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3 HEARING ON CONSUMER CREDIT AND DEBT: THE ROLE OF THE FEDERAL

4 TRADE COMMISSION IN PROTECTING THE PUBLIC

5 TUESDAY, MARCH 24, 2009

6 House of Representatives,

7 Subcommittee on Commerce, Trade, and Consumer Protection

8 Committee on Energy and Commerce

9 Washington, D.C.

10 The subcommittee met, pursuant to call, at 10:07 a.m.,
11 in Room 2123 of the Rayburn House Office Building, Hon. Bobby
12 L. Rush (chairman) presiding.

13 Members present: Representatives Rush, Schakowsky,
14 Sutton, Stupak, Green, Barrow, Matsui, Waxman (ex officio),
15 Radanovich, Stearns, Whitfield, Pitts, Terry, Myrick,
16 Gingrey, Scalise, and Barton (ex officio).

17 Staff present: Anna Laitin, Professional Staff;
18 Christian Fjeld, Counsel; Michelle Ash, CTCP Chief Counsel;

19 Valerie Baron, Legislative Clerk; Brian McCullough, Minority
20 Senior Professional Staff; Will Carty, Minority Professional
21 Staff; Sharon Weinberg, Minority Counsel; and Sam Costello,
22 Minority Legislative Analyst.

|

23 Mr. {Rush.} The Subcommittee on Commerce, Trade and
24 Consumer Protection will come to order. Today's hearing is a
25 hearing that we are anxiously awaiting to conduct. It is a
26 hearing on Consumer Credit and Debt, the Role of the Federal
27 Trade Commission in Protecting the Public. The chair would
28 yield himself 5 minutes for the purposes of a opening
29 statement. Three weeks ago, the Subcommittee on Commerce,
30 Trade, and Consumer Protection held a hearing on abusive
31 credit practices in the used-car industry. Today, I want to
32 expand our inquiry into the world of consumer credit and debt
33 in general. For the past decade, if not longer, American
34 consumers, particularly low-income Americans, have been
35 swimming in shark-infested waters.

36 Whether it is sub-prime mortgages, auto loans, or pay-
37 day loans, too many companies have had a free reign to saddle
38 Americans with debts they simply cannot afford. They sold
39 their snake oil by taking advantage of the people's
40 circumstances, or with outright deception. Unfortunately,
41 there wasn't a strong enforcement or regulatory authority at
42 the federal level protecting consumers from these abusive
43 practices. The result has been a wrecked economy, and, I
44 might add, wrecked lives.

45 The purpose of today's hearing is twofold. First, I

46 want us to examine the actions taken by the Federal Trade
47 Commission in tracking down on abusive credit practices. The
48 FTC has broad authority under the FTC Act to enforce against
49 ``unfair or deceptive acts of practices.'' How was this
50 broad authority exercised is one question that we may ask.
51 If the Commission took insufficient action in the past, then
52 why was that the case is another looming question. Was it
53 political will or was it because the Commission lacks
54 sufficient statutory authority and resources is the third
55 question that we should explore.

56 Second, in this hearing, I want members of the
57 subcommittee to deliberate on reforms that Congress can
58 initiate to make the FTC as effective as possible in
59 protecting consumers from abusive credit and debt practices
60 in the marketplace. I am working on legislation that will
61 better equip the Commission to aggressively address abusive
62 lending practices. How can we utilize the Commission's
63 historical authority to prohibit and enforce against unfair
64 or deceptive acts or practices to our advantage? The FTC is
65 America's foremost consumer protection agency, and we need to
66 take advantage of its historical authority by enhancing the
67 Commission's underlying regulatory and enforcement powers.

68 I believe the basic cornerstones of the Consumer Credit
69 Protection Agency are already in place but some reforms are

70 more than likely necessary. Does the Commission need more
71 resources? Should the Commission be given regulatory or
72 rulemaking authority under the Administrative Procedures Act
73 to replace its current, burdensome rulemaking process under
74 Magnusson-Moss? Should the Commission be given additional
75 civil penalty authority? If the FTC has one hand tied behind
76 its back, I believe that we should untie that one hand, but
77 if we do so, we must be assured that the Commission will
78 aggressively utilize these tools to protect consumers to the
79 fullest extent.

80 Today, I want to explore how the FTC can be equipped to
81 adequately deal with not only today's abusive practices, such
82 as sub-prime mortgages and pay-day loans, but also tomorrow's
83 unforeseen snake oil that will be sold to consumers in the
84 future. I want to congratulate and welcome the new chairman
85 of the FTC, Mr. Jon Leibowitz. I have had the opportunity to
86 meet with him, and I find him an outstanding and fine
87 gentleman and a dedicated public servant. And this is his
88 first appearance on Capitol Hill as chairman of the FTC. And
89 I hope that this hearing today will be first in a series of
90 constructive hearings. As chairman of this subcommittee, I
91 want to have a constructive relationship with Chairman
92 Leibowitz and with our friends at the Commission to ensure
93 that both Congress and the FTC are doing everything we can to

94 protect the American consumers, particularly poor American
95 consumers, from the unfair, deceptive, and abusive practices
96 that are far too prevalent in the American economy. With
97 that, I yield back the balance of my time.

98 [The prepared statement of Mr. Rush follows:]

99 ***** COMMITTEE INSERT *****

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100 Mr. {Rush.} And now I recognize my friend, the ranking
101 member of this subcommittee, the gentleman from Georgia, Mr.
102 Radanovich, for 5 minutes for the purposes of an opening
103 statement.

104 Mr. {Radanovich.} Thank you, Mr. Chairman. I want to
105 thank you so much for holding today's hearing on the FTC's
106 role in financial consumer protection. Given the current
107 economic downturn and the slow thawing freeze in the credit
108 markets, this discussion is particularly timely. Abuses must
109 have the disinfectant of sunlight shone brightly on them, and
110 it is our responsibility as representatives of our
111 constituents to examine the protections afforded to consumers
112 by the law. Any credit scam that takes advantage of innocent
113 consumers is deplorable and we must have our regulators
114 pursue all those responsible for this kind of despicable
115 crime behavior with vigor.

