

PREPARED STATEMENT OF  
THE FEDERAL TRADE COMMISSION

on

HOME MORTGAGE DISCLOSURE ACT DATA AND  
FTC LENDING ENFORCEMENT

Before the

HOUSE COMMITTEE ON FINANCIAL SERVICES  
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

Washington, D.C.

July 25, 2007

## **I. INTRODUCTION**

Chairman Watt, Ranking Member Miller, and Members of the Subcommittee, I am Lydia B. Parnes, Director of the Bureau of Consumer Protection of the Federal Trade Commission (“FTC” or “Commission”).<sup>1</sup> I appreciate the opportunity to appear before you today to discuss the Commission’s efforts to combat unfair, deceptive, and other illegal practices in the mortgage lending industry, including its fair lending enforcement program.

This testimony will discuss (1) the Commission’s legal authority to address illegal mortgage lending practices, including violations of the fair lending laws it enforces, and its coordination with the federal banking agencies and other law enforcers; (2) the Commission’s use of the Home Mortgage Disclosure Act (“HMDA”) data; and (3) the Commission’s lending enforcement program and consumer education initiatives. As detailed below, the Commission has brought over two dozen fair lending cases, has several ongoing, nonpublic fair lending investigations, and has brought 21 cases to combat deceptive and unfair lending practices, focusing in particular on the subprime market and returning \$320 million to consumers.

## **II. THE COMMISSION’S LEGAL AUTHORITY AND INTERAGENCY COORDINATION**

### **A. The Commission’s Legal Authority**

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<sup>1</sup> The views expressed in this statement represent the views of the Commission. My oral presentation and responses to any questions you have are my own, however, and do not necessarily reflect the views of the Commission or any individual Commissioner.

<sup>2</sup> The Commission’s June 13, 2007 testimony before the House Committee on Financial Services enumerated in detail the agency’s activities in the financial services sector. The Commission’s statement is available at [www.ftc.gov/os/2007/06/070613statement.pdf](http://www.ftc.gov/os/2007/06/070613statement.pdf).

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<sup>3</sup> 15 U.S.C. § 5(a).

<sup>4</sup> 15 U.S.C. § 1691. Congress directed the Federal Reserve Board to implement the ECOA

## **B. Interagency Coordination**

In the fair lending area, the Commission coordinates closely with federal and state regulators and enforcers on enforcement, education, and policy. Last week, the FTC, along with the Federal Reserve Board (“Board”), the Office of Thrift Supervision (“OTS”), and state regulators, announced a pilot project to conduct targeted consumer protection compliance reviews and invest in the development of fair lending practices. The project will focus on reviewing and investing in the development of fair lending practices.

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<sup>8</sup> See Joint Agency Press Release, available at [www.ftc.gov/opa/2007/07/subprime.shtm](http://www.ftc.gov/opa/2007/07/subprime.shtm).

<sup>9</sup> The agencies will also review compliance with the HMDA, HOEPA, and the Real Estate Settlement Procedures Act.

<sup>10</sup> See Notice of Approval and Adoption of “Policy Statement on Discrimination in Lending” and Solicitation of Comments Regarding its Application, 59 Fed. Reg. 18,266 (Apr. 15, 1994).

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<sup>11</sup> “Interagency Fair Lending Examination Procedures,” available at [www.ffiec.gov/PDF/fairlend.pdf](http://www.ffiec.gov/PDF/fairlend.pdf)

<sup>12</sup> 42 U.S.C. § 3601. The Fair Housing Act also prohibits discrimination on the basis of race, national origin, religion, and sex in any housing-related transaction, including making home loans.

<sup>13</sup> In addition, the ECOA requires the federal banking agencies and HUD to make referrals to DOJ when the agency determines an entity has engaged in a pattern or practice of discrimination. Notice of Approval and Adoption of “Policy Statement on Discrimination in Lending” and Solicitation of Comments Regarding its Application, 59 Fed. Reg. 18,266 (Apr. 15, 1994); “The Attorney General’s 2006 Annual Report to Congress Pursuant to the Equal Credit Opportunity Act Amendments of 1976,” [www.usdoj.gov/crt/housing/documents/ecoa2006.pdf](http://www.usdoj.gov/crt/housing/documents/ecoa2006.pdf).

