Address by Commissioner Edith Ramirez
Women in Housing & Finance
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Last Dollar Fraud:
The FTC's Response to the Foreclosure Crisis

Good afternoon. It's a pleasure to be here and have this opportunity to speak to you discussion of how I expect the FTC will coordinate its work with the newest cop on the beat, the Consumer Financial Protection Bureau.[1]

FTC Regulatory Regime

At the outset, I'd like to take a moment to describe the FTC's consumer protection authority with respect to mortgages. Of the various federal agencies that have authority over the financial services industry, the FTC is unique. We are primarily a law enforcement agency, rather than a regulator. In fact, we have exceedingly little rulemaking power in this area. And we don't supervise any financial institutions.

The heart of our authority is Section 5 of

Mortgage Advertising

I also want to emphasize that our consumer protection work extends to the full lifecycle of a mortgage, from the moment consumers first see an advertisement for a mortgage to their dealings with their mortgage servicer. Before turning to the specifics of foreclosure crisis, I want to address our work in connection with several of the early stages of that lifecycle: mortgage advertising, mortgage disclosures, and fair lending.

disclosures. The study, not surprisingly, found that mortgage disclosure forms fail to convey key mortgage costs and terms to many consumers. And, having recently refinanced my own mortgage, I confess that I am one of those consumers who found the disclosures provided to be thoroughly confusing. Not even my law degree was enough to help me make sense of the ambiguous and sometimes conflicting documentation. I had to ask so many questions — many of which the bank representatives themselves could not answer — that, by the time all of the documents had been signed, the bank was completely fed up with me. If my rate hadn't already been locked in, they no doubt would have added several basis points to my loan because I was such a difficult customer. In short, there is no question that change is needed in this area.

The FTC study tested prototype disclosures, and concluded that better disclosures can be created to help consumers understand the costs and terms of mortgages and enable them to make more informed decisions about mortgage products. Elizabeth Warren has made clear that one of the CFPB's highest priorities will be simplifying mortgage disclosures, and I'm pleased that FTC staff has been coordinating with the Department of the Treasury, HUD, and the Fed on this issue.

<u>Fair Lending</u>

Once a consumer begins working with a mortgage lender, the question of what terms the borrower receives comes front and center. And this brings me to fair lending. The Commission is one of the federal agencies that enforces ECOA's prohibitions on discrimination against applicants for credit on the basis of race, color, religion, national origin, sex, marital status, age, or other factors.

Just a few months ago, the Commission settled a disparate impact case against a company called Golden Empire Mortgage. We alleged that Golden Empire charged Latino borrowers officers wide discretion to charge some borrowers "overages" through higher interest rates and higher up-front charges and then paid them a percentage of the overages as a commission. This practice resulted in Latino consumers being charged higher overages than other borrowers. The price disparities were substantial and could not be explained by factors relating to underwriting risk or any other legitimate business reason. As part of the settlement, the company agreed to pay $1.5 million to provide redress to consumers who were harmed by the discriminatory pricing practice. It also agreed to limit its discretionary pricing policies and implement a fair lending monitoring program.

Mortgage Servicing

I'd like to turn now to mortgage servicing. After consumers purchase a home, their mortgage servicers become their day-to-day contact. Consumers can choose their mortgage lender, but have no say in who purchases and services their loan. This captive relationship leaves consumers vulnerable to abuse. For this reason, since 2003, the FTC has taken a leading role in protecting consumers against deceptive and unfair mortgage servicing practices, especially in the subprime area.

Most recently, in June of this year, the FTC announced an action against the country's largest mortgage servicer: Countrywide Home Loans and BAC Home Loans, both wholly-owned subsidiaries of Bank of America, which acquired Countrywide in 2008.

Countrywide, of course, is notorious for its role as a subprime lender during the housing boom. Countrywide profited from making risky loans during the boom years, and then, as a servicer, profited again when the loans failed. It did this through what it touted to Wall Street as a "counter-cyclical diversification strategy," but what we at the FTC called an unlawful scheme.

