

**PREPARED STATEMENT OF
THE FEDERAL TRADE COMMISSION**

on

*“Proposed Consumer Financial Protection Agency:
Implications for Consumers and the Federal Trade Commission”*

Before the

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

**Washington, D.C.
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I. Introduction

Chairman Rush, Ranking Member Radanovich, and members of the Subcommittee, I am Jon Leibowitz, Chairman of the Federal Trade Commission (“FTC” or “Commission”).¹ I appreciate the opportunity to appear before you today to discuss consumer protection regulatory reform, including President Obama’s far-reaching proposal to enhance protection for consumers of financial products and services through the creation of a new Consumer Financial Protection Agency (“CFPA”).² The Commission agrees with the fundamental objective of the proposal: to improve the effectiveness of the current governmental system for protecting consumers of financial services. The Commission also appreciates the proposal’s recognition of the FTC’s role as the nation’s consumer protection agency, and agrees that the agency’s ability to protect consumers would be enhanced by the additional resources and authority recommended by the Administration. In this testimony, the Commission will provide a brief overview of its authority and activities with respect to financial services, a description of its priorities in this time of economic distress, and some preliminary comments on the impact on the Commission of the Administration’s proposed Consumer Financial Protection Agency Act of 2009.

¹ The views expressed in this statement represent the views of the Commission. Commissioner Kovacic dissents from Parts IV.C and IV.D of the testimony for reasons explained in notes 25 and 30. Commissioner Rosch did not participate in the vote because he does not endorse the proposal to establish a new consumer protection agency. My oral presentation and responses to any questions are my own and do not necessarily reflect the views of the Commission or any other Commissioner.

² See Proposed Consumer Financial Protection Agency Act of 2009 (“Proposed CFPA Act”) (June 29, 2009); U.S. Department of Treasury, Financial Regulatory Reform – A New Foundation: Rebuilding Financial Supervision and Regulation (June 2009) (“Financial Regulatory Reform Proposal”), *available at* www.financialstability.gov/docs/regs/FinalReport_web.pdf.

Obviously, as with any new proposal, some lines may need to be redrawn and some issues fleshed out, but we expect that any ambiguity in the proposal will be worked out in the legislative process. We discuss these issues in section V of our testimony. We look forward to working with Congress as this complex legislation is considered to ensure that consumers are best protected.

II. The FTC's Authority over Financial Services

The Commission can bring law enforcement actions to enforce Section 5 of the FTC Act, which prohibits unfair or deceptive acts or practices in or affecting commerce,³ and any rules that the Commission⁴ issues to implement the FTC Act.⁵ Section 5, however, exempts banks, savings and loan institutions, and certain credit unions from the Commission's jurisdiction. Thus, the Commission's jurisdiction reaches only non-bank entities, such as non-bank mortgage companies, mortgage brokers, and finance companies. The Commission supports taking steps to rationalize the jurisdiction over consumer protection of financial products and services.

The Commission also has responsibilities under other consumer protection statutes covering financial services, including the Truth in Lending Act ("TILA"), Consumer Leasing Act ("CLA"), Equal Credit Opportunity Act ("ECOA"), Electronic Funds Transfer Act ("EFTA"), Fair Debt Collection Practices Act ("FDCPA"), Credit Repair Organizations Act

³ 15 U.S.C. § 45(a).

⁴ Under the FTC Act, the Federal Reserve Board ("FRB"), Office of Thrift Supervision, and National Credit Union Administration have the authority to promulgate rules prohibiting unfair or deceptive practices engaged in by banks, thrifts, and federal credit unions, respectively. *See* 15 U.S.C. § 57a(f).

⁵ The FTC has issued two rules under the FTC Act covering unfair and deceptive acts and practices specifically related to financial services. *See* Holder in Due Course Rule, 16 C.F.R. pt. 433; Credit Practices Rule, 16 C.F.R. pt. 444.