<sup>14</sup> *See* FTC Comment on Federal Reserve Board Proposed Amendments to Provisions of



Initially, HMDA required bank lenders to report mortgage loan information only by census tract. Lenders subject to the Commission's jurisdiction began reporting data in 1989, when the statute's requirements were expanded to cover nonbank lenders and to include information on the race, national origin, sex, and income level of loan applicants. In the early to mid-1990s, the focus of fair lending enforcement was whether illegal discrimination caused the higher denial rates for minority applicants reported by many mortgage lenders in the HMDA data or whether the disparities in denials could be explained by the legitimate criteria used by lenders to make decisions on whether to approve or deny a mortgage loan.

In the late 1990s, subprime mortgage lending began to grow dramatically.<sup>20</sup> The enormous growth in the subprime mortgage industry is part of a broader trend of the increasing availability of credit to populations that in the past could not qualify for it.<sup>21</sup> Creditors increasingly used credit data to undertake risk-based pricing. This allowed them to move away from simple approval or denial of all loans towards using credit data to more finely calibrate the price of the loan and loan terms to the risk. With this growth of higher-priced loans to consumers who previously could not obtain a mortgage, fair lending concerns became more focused on whether lenders were engaged in illegal pricing discrimination on the basis of race or national origin. At the same time, the Commission increased its scrutiny of deceptive representations by subprime lenders regarding the cost and other key terms of a mortgage loan.

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Financial Services, U.S. House of Representatives, June 13, 2006, [www.zentralbank.us./boarddocs/testimony/2006/20060613/default.htm](http://www.zentralbank.us./boarddocs/testimony/2006/20060613/default.htm).

<sup>20</sup> In 1999, subprime lenders originated \$160 billion in mortgage loans, while in 2006 subprime lenders originated \$640 billion in mortgage loans. *Top 25 B & C Lenders in 1999*, INSIDE B & C LENDING, Feb. 14, 2000, at 2; *Top 25 B & C Lenders in 2006*, INSIDE B & C LENDING, Feb. 23, 2007, at 12.

<sup>21</sup> See, e.g., Avery, *supra* n.17, at A125.





of a loan, such as borrower credit scores, loan-to-value ratios, debt-to-income ratios, loan type, or the length of the loan. Thus, the HMDA data alone are insufficient to establish a law violation. Rather, the Commission uses the reported data to identify lenders with differences in outcomes for protected classes, and in particular for minorities compared to non-minorities.<sup>25</sup> The disparities in denial rates or pricing, however, may be explained by information on the many credit characteristics and loan terms that are not contained in the HMDA data. Consequently, the principal goal of a fair lending investigation is to determine whether or not the differences in outcomes persist after legitimate underwriting criteria are taken into account.

Typically, an investigation begins with substantial requests for information directed to the target lender, such as requests for documents fully reflective of the target's lending operations,

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<sup>25</sup> The Federal Reserve Board provides to the Commission information and analysis regarding HMDA data reported by the lenders within the FTC's jurisdiction. The Commission staff reviews this analysis and also performs its own, independent analysis of the data.

engages in fair lending compliance monitoring and may conduct interviews of current and former employees or officers of the target and other related entities possessing relevant information.

The determination of whether a law violation occurred requires the resource-intensive and careful review of all of the statistical analyses and the additional facts obtained through extensive document review and other evidentiary sources. The Commission has a strong commitment to enforcing the fair lending laws and will pursue vigorously any violations revealed by its investigations.

#### **IV. THE COMMISSION'S LENDING ENFORCEMENT AND EDUCATION PROGRAM**

The current fair lending investigations are part of a broad and aggressive law enforcement and consumer education program to protect consumers from deceptive, unfair, and otherwise illegal credit practices, particularly in the subprime mortgage market.

