Prepared Statement of

The Federal Trade Commission

Before the

Senate Committee on Commerce, Science, and Transportation
Subcommittee on Consumer Protection, Product Safety, and Insurance

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Chairman Pryor, Ranking Member Wicker, and members of the Subcommittee, I am David Vladeck, Director of the Bureau of Consumer Protection at the Federal Trade Commission ("Commission" or "FTC").[1] I appreciate the opportunity to appear before you today to examine the types of fraud the Commission has seen during the economic downturn, describe the Commission's anti-fraud law enforcement program, and recommend changes in the law and resources the Commission needs to enhance the FTC's ability to protect consumers. During these difficult economic times, the Commission is on the job, enforcing the law, and working with a heightened urgency. This testimony will highlight *Operation Short Change*, a law enforcement sweep the Commission recently announced that has targeted entities defrauding American consumers hit by the economic downturn.

Job losses, foreclosures, and dwindling retirement accounts are forcing increasingly more Americans to search for ways to make ends meet. Opportunistic fraudsters have quickly adapted their schemes and sales pitches to take advantage of consumers during the economic downturn, with some capitalizing on the economic stimulus package. They use come-ons that offer the lure of free government grant money, guaranteed job placement, investments promising recession-proof income, access to credit cards, or debt relief services. These and other schemes have defrauded hundreds of thousands of consumers out of millions of dollars, and have been the

[1] The views expressed in this statement represent the views of the Commission. My oral presentation and responses to questions are my own and do not necessarily reflect the views of the Commission or any individual Commissioner. Commissioner Kovacic dissents from portions of the testimony explained in notes 4 and note 43.

focus of the Commission's ongoing law enforcement program[2] and consumer outreach efforts. Just two weeks ago, the Commission announced *Operation Short Change*,[3] a law enforcement sweep targeting fraudulent schemes designed to profit from the economic downturn. Together with fourteen state partners, the Department of Justice, and other agencies prosecuting criminal law violations, the Commission announced more than 120 law enforcement actions.

Today's testimony highlights the agency's current experience with and efforts to combat fraud exploiting the economic stimulus program and other fraudulent schemes preying on financially-distressed consumers. The testimony also describes the Commission's anti-fraud law enforcement program, with an overview of the tools and strategies the Commission uses to further its critical consumer protection mission. Finally, the Commission makes four important recommendations to improve the Commission's ability to protect consumers from scams and deter would-be fraudsters, including: (1) increasing resources committed to tackling fraud; (2) authorizing the agency to employ notice and comment rulemaking procedures for unfair or deceptive acts and practices under the FTC Act; (3) expanding the FTC's authority to seek civil penalties in its own right in federal court; and (4) giving the FTC the authority to challenge

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[2] The FTC has broad law enforcement responsibilities under the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 41, *et seq*. The statute provides the agency with broad jurisdiction over most economic sectors. Certain entities or activities, however, such as banks, companies engaged in common carrier activity, and companies engaged in the business of insurance, are wholly or partly exempt from FTC jurisdiction. In addition to the FTC Act, the agency has enforcement responsibilities under more than 50 other statutes and more than 30 rules governing specific industries and practices.

[3] Press Release, Federal Trade Commission, FTC Cracks Down on Scammers Trying to Take Advantage of the Economic Downturn (July 1, 2009), *available at* http://www.ftc.gov/opa/2009/07/shortchange.shtm

practices that aid or abet violations of the FTC Act.[4]

I. Financial Distress Fraud

The downturn in the economy has had a severe impact on American consumers. The unemployment rate in the United States is now 9.4 percent,[5] and the national foreclosure rate is

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[4] 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.

Commissioner Kovacic also 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 where existing remedies are likely to be inadequate. *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, *available at* http://www.ftc.gov/os/testimony/P034101reauth.pdf.

[5] *See* Bureau of Labor Statistics Data (June 5, 2009), available at http://www.bls.gov/news.release/empsit.nr0.htm.

over 12 percent.[6] With *Operation Short Change*, the Commission struck back at scams that are targeting consumers during the current economic downturn. The Commission's recently filed cases fall into five broad categories of familiar fraud: (1) phony income-generating opportunities, (2) job placement scams, (3) government grant scams, (4) credit-related scams, and (5) mortgage loan modification scams. The Commission's program to combat these types of fraud centers around its enforcement of Section 5 of the Federal Trade Commission Act ("FTC Act"), which prohibits unfair or deceptive acts or practices affecting commerce. 15 U.S.C. § 45(a).

A. Phony Job Placement Schemes

In a time of economic distress with many Americans out of work, con-artists see the opportunity to take advantage of those seeking simply to earn an honest day's wage. Recognizing that out of work Americans can least afford to fall victim to scams, the Commission aggressively pursues employment scams.[7] As part of *Operation Short Change*, the Commission charged that Wagner Borges, operating as Job Safety U.S.A., targeted consumers who were

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[6] *See* Mortgage Bankers Association, *Delinquencies and Foreclosures Continue to Climb in Latest MBA National Delinquency Survey* (May 28, 2009), *available at* http://www.mortgagebankers.org/NewsandMedia/PressCenter/69031.htm. According to the Mortgage Bankers Association's first quarter 2009 National Delinquency Survey, 12.07% of loans are either in foreclosure or delinquent by at least one payment. This is an increase over fourth quarter 2008, and is the highest rate ever recorded in the MBA national delinquency survey.