This scheme had two components. First, Countrywide substantially overcharged homeowners who were behind on their mortgage payments for default-related services, such as property inspections, title reports, or maintenance work. Many servicers provide these services

credit reporting agencies. Together, the companies have paid $68 million for consumer refunds. And they have also agreed to broad injunctions that bar them from making inaccurate or unsubstantiated claims about what borrowers owe or initiating foreclosure actions without verifying that the homeowner is in default.

EMC and *Fairbanks* stand for the proposition that consumers have a right to accuracy from their mortgage servicer and a right not to be charged unauthorized fees. The *Countrywide* case goes a step further. *Countrywide* makes clear that servicers can't charge exorbitant fees beyond the actual cost of the services provided, a limitation that is necessary given the captive relationship between borrowers and servicers.

As I also noted, these three FTC orders bar all the mortgage servicers from initiating foreclosure actions without reviewing records that show the borrower is in default. I emphasize this in light of the robo-signing scandal that's recently come to light. This very serious issue is now commanding the attention of the FTC and many other law enforcers and regulators. For our part, we're monitoring the mortgage servicers already under court order to ensure they are complying with the orders and also conducting reviews of other servicers to ensure they are not violating laws enforced by the FTC. We are also working with other federal agencies, such as Treasury, HUD, and the banking agencies, as well as several state law enforcers, to address this issue. Overall, the federal government's response is being coordinated through the Financial Fraud Enforcement Task Force, led by DOJ.

Mortgage Modification and Foreclosure Rescue Fraud

While our mortgage servicing cases involve large, established companies, the next set of enforcement actions I would like to discuss involves small, fly-by-night companies that are often run by career fraudsters.

For these scammers, others' economic distress is an economic opportunity. The large numbers of consumers who are struggling to pay their mortgages are their latest prey.

Perhaps you've seen their ads, which have run heavily in mass media and on the Internet. These companies try to link themselves to government programs like Making Home Affordable. They tell consumers that they may qualify to refinance their mortgage and urge them to call supposed "foreclosure experts." Consumers who answer these ads are told that, in exchange for up-front fees of thousands of dollars, the companies will get a loan modification or prevent it requires companies to tell consumers what their services will cost and that they aren't affiliated with the government. This new rule provides a powerful new tool that the FTC and the states will be able to use effectively to combat existing and emerging types of mortgage relief fraud.

Consumer Financial Protection Bureau

Finally, I would like to briefly discuss the CFPB and how I anticipate the new agency will work with the FTC to protect consumers. When the topic of the CFPB comes up, the question I am asked most often is whether the FTC will continue to play a key role in the financial arena now that there is a new agency. I think it absolutely will.

In fact, I am confident that the two agencies will have a very productive relationship. FTC officials and the CFPB team at Treasury are already coordinating. A former top FTC staffer has joined Treasury to work on the CFPB implementation team, and we've also loaned two of our star attorneys to the effort.

The FTC has a strong track record of working effectively with other agencies. That is true, for example, with the advertising of food and dietary supplements, where we share authority with the Department of Health and Human Services; with telemarketing, where we have overlapping authority with the FCC; and, of course, with state attorneys general, with whom we share authority in connection with just about everything the FTC does. I expect that these relationships will serve as a model for our collaboration with the CFPB.

To be sure, the FTC is losing some of its rulemaking authority under certain of the Dodd-Frank "enumerated statutes." But the FTC has always fundamentally been a law enforcement

By next January, the two agencies must finalize an MOU concerning our shared law enforcement authority. The FTC has deep expertise in a range consumer protection issues in the non-bank arena, such as debt collection, the FCRA, mortgage servicing, disclosures, and advertising, as well as privacy and data security. I expect that the FTC will continue to use its expertise in these areas and remain an aggressive law enforcer.

In fact, I expect that the CFPB will very much want the FTC to continue its vigorous law enforcement work in the financial services realm. The reality is that the CFPB will have its hands full for at least a few years dealing with a host of congressionally-mandated rulemakings and studies, not to mention the gargantuan task of assembling a full staff and getting a federal agency off the ground. I anticipate that the CFPB will welcome the FTC's continued vigilance with respect to the kinds of last dollar fraud that we have been focusing on during the economic downturn, and which will remain a top priority for the fore pria7.4(b)uouaTJ 16S.aTJ 16cer.