal rights to pursuer Fairbanks/SPS in any further legal action in order to obtain their redress/restitution. In providing restitution/redress checks to the 86,000 consumers that the Commission deemed to be victims of EMC/Bear were these victims required to do so as well? Was this properly explained to the 86,000 victims *before* they cashed their redress/restitution checks? Did the 86,000 victims fully understand the legal ramifications of accepting the redress/restitution checks? Did they, in fact, give up any legal rights in accepting those checks?

Most importantly, we are only now finding out the necessity to have servicers, note holders, trustees and others involved in bringing both judicial and non-judicial foreclosure actions prove that they have legal standing to bring those actions. It is becoming increasingly apparent that more and more original notes have been "lost" or are otherwise unable to be produced by the supposed owners and/or foreclosing entities. Such being the case, did the Commission due proper diligence in confirming that EMC/Bear had the proper legal standing to be servicing each of the 86,000 loans involved in *FTC* v. *EMC/Bear Stearns* or did the Commission *simply* assume that EMC/Bear had proper legal standing at the time of settlement?

Mr. Chairman, I am all for laws and regulations that protect consumers in any manner, shape and/or form. In my own humble opinion, there are already sufficient laws and regulations to protect consumers from the "bad actors" that Commissioner Harbour and the Federal Trade Commission supposedly prosecute. The problem lays in the *enforcement* —or more precisely the lack thereof—of these laws and regulations. To the best of my knowledge, the Federal Trade Commission is a *civil* enforcement entity. Herein lies the problem. Any "civil" penalty brought by the Commission has the potential to be waived if a corporation is determined "unable to pay" the penalty or any portion thereof. Even if a corporation is held to the full civil penalty imposed by the Commission, in many cases the penalty is so insignificant compared to the corporation's income that it is viewed as nothing more than the cost of doing business in the United States. In the years leading up to the Commission's investigation of Fairbanks, Fairbanks was reportedly making upwards of $100 million per month. A review of their financial records or The PMI Group's SEC filings may be able to confirm this. Fairbanks/SPS "voluntarily" settled *USA* v. *Fairbanks* for between $40 and $55 million. Of that amount, Fairbanks' majority shareholder, The PMI Group, guaranteed $35 million. The minority shareholder, Financial Security Assurance, provided an additional $10 million. Testimony was provided in *USA* v. *Fairbanks* stating that Fairbanks/SPS was in such poor financial condition that defense counsel, plaintiff counsel *and* the Commission expressed concern as to whether Fairbanks would survive beyond the class action. Yet, 6 months after the settlement was approved, Fairbanks/SPS was purchased by Credit Suisse and immediately obtained $6 Billion in servicing business. If a corporation cannot provide proper restitution as a result of a Federal Trade Commission investigation, settlement or verdict, why is that corporation given the opportunity to continue to do business via reduced fines or "waivers" of monetary penalties as opposed to being dissolved? Despite the Commission having the ability to seek additional restitution from defendants if/when their financial situations improve, the Commission does not always seek to do so, as in the case of *USA* v. *Fairbanks/SPS*.

As long as corporations have no fear of any *criminal* prosecution by the Federal Trade Commission or other enforcement body, these "penalties" levied by the Commission will be viewed as nothing more than the cost of doing business. It is also my opinion that, as long as the Federal Trade Commission is allowed to function in the manner in which it has for at least the last 10 years, consumers have no hope of being properly protected or compensated for the illegal acts perpetrated against them by corporate greed.

I would be more than happy to attempt to answer any questions that the Committee may have at any time.

Sincerely,

MICHAEL C. DILLON

FEDERAL TRADE COMMISSION
Washington, DC, March 23, 2009

Hon. JAY ROCKEFELLER,
Chairman,
Senate Committee on Commerce, Science, and Transportation,
Washington, DC.

Dear Chairman Rockefeller,

I am writing to follow-up on questions that were raised during the Federal Trade Commission's February 26, 2009 testimony regarding the credit crisis and consumer protection and questions for the record that were provided by Senator Warner and Senator Boxer. I welcome this opportunity to provide the information requested and also to provide some additional information about the FTC's consumer protection mission.