[7] The Commission has actively pursued cases against fraudsters who falsely represented that they were affiliated with or endorsed by the U.S. Postal Service, and that postal jobs were available in areas where their ads appeared. In one recent case filed against U.S. Work Alliance, the Commission charged a nationwide marketing operation with allegedly violating federal law by deceiving consumers into buying $120 to $140 worth of materials they thought would help them get federal postal jobs. *FTC v. U.S. Work Alliance, Inc.*, No. 08-CV-2053-WSD (N.D. Ga. June 19, 2008) (complaint).

searching for jobs as janitors and/or maintenance workers, using classified advertisements online and in newspapers.[8] The complaint alleges that the defendant told job seekers that the only thing standing between them and a new job making "$11-$15/hour + benefits" was a five-digit "certificate registration number" or "CRN." In truth, the CRN was a ruse used by Borges, allegedly to trick consumers to pay him $98 for a worthless credential that did not lead to the job described. The Commission sought and obtained an *ex parte* temporary restraining order with an asset freeze to put an immediate end to Borges's scheme.[9]

B. Fraudulent Income-Generating Opportunities: Work-At-Home, Investment, and Business Opportunities

Most Americans are not looking for ways to get rich quick, but in times of economic distress, they often are looking for ways to supplement their income. Opportunists are quick to exploit the entrepreneurial spirit of Americans by hawking expensive business opportunities that purportedly will generate significant earnings. Typical business opportunity fraud involves the sale of vending machine routes or distributorships; medical billing scams; envelope stuffing scams; jewelry or craft assembly; and countless others. To convince people that the opportunity

[8] For a compelling illustration of how this type of scam harms consumers, see the statement made by Beverly Steward, a consumer who spoke during the FTC's press conference announcing *Operation Short Change*, *available at* http://htc-01.media.globix.net/COMP008760MOD1/ftc_web/FTCindex.html#July_1_09

[9] When the Commission discovers an entity is engaged in outright fraud, it uses aggressive law enforcement tools to bring the perpetrators to justice. After assembling a case against a suspected fraud, the Commission often applies to a federal district court for an *ex parte* temporary restraining order to halt the deceptive conduct and an asset freeze to preserve the possibility of returning money to consumer victims. Indeed, in many of the telemarketing and business opportunity cases the Commission has brought, such as those described herein, staff has sought and federal courts have entered temporary restraining orders or preliminary injunctions.

is worth the investment, hucksters sometimes give prospective purchasers the names of shills – phony references of prior customers who are purportedly experiencing significant success with the business opportunity.

The economic downturn has presented opportunities for those who would seek to capitalize on the misfortune of Americans who have seen their jobs disappear or their incomes slide. As part of *Operation Short Change*, the FTC sued two fraudulent schemes using the home foreclosure crisis as fodder for their scams. First, the Commission alleges that Family Products, LLC runs infomercials pitching money-making programs that are supposedly easy for consumers to replicate.[10] In one of these, the John Beck Free and Clear Real Estate System, defendants mention the high foreclosure rate our country has experienced, exploiting the crisis to pitch a program for acquiring abandoned properties for "pennies on the dollar." Like many business opportunity scams, the defendants allegedly used false testimonials to convince consumers that they could earn substantial sums of money using their programs. The Commission's June 30th complaint aims to halt the scheme and return money to consumers, who paid more than $300 million for the defendants' fraudulent money-making opportunities.

Second, the FTC sued an Arizona-based scam taking advantage of consumers, including unemployed real estate agents and mortgage brokers trying to earn a living, and homeowners at risk of foreclosure.[11] The complaint filed against Freedom Foreclosure Prevention Services, LLC ("Freedom Foreclosure") and its principals alleges that they falsely claimed that business

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[10] *FTC v. John Beck Amazing Profits, LLC*, No. 09-CV-4719 (C.D. Cal. June 30, 2009) (complaint).

[11] *FTC v. Freedom Foreclosure Prevention Services, LLC*, No. 09-CV-1167-PHX-PJM (D. Ariz. June 1, 2009) (complaint).

opportunity purchasers – after paying a fee of approximately $1,500 – could easily earn $10,000 per month by referring homeowners for Freedom Foreclosure's loss mitigation services. In fact, the Commission charged, homeowners who turned to Freedom Foreclosure for help routinely lost their homes to foreclosure, and none of Freedom Foreclosure's 2,500 consultants earned the income they were promised for purportedly "helping" consumers out of foreclosure. On June 1st, a federal district court granted the Commission's request for an *ex parte* temporary restraining order with a freeze on the defendants' assets, and the Court later entered a stipulated preliminary injunction.