##### **A. Law Enforcement**

The Commission has brought over two dozen cases enforcing the ECOA's fair lending mandates against large subprime lenders, major non-mortgage creditors, as well as smaller finance companies.<sup>26</sup> The agency's enforcement has addressed both substantive and procedural protections afforded by the statute, from failures to comply with the adverse action notice requirement<sup>27</sup> and the record-keeping requirements necessary for determining fair lending

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<sup>26</sup> Pursuant to ECOA, a violation of ECOA is deemed to be a violation of the FTC Act, and the FTC is authorized to enforce compliance with ECOA as if it were a violation of an FTC Trade Regulation Rule. 15 U.S.C. § 1691c(c) (violations of a trade regulation rule are subject to civil penalties of up to \$11,000 per violation). The FTC Act does not authorize the FTC to collect civil penalties in its own right. Thus, where the Commission seeks civil penalties for alleged ECOA violations, it refers the case to the DOJ, and if DOJ declines to litigate the matter, the FTC may prosecute the matter, including the request for civil penalties. In cases where the Commission seeks equitable relief and does not seek civil penalties, it files the case by its own attorneys in federal district court. *See generally*, 15 U.S.C. § 56(a).

<sup>27</sup> *United States v. Sprint Corp.*, No. 04-00361 (N.D. Fla. 2004); *United States v. Action Loan, Inc.*, No. 3:00CV-511-H (W.D. Ky. 2000); *United States v. Franklin Acceptance Corp.*, No. 99-

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CV-2435 (E.D. Penn. 1999); *FTC v. Capital City Mortgage Corp.*, No. 98-00237 (D.D.C. 1998); *United States v. Bonlar Loan Co., Inc.*, No. 97C-7274 (N.D. Ill. 1997); *United States v. J.C. Penney Company*, No. CV-96-4696 (E.D.N.Y. 1996).

<sup>28</sup> *FTC v. Associates First Capital Corp.*, No. 01-00606 (N.D. Ga. 2001); *United States v. Action Loan, Inc.*, No. 03-511 (W.D. Ky. 2000); *United States v. Franklin Acceptance Corp.*, No. 99-2435 (E.D. Penn. 1999); *FTC v. Capital City Mortgage Corp.*, No. 98-00237 (D.D.C. 1998) (2005 settlement resolving alleged violations of ECOA, TILA, FDCPA, and Section 5 of the FTC Act and imposing \$750,000 judgment for consumer redress); *United States v. Paine Webber*, No. 92-2921 (D. Md. 1992); *United States v. Academic Int'l*, No. 91-2738 (N.D. Ga. 1991); *United States v. Barclays American*, No. 91-14 (W.D.N.C. 1991); *United States v. Tower Loan of Mississippi*, No. 90-0447 (S.D. Miss. 1990); *United States v. Blake*, No. 90-1064 (W.D. Okl. 1990); *United States v. Chesterfield*, No. 90-0347 (N.D. Al. 1990); *United States v. City Finance*, No. 90-246 (N.D. Ga. 1990).

<sup>29</sup> *United States v. Delta Funding Corp.*, No. 00-1872 (E.D.N.Y. 2000); *United States v. Shawmut Mortgage Co.*, No. 93-2453 (D. Conn. 1993); *United States v. Academic Int'l*, No. 91-2738 (N.D. Ga. 1991).

<sup>30</sup> *United States v. Ford Motor Credit Co.*, No. 99-75887 (E.D. Mich. 1999); *United States v. Franklin Acceptance Corp.*, No. 99-2435 (E.D. Penn. 1999); *Federal Trade Commission v. CIT*, No. 94-4092 (D.N.J. 1994); *United States v. Barclays American*, No. 91-14 (W.D.N.C. 1991); *United States v. Blake*