116 My district is located in California San Joaquin Valley,
117 which is suffering from one of the Nation's highest
118 foreclosure rates due to the easy availability of credit,
119 unfortunately, so the easy money was available to consumers
120 because of deception and fraud. These were cases of mortgage
121 fraud, appraisal fraud, and income fraud that all played a
122 part in creating the current mess that we are in. It is

123 reprehensible that people who may have been taken advantage
124 of when they bought their house could now be victims in their
125 time of need. Today, we focus on the Federal Trade
126 Commission's efforts. The FTC deals with matters that affect
127 the economic life of all our constituents. The Commission's
128 consumer protection mission is to ensure consumers are
129 protected from unfair and deceptive practices in or affecting
130 commerce. That Herculean task puts the Commission in the
131 position of overlooking a multitude of industries, and the
132 Commission's responsibility to protect consumers of financial
133 service products are a critical part of this work.

134 The Commission helps to protect consumers at every stage
135 of the consumer credit market from the advertising and the
136 marketing of financial products to debt collection and debt
137 relief. However, the Commission's legal authority does not
138 extend to all entities that provide financial services to
139 consumers. The FTC Act and the statutes the Commission
140 enforces specifically exempt banks, thrifts, and federal
141 credit unions. The FTC, however, had jurisdiction over non-
142 bank financial companies including non-bank mortgage
143 companies, mortgage brokers, and finance companies.

144 As the lead consumer protection agency, it has the
145 expertise and the experience that was recognized by our
146 colleagues on the House Financial Services Committee last

147 Congress. They developed legislation to improve the existing
148 framework of the consumer protection regulations to better
149 coordinate banking regulators rulemakings with those of the
150 Commission, and while avoiding duplicative efforts in the
151 government this coordinated approach to protect consumers of
152 financial services is essential. The same rule should apply
153 regardless of what entity sells the product. I am anxious to
154 hear about the FTC's recent activity in this area, the
155 cooperative efforts among agencies, and whether these efforts
156 are effective.

157 I do have concerns about some of the reforms that have
158 been discussed over the years that would change how the
159 Commission operates. As I mentioned, the FTC's jurisdiction
160 is enormous. Except for the few exempted entities, the
161 Commission's authority to promulgate regulations impacts
162 nearly our entire economic spectrum. Unlike some other
163 agencies who promulgate rules using the procedures of the
164 Administrative Procedures Act, the FTC's rulemaking process
165 is laid out in the Magnusson-Moss FTC Improvement Act.
166 Congress established the Magnusson-Moss rulemaking procedures
167 in the 1970's specifically to be more rigorous than the APA
168 process, in part, to provide affected industries the
169 opportunity to present arguments in an evidentiary hearing.

170 The FTC must base any rule on that hearing record and

171 substantial evidence must be presented to justify it. I am
172 concerned that any significant change to this process would
173 not allow for such careful consideration before rules are
174 finalized. Congress set up the Magnusson-Moss process to be
175 intentionally deliberative, but Congress also has been highly
176 effective in enacting consumer protection legislation on
177 specific issues and providing the Commission with APA
178 rulemaking authority in those cases where it is warranted,
179 such as the Do Not Call Act.

180 I want to thank all our witnesses for being here today,
181 and I look forward to their insight and expertise on how
182 consumers can be best protected. I am particularly
183 interested in hearing if there are any holes in the current
184 law which prevent the FTC from pursuing bad actors and
185 whether or not additional regulations would be effective in
186 deterring unscrupulous lenders and others. If the testimony
187 and the evidence we receive lead to the conclusion that the
188 Commission should be doing more, including regulating
189 entities that it currently does not, I stand ready to work
190 with you, Mr. Chairman, to develop the appropriate
191 legislation. Thank you, Mr. Chairman, and I yield back.

192 [The prepared statement of Mr. Radanovich follows:]

193 ***** COMMITTEE INSERT *****

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194 Mr. {Rush.} The chair thanks the gentleman. Now it is
195 my privilege to recognize the chairman of the full committee
196 for 5 minutes for the purposes of opening statements, the
197 gentleman from California, Chairman Waxman.

198 The {Chairman.} Thank you very much, Mr. Chairman. I
199 want to commend you for holding this hearing, and the fact
200 that your subcommittee is taking a close look at consumer
201 protection in the area of credit and debt. This committee
202 has an important role in ensuring that consumers are
203 protected from unfair, abusive, and deceptive practices
204 throughout the marketplace, including the credit market, and
205 I am please to join you in welcoming the chairman, the new
206 chairman, of the Federal Trade Commission, Jon Leibowitz.
207 Congratulations on your appointment. I look forward to
208 working with you on this and other issues before our
209 committee.

210 The current financial crisis has brought to light a host
211 of schemes that have hurt both individual consumers and the
212 economy as a whole, mortgages have required no money down and
213 no proof of income or assets, pay-day lenders who charge 500
214 percent interest for a short-term loan, companies that take
215 money from individuals based on false offers or they offer to
216 fix a credit report or save a home from foreclosure. These

217 are schemes, and they are allowed to happen because of a
218 fierce anti-regulatory ideology that was prevailing at least
219 in the last 8 years. The philosophy was the government was
220 the source of the problem, that it posed obstacles to success
221 and that it should be slashed wherever feasible. This was
222 the ideology that led to FEMA's failure during Hurricane
223 Katrina, billions of dollars of contracting abuse at the
224 Defense Department, and a food safety system that could not
225 keep unsafe peanuts and spinach off the grocery shelves.