(“CROA”), Gramm-Leach Bliley Act (“GLB Act”), and Fair Credit Reporting Act (“FCRA”). These statutes impose the same jurisdictional restrictions as the FTC Act; the Commission’s enforcement authority is limited to non-bank institutions.⁶

III. FTC Activities to Protect Consumers of Financial Services

Within the parameters of its authority, the Commission protects consumers at every stage of the credit life-cycle: from the unfair or deceptive practices of brokers, lenders, and others who advertise and offer credit; to the unlawful conduct of creditors and mortgage servicers who collect payments from consumers; to the violations of debt collectors, credit repair companies, debt relief firms, and mortgage loan modification and foreclosure scam artists, who prey on consumers who are delinquent or in default on their debts. In its consumer protection work, the Commission uses four primary tools: law enforcement, rulemaking, consumer education, and research and policy development.

A. Law Enforcement

The FTC is primarily a law enforcement agency. In recent months, the Commission has focused heavily on cases against those who seek to prey on consumers in financial distress, such as opportunistic scam artists who offer purported mortgage loan modification and foreclosure rescue services, debt relief services, credit repair, and advance fee loans. The Commission can

⁶ Most of these statutes grant rulemaking authority; in most cases to the FRB. The FTC has rulemaking authority for financial services under the FTC Act, for certain specified purposes under the FCRA and GLB Act, and with respect to mortgage loans under the Omnibus Appropriations Act of 2009, as amended. The FTC recently issued a report recommending that Congress grant it rulemaking authority under the FDCPA. *See* Federal Trade Commission, *Collecting Consumer Debts: The Challenges of Change, A Workshop Report* (Feb. 2009) (“Collecting Consumer Debts”), available at www.ftc.gov/bcp/workshops/debtcollection/dcwr.pdf. Generally, the FTC can enforce rules promulgated by the Federal Reserve Board under the consumer financial statutes as to entities within its jurisdiction.

act quickly to stop such unlawful conduct through injunctive relief and can obtain monetary relief, including consumer redress and disgorgement of ill-gotten gains.⁷

With the current high levels of mortgage delinquencies and foreclosures, the FTC has stepped up its efforts to protect consumers from mortgage modification and foreclosure rescue scams. In many of these schemes, the firms promise that, in exchange for an up-front fee, they will obtain a loan modification or prevent foreclosure, but in fact do little or nothing. Some of the firms use copycat names or look-alike websites to falsely suggest that they are affiliated with a nonprofit or government program.⁸ In a little over a year, the FTC has brought 15 cases targeting these types of mortgage frauds⁹ and is engaged in additional non-public investigations of others who offer similar services. In the last ten years, the commission has obtained nearly half a billion dollars in redress for consumers of financial services. In the last five years, the Commission has filed over 100 actions against providers of financial services, with 14 of these actions being filed since we testified in March before this Subcommittee.

Consumers facing credit card and other debts they cannot afford often turn to providers of debt settlement or other types of debt relief services. Many of these are legitimate, nonprofit counselors who provide a genuine benefit to consumers. All too often, however, fraudsters falsely promise that they can renegotiate, reduce, or even eliminate debt. The FTC has brought a

⁷ 15 U.S.C. § 57b.

⁸ See, e.g., *FTC v. Thomas Ryan*, Civil No. 1:09-00535 (HHK) (D.D.C. filed March 25, 2009).

⁹ See, e.g., *FTC v. Freedom Foreclosure Prevention Svcs., LLC*, No. CV-09-1167-PHX-FJM (D. Ariz. filed June 1, 2009); *FTC v. Data Medical Capital, Inc.*, No. SA-CV99-1266AHS (C.D. Cal. filed May 27, 2009); *FTC v. Dinamica Financiera LLC*, No. CV09-3554MMM (C.D. Cal. filed May 19, 2009); *FTC v. Cantkier*, No. CV-09-894 (D.D.C. filed May 14, 2009).

number of lawsuits against for-profit debt relief companies.¹⁰ In some of these cases, the company allegedly deceived consumers into paying large up-front fees for services that were never provided, falsely promised consumers that not paying their creditors would not hurt their credit ratings, or falsely promised that purchasing services from the companies would stop debt collectors from calling.¹¹