I. The Bureau of Consumer Protection

As you know, the Commission has two law enforcement missions: competition and consumer protection. On the consumer protection side, the FTC has 270 attorneys who are responsible for enforcing more than forty Federal consumer protection laws and regulations. In Fiscal Year 2008, the Commission filed 68 new consumer protection law enforcement actions in Federal district court, on issues ranging from the financial matters we discussed at the hearing, to telemarketing fraud and false advertising, data security and violations of the National Do Not Call registry. In 2008, Commission staff obtained orders providing monetary redress for consumers totaling $215 million, and obtained orders requiring an additional $14 million in payments to the U.S. Treasury for civil penalties and the disgorgement of ill-gotten gains. In 2008, the Commission's law enforcement actions stopped ongoing illegal conduct victimizing millions of consumers. In addition to litigating cases, attorneys in the Bureau of Consumer Protection are conducting numerous ongoing rulemakings, investigating and preparing significant reports, such as the 2008 study on food marketing to children and adolescents and reports on behavioral advertising and debt collection, providing guidance to industry to help them comply with the rules we enforce, engaging in outreach to stakeholders through workshops and seminars, and providing support to other law enforcement agencies, including criminal authorities.

Unlike other agencies that do not litigate their own cases, FTC staff are responsible for investigating and litigating almost all o f the consumer protection cases we bring. Investigating fraud cases can be quite challenging and resource-intensive, and FTC staff have developed the skills needed to track down recalcitrant defendants, unravel complex corporate webs, locate bank assets and other hidden funds, find witnesses, and develop a sufficient evidentiary record to allow us to convince a Federal court to issue injunctions to stop the fraud and ultimately redress consumers.

The consumer protection cases brought by the FTC often proceed to litigation, and substantial staff resources are dedicated to litigating these cases that do not settle. Indeed, at the moment, the Bureau of Consumer Protection is actively litigating approximately 55 cases. Many of these cases are complex litigations with sophisticated opposing counsel and require the agency to devote substantial resources to extensive discovery, motions practice and ultimately trials. To best leverage its limited resources, Commission staff work closely with other state, local, and international law enforcement agencies and we occasionally coordinate law enforcement sweeps with these other agencies. Additionally, Commission staff frequently work with criminal law enforcement agencies to encourage the criminal prosecution of crimes arising from acts investigated by the Commission.

II. Follow-up Requested at the Hearing

A. Is it advisable for the Federal Trade Commission to compile a list of bad actors so consumers know which companies to avoid?

It would be extremely difficult to compile and maintain an accurate and reliable nationwide list of bad actors. In the first instance, it would be difficult to create such a list, given the scope of the marketplace and the types of businesses under the FTC's jurisdiction. Any such list also would be out of date quite soon because bad actors committing fraud change their names and lines of business very quickly. In addition, there are legitimate companies that the FTC has charged with violating the law, and in some instances in very serious ways, but nevertheless they later change their business practices and comply with the law. Such a company could remain mistakenly on a "bad actors" list even after it has come into compliance.

The FTC does inform the public of companies and individuals who have been named as defendants in Commission law enforcement actions. The agency specifi-

cally publicizes and makes available on its website the names of companies and individuals that the Commission has named in its lawsuits. However, the agency only does so after it has developed evidence sufficient to provide at least reason to believe that they have violated the law. Consumers may consider this information in deciding whether to do business with a company or an individual.

Overall, however, the best strategy to warn consumers about bad actors is through consumer education about bad business practices. That is why the FTC's multi-media consumer education campaigns give consumers the tools and information they need so that they can independently assess each company's marketing practices, spot red flags, and stop before paying a had actor for any promised service that may not be provided.

B. Why doesn't the FTC engage in television public service advertising?

Commission staff have not found the production of video public service announcements (PSAs) for network or cable TV to be a cost-effective use of our limited budget. A study by the Kaiser Family Foundation, released in January 2008 (see *http://www.kff. org/entmedia/entmedia012408nr.cfm*), found that TV stations donate an average of 17 seconds per hour to public service advertising, and only 9 seconds per hour in prime time.

Much of that PSA time is given to messages produced by the networks themselves, on issues they choose. An example of this is the "The More You Know" campaign by NBC Universal. Nevertheless, many large-scale public education campaigns still include a TV PSA component, so there is intense competition to get PSAs on the air, even though available time slots are not ideal and are ad hoc.

The Commission has had success with other types of public service announcements. We have created PSAs to run in the classified advertising sections of newspapers and other print publications, and we have created PSAs for magazines on request. We also have produced PSAs for radio—both announcer copy and produced spots. We have anecdotal evidence that announcers read our public service copy and get it into their rotations—and that they download our produced spots from our website and use those as well. These radio spots often have led to news interviews with FTC staff attorneys. We have created videos for distribution on the web that local cable access shows have aired. Cable access stations are much more generous than networks at placing PSAs, but their viewership is relatively low. Some of the FTC's videos can be seen at *www.YouTube.com/FTCVideos.*

Video is, nonetheless, a critical component of most successful outreach efforts, and I believe that producing informational videos, posting them to the web, and releasing them to the press and to interested partner organizations is one of the most efficient and cost-effective ways for us to reach a wide audience. Our recent videos illustrate the power and reach of our efforts in this area: we released two videos telling people that *AnnualCreditReport.com* is the one authorized source for the free credit reports that the law entitles consumers. One week following the release of the videos, we have reports indicating they were the subject of almost 100 influential blogs as well as news stories in 37 markets. Many of the stories and posts included embedded videos, and all included a link to either *www.FTC.gov/freereports* or *www.YouTube.com/FTCVideos.* At this writing, the videos have logged some 40,000 views on the FTC's YouTube channel.