226 The agencies of government responsible for protecting
227 our financial system and Americans' hard-earned assets also
228 suffered under this ideology. There was a feeling that
229 government should step aside and markets should be allowed to
230 work with little or no regulatory intervention. Now we have
231 an opportunity move beyond the flawed system of the previous
232 8 years and strengthen consumer protections across the
233 financial system. Today's hearing focuses on the Federal
234 Trade Commission which plays an essential role in overseeing
235 consumer credit. An aggressive and rejuvenated FTC could
236 prevent unfair and deceptive practices before they become
237 commonplace, and it could use its enforcement authority to
238 deter fraudulent schemes.

239 I look forward to working with you, Mr. Chairman, and
240 the members of this committee to making sure that the FTC has

241 the authority, the resources, and the will to be an
242 aggressive consumer protection agency. I yield back the
243 balance of my time.

244 [The prepared statement of Mr. Waxman follows:]

245 ***** COMMITTEE INSERT *****

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246 Mr. {Rush.} The chair thanks the chairman, and now
247 recognizes the gentleman from Pennsylvania for 2 minutes for
248 the purposes of opening statement, Mr. Pitts from
249 Pennsylvania.

250 Mr. {Pitts.} Thank you, Mr. Chairman. Thank you for
251 holding this important hearing on the role of the Federal
252 Trade Commission and protecting consumers of credit and debt.
253 I think we all agree that we need to ensure that strong
254 consumer protection measures are in place. The recent
255 housing and the credit crises our country has faced has made
256 that abundantly clear. We must do this prudently though,
257 avoiding duplicity and jeopardizing processes that work well,
258 and this is why we should examine legislation already in
259 place to see if it has been successful in protecting
260 consumers. While there may be room for improvements in our
261 consumer protection laws, we should also consider that a
262 complete overhauling of legislation may actually force
263 negative and overly burdensome requirements on those who are
264 being truthful and honest.

265 Again, we all desire effective and efficient enforcement
266 of consumer protection laws, and it is my hope that this
267 committee moves forward in a wise, careful, and deliberative
268 manner, and I look forward to hearing our distinguished

269 witnesses today. Thank you, and yield back.

270 [The prepared statement of Mr. Pitts follows:]

271 ***** COMMITTEE INSERT *****

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272 Mr. {Rush.} The chair thanks the gentleman. And the
273 chair now recognizes the gentlelady from California, my
274 friend, Ms. Matsui, for 2 minutes for the purposes of opening
275 statement.

276 Ms. {Matsui.} Thank you, Mr. Chairman. Thank you very
277 much for calling today's hearing. I applaud your leadership
278 on this issue. I would also like to thank Chairman Leibowitz
279 for being here today with us and congratulate him also. In
280 today's economic recession, many families in my home district
281 of Sacramento are really struggling to make ends meet. I
282 have heard countless stories about people struggling to keep
283 their homes, their jobs, and their way of life. As we all
284 know, the housing crisis has had an unprecedented effect on
285 our economy. The rising unemployment will cause even more
286 Americans to face foreclosure. California, and in particular
287 my home district of Sacramento, has been greatly impacted by
288 the foreclosure crisis. Many of my constituents were victims
289 of predatory lending and were steered into high cost, bad
290 loans. Now many of these homeowners are seeking assistance
291 in modifying their loans to more affordable loan terms.

292 However, that has been a serious issue for many. In
293 some cases, their original loan company is not a business or
294 in some cases their lenders or services are not being

295 responsive leaving struggling homeowners feeling desperate to
296 save their homes. As a result, many have been tricked into
297 contacting scam artists posing as so-called foreclosure
298 consultants or the so-called agencies to save their homes.
299 These scams are costing thousands of dollars and false
300 promises to struggling homeowners.

301 I am a member of the Sacramento District Attorney's
302 Foreclosure Task Force, which is charged with cracking down
303 on mortgage fraud. Many of these unfortunate scams have been
304 well documented in my district. It is clear that consumers
305 are not being properly protected from these shameful,
306 unacceptable practices. We are here today to determine what
307 more the government can and should do to stop these abuses
308 from occurring today and in the future. I think you once
309 again, Mr. Chairman, for holding this important hearing
310 today, and I yield back the balance of my time.

311 [The prepared statement of Ms. Matsui follows:]

312 ***** COMMITTEE INSERT *****

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313 Mr. {Rush.} The chair thanks the gentlelady. The chair
314 now recognizes the ranking member of the full committee, my
315 friend from Texas, Mr. Barton, for 5 minutes for the purposes
316 of opening statements.

317 Mr. {Barton.} Thank you. And I haven't forgotten about
318 that cowboy hat, Mr. Chairman.

319 Mr. {Rush.} I thank you very much.

320 Mr. {Barton.} It is on order.

321 Mr. {Rush.} All right.

322 Mr. {Barton.} The hat is in the mail.

323 Mr. {Rush.} The hat is in the mail. All right.

324 Mr. {Barton.} Thank you for this hearing today, Mr.
325 Chairman. Its title, Consumer Credit and Debt: The Role of
326 the Federal Trade Commission in Protecting the Public, is an
327 important one. As you know, the subcommittee in the past has
328 explored a multitude of consumer protection issues. We have
329 looked into data security, spyware, spam, and children's on
330 line privacy. We have inquired about how Social Security
331 numbers are abused. We have investigated calling cards and
332 also telemarketing. These areas are important and it is
333 fitting that today we are considering consumer protection
334 particularly given our current economic environment.

335 The fraud in consumer credit is considerable, its

336 ramifications beyond those suffered by the victims. The fall
337 out often damages the businesses with whom the consumer
338 interacts and it nearly always harms consumers at large.
339 Losses reach into the millions of dollars every year and the
340 cost is borne by all of us. We know that the FTC is a strong
341 advocate for consumers policing that activity of those
342 fraudsters who seek to take advantage of consumers in a most
343 repugnant way. I am interested today to learn what the
344 chairman, Mr. Leibowitz, has to say about the tools that his
345 agency has in its toolbox, how it complements the actions of
346 sister agencies with similar authority and the state attorney
347 generals and what additional tools, if any, the Commission
348 needs.