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In several of its major cases, the Commission alleged violations of ECOA, TILA, and other credit statutes. For example, the FTC’s complaint against Associates First Capital Corporation and Associates Corporation of North America (“the Associates”) alleged that the defendants marketed subprime mortgage loans through false and misleading statements about loan costs and failed to maintain loan applicant records as required by the ECOA.<sup>38</sup> The Associates represented that consumers would save money when consolidating their existing debts, but these “savings claims” did not take into account the typical loan fees and closing costs or certain “balloon” payments. The complaint also challenged as deceptive the Associates’ practice of including single-premium credit insurance in loans. The defendants paid a record-setting \$215 million in consumer redress to settle the FTC complaint.<sup>39</sup>

The Commission also alleged unfair and deceptive loan servicing practices in its lengthy litigation against Capital City Mortgage Corp. (“Capital City”), which both originated and

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<sup>38</sup> *FTC v. Associates First Capital Corp.*, No. 01-00606 (N.D. Ga. 2001).

<sup>39</sup> *FTC v. Associates First Capital Corp.*, No. 01-00606 (N.D. Ga. Jan. 26, 2002) (Order Preliminarily Approving Stipulated Final Judgment and Order). Defendants paid an additional \$25 million to settle a concurrent class action. The Commission sought and obtained equitable monetary relief in this case so that the \$215 million paid by the defendants was returned directly to consumers. As a result, the Commission did not seek civil penalties for the alleged violations of ECOA.

<sup>40</sup> *FTC v. Capital City Mortgage Corp.*, No. 98-00237 (D.D.C. 1998).

phony charges to loan balances, foreclosed on borrowers who were in compliance with the terms of their loans, and failed to release liens on borrowers' homes after the loans were paid off. A settlement, reached in February 2005, permanently enjoined the defendants from future deception, required them to pay \$750,000 in consumer redress, and required them to post a \$350,000 performance bond to remain in the lending business.<sup>41</sup>

In another case against a subprime mortgage lender that alleged deceptive marketing, the Commission reached a settlement in March 2002 with First Alliance Mortgage Co. ("FAMCO"). The Commission's complaint charged that FAMCO's loan officers made deceptive claims in their sales presentations about fees and other loan terms.<sup>42</sup> For example, FAMCO representatives

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<sup>41</sup> *Id.*

<sup>42</sup> *FTC v. First Alliance Mortgage Co.*, No. 00-964 (C.D. Cal. 2000). The court consolidated our complaint with cases brought by six states, AARP, and private plaintiffs.

<sup>43</sup> *See* NEW RESEARCH ABOUT MORTGAGE BROKERS PUBLISHED (July 28, 2005), and other data, available at [www.wholesaleaccess.com](http://www.wholesaleaccess.com).

<sup>44</sup> *FTC v. Chase Fin. Funding*, No. 04-549 (C.D. Cal. 2004); *FTC v. Diamond*, No. 02-5078 (N.D. Ill. 2002).

<sup>45</sup> *FTC v. Diamond*, No. 02-5078 (N.D. Ill. 2002).

fixed.<sup>46</sup> Most recently, in 2006, the Commission filed suit against a mortgage broker for allegedly deceiving Hispanic consumers who sought to refinance their homes by misrepresenting numerous key loan terms.<sup>47</sup> The alleged conduct was egregious – a lender conducting business with his clients almost entirely in Spanish, and then providing at closing loan documents in English containing the less favorable terms.<sup>48</sup>

The Commission also has challenged allegedly deceptive and unfair practices in the servicing of subprime mortgage loans.<sup>49</sup> For example, in November 2003, the Commission, along with HUD, announced a settlement with Fairbanks Capital Corp. and its parent company. Fairbanks (now called Select Portfolio Servicing, Inc.) had been one of the country's largest third-party subprime loan servicers – it did not originate any loans, but collected and processed payments on behalf of the holders of the mortgage notes. The Commission alleged that Fairbanks failed to post consumers' payments upon receipt, charged unauthorized fees, used dishonest or abusive tactics to collect debts, and reported consumer payment information that it knew to be inaccurate to credit bureaus. To resolve these charges, Fairbanks and its former chief executive officer paid over \$40 million in consumer redress, agreed to halt the alleged illegal practices, and implemented significant changes to company business practices to prevent future violations.<sup>50</sup>

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<sup>46</sup> *FTC v. Chase Fin. Funding*, No. 04-549 (C.D. Cal. 2004); *FTC v. Diamond*, No. 02-5078 (N.D. Ill. 2002).