Two other types of financial services fraud that increase in times of economic hardship are credit repair and advance fee loan scams. With the economic downturn and corresponding increases in consumer delinquencies, defaults, and bankruptcies, many consumers are facing the prospect of damaged credit ratings, making it even more difficult for them to obtain credit, insurance, or employment, or to rent a home. Fraudulent “credit repair” companies falsely promise, in exchange for a fee, to remove negative but accurate information from consumers’ credit reports. In the last five years, the FTC has brought more than 17 cases against such companies. For example, in October 2008, the Commission coordinated a law enforcement sweep that included ten FTC actions and 26 state actions against credit repair operations.¹²

¹⁰ See, e.g., *FTC v. Edge Solutions, Inc. of New York*, No. CV-07-4087-JG-AKT (E.D.N.Y. Aug. 7, 2008) (stipulated order and judgment for permanent injunction).

¹¹ The FTC recently filed an action with similar allegations against a provider of debt relief services, and the court granted the agency’s motion for a temporary restraining order and asset freeze against the defendants. *FTC v. MCS Programs, LLC*, No. 09-CV-5380 (W.D. Wash. 2009) (complaint filed). See Press Release, FTC Cracks Down on Scammers Trying to Take Advantage of the Economic Downturn: New Public Education Video Helps Consumers Steer Clear of Business Opportunity Fraud (July 1, 2009), available at www.ftc.gov/opa/2009/07/shortchange.shtm.

¹² See Press Release, Federal Trade Commission, FTC’s Operation “Clean Sweep” Targets “Credit Repair” Companies (Oct. 23, 2008), available at www.ftc.gov/opa/2008/10/cleansweep.htm.

Similarly, when consumers find it difficult to obtain credit from legitimate sources, they are susceptible to pitches from those who promise to find credit (*e.g.*, credit cards or unsecured loans) for them. In the last five years, the FTC has brought more than 15 cases against marketers who promised credit in exchange for the payment of an advance fee, but failed to deliver the credit as promised.¹³

B. Rulemaking

The Commission recently has increased its use of rulemaking to protect consumers of financial services. In March of this year, through the Omnibus Appropriations Act of 2009,¹⁴ Congress gave the Commission the authority to promulgate rules “with respect to mortgage loans” using Administrative Procedure Act (APA) “notice and comment” rulemaking procedures. On June 1, 2009, the Commission used this authority, as clarified by the Credit CARD Act of 2009,¹⁵ to commence a two-part rulemaking proceeding on mortgage loans.¹⁶ One part of the rulemaking concerns practices occurring throughout the life cycle of a mortgage loan, including mortgage advertising, origination, appraisal, and servicing activities.¹⁷ The other is

¹³ The FTC’s Telemarketing Sales Rule (“TSR”) prohibits telemarketers from requesting or receiving payment of any advance fee for credit, if they have represented a high likelihood of success in obtaining or arranging the extension of credit. 16 C.F.R. § 310.4(a)(4).

¹⁴ Omnibus Appropriations Act of 2009, Pub. L. No. 111-8, § 626, 123 Stat. 524 (Mar. 11, 2009).

¹⁵ Credit CARD Act of 2009, Pub. L. No. 111-24, § 511(a)(1)&(2), 123 Stat. 1734 (May 22, 2009).

¹⁶ 74 Fed. Reg. 26,118 (June 1, 2009); 74 Fed. Reg. 26,130 (June 1, 2009).

¹⁷ The Commission has played a leading role in taking law enforcement action against mortgage servicers who engage in unfair or deceptive acts and practices. For example, in *FTC v. EMC Mortgage Corp.*, 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

related to mortgage modification and foreclosure rescue services, a current focus of FTC law enforcement activity, as discussed above.

The Commission also has promulgated rules to protect consumers of financial services under the GLB Act and the FACT Act amendments to the Fair Credit Reporting Act. For example, the Commission and the federal banking agencies recently announced rules and guidelines expanding the obligations of the entities that furnish information to consumer reporting agencies.¹⁸ These entities are most commonly providers of financial services. These rules and guidelines will make the furnished information more accurate and will enhance consumers' ability to dispute inaccurate information. In addition, the FTC and several other federal agencies have issued rules under the GLB Act to require financial institutions to disclose their privacy practices to consumers and to safeguard their customers' personally identifiable information. The agencies will shortly be issuing a consumer-friendly model privacy notice that financial institutions can use to provide privacy notices to their customers.