Other investment scams, such as the one the Commission alleged against an entity using the name Google Money Tree, simply lure consumers into divulging their financial account information. Google Money Tree, the FTC alleges, advertised a low-cost kit ($3.88) that supposedly would enable consumers to earn more than $100,000 in six months.[12] The defendants allegedly failed to disclose adequately that the small fee triggered recurring $72.21 monthly charges for consumers. The Commission charged that by prominently displaying the Google name and logo, and disclosing only a nominal charge, the defendants convinced consumers that submitting their credit card or debit card account information would be a low risk venture. In truth, the complaint alleges, the defendants' supposed kit does not generate substantial earnings, defendants have no affiliation with Google, and they buried material terms and conditions of their offer in fine print and inconspicuously-placed hyperlinks. On June 23rd, a federal court granted the FTC's *ex parte* motion for a temporary restraining order to halt the

[12] *FTC v. Infusion Media, Inc.*, No. 2:09-CV-01112-RCJ (June 22, 2009) (complaint).

scheme and freeze the defendants' assets.

C. Government Grant Scams

Con-artists have sought to exploit the American Recovery and Reinvestment Act of 2009 by selling purported access to or expertise in obtaining free government grants. The FTC searched the Internet to identify those websites promoting ways to obtain a piece of the economic stimulus package, and in March 2009, held a press conference to warn consumers to beware of such scams.[13] The event was highly successful at generating media coverage that reached consumers, as the story was picked up by national and regional media outlets. The FTC warned specifically of websites promising government grant money for any reason, even paying bills, and those that brazenly use the image of President Obama to add legitimacy to their misrepresentations. These scams ask consumers simply to provide personal information or send a very small payment to get information on how to get free government grant money. But, any financial account information in the hands of scam artists can be very costly for consumers. The Commission alerted consumers that whatever a website may say, the federal government does not award grants to individuals to pay personal expenses or bills, and the official source for information on available federal government grants is at www.grants.gov, a free website operated by the U.S. Department of Health and Human Services.

As part of the Commission's efforts, it reached out to industry for help in pulling down ads for such scams. At our request, major online ad networks have agreed to screen out ads touting the economic stimulus as providing grant opportunities for individual consumers. For

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[13] Press Release, Federal Trade Commission, FTC Warns Consumers About Economic Stimulus Scams (March 4, 2009), *available at* http://www.ftc.gov/opa/2009/03/stimulusscam.shtm.

instance, after being contacted about this problem, Facebook voluntarily pulled off the offending ads. We want to commend these networks for their help. The Commission also issued an alert to consumers to beware of scams relating to the economic stimulus package, stating particularly that the promise of stimulus money in return for a fee or financial information is always a scam.

With *Operation Short Change*, the Commission aggressively targeted and pursued con-artists making bogus offers of free government grant money. After a painstaking investigation, on June 25th, the Commission alleged that defendants operating as "Cash Grants Institute"[14] placed robocalls containing prerecorded messages to consumers throughout the United States, advertising "free grant money available from federal, state and local governments." The complaint describes the numerous techniques the defendants allegedly used to create a false aura of legitimacy, such as placing pre-recorded calls purportedly coming from the Cash Grant Institute in Washington, D.C., using a website which includes images of President Obama and the U.S. Capitol building, and brazenly advertising a website as the "source of free money from the government." The Commission charged that the defendants did not provide grants; instead, they just transferred consumers to other websites purportedly providing grant-related services.

Other scams wave the promise of free government grant money as a lure to obtain consumers' financial account information and initiate recurring charges. In a case filed June 23rd, again, after an intensive investigation, the Commission alleged that website operators, using names like Grants for You Now,[15] represented that consumers who purchased their

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[14] *FTC v. Paul Navestad,* No. 09-CV-6329T (W.D.N.Y. June 25, 2009) (complaint).

[15] *FTC v. In Deep Services, Inc.*, No. EDCV-09-1193-SGL (PGWx) (June 22, 2009) (complaint).

product would be likely to receive a government grant. One website, ornamented with the image of a suitcase bursting with money and boldly identifying specific federal government grants for housing and education, proclaimed that “anyone who needs money for” paying off debt, home repair, and personal expenses can “benefit.” Instead, the complaint charges, consumers who purchased the defendants’ software program unwittingly enrolled in a negative option continuity program, subjecting them to recurring monthly charges of nearly $100. In both cases, the Commission acted aggressively to put an immediate end to the fraud, seeking and obtaining *ex parte* temporary restraining orders and asset freezes from federal district courts.

D. Credit-Related Frauds

With the tightening of credit in the marketplace, telemarketers and online sellers of advance-fee credit cards are aggressively targeting consumers. Consumers with poor credit histories are enticed with offers guaranteeing loans or general-purpose credit cards regardless of their credit histories. Often, the sales pitch includes false claims that the seller reports to the major credit bureaus and that the credit program will help the consumer build his credit. Consumers who pay a fee in advance to receive the purported credit card often discover that all they have received in return is either a stored value or debit card or a catalog card that can be used only to purchase merchandise from a particular paper or online catalog.

This past February, as part of *Operation Short Change*, the Commission sued Group One Networks, a network of companies allegedly engaged in a telemarketing scheme to trick consumers into paying hundreds of dollars for credit cards that could only be used to purchase goods from a limited number of online catalog websites.[16] The Commission charged that as part

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[16] *FTC v. Group One Networks, Inc.*, No. 8:09-CV-0352-T-26-MAP (M.D. Fla. Feb.

of the scheme, defendants allegedly obtained the financial account information of consumers who filled out online payday loan applications and, without the consumers' knowledge or consent, charged them for a worthless credit card membership. Moving aggressively to halt these alleged law violations, the Commission sought and obtained an *ex parte* temporary restraining order, and later a preliminary injunction.