349 Let me add a cautionary note, however. I support
350 efforts to strengthen the Commission's authority where
351 necessary. I am aware too that several stakeholders believe
352 the Commission's authority must be strengthened by
353 eliminating the rulemaking requirements of the Magnusson-Moss
354 Act in 1975 in favor of the Administrative Procedures Act.
355 As we move forward in this debate, I would ask yourself, Mr.
356 Chairman, and the members of this subcommittee, to remember
357 the reasons that Congress imposed the Magnusson-Moss
358 requirements in the first place. The FTC oversees an
359 enormous jurisdiction. Its rules reach into enumerable

360 industries and affect every commercial main street in the
361 country. Given the breadth of that impact, Congress believes
362 that the Commission should take more than 180 days so that it
363 could carefully consider its broad sweeping rulemakings and
364 the comments generated by that consideration. We still have
365 the power here to permit the FTC to side step the Magnusson-
366 Moss Act when necessary and permit rulemaking under APA where
367 it is appropriate and necessary.

368 This is an ability this committee has never had a
369 problem utilizing when we found a situation that warrants it.
370 Again, thank you, Mr. Chairman, for holding the hearing. I
371 want to thank our witnesses, and I look forward to reviewing
372 their testimony.

373 [The prepared statement of Mr. Barton follows:]

374 ***** COMMITTEE INSERT *****

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375 Mr. {Rush.} The chair thanks the ranking member. Now
376 the chair recognizes the gentleman from Georgia for 2 minutes
377 for the purposes of opening statement of Mr. Barrow.

378 Mr. {Barrow.} I thank the chair. I will waive an
379 opening.

380 [The prepared statement of Mr. Barrow follows:]

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382 Mr. {Rush.} The gentleman desires 2 minutes in addition
383 to the 5 minutes that he is granted for questioning. So
384 granted. The chair now recognizes my friend and vice-chair
385 of the subcommittee, the gentle woman from Illinois, Ms.
386 Schakowsky, for 2 minutes for the purposes of opening
387 statement.

388 Ms. {Schakowsky.} Thank you, Mr. Chairman, for holding
389 this hearing. And congratulations to you, Mr. Leibowitz. We
390 are glad to have you here. The repercussions of years of
391 irresponsible mortgage lending continued to unfold.
392 According to the Center for Responsible Lending, there have
393 been nearly 550,000 new foreclosure filings since 2009 began,
394 6,600 each day or 1 every 13 seconds. We were trying to
395 calculate how many since this hearing began. It is more than
396 100, in every 13 seconds yet another. In my State of
397 Illinois more than 100,000 families are projected to lose
398 their homes to foreclosure this year, and this Administration
399 and this Congress are obviously taking steps to mitigate this
400 crisis and ensure it never happens again.

401 But to do that, I really think we have to ask how did we
402 get here. We are here not just because the banks were a
403 problem, and it is not just bank lending that is responsible
404 for billions of dollars worth of bad loans that now must be

405 dealt with in order to put our economy back on track.
406 Lending by non-bank entities has exploded in recent years and
407 a major factor in today's financial crisis Country Wide and
408 other non-bank mortgage lenders are responsible for 40
409 percent of the home loans made in 2007 and 55 percent of the
410 sub prime loans. It was the Federal Trade Commission's
411 responsibility to exercise oversight of these mortgages where
412 abusive practices have hurt consumers. Clearly, they missed
413 something.

414 The FTC's authority extends to, it is my understanding,
415 auto loans, pay-day loans, car title loans, and other non-
416 traditional forms of credit that often flows to non-bank
417 entities and currency exchanges. We have those in Chicago
418 big time. It is a vital role of this subcommittee to
419 exercise oversight over FTC and its rulemaking enforcement
420 actions over non-bank lenders, and I look forward to working
421 with you, our committee does, to make sure that these
422 improvements are made as we move forward. I thank you again,
423 Mr. Chairman.

424 [The prepared statement of Ms. Schakowsky follows:]

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426 Mr. {Rush.} The chair thanks the gentlelady. The chair
427 now recognizes the gentleman from Georgia, Dr. Gingrey, for 2
428 minutes for the purposes of an opening statement.

429 Mr. {Gingrey.} Mr. Chairman, I thank you for calling
430 the hearing today on such an important issue. It hadn't been
431 examined in depth by this committee since 106th Congress. I
432 join with my colleagues in congratulating the new chairman of
433 the FTC, Jon Leibowitz, and I look forward to his testimony.
434 I think one of the most important things as we go forward is
435 to strike a balance. And we heard testimony from our
436 distinguished chairman a little bit earlier in regard to, and
437 I paraphrase, the government during the past 8 years, at
438 least the past 8 years, has taken sort of a hands-off or soft
439 approach to regulation to the detriment of consumers. Well,
440 in the first 60 days of the current Administration very
441 aggressive intervention by the government led to over \$200
442 million of egregious loans to AIG executives, so this is I
443 think a perfect example of why we need to strike a balance.

444 No doubt both lenders and borrowers can share the blame
445 for elements of the current credit climate within the
446 economy, and as the economy begins to work toward recovery
447 one of the basic ways in which we can work in a bipartisan
448 manner to prevent these problems from occurring again is

449 through consumer credit reform. Unfortunately, there will
450 always be bad actors within the financial and credit markets,
451 and this committee hopefully will play a role in mitigating
452 this in the future. First and foremost, credit scams that
453 take advantage of innocent consumers are absolutely shameful.
454 However, before we look to expand the role and the duties of
455 the FTC, it is imperative that we examine how the FTC could
456 be more effective given its current and very broad set of
457 responsibilities.