C. How does the FTC measure the effectiveness of its consumer education campaigns?

The FTC produces, promotes, and disseminates educational messages and materials to the widest possible audience through multi-faceted communications and outreach programs. These efforts involve the use of print, broadcast, and electronic media, the Internet, special events, and partnerships with other government agencies, consumer groups, trade organizations, businesses, and other organizations. We design our materials and campaigns to be relevant to the specific audiences most affected by the topic at hand.

Commission staff have developed creative and effective ways of reaching all types of consumers to arm them with the information they need. Indeed, the form in which the information is presented is important to consumer education campaigns and, therefore, the FTC uses a variety of products to educate consumers and businesses. For example, the FTC uses print materials, mini-CDs containing all of the FTC's credit materials, websites, videos, radio public service announcements, bookmarks, and signs on public transit vehicles.

The FTC uses a number of ways to measure the reach of various aspects of a consumer education campaign. For example, we track the distribution of printed publications—what publications are ordered, how many, and by what organizations. We also track visits to the websites we host that provide information online. In so doing, we are able to monitor the type of information that is of most interest to businesses

and consumers. The FTC also tracks media usage of its consumer education information, and we pay close attention to what consumers report to our counselors on our toll-free help line and to our website. This information is helpful in tracking trends in fraud and other consumer protection issues over time. In addition, the FTC has conducted two national telephone surveys about consumer experiences with fraud, and other quantitative and qualitative opinion research on specific consumer experiences.

However, the U.S. and global marketplaces are incredibly dynamic—with many factors at work—so it is difficult to attribute changes in behavior and awareness over time to a single factor, such as a specific consumer education campaign. Moreover, it is often unclear whether an increased number of consumer complaints reflects the fact that a practice is becoming more widespread or that consumers have an increased awareness about where they should report the unlawful practice. Although the FTC can monitor certain aspects related to its consumer education campaigns, such as the number of visitors to a "branded" website, the number of publications ordered, the partner organizations ordering information to disseminate on our behalf, or the media pick-up, it is difficult to extrapolate from those numbers the extent to which preventive efforts have been effective.

D. What specific outreach is the FTC doing regarding mortgage foreclosure rescue scams beyond online consumer education?

In February 2008, the FTC started to use a variety of methods to alert people to mortgage foreclosure rescue scams. Working with the media, Federal, state and local agencies, partner organizations and others—to help us extend our reach and get the biggest bang for our buck—the FTC produced and distributed public service announcements for print, online and radio; produced brochures that have been distributed by law enforcement partners, placed articles in community newspapers across the nation, encouraged Congressional staff to run the information in their own constituent newsletters; and participated in local law enforcement task forces. Indeed, FTC staff sent an article adapted from our consumer education materials to a national syndicated news service, which, in turn, sent it to more than 10,000 community newspapers. The English version of the article generated more than 1,000 placements in more than 30 states with a readership of more than 127 million. The Spanish version has generated more than 35 newspaper articles in 5 states with a readership of more than 2.6 million.

Educating consumers about these scams remains a high priority and we are working with coalitions of mortgage servicers and others active in the mortgage arena to do targeted foreclosure rescue scam prevention education throughout the Nation. Additionally, moving forward, our outreach plans on foreclosure rescue scams and loan modification scams include using public transportation systems to get out the HOPE Now telephone number and related websites, and producing videos for the Web and for use at events about foreclosure rescue and loan modification scams.

III. Question for the Record from Senator Warner

Question. A recent FTC report recommends that reforms to the Fair Debt Collection Practices Act are warranted with respect to "new and emerging technologies." Specifically, the report recommends that debt collectors be permitted to contact debtors by cell phone if they have prior consumer consent. However, I've heard about debt collectors using social networking websites such as Facebook and MySpace to contact and/or harass debtors. Other than the issue of contacting debtors by cell phone, what are the FTC's plans, if any, to protect debtors from overzealous debt collectors with respect to social networking websites and other "emerging" technologies?