Another scheme affecting consumers with credit problems is debt relief services. On June 25th, the Commission sued Mutual Consolidated Savings,[17] a company that allegedly placed pre-recorded or "robocalls" to market a supposed "rapid debt reduction" program. The defendants allegedly told consumers they would generate thousands of dollars in savings by negotiating interest rate reductions with their credit card companies, and they promised a refund of the $690 to $899 fee if they failed. The FTC alleged that defendants did fail, often refusing to refund consumers and leaving them even deeper in debt. The Commission sought and obtained an *ex parte* temporary restraining order and an asset freeze on June 26th.

Debt settlement companies also offer debt relief to consumers, promising for a fee to obtain a lump sum settlement from the creditor of the consumer's credit card debt. These companies typically promise that they will negotiate with creditors to obtain settlements for amounts less than the full balance that the consumer owes. The FTC has brought a number of lawsuits against for-profit debt settlement companies that do not deliver on their promises.[18] In

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25, 2009) (complaint).

[17] *FTC v. MCS Programs, LLC*, No. C09-5380RBL (W.D. Wash. June 25, 2009) (complaint).

[18] *See 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).

some of these cases, the companies allegedly deceived consumers who were seeking help with their credit card bills into paying large up-front fees for debt relief services that were never provided. Some of the companies also falsely promised consumers that not paying their creditors would not hurt their credit ratings, and that purchasing their services would stop debt collectors from calling them. In addition to taking these law enforcement actions, the FTC last year convened a workshop to learn more about the debt settlement industry and develop solutions to the consumer protection problems they cause.[19]

E. Loan Modification and Foreclosure Rescue Services

With the rapid increase in mortgage delinquencies and foreclosures, the FTC has stepped up its efforts to protect consumers from mortgage loan modification and foreclosure rescue scams. In a little over a year, the FTC has brought 14 cases targeting these scams,[20] and is currently engaged in additional non-public investigations of providers of loan modification and

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[19] *See* Federal Trade Commission, Debt Settlement Workshop (Sept. 25, 2008), Transcript, *available at* http://www.ftc.gov/bcp/workshops/debtsettlement/OfficialTranscript.pdf.

[20] *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. One or More Unknown Parties Misrepresenting Their Affiliation With the Making Home Affordable Program*, No. CV-09-894 (D.D.C. filed May 14, 2009); *FTC v. Federal Loan Modification Law Center, LLP*, No. SACV09-401 CJC (C.D. Cal. filed Apr. 3, 2009); *FTC v. Thomas Ryan*, Civil No. 1:09-00535 (D.D.C. filed Mar. 25, 2009); *FTC v. Home Assure, LLC*, Case No. 8:09-CV-00547-T-23T-SM (M.D. Fla. filed Mar. 24, 2009); *FTC v. Hope Now Modifications*, No. 1:09-cv-01204-JBS-JS (D.N.J. Mar. 17, 2009); *FTC v. New Hope Property LLC*, No. 1:09-cv-01203-JBS-JS (D.N.J. Mar. 17, 2009); *FTC v. National Foreclosure Relief, Inc.*, No. SACV09-117 (C.D. Cal. Feb. 2, 2009); *FTC v. United Home Savers, LLP*, No. 8:08-cv-01735-VMC-TBM (M.D. Fla. Sept. 3, 2008); *FTC v. Foreclosure Solutions, LLC*, 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); *FTC v. Safe Harbour Foundation*, No. 08 C 1185 (N.D. Ill. Feb. 25, 2008).

foreclosure rescue services.

The FTC's law enforcement actions in this area typically have alleged the following: First, the defendants used terms like "guarantee" and "97% success rate" to mislead consumers about the effectiveness of the services they provide. Second, they charged up-front fees for their services. Lastly, after collecting the fee, the defendants did little or nothing to help consumers obtain a loan modification or stop foreclosure. Such operations not only defraud financially distressed consumers out of desperately needed funds but also may lead them to forgo viable options to help them with their mortgage payments, such as getting assistance from a non-profit housing counselor, or discussing their payment problems with their servicer and continuing their payments.

Sometimes, the defendants allegedly have used copycat names or look-alike websites to misrepresent that they are affiliated with a non-profit or government entity.[21] The Commission, for example, recently filed two actions alleging that defendants used similar sounding names and other claims to misrepresent that they were part of the legitimate Hope Now Alliance of housing counselors and mortgage servicers.[22] Similarly, the Commission recently filed an action alleging that defendants misrepresented that they were affiliated with the Administration's "Making Home Affordable" programs.[23] Defendants also sometimes allegedly misrepresent that members

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[21] *See FTC v. Thomas Ryan*, Civil No. 1:09-00535 (HHK) (D.D.C. filed Mar. 25, 2009).

[22] *FTC v. Hope Now Modifications*, No. 1:09-cv-01204-JBS-JS (D.N.J. filed Mar. 17, 2009); *FTC v. New Hope Property LLC*, No. 1:09-cv-01203-JBS-JS (D.N.J. filed Mar. 17, 2009). In these two cases, the court issued temporary restraining orders and asset freezes against the defendants. Both defendants later agreed to stipulated preliminary injunctions.