458 Mr. Chairman, moving forward, we must ensure that there
459 continues to be strict scrutiny and transparency within the
460 rulemaking process of the FTC. The Magnusson-Moss rulemaking
461 structure is unique because in order to ensure transparency
462 it was specifically designed in the 70's to be difficult to
463 make sporadic whimsical changes. As we are about to begin
464 this hearing and future deliberation on the legislative
465 changes to the FTC, I am reminded of the words of Speaker
466 Pelosi when she took the gavel at the start of the 110th. She
467 guaranteed that it would be the most open and honest Congress
468 in the history of our Nation. I hope that this subcommittee
469 takes heed of these words as we begin to modify the role.

470 Mr. Chairman, transparency is everything, and with that
471 I look forward to the testimony of the Honorable Jon
472 Leibowitz, and I thank you so much for holding the hearing.

473 [The prepared statement of Mr. Gingrey follows:]

474 ***** COMMITTEE INSERT *****

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475 Mr. {Rush.} The chair thanks the gentleman. The chair
476 now recognizes the gentlelady from Ohio, Ms. Sutton, for 2
477 minutes for the purposes of opening statement.

478 Ms. {Sutton.} Thank you so much, Mr. Chairman. Thank
479 you for holding this hearing. It is extremely important to
480 the people that I represent in Ohio. You know, time and time
481 again we have learned that sometimes the people who are hurt
482 the most by what is going on out there are the ones who need
483 our help the most. Today there are a wide range of financial
484 products advertised to assist consumers in paying off debt
485 and emerging from debt from pay-day lending to car title
486 loans, short-term loans with incredibly high interest rates
487 all but ensure that individuals remain in debt, and these
488 individuals, many of them, are my constituents. The American
489 people expect their government to rein in unscrupulous and
490 unfair lending. Last November, voters in Ohio overwhelmingly
491 improved a referendum on pay-day lenders to end predatory
492 loans.

493 Our referendum capped interest rates provided borrowers
494 with more time to pay back loans and prohibited new loans to
495 pay off old ones which will help to break that cycle of debt.
496 However, we are now learning that these lenders are exploring
497 new loopholes and operating under different licenses and

498 adding new fees such as inflated check cashing fees for
499 checks they have just printed and even as our Attorney
500 General, Richard Cordray, and our state legislature and our
501 governor are working to address this situation, the Federal
502 Trade Commission must aggressively act as the American people
503 expect. While I used Ohio as an example, this is a problem
504 that severely impacts people in need throughout our country
505 and if the Federal Trade Commission does not have the tools
506 or the authority to aggressively protect Americans, then it
507 is our responsibility to strengthen the Commission and
508 restore Americans' confidence, and I look forward to being a
509 part of making that happen.

510 [The prepared statement of Ms. Sutton follows:]

511 ***** COMMITTEE INSERT *****

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512 Mr. {Rush.} The chair thanks the gentlelady. And now
513 it is my pleasure to recognize the gentleman from Louisiana,
514 Mr. Scalise, for the purpose of 2 minutes of opening
515 statement.

516 Mr. {Scalise.} Thank you, Mr. Chairman. I appreciate
517 you holding this hearing. Fraudulent and deceptive practices
518 that prey upon consumers are deplorable and shameful
519 especially during these tough economic times because
520 consumers are even more vulnerable to unethical scams. We
521 need to make sure that the FTC is fully utilizing the tools
522 they already have available to them and also ensure that the
523 FTC is working with our local, state attorney generals, those
524 people that are closest in many cases to the practices of
525 those illegal and unethical practices that are going on where
526 we would have the ability to actually go and get prosecutions
527 and root out the things that are being done to take advantage
528 of our consumers in this country.

529 Another critical issue that we need to look at is the
530 coordination with other federal agencies like the FBI, who
531 are also involved in some of these investigates themselves as
532 well as local attorney generals that were not duplicating the
533 scarce resources that we do have, so I look forward to
534 hearing from Chairman Leibowitz of the Federal Trade

535 Commission, and yield back the balance of my time.

536 [The prepared statement of Mr. Scalise follows:]

537 ***** COMMITTEE INSERT *****

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538 Mr. {Rush.} The chair thanks the gentleman. The chair
539 now recognizes my friend, my colleague, my classmate, the
540 gentleman from Texas, Mr. Green, for 2 minutes for the
541 purposes of opening statement.

542 Mr. {Green.} Mr. Chairman, thank you for your
543 friendship over the last 17 years. I thank you for holding
544 this hearing on the consumer credit and debt protection and
545 to look at the role that the FTC should play. I would like
546 to welcome our new FTC chairman, Jon Leibowitz, and
547 congratulate him on the new position as the chair of the
548 Commission. I look forward to working with you. The FTC is
549 important all the time but in this day and time it is even
550 more so. As the primary federal agency that enforces
551 consumer credit laws at entities other than banks, the
552 thrifts and federal credit unions, the FTC has broad
553 responsibility regarding consumer financial issues in the
554 mortgage market including those involving mortgage lenders,
555 brokers, and services.

556 The FTC enforces a number of federal laws governing
557 mortgage lending, Truth in Lending Act, the Home Ownership
558 and Equity Protection Act, and the Equal Credit Opportunity
559 Act. The Commission also enforces Section 5 of the Federal
560 Trade Commission Act which more generally prohibits unfair

561 and deceptive acts or practices in the marketplace. That is
562 probably one of the most important that we can deal with. In
563 addition, the Commission enforces a number of other consumer
564 protection statutes that govern financial services including
565 Consumer Leasing Act, Fair Debt Collection Practice Act, the
566 Fair Credit Reporting Act, the Credit Repair Organization
567 Act, and the privacy provisions of the Gramm-Leach-Bliley
568 Act.