<sup>47</sup> *FTC v. Mortgages Para Hispanos.Com Corp.*, No. 06-00019 (E.D. Tex. 2006).

<sup>48</sup> *FTC v. Mortgages Para Hispanos.Com Corp.*, No. 06-00019 (E.D. Tex. Sept. 25, 2006) (Stipulated Final Judgment and Order of Permanent Injunction) (entering suspended judgment of \$240,000 and ordering payment of \$10,000 based on documented inability to pay full judgment amount).

<sup>49</sup> *United States v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. 2003); *FTC v. Capital City Mortgage Corp.*, No. 98-00237 (D.D.C. 1998).

<sup>50</sup> *United States v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. Nov. 21, 2003) (Order Preliminarily Approving Stipulated Final Judgment and Order as to Fairbanks Capital Corp. and

The Commission is continuing to investigate companies in the mortgage lending industry, focusing in particular on the subprime market.

## **B. Consumer Education**

Of course, educated consumers are the first line of defense against fraud and deception. This is especially true for subprime borrowers, given the complexity of the loan transaction and many borrowers' limited experience in obtaining mortgages.

The Commission has implemented extensive programs to educate consumers about financial literacy generally, and subprime borrowing specifically, including a plain English brochure setting forth consumer rights under the fair lending laws, called "Mortgage Discrimination."<sup>51</sup> The Commission also has included educational materials on mortgage loans in numerous redress distributions. For example, when the Commission mailed over 800,000 redress checks to claimants in our case against The Associates, it included a bookmark containing tips for shopping for a home equity loan. Most recently, in the wake of reports of rising mortgage delinquencies, the Commission published an alert with guidance on steps borrowers can take to avoid foreclosure.<sup>52</sup>

The Commission regularly partners with other enforcers to educate consumers. The FTC has jointly published with the banking regulators, DOJ, and HUD brochures addressing key lending issues, including brochures such as "Looking for the Best Mortgage? Shop, Compare,

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Fairbanks Capital Holding Corp.); *United States v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. Nov. 21, 2003) (Stipulated Final Judgment and Order as to Thomas D. Basmajian).

<sup>51</sup> [www.ftc.gov/bcp/online/pubs/homes/mortgdis.pdf](http://www.ftc.gov/bcp/online/pubs/homes/mortgdis.pdf) (English version); [www.ftc.gov/bcp/online/spanish/homes/s-mortgdis.shtm](http://www.ftc.gov/bcp/online/spanish/homes/s-mortgdis.shtm) (Spanish version). All of the Commission's mortgage and real estate-related publications, many in both English and Spanish, are available online at [www.ftc.gov/bcp/menus/consumer/credit/mortgage.shtm](http://www.ftc.gov/bcp/menus/consumer/credit/mortgage.shtm).

<sup>52</sup> "Mortgage Payments Sending You Reeling? Here's What to Do", *available at* [www.ftc.gov/bcp/edu/pubs/consumer/homes/rea04.shtm](http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea04.shtm).



and Negotiate.”<sup>53</sup> The FTC also continues to participate in the governmental Financial Literacy and Education Commission, contributing its expertise to subcommittees that produced MyMoney.gov and “Taking Ownership of the Future: The National Strategy for Financial Literacy.”<sup>54</sup>

## V. CONCLUSION

The Commission will continue to take aggressive and concerted action to halt illegal practices in the marketplace, while mindful of the important benefits that increased access to

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<sup>53</sup> [www.ftc.gov/bcp/online/pubs/homes/bestmorg.shtm](http://www.ftc.gov/bcp/online/pubs/homes/bestmorg.shtm).

<sup>54</sup> In addition, each April, the FTC participates in Financial Literacy Month. Activities include presentations to students on the importance of responsible credit card use and safeguarding personal information, and exhibits at Financial Literacy Day on Capitol Hill, where agency representatives distribute free consumer education materials.