[23] *FTC v. One or More Unknown Parties Misrepresenting Their Affiliation with the*

of Congress or other government officials endorse their services or products.[24]

In addition to bringing law enforcement actions, the FTC has commenced a rulemaking to address unfair and deceptive acts and practices related to loan modification and foreclosure rescue services. Any proposed rules that the FTC would issue as part of this rulemaking would apply only to entities within the FTC's jurisdiction under the FTC Act, which excludes banks, thrifts, and federal credit unions, among others. The Commission issued its advanced notice of proposed rulemaking on June 1, 2009, and the public has 45 days in which to file comments in response to this notice.[25] Because of the serious risks to consumers in the current financial crisis, the FTC will proceed as expeditiously as practicable in conducting this rulemaking proceeding as a complement to its vigorous law enforcement efforts.

II. Sustained FTC Enforcement and Other Activities Targeting Fraud

In addition to the law enforcement activities described above, the Commission also targets fraud by enforcing the Telemarketing Sales Rule and the Business Opportunity Rule.[26] With these rules, the Commission's anti-fraud law enforcement program reaches fraud perpetrated through telemarketing, print advertising, and, with ever increasing frequency, online.

Making Home Affordable Program, No. CV-09-894 (D.D.C. May 14, 2009) (complaint).

[24] *See FTC v. Federal Loan Modification Law Center, LLP*, Case No. SACV09-401 CJC (C.D. Cal. filed Apr. 3, 2009). *See also* Press Release, *Federal and State Agencies Crack Down on Mortgage Modification and Foreclosure Rescue Scams* (Apr. 6, 2009), *available at* http://www.ftc.gov/opa/2009/04/hud.shtm.

[25] 74 Fed. Reg. 26,118 (June 1, 2009).

[26] Telemarketing Sales Rule, 16 C.F.R. Part 310; Business Opportunity Rule, 16 C.F.R. Part 437.

A. Enforcement of the Telemarketing Sales Rule

The Commission has developed a robust law enforcement program against fraudulent telemarketers. Since the 1996 promulgation of the Telemarketing Sales Rule ("TSR"),[27] which now includes the privacy protections of the National Do Not Call ("DNC") Registry,[28] the Commission has initiated 271 telemarketing cases aimed at halting various telemarketing frauds, such as unauthorized debiting of consumers' financial accounts, as well as the deceptive sales of various goods and services, including work-at-home opportunities, advance-fee credit cards, government grants, sweepstakes and prize promotions.[29] The Commission's efforts have broadly targeted not only fraudulent telemarketers, but also the third-parties that assist them. Many of the Commission's actions have been brought as part of coordinated law enforcement sweeps of the telemarketing industry, such as *Operation Tele-PHONEY*, which included 180

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[27] In 1994, Congress enhanced the Commission's legal arsenal against fraud by enacting the Telemarketing and Consumer Fraud and Abuse Prevention Act (the "Telemarketing Act"), 15 U.S.C. §§ 6101-6108, which directed the Commission to issue a trade regulation rule defining and prohibiting deceptive or abusive telemarketing acts or practices. Accordingly, the Commission promulgated the TSR in 1995, which is codified in the Code of Federal Regulations, 16 C.F.R. Part 310.

[28] In December 2002, the Commission adopted amendments to the TSR that, among other things, established the National Do Not Call Registry, prohibited call abandonment, required (where feasible) transmission of Caller ID identifying information, and established important new safeguards in situations where telemarketers use preacquired account information. 68 Fed. Reg. 4580 (Jan. 29, 2003). The TSR also was recently amended to, among other things, bar telemarketing calls that deliver pre-recorded messages (so-called "voice blasting" or "robo calls"), unless the consumer previously has agreed to accept such calls from the seller. Those amendments will become fully effective in September 2009. TSR Final Rule Amendments, 73 Fed. Reg. 51164 (Aug. 29, 2008).

[29] Prior to the enactment of the TSR, the Commission brought 110 telemarketing cases pursuant to Section 5 of the FTC Act, which prohibits "unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45(a).

actions by state, federal, and international law enforcement agencies to crack down on telemarketing fraud.[30] Many cases against deceptive telemarketers also allege violations of the Do Not Call or related privacy protection provisions of the TSR. Twenty-eight cases have alleged only violations of Do Not Call and/or other privacy provisions of the TSR. Ultimately, almost all of these cases resulted in permanent injunctions against the defendants which severely restricted or banned defendants' deceptive or abusive marketing sales practices. The pursuit of these cases by the Commission has resulted in orders providing for over $540 million in consumer restitution or, where that was not practicable, disgorgement to the U.S. Treasury. During this period, through cases filed on its behalf by the U.S. Department of Justice,[31] the