569 I also have a particular concern about non-traditional
570 loans such as pay-day loans and car title loans, which can
571 carry enormous interest rates and fees. In 2006, Congress
572 enacted to cap the pay-day loans made to military personnel
573 to a 36 percent annual percentage rate after pay-day loans
574 grew 34 percent to reach a total of 500 million the previous
575 2 years. That figures has doubled since 2002. In an
576 economic climate such as the one we are in today where credit
577 availability is shrinking consumers may be more inclined to
578 turn to these options which are much less regulated and
579 therefore the potential for predatory practice is much
580 greater. In recent months, the FTC has taken significant
581 steps to protect consumers and crack down on scam artists by
582 going after Internet pay-day lenders, alleged mortgage
583 foreclosure rescue companies, and companies claiming they
584 remove negative information from the consumers' credit

585 reports.

586 I look forward to hearing what other actions the FTC is
587 making to protect consumers, what tools it may need from
588 Congress, and what the rest of our witnesses believe could be
589 done better to protect consumers in today's volatile economic
590 environment. All told, this gives the FTC broad authority to
591 go after those predatory practices. The Congress may need to
592 act particularly to give FTC authority to issue rules under
593 the Administrative Procedures Act. Again, Mr. Chairman,
594 thank you for calling the hearing, and I appreciate the
595 opportunity.

596 [The prepared statement of Mr. Green follows:]

597 ***** COMMITTEE INSERT *****

|
598 Mr. {Rush.} The chair thanks the gentleman. The chair
599 now recognizes my friend from Florida, Mr. Stearns, for 2
600 minutes for the purposes of an opening statement.

601 Mr. {Stearns.} Good morning, and thank you, Mr.
602 Chairman. Welcome the new chairman. Mr. Leibowitz had been
603 on the FTC as commissioner, I think, since September, 2004,
604 so we have someone, Mr. Chairman and members, who is
605 experienced and can help us out. He has seen some of the
606 problems and some of the accomplishments. Obviously, as
607 members have talked about, the current financial situation
608 and housing crisis has brought a lot of relevant consumer
609 protection issues to the forefront and we need to see how
610 much more authority we should give the Federal Trade
611 Commission. Something that no one has mentioned is perhaps
612 giving them more jurisdiction over the banks to credit unions
613 and the thrifts that my colleague from Texas mentioned they
614 do not have jurisdiction, and of course that is 75 percent of
615 the credit cards, so I think the people across the hall here
616 will probably not like that, but it would fall in their
617 jurisdiction. I think it is something that we should not not
618 discuss.

619 The FTC has authority, but as I pointed out earlier, it
620 is sort of limited because 75 percent of the credit cards go

621 through credit union, banks, and thrifts. But they can issue
622 and prohibit unfair and deceptive acts, particularly dealing
623 with advertising. The FTC's stated goal is to protect
624 consumers at every stage of the credit life cycle by both the
625 FTC and consumer protection groups acknowledge that more can
626 be done to protect consumers. And I think with his over 4
627 years experience as a commissioner he will certainly have
628 some ideas that bring it to bear on this problem. The FTC
629 has taken more aggressive action, I think, more recently
630 against companies such as Internet pay-day lenders and credit
631 repair companies who purposely deceive consumers, but the
632 issue of whether the FTC should expand its jurisdiction, as I
633 mentioned earlier, is still up in the air. It should be
634 something of consideration.

635 But I look forward, Mr. Chairman, in a bipartisan manner
636 to see what we can do to help the Federal Trade Commission,
637 and I appreciate you having this hearing. Thank you.

638 [The prepared statement of Mr. Stearns follows:]

639 ***** COMMITTEE INSERT *****

|
640 Mr. {Rush.} The chair thanks the gentleman. Now all
641 the members of the subcommittee have had an opportunity to
642 issue opening statements. And it is now my distinct honor
643 and privilege to welcome the new chairman of the FTC, Mr. Jon
644 Leibowitz, to this committee. I want to say, Mr. Liebowitz,
645 we are excited about your chairmanship. We look forward to
646 working with you and look forward to having a meaningful and
647 productive relationship on behalf of the American people.
648 First of all, it is the practice of the subcommittee
649 beginning with this Congress to swear in all witnesses so
650 would you please stand up and raise your right hand?

651 [Witnesses sworn.]

652 Mr. {Rush.} Let the record reflect that the witnesses
653 all answered in the affirmative. Chairman Leibowitz, you are
654 now recognized for 5 minutes for purposes of an opening
655 statement.

|
656 ^TESTIMONY OF HONORABLE JON LEIBOWITZ, CHAIRMAN, FEDERAL
657 TRADE COMMISSION

658 } Mr. {Leibowitz.} Thank you, Mr. Chairman, Mr.
659 Radanovich, Ms. Schakowsky, members of the subcommittee, I am
660 Jon Leibowitz. I am the chairman of the Federal Trade
661 Commission, and I really do appreciate the opportunity to
662 appear before you today to discuss the FTC's role in
663 protecting consumers from predatory financial practices.
664 This is my first hearing of several you mentioned, and let me
665 just say this. You are an authorizing committee. We want to
666 work with all of you. We will not be successful agency
667 unless we can work together, and I hope that we will be doing
668 that over the coming weeks and months. The Commission's
669 views are set forth in the written testimony which was
670 approved by a vote of the entire Commission, though my
671 answers to your questions represent my own views.

672 Mr. Chairman, during these times of difficulty for so
673 many American consumers, the FTC is working hard. Whether
674 Americans are trying to stave off foreclosure, lower their
675 monthly mortgage payments or deal with abusive debt
676 collectors the FTC is on the job enforcing the law, offering
677 guidance, and in the process of issuing new regulations. The

678 written testimony describes in great detail the Commission's
679 enforcement, education, and policy tools and how we have used
680 those tools to protect and advocate for consumers of
681 financial services. We brought about 70 cases involving
682 financial services since I came to the Commission 4-1/2 years
683 ago, and we have gotten \$465 million in redress for consumers
684 over the past 10 years in this area alone.