C. Consumer Education

Complementing its rulemaking and law enforcement activities, the Commission educates consumers to help them manage their financial resources, avoid fraud, and be aware of emerging scams. For example, the FTC recently has undertaken a major consumer education initiative

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. *FTC v. EMC Mortgage Corp.*, No. 4:08-cv-338 (E.D. Tex. Sept. 9, 2008).

¹⁸ Procedures To Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies Under Section 312 of the Fair and Accurate Credit Transactions Act; Final Rule; Guidelines for Furnishers of Information to Consumer Reporting Agencies; Proposed Rule, 74 Fed. Reg. 31,484 (July 1, 2009).

related to mortgage loan modification and foreclosure rescue scams, including the release of a suite of mortgage-related resources for homeowners in distress, which are featured on a new web page at www.ftc.gov/MoneyMatters. Consumer groups and nonprofit organizations are distributing FTC materials directly to homeowners, while some mortgage servicers are communicating the information on their websites, with their billing statements, and on the telephone. This month, the FTC will work with community organizations, state attorneys general, and other partners to distribute copies of a new video featuring the stories of real people who are working with legitimate housing counselors to save their homes.

D. Research and Policy Development

Markets for financial services are complex and dynamic. To remain an effective protector of and advocate for consumers of financial services, the FTC continually increases its knowledge of evolving practices and modifies its approaches as needed.

Among other priorities, in its policy work relating to financial services, the Commission has taken the lead in developing and testing disclosures (especially mortgage disclosures). In 2007, the FTC's Bureau of Economics published a seminal report concluding, based on extensive consumer research and testing, that current mortgage disclosure requirements are ineffective and should be revised and that a new FTC prototype disclosure was more effective than the disclosures used in the industry pursuant to current law.¹⁹

¹⁹ 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 www.ftc.gov/os/2007/06/P025505mortgagedisclosurereport.pdf. Following up on this report, in 2008 the FTC's Bureau of Economics convened a conference to review empirical research on consumer use and understanding of financial disclosures. See Federal Trade Commission, "May 15, 2008 Mortgage Disclosure Conference," available at www.ftc.gov/opa/2008/05/mortgage.shtm.

In addition to conducting empirical research, the Commission engages in other efforts to identify and promote effective financial services policies. For example, in February 2009, the FTC issued a report recommending changes in the law to reform and modernize the debt collection regulatory system.²⁰ In addition, in September 2008, the Commission held a public workshop to examine consumer protection problems related to debt relief services and consider the most effective public policy responses to these problems.

IV. Enhanced FTC Consumer Protection Tools

The Administration's proposal recognizes the value of the FTC's consumer protection efforts and includes recommendations that would give the FTC enhanced tools to make the agency even more effective. As President Obama noted at his announcement of a proposed CFPA, "There are other agencies, like the Federal Trade Commission, charged with protecting consumers, and we must ensure that those agencies have the resources and the state-of-the-art tools to stop unfair and deceptive practices as well."

A. Resources

The proposal broadly calls for the FTC to be given "the tools and human, financial, and technical resources it needs to do its job effectively by substantially increasing its capacity to protect consumers in all areas of commerce that remain under its authority."²¹ The FTC agrees

²⁰ Collecting Consumer Debts, *supra* n. 6. Following up on issues raised in the report, the FTC and the Searle Center on Law, Regulation, and Economic Growth at Northwestern University School of Law also will hold a roundtable in August 2009 to consider debt collection litigation and arbitration issues.

²¹ Financial Regulatory Reform Proposal, *supra* n. 2, at 63.

that more resources would enable it to address the broad range of current and future consumer protection issues more effectively.²²

B. Aiding and Abetting Authority

The proposal authorizes the Commission to take action against those who assist others in engaging in unfair or deceptive acts or practices. Specifically, the proposal would allow the FTC to bring an action against one who “knowingly or recklessly ...provide[s] substantial assistance to another.”²³ Effective law enforcement often requires reaching not only those who engage in unfair or deceptive practices, but also those who support and enable them to violate the law. Having such authority would make the FTC much more effective as a law enforcement agency.²⁴

²² See Prepared Statement of the Federal Trade Commission on Leveraging FTC Resources to Protect Consumers of Financial Services and Promote Competition before the House Committee on Appropriations Subcommittee on Financial Services and General Government, Mar. 31, 2009, *available at* www.ftc.gov/os/2009/03/P064814financialservices.pdf.