[30] "Operation Tele-PHONEY" http://www2.ftc.gov/opa/2008/05/telephoney.shtm. The following is a sampling of some of the sweeps that the FTC and its law-enforcement partners have conducted over the past several years: "Dialing for Deception," http://www.ftc.gov/opa/2002/04/dialing.shtm (a sweep by the FTC that targeted telemarketing fraud in connections with in-bound telephone calls); "Ditch the Pitch," http://www.ftc.gov/opa/2001/10/ditch.shtm (a sweep targeting fraudulent out-bound telemarketing brought by the FTC and 6 states); "Operation No Credit," http://www.ftc.gov/opa/2002/09/opnocredit.shtm (43 law enforcement actions, including criminal indictments, targeting a wide range of credit-related fraud brought by the FTC, the DOJ, the U.S. Postal Inspection Service, and 11 state and local authorities); "Operation Protection Deception," http://www.ftc.gov/opa/2000/10/protectdecpt.shtm (a sweep against telemarketers of fraudulent "credit card protection" services with extensive assistance from 5 states and the Federal Bureau of Investigation ("FBI")); "Senior Sentinel," http://www.ftc.gov/opa/1995/12/sen.shtm (a sweep targeting telemarketers who defraud the elderly coordinated by the DOJ and FBI, with 5 civil cases brought by the FTC, that led to hundreds of arrests and indictments across the country); "Project Telesweep," http://www.ftc.gov/opa/1995/07/scam.shtm (nearly 100 cases filed by the FTC, DOJ and 20 states targeting business opportunity fraud often promoted through slick telemarketing).

[31] Civil penalty actions are filed by the Department of Justice ("DOJ") on behalf of the FTC. In general, under the FTC Act, the Commission must notify the Attorney General of its intention to commence, defend, or intervene in any civil penalty action under the Act. 15 U.S.C. § 56(a)(1). DOJ then has 45 days, from the date of the receipt of notification by the Attorney General, in which to commence, defend or intervene in the suit. *Id.* If DOJ does not act within the 45-day period, the FTC may file the case in its own name, using its own attorneys. *Id.*

Commission has obtained civil penalty orders and equitable monetary relief totaling nearly $31 million.

B. Enforcement of the Business Opportunity Rule

Like its telemarketing anti-fraud program, since 1981, the Commission has had a vigorous program to pursue fraudulent purveyors of business opportunities, scams which can cost individual consumers thousands of dollars. The Commission uses Section 5 of the FTC Act to pursue business opportunity fraud, often charging violations of the Business Opportunity Rule (formerly, the Franchise Rule), as well.[32] Since 1981, the Commission has initiated over 262 actions to halt business opportunity schemes promising money through vending machine routes, medical billing, rack display, Internet kiosk, 900-number ventures, envelope stuffing, and many other schemes.

The Commission routinely works cooperatively with other federal and state law enforcement agencies to combat business opportunity fraud, often leading sweeps of the industry. Since 1995, the Commission has conducted more than 15 business opportunity sweeps

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[32] Until 2007, business opportunities were covered under the original Franchise Rule, 16 C.F.R. Part 436. In 2007, the Commission amended Part 436 to apply only to business format franchises, and created Part 437 to cover business opportunities. *Final Rule on Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunities*, 72 Fed. Reg. 15444 (March 30, 2007). The Business Opportunity Rule is identical to the corresponding portions of the original Franchise Rule except that it deletes the definitional elements and references regarding business format franchising that are now covered by the amended Franchise Rule. *Id.*

The Business Opportunity Rule, Part 437, is currently under regulatory review and is in the process of being amended. *See Notice of Public Workshop on the Business Opportunity Rule,* 74 Fed. Reg. 18712 (April 24, 2009). Among other things, the proposed amendments would expand the scope of the rule to cover entities that previously were not covered under the Franchise Rule, such as many work-at-home schemes. The amendments also would simplify the disclosure document that sellers are required to provide prospective purchasers.

to combat persistent business opportunity fraud.[33] These sweeps bring public attention to these types of fraud and heighten consumer awareness of how to avoid losing money in these schemes. Through the Business Opportunity Rule itself, which requires that sellers make certain pre-sale disclosures to prospective purchasers, the Commission aims to put material information into consumers' hands before they make a hefty investment in a business opportunity.[34]

The Commission values the cooperative relationships it has fostered with the states and other federal agencies. Although the Commission does not have criminal law enforcement authority, it recognizes the importance of criminal prosecution to deterrence and consumer confidence. Accordingly, the Commission routinely refers matters appropriate for criminal prosecution to federal and state prosecutors through its Criminal Liaison Unit ("CLU"). Since October 1, 2002, 349 people have been indicted and 238 have been convicted in criminal cases that arose from referrals made by CLU, including cases where an FTC attorney was designated a Special Assistant U.S. Attorney to help with the criminal prosecution.

C. Consumer and Business Education

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[33] *E.g.*, Project Fal$e Hope$ (2006); Project Biz Opp Flop (2005); Project Busted Opportunity (2002); Project Bizillion$ (1999); Operation Money Pit (1998); Project Vend Up Broke (1998); Project Trade Name Games (1997); Operation Missed Fortune (1996); and Project Telesweep (1995). In addition to joint law enforcement sweeps, Commission staff has also targeted specific business opportunity ventures such as envelope stuffing (Operation Pushing the Envelope 2003); medical billing (Operation Dialing for Deception 2002, and Project Housecall 1997); seminars (Operation Showtime 1998); Internet-related services (Net Opportunities 1998); vending (Project Yankee Trader 1997); and 900 numbers (Project Buylines 1996).