Answer. In the FTC's Debt Collection Workshop Report, entitled "Collecting Consumer Debts: The Challenges of Change," the Commission stated that third party collectors ("debt collectors") generally should be permitted to use all communications technologies, including new and emerging technologies such as social networking sites, to contact consumers. The FTC emphasized however, that debt collectors who use such new technologies to contact consumers must not engage in unfair, deceptive, or abusive acts and practices in violation of the Fair Debt Collection Practices Act (FDCPA), and creditors collecting on their own debts must not engage in unfair or deceptive acts and practices in violation of Section 5 of the FTC Act.

While the FTC's report concluded that the FDCPA should be modernized to adapt to changes in new technology, current law clearly prohibits certain practices now. For example, a debt collector would violate the FDCPA if it posted information about a consumer's debt on the public portion of his or her page on a social networking site. Section 805(b) of the FDCPA generally prohibits collectors from revealing the existence of a debt to anyone other than the consumer, the consumer's

spouse, or the consumer's attorney. Section 806(3) of the FDCPA also generally prohibits collectors from publicizing lists of consumers who allegedly refuse to pay debts. A collector rho posts information about a consumer's debt on the public portion of his or her page on a social networking site likely would violate one or both of these FDCPA provisions.

The Commission intends to closely monitor the use of new technologies by debt collectors to make sure that they are complying with the law. With regard to social networking sites, in particular, the FTC has received very few complaints about collectors contacting consumers via social networking sites or posting information about consumers on these sites. State officials who enforce laws similar to the FDCPA likewise report an absence of debt collection complaints relating to social networking sites. Although there currently appear to be few consumer complaints about this topic, because communication through social networking sites is likely to continue to increase, the FTC will monitor this area to prevent collectors from violating the law in connection with using this method of communication to contact consumers.

IV. Questions for the Record from Senator Boxer

Question 1. Where does the FTC rank combating mortgage foreclosure scams on its priority list?

Answer. Combating mortgage foreclosure scams is a top priority. We have brought cases against mortgage foreclosure rescue scams targeted at homeowners facing foreclosure, and are now seeing companies make deceptive loan modification offers to borrowers who are not yet in foreclosure. We are devoting substantial resources to law enforcement and consumer education initiatives in this area.

Question 2. What are you seeing that is new with respect to mortgage scams?

Answer. With the advent of the array of Federal-sponsored or supported loan modification programs, marketers are now touting loan modification programs in addition to the prevalent foreclosure assistance scams. Some loan modification firms recruit unemployed mortgage brokers who know the mortgage market and can impress borrowers with their technical knowledge.

Question 3. Is additional legislation needed to address *mortgage fraud*?

Answer. The FTC has used its existing authority under Section 5 of the FTC to reach unfair or deceptive acts or practices in this area. The omnibus budget bill just passed by the Congress directs the Commission to initiate a rulemaking regarding mortgage loans. We anticipate using this new authority to address unfair or deceptive loan modification or foreclosure assistance practices, in addition to other practices related to mortgage loans.

Question 4. The State of California has taken steps to discourage *mortgage fraud* by working to prohibit mortgage brokers and real estate agents from collecting fees before rendering services. Would the FTC support this type of legislation?

Question 5. Have you found cases where attorneys are participating in *mortgage foreclosure rescue fraud*? Is there legitimate work being performed by either brokers or lawyers that would merit an advanced fee?

Answer. In response to questions 4 and 5, I agree that advance fees charged by companies purportedly offering mortgage loan modification or foreclosure assistance services are extremely problematic as many consumers report that, after paying the fee, the companies do little or nothing to help consumers as promised. However, we know that some state laws, such as California's law, exempt attorneys from coverage of the advance fee ban which has led to some companies either adopting "law firm" in their name or affiliating with a law firm or lawyers to take advantage of the exemption. We are discussing the effect of these state laws with state enforcers and are exploring uses of the FTC's existing authority to determine the best way to address this practice.

Question 6. Have you seen an increase in cases where homeowners who have not received Notices of Default are being targeted in *mortgage fraud*?

Answer. Yes, as discussed in response to Question 2, above, marketers are now touting loan modification services, particularly in light of both private and government-backed loan modification plans that are being widely publicized. Generally, based on our enforcement experience in mortgage foreclosure fraud, both homeowners in foreclosure as well as homeowners who were not in financial trouble have consistently been targeted.

Notices of Default bring up a troubling problem. Some states have an expedited non judicial foreclosure procedures (*e.g.* Georgia) such that, when homeowners receive notice of default, it is almost too late to do anything to save the mortgage other than pay the entire arrearage plus fees. Promises of foreclosure assistance in

those instances are particularly pernicious given that the chance of averting foreclosure is unlikely.

Conclusion

I appreciate this opportunity to respond to your questions in connection with the FTC's recent testimony. If you or your staff have additional questions or comments, please contact me or have your staff contact Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326–2946.

Sincerely,

PAMELA JONES HARBOUR,
Commissioner.

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