²³ Proposed CFPA Act, *supra* n. 2, § 1101(c).

²⁴ See Prepared Statement of the Federal Trade Commission on the Commission's Work to Protect Consumers and to Promote Competition, and on a Bill to Reauthorize the Commission before the Senate Committee on Commerce, Science, and Transportation, Apr. 8, 2008 (“FTC Reauthorization Testimony”), *available at* www.ftc.gov/os/testimony/P034101reauth.pdf.

C. APA Rulemaking Authority²⁵

In addition, the proposal streamlines and expedites the FTC's rulemaking process. Earlier this year, the Commission recommended before this Subcommittee that the FTC be given the authority to use APA notice and comment procedures to promulgate rules addressing unfair and deceptive practices related to financial services,²⁶ because the existing rulemaking procedures in Section 18 of the FTC Act are cumbersome and time-consuming. Subsequently, Chairman Rush proposed, and this Subcommittee approved, the Consumer Credit and Debt Protection Act ("CCDPA"), which would grant that power to the Commission.²⁷ The Commission appreciates the Chairman's and the Subcommittee's efforts to provide the Commission with the tools it needs.

²⁵ Commissioner Kovacic dissents from the Commission's endorsement of authority to use, for promulgating all rules respecting unfair or deceptive acts or practices under the Federal Trade Commission Act, the notice and comment procedures of the Administrative Procedure Act. While other agencies have the authority to issue significant rules following notice and comment procedures, the Commission's rulemaking authority is unique in its range of subject matter (unfair or deceptive acts or practices) and sectors (reaching across the economy, except for specific, albeit significant, carve-outs). Except where Congress has given the Commission a more focused mandate to address particular problems, beyond the FTC Act's broad prohibition of unfair or deceptive acts or practices, Commissioner Kovacic believes it prudent to retain procedures beyond those encompassed in the APA. However, he would be willing to consider whether all the procedures currently required to issue, repeal, or amend these rules are necessary.

²⁶ See Prepared Statement of the Federal Trade Commission on Consumer Credit and Debt: The Role of the Federal Trade Commission in Protecting the Public before the House Committee on Energy and Commerce Subcommittee on Commerce, Trade, and Consumer Protection, Mar. 24, 2009 ("FTC Role Testimony"), available at www.ftc.gov/os/2009/03/P064814consumercreditdebt.pdf.

²⁷ See The Consumer Credit and Debt Protection Act, H.R. 2309, 111th Cong. § 2 (2009); Prepared Statement of the Federal Trade Commission on H.R. 2309, the Consumer Credit and Debt Protection Act before the House Committee on Energy and Commerce Subcommittee on Commerce, Trade, and Consumer Protection, May 12, 2009, available at www.ftc.gov/2009/05/P064814debtproact.pdf.

The Administration's proposal would give the FTC APA rulemaking authority under the FTC Act.²⁸ In such a rulemaking, the Commission will consider the views of stakeholders and the likely effects of a proposed rule on consumers and competition.²⁹ Giving the Commission APA rulemaking authority would strengthen its ability to address widespread problems more quickly.

D. Enforcement Remedies³⁰

The proposal also gives the FTC enhanced law enforcement remedies. The Commission recently recommended before this Subcommittee that the FTC be given civil penalty authority for rules it promulgates addressing unfair and deceptive practices related to financial services.³¹

²⁸ Proposed CFPA Act, *supra* n. 2, § 1101(d); Financial Regulatory Reform Proposal, *supra* n. 2, at 63.

²⁹ As demonstrated by the FTC's recent commencement of the mortgage lending rulemaking discussed above, the agency would use such authority to move quickly to address pressing consumer protection problems.