685 But let me highlight just a few recent cases. In the
686 fall, Bear Stearns and its EMC subsidiary paid \$28 million to
687 settle Federal Trade Commission charges of illegal mortgage
688 servicing practices. For example, they misrepresented the
689 amounts consumers owed. They collected unauthorized fees.
690 They made harassing and deceptive collection calls. In
691 January we sent out more than 86,000 redress checks, 86,000,
692 to reimburse consumers who were harmed. And today the FTC
693 announced two more cases against so-called mortgage rescue
694 operations that allegedly charged thousands of dollars in
695 upfront fees but failed to provide any assistance in saving
696 people's homes.

697 Even worse, these scurrilous companies Hope Now and New
698 Hope gave consumers false hope by impersonating the HUD-
699 endorsed Hope Now alliance, which helps borrowers with free
700 debt management and credit counseling services, mostly low
701 income consumers. I am pleased to report that the courts

702 have issued temporary restraining orders stopping these
703 fraudulent claims and freezing the company's assets. We are
704 announcing a third action today against yet another rogue
705 rescue scam. Less than 2 weeks ago, FTC investigators
706 discovered a foreclosure rescue web site that was
707 impersonating the HUD web site itself. The HUD inspector
708 general had the site taken down. Last week, however, we were
709 told that the same site had popped up again on a differed
710 ISP.

711 Within hours, we filed a complaint against the unknown
712 operators of the site, and armed with a court order we shut
713 it down. Let me assure you, particularly in this economic
714 climate the FTC will continue to target fraudulent mortgage
715 rescue operations, but we can do better and we will. Mr.
716 Chairman, you mentioned the lack of statutory authority, the
717 one hand tied behind our back. First, we are going to
718 vigorously enforce new mortgage rules issued by the Federal
719 Reserve Board that go into effect this fall that will
720 prohibit a variety of unfair, deceptive, and abusive mortgage
721 advertising, lending, appraisal, and servicing practices such
722 as banning sub-prime buyer's loans.

723 Second, the 2009 Omnibus Appropriations Act gave us
724 authority to find violators in this area for the first time.
725 And, third, we are going to use the regulatory authority

726 given to use by the Omnibus to issue new regulations that
727 will protect consumers from other predatory mortgage
728 practices. We expect these rules to address foreclosure
729 rescue scams and unfair and deceptive mortgage modification
730 and servicing practices. At the same time, we are going to
731 focus more attention on empirical research about how to make
732 mortgages and other disclosures more effective so that
733 consumers have accurate, easily understandable information
734 about a mortgage's terms.

735 We have put a prototype disclosure form on your desks.
736 It is clearly better, and we have copy tested this, than what
737 people are using under current law. But we could use more
738 help. FTC law enforcement would be a greater deterrent if we
739 were able to obtain civil penalties for all unfair and
740 deceptive acts and practices related to financial services
741 beyond mortgages, for example, in-house debt collection and
742 debt negotiation. The FTC could also do more to assist
743 consumers if it could use streamlined APA rulemaking
744 procedures to promulgate rules for unfair acts and practices
745 related to financial services other than mortgage loans.
746 These steps, of course, would require congressional action.
747 They may perhaps require some more resources.

748 Will all these measures be enough? Well, they could
749 certainly help to ensure that we are never in this kind of

750 economic mess again. Finally, Mr. Chairman, as you know,
751 right now jurisdiction is balkanized between the FTC and the
752 banking agencies about who protects American consumers from
753 deceptive financial practices. Several bills have been
754 introduced that call for an overall federal consumer
755 protection regulator of financial services. As discussions
756 about these proposals continue, we urge you to keep this in
757 mind. The FTC, the Commission, has unparalleled expertise in
758 consumer protection. That is what we do.

759 We are not beholdng to any providers of financial
760 services, and we have substantial experience effectively and
761 cooperating working with the states, especially cooperatively
762 working with the states. In short, if your committee and if
763 Congress determines that such an overall federal regulator is
764 needed, if you do, we ask that the FTC be an integral part of
765 the discussion about how to best protect the American public.
766 Thank you, Mr. Chairman, for the opportunity to speak today
767 about what the FTC has done and what we are going to do. We
768 look forward to working with this committee, and I am pleased
769 to answer your questions. Thank you.

770 [The prepared statement of Mr. Leibowitz follows:]

771 ***** INSERT 1 *****

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772 Mr. {Rush.} The chair thanks the chairman. The chair
773 recognizes himself for 5 minutes for the purposes of
774 questioning our witness. Chairman Leibowitz, during the
775 housing boom the FTC had clear jurisdiction over many of the
776 worse predatory lenders with the most objectionable
777 practices, but the Commission arguably didn't do much to
778 address any of these activities. As a matter of fact, it was
779 the states that successfully brought actions against lenders
780 such as Countrywide and AmeriQuest when there are abusive
781 lending practices in the sub-prime mortgage market. In the
782 second panel Attorney Jim Tierney will talk about these and
783 other issues a little more.

784 But to begin with, I want to ask a simple question to
785 you. What happened at the FTC? Why did the FTC not take
786 aggressive action against mortgage lenders in the earlier
787 part of this decade?

788 Mr. {Leibowitz.} Well, Mr. Chairman, I would say
789 sometimes the simple questions are the most difficult ones to
790 answer, but let me try to respond. First of all, I think, as
791 you know, we are a tiny agency by Washington standards. We
792 have 270 attorneys doing consumer protection. And, as Mr.
793 Radanovich and others mentioned, we cover the entire
794 waterfront of the economy with a few exceptions like common

795 carriers. So we have to--and we spent a lot of time doing
796 things like stopping fraud, going after spywares, you know,
797 because we talked about that together. Having said that, I
798 think we did a pretty good job. You know, we brought 75
799 cases in the last 5 years. We have gotten in the last 10
800 years \$465 million in consumer redress, and that is just in
801 this area of financial services alone.