[34] The Business Opportunity Rule requires sellers to make numerous disclosures to consumers, such as, among other things, the seller's litigation history, a list of prior purchasers of the business opportunity, the seller's refund and cancellation policy, and if the seller makes a claim about likely earnings, the basis for that claim. 16 C.F.R. Part 437.1(a)(4), (7), (16)(iii); 437.1(b)(3).

In addition to the Commission's law enforcement activities, the agency reaches out to consumers to give them the tools they need to recognize and avoid fraud. In response to the recent economic downturn, the FTC developed several initiatives to help people manage their financial resources, avoid fraud, and be aware of emerging scams. We share our consumer education materials with state attorney general offices and various local organizations to help get the word out to the public.

For instance, with *Operation Short Change*, the Commission developed and released a video to educate the public on business opportunity fraud.[35] The video features a former con-artist, Jim Vitale, describing the tools of the trade, including the techniques he used to rush consumers into sending their money. It provides a sobering glimpse into the lives of two individuals who lost money in business opportunity scams, and it gives consumers concrete advice on what they should do before investing in a business opportunity.

In conjunction with a federal-state crackdown on mortgage foreclosure rescue scam operators, the FTC produced a toolbox of mortgage-related resources for homeowners in distress; they are featured on a new web page at www.ftc.gov/MoneyMatters. Indeed, groups including NeighborWorks America, and the Homeowners Preservation Foundation – a nonprofit member of the HOPE NOW Alliance of mortgage industry members and U.S. Department of Housing and Urban Development-certified counseling agencies – are distributing FTC materials directly to homeowners at borrower events across the country, on their websites, in their statements, and even on the phone: when people call the nation's major mortgage servicers, they

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[35] A*vailable at* http://www.ftc.gov/multimedia/video/scam-watch/fraud-inside-look.shtm.

hear about the tell-tale signs of a mortgage foreclosure scam while they are on hold. Next month, the agency will distribute to thousands of community organizations, HUD certified housing counselors, and state attorneys general across the nation copies of a new video featuring the stories of real people who are working with legitimate counselors to save their homes from foreclosure.

The agency has focused outreach efforts on a number of other issues faced by people in economic distress, including stimulus scams, rental scams, church "opportunity" scams, offers for bogus auto warranties, and solicitations for phony charities that play on the public's concern for the welfare of our military troops and public safety personnel, especially at a time when budgets are shrinking.

Finally, in an effort to stem the number of false or misleading claims that consumers see, the agency has a publication for publishers and broadcasters to alert them to the kinds of claims – extravagant earnings promises, for example – that can signal a rip-off. The Commission also offers sample public service announcements that newspapers can run in the business opportunity section of their classified section to remind readers to do their homework before buying a business opportunity.

D. Research and Policy Development

To complement its law enforcement and educational initiatives, the Commission regularly conducts research to stay abreast of marketplace developments, and ensure the agency is best situated to prevent, deter, and halt consumer fraud. Toward these ends, the Commission has conducted two consumer fraud surveys, in 2003 and 2005, seeking to quantify fraud in the United States, and will continue to conduct research in 2010.[36]

More recently, to examine consumer fraud in depth, the Federal Trade Commission staff held a two-day Fraud Forum on February 25 and 26, 2009. In addition to federal, state and international law enforcers, staff invited consumer advocates, business representatives, criminologists and sociologists, all of whom share a keen interest in understanding fraud, and identifying ways to more effectively protect consumers from fraudulent schemes.[37] The purposes of the Forum were both to gain a greater understanding of fraud and the ways that fraud artists ply their trades, and to harness the collective knowledge and experience of Forum participants to advance anti-fraud initiatives.

The Forum focused on the dynamics of fraud, including common traits of fraudsters and characteristics of victims in order to develop better methods of deterrence and prevention. As a reminder to law enforcement of the threat posed by the economic downturn, Jim Vitale, a former con-artist who participated in the forum, aptly noted: "I'd have to say that the potential for business opportunity fraud is greater now than it would be in a booming economy . . . If the right marketing is done, it's [the] perfect storm."[38]

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36 Reports of the results of those two surveys, "Consumer Fraud in the United States: An FTC Survey, FTC Staff Report,"(Aug 2004) ("2003 Survey") and "Consumer Fraud in the United States: The Second FTC Survey, FTC Staff Report,"(Oct 2007) ("2005 Survey") are available at http://www2.ftc.gov/reports/consumerfraud/040805confraudrpt.pdf and http://www2.ftc.gov/opa/2007/10/fraud.pdf, respectively.

37 Panelists and presenters at the Fraud Forum included 20 representatives from 16 federal, state, and international law enforcement or consumer protection agencies.