³⁰ Commissioner Kovacic dissents from the Commission's endorsement of across-the-board civil penalty authority. The existing consequences attendant to a finding that an act or practice is unfair or deceptive under the FTC Act include an administrative order (whose violation would then subject the respondent to civil penalties) or a court-issued injunction (which can contain such equitable remedies as redress and disgorgement). In his view, these are generally appropriate remedies, and they are consistent with the goal of developing FTC law to develop new doctrine and to reach new and emerging problems. The routine availability of civil penalties, even if subject to a scienter requirement, would in his view risk constraining the development of doctrine, much as judicial concerns about the availability of private litigation with mandatory treble damages appear to be constraining the development of antitrust doctrine. *See, e.g., Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 558-59 (2007). Commissioner Kovacic would prefer that Congress grant more targeted authority to seek civil penalties, particularly in matters, like data security breaches, malware, and pretexting, where existing remedies are likely to be inadequate. *See* FTC Reauthorization Testimony, *supra* n. 24, at 10-12.

³¹ *See* FTC Role Testimony, *supra* n. 25.

As noted above, the Subcommittee approved the CCDPA,³² which would grant that authority to the Commission. Again, the Commission appreciates the Subcommittee's efforts.

The Administration's proposal would give the FTC civil penalty authority for any violations of Section 5 of the FTC Act.³³ The Commission believes that this new power would increase deterrence of would-be violators and help protect consumers more effectively,³⁴ particularly in areas such as data security and spyware.³⁵

Although the proposal does not include a provision to give the FTC independent litigating authority when it seeks civil penalties, the FTC has previously testified³⁶ about the benefits of being able to file cases in its own name rather than first presenting them to the Department of Justice ("DOJ") so that it can decide whether to file an action.³⁷ This authority

³² See *supra* note 26.

³³ Proposed CFPA Act, *supra* n. 2, § 1101(b); Financial Regulatory Reform Proposal, *supra* n. 2, at 63.

³⁴ The Commission has supported this position at times in the past. On February 4, 1970, FTC Chairman Caspar Weinberger testified before Congress on behalf of the Commission in favor of allowing the FTC to assess civil penalties administratively against respondents who knowingly committed consumer protection violations. See *Hearings on H.R. 14931 and Related Bills before the Subcomm. on Commerce and Finance of the H. Comm. on Interstate and Foreign Commerce*, 91st Cong. 53, 54 (1970) (statement of FTC Chairman Caspar Weinberger). The Senate passed legislation to permit the FTC to seek civil penalties for such violations in federal court proceedings, but the provision was dropped in conference.

³⁵ See FTC Reauthorization Testimony, *supra* n. 24.

³⁶ See *id.*

³⁷ Currently, if DOJ declines to file the case in the name of the United States or otherwise fails to act within 45 days on a referral from the FTC, 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

would allow the Commission – the agency with the greatest expertise in enforcing the FTC Act – to bring cases more efficiently while retaining the option of referring appropriate matters to the DOJ. The Commission therefore believes that the FTC Act 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.

V. Future of the FTC and Consumer Protection in Financial Services

The Administration’s proposal would fundamentally reform the way in which the government helps protect consumers of financial services. The proposal and related recently-released proposed legislative language are comprehensive and complex. The Commission is carefully evaluating the proposal, including its implications for the FTC’s consumer protection mission. This section is not intended to serve as a comprehensive analysis of how the proposal would affect the Commission, but rather comments on a few of the provisions.

Under the proposal, the CFPA would have “consolidated authority over the closely related functions of writing rules, supervising and examining institutions’ compliance, and administratively enforcing violations”³⁸ of a number of laws relating to financial services. In addition, the CFPA would “play a leading role in efforts to educate consumers about financial matters” as well as “streamline existing financial literacy and education initiatives

penalty settlement to be filed in federal court.

³⁸ Financial Regulatory Reform Proposal, *supra* n. 2, at 56.

government-wide.”³⁹ The CFPA’s responsibilities further would include research and policy development, including undertaking an empirically-based reform of mortgage disclosure requirements.⁴⁰

Many of the rulemaking, enforcement, education, and research functions of the CFPA are functions that the FTC currently performs with respect to entities under its jurisdiction. The proposal is designed to consolidate these responsibilities – which currently are divided amongst a number of different agencies, depending on the nature of the financial institution – within a single regulatory body.⁴¹

The Administration’s proposal would provide the CFPA with exclusive authority to issue rules respecting financial consumer products and services. To the extent the FTC currently has rulemaking authority respecting financial consumer products and services, this approach would supersede that authority. Thus, all of the FTC’s existing authority to promulgate financial services-related rules under the FTC Act, the Omnibus Appropriations Act of 2009 (with respect to mortgage loans), the privacy provisions of the GLB Act, and certain provisions of the FCRA would be transferred to the CFPA.⁴²

Under the Administration’s proposal, the FTC would apparently retain a law enforcement role in the financial services area. The CFPA would have primary authority to enforce the

³⁹ *Id.* at 62.

⁴⁰ *See id.* at 62-63.

⁴¹ *See id.* at 56.

⁴² *See* Financial Regulatory Reform Proposal, *supra* n. 2, at 58-59, 63. The proposal also would give the CFPA the sole authority to promulgate rules to implement the TILA, CLA, ECOA, EFTA, and FDCPA – authority that the FTC currently lacks.

consumer protection laws covering financial services that are currently enforced by the FTC. The FTC would retain back-up authority, however.⁴³

In beginning to assess the implications of the Administration’s proposal, the Commission has identified some key issues that warrant consideration, discussion, clarification, and refinement. First, the Commission notes that many of the definitions of key terms (such as “credit” and “financial activity”) in the proposal appear to be very broad. To the extent these definitions dictate which FTC functions would be transferred to the CFPA, their breadth could limit the ability of the FTC to protect consumers outside the context of traditional financial services.⁴⁴

Second, the FTC also is reviewing the proposal to determine whether the structure of law enforcement cooperation is as efficient as it could be. For instance, section 1022(e) requires the FTC to refer an enforcement recommendation to the CFPA and wait up to 120 days for the CFPA to determine whether to bring its own enforcement action, before the FTC can proceed. The FTC is evaluating the practical effects on our law enforcement efforts of waiting up to 120 days for a CFPA determination. For example, such a delay may raise concerns in cases involving fraud, where time is of the essence. In addition, the Commission is evaluating the

⁴³ See Financial Regulatory Reform Proposal, *supra* n. 2, at 63.

⁴⁴ For example, the definition of “financial activity” includes companies, such as financial data processors, that may work in tandem with fraudulent telemarketers. See Proposed CFPA Act, *supra* n. 2, § 1002(18). If the FTC finds that a telemarketer making illegal and pervasive robocalls to consumers on the Do Not Call Registry has hired a firm to assist it in processing payments, it is critical that, when the FTC brings an action against the telemarketer, it is also able to proceed against the processor. Do Not Call enforcement could be significantly hampered if, every time the FTC wants to investigate or bring an action against a telemarketer even of nonfinancial products or services, it needs to go through the coordination process with the CFPA.

relation of the referral provision to section 1101(a), which allows the two agencies to develop an appropriate system of coordinated enforcement.

The Commission believes that the goal of improving the overall regulatory, supervisory, and enforcement system for protecting consumers of financial services is a worthy one. It will be critical, however, that the agency or agencies charged with financial consumer protection act vigorously and effectively to protect consumers. In particular, if legislation creating an agency such as the CFPB is enacted, care must be taken to ensure that such consumers are protected during the establishment, transition, and early phases of the new agency. The Commission will continue to review the proposal with that consideration in mind, and will express its views as necessary to ensure that consumers are treated fairly and honestly when they purchase financial products or services. The Commission is committed to working with the Congress in the coming days on these and other issues to ensure that consumers of financial services have the best protection possible.

VI. Conclusion

The FTC appreciates the opportunity to update the Subcommittee on its activities and offer preliminary comments on the Administration's proposal for financial services reform. The Commission looks forward to working with the Subcommittee on legislation to implement the proposal to ensure that it provides appropriate protection for consumers of financial services. While the new proposal for financial regulatory reform is being considered, the Commission will continue to vigorously enforce consumer protection laws under its current authority and will welcome any new authority it receives should the CCDPA be enacted.