38 Federal Trade Commission, Fraud Forum, *Panel 1: Becoming a Scam Artist, Understanding the Victim: Exploring the Psychology of Scammers and Victims*, at 45-46

Looking ahead, the Commission will be hosting a roundtable this fall to examine consumer protection issues that arise in debt collection proceedings against individual consumers.[39]

III. Enhancing the FTC's Fraud-Fighting Tools

The cases discussed in this testimony are only part of the Commission's continuous efforts to protect financially-distressed consumers from fraud during the current economic downturn. An effective program depends on communication with the public to help the Commission spot fraud, track complaints, and provide Americans with tools that will help them avoid falling prey to fraud. Fraud investigations are aided by the Commission's considerable investment in technology, such as Consumer Sentinel, a database of complaints collected from consumers. As noted above, the Commission's law enforcement sweeps provide an opportunity to reach the public through media coverage of law enforcement crack-downs on fraud. And, through the use of consumer alerts, such as the Commission's warning to consumers about economic stimulus grant scams (March 2009),[40] and consumer education, such as the FTC's website "Money Matters" (March 2009),[41] the Commission strives to give consumers the most

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(February 25-26, 2009), transcript available at http://htc-01.media.globix.net/COMP008760MOD1/ftc_web/transcripts/022509_sess1.pdf. Vitale's input at the fraud forum was leveraged in making the educational video released as part of Operation Short Change. *See supra* note 33.

[39] *Available at* http://www.ftc.gov/opa/2009/06/chicagoround.shtm (press release).

[40] *Available at* http://www.ftc.gov/opa/2009/03/stimulusscam.shtm (press release) and http://htc-01.media.globix.net/COMP008760MOD1/ftc_web/FTCindex.html#March_4_09 (webcast of press conference).

[41] *Available at* http://www.ftc.gov/moneymatters.

current resources to help them spot and avoid financial scams.

The agency's vigorous pursuit of its consumer protection mission, however, is hampered by the Commission's insufficient resources and its limited authority. Increased resources and certain expansions of its legal authority would improve the Commission's ability to act quickly to protect consumers from scams and would serve to deter would-be fraudsters and those who assist them.[42] To that end, the Commission first asks Congress to provide the agency with more resources to increase its law enforcement and consumer protection activities. Second, the Commission recommends that Congress authorize the agency to employ notice and comment rulemaking procedures for unfair and deceptive acts and practices under the FTC Act**.** Third, the Commission recommends that Congress authorize the FTC to seek civil penalties for violations of Section 5 of the FTC Act and, to promote efficiency and expediency, to seek civil penalties in its own right in federal court without being required to refer enforcement of civil penalty proceedings to the U.S. Department of Justice.[43]

Finally, the Commission believes that an expansion of its authority to include the ability to challenge practices that aid or abet violations of the FTC Act, could be beneficial to the Commission's consumer protection law enforcement program.[44] Effective law enforcement

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[42] These recommendations are discussed in greater detail in the FTC's April 8, 2008 testimony before the House Committee on Energy and Commerce, Subcommittee on Commerce, Trade, and Consumer Protection, which is available at http://www2.ftc.gov/os/testimony/P034101reauth.pdf.

[43] Please see Commissioner Kovacic's dissent in note 4.

[44] Since the Supreme Court's ruling in *Central Bank of Denver v. First Interstate Bank of Denver*, 511 U.S. 164 (1994), which cast doubt on the argument that Section 5 of the FTC Act could reach "aiding and abetting" another person's violation, the Commission's ability to pursue those who assist and facilitate unfair or deceptive acts and practices has been

often requires reaching not only the direct participants in unfair or deceptive practices, but also those who support and enable the direct participants to violate the law.[45] The need for this authority has become particularly clear in the Internet era, in which online frauds involve numerous actors with murky and varying roles in complicated channels of distribution. Making it easier for the Commission to challenge those who provide assistance to others who are violating Section 5 of the FTC Act could help the agency attack the infrastructure that supports Internet fraud, such as in the online scams described above.

III. Conclusion

The economic downturn has shown how quickly and easily opportunists adopt schemes to take advantage of individuals in financial distress. The Commission is committed to using its law enforcement authority aggressively to bring these schemes to a halt, and to continue deploying public alerts and educational materials to help consumers avoid being victimized in the first instance. The Commission supports legislation that would help it do more to protect

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compromised. Although the Commission has developed alternative "assistance" theories to reach secondary actors, these theories may make liability more difficult to prove than if the FTC had specific statutory authority in this area. *See, e.g.*, *FTC v. Winstead Hosiery Co.*, 258 U.S. 483, 494 (1922) (establishing the doctrine that providing the means and instrumentalities by which unfair or deceptive practices occur is itself an unfair or deceptive practice in violation of the FTC Act).

[45] The Telemarketing Act is one statute that specifically gives the FTC express authority to pursue aiders and abetters. 15 U.S.C. § 6102(a)(2). Based on this express authority, Section 310.3(b) of the TSR prohibits providing "substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer" is engaged in certain practices that violate the Rule. 16 C.F.R. § 310(b). The Commission has included an "assisting and facilitating" allegation in at least two dozen cases since the TSR was adopted. *See*, *e.g*., *FTC v. Assail, Inc*., No. W03CA007 (W.D. Tex. final orders entered Jan. 2005); *U.S. v. DirecTV, Inc*., No. SACV05 1211 (C.D. Cal. final order entered Dec. 2005); *U.S. v. Entrepreneurial Strategies, Ltd*., No. 2:06-CV-15 (WCO) (N.D. Ga. final order entered Jan. 2006).

consumers by authorizing it to issue consumer protection rules and obtain civil penalties for violations of those rules.

Thank you for providing the Commission with the opportunity to appear before the Committee to describe its efforts in this critical area.