802 Could we have done more? Yeah, I think we could have
803 done more. Will we do more in the future? Yes. And do we
804 need to work with the state attorney generals? Yes, and we
805 do it all the time. We are part of several regional task
806 forces. The director of our Atlanta office or southeastern
807 regional office has actually set up a task force with state
808 AGs, and they are going after predatory lending. But, yes,
809 we can do more. I have been exchanging phone calls with
810 Attorney General Holder about resurrecting something called
811 the Executive Working Group, which involved the Federal Trade
812 Commission, the state AGs, and the Justice Department. And
813 it was something that was used in the 1990's and the 1980's
814 to sort of coordinate efforts. I think we are going to
815 resurrect that, and I think that would be--you can ask
816 Attorney General Tierney, but I believe that that will be
817 something that is welcome by all the state AGs, and it will
818 allow us to help coordinate even more.

819 Mr. {Rush.} You asked for new authority for the FTC
820 such as additional rulemaking authority, the ability to seek
821 civil penalties, and possibly additional authority over banks
822 and other depository institutions. But there are critics,
823 and some of them are on this panel, or the next panel rather,
824 and they argue that the Commission hasn't been aggressively
825 using the authority it already has. My question is given the
826 FTC's record over the past 8 years, why should we give this
827 authority to you now? How can you assure us that you will
828 use these authorities to aggressively protect American
829 consumers?

830 Mr. {Leibowitz.} Well, I think, you know, you raise a
831 very fair question, but I would say this. We are hamstrung,
832 speaking for myself, we are hamstrung by the Magnusson-Moss
833 rulemaking process. When you pass laws like Can-Spam, Gramm-
834 Leach-Bliley, FACTA, you have given us APA rulemaking
835 authority so that we can do rules more quickly. But in a
836 Mag-Moss rule, and I think Mr. Radanovich raised the
837 rationale for making rulemaking, and Congressman Stearns too,
838 we are making rulemaking more complicated under Mag-Moss. It
839 is a legitimate argument. But what we have found is that
840 sometimes it takes 6 or 8 years to do rulemakings, and when
841 it takes 6 or 8 years to do rulemakings, it is impossible to
842 do a rulemaking in a timely manner to stop or to respond to a

843 crisis.

844 So, for example, 2 years ago we did a sweep of Internet
845 advertising for mortgages, and we found facially deceptive
846 ads, over 200 different companies on the Internet. And the
847 commissioners had discussions about what should we do about
848 this. Well, we ended up bringing some cases against the
849 worse malefactors. We wrote letters to everybody. Some
850 people cleaned up their work. But we couldn't do a
851 rulemaking because under Mag-Ross rules by the time we
852 started or finished the rulemaking, we knew that Congress
853 would legislate in this area, as they should. And so if we
854 could have some relief from Mag-Moss, I think we can be more
855 effective in helping consumers.

856 And it is a legitimate debate. I think when you reach
857 reauthorization, which I know you want to do this year, we
858 will have a discussion about the broader--about broader Mag-
859 Moss rulemaking relief and finding malefactors. But again
860 you can be much more effective if you have fining authority,
861 which we don't have for violations of Section 5. You can be
862 much more effective if you can do some sort of streamline
863 rulemaking authority too.

864 Mr. {Rush.} My time is up, but I want to inform the
865 members of the subcommittee if the chairman will indulge us,
866 we want to go through a second round of questioning. The

867 chair now recognizes the gentleman from California for 5
868 minutes, Mr. Radanovich.

869 Mr. {Radanovich.} Thank you, Mr. Chairman. And
870 welcome, Mr. Leibowitz, to this subcommittee.
871 Congratulations on your recent appointment. I did want to
872 ask a couple questions. This first one, I am going to ask
873 about five questions to the subject matter about why would
874 you like the FTC to have an APA notice and comment rulemaking
875 to define unfair deceptive acts for financial services. Why
876 isn't the current Section 5 authority sufficient?

877 Mr. {Leibowitz.} Well, it is two things. First of all,
878 in the Omnibus Act we have a fining authority for the rules
879 that the fed issued under the FTC Act and rulemaking
880 authority. We are going to use that to go after deceptive
881 and unfair mortgage servicing and in some other areas. Why
882 do we want expanded rulemaking authority? Because we think
883 when you write rules, you can set standards for an entire
884 industry, and here where you have--where you have many, many
885 actors it is better to try to set standards, and also we have
886 seen a pattern and practice of bad behavior by many
887 companies. Not all, but many. And so we think it would be
888 helpful. It would make us a more effective agency.

889 Mr. {Radanovich.} Do you have thoughts on what kind of
890 rules you would like to proposed for the activities that are

891 not already covered under existing statutes?

892 Mr. {Leibowitz.} We do. I think debt negotiation would
893 be one area. We would want to work with the committee in
894 thinking about other areas, but, yes, we do and we can get
895 back to you with some more thoughts on that.

896 Mr. {Radanovich.} Okay. What would be the most
897 prevalent consumer fraud violations in financial services
898 that you think the FTC should be pursuing that it currently
899 can't?

900 Mr. {Leibowitz.} Well, I mean I guess I would say this.
901 We found a fair amount of fraud in the entire life cycle of
902 the mortgage instrument, and when you have an economic
903 downturn as severe as the one that we are in now, I think
904 there is more of an incentive to see more of this, so we are--
905 --in the mortgage area we now have that rulemaking authority
906 that was given to us in the Omnibus. We think that is going
907 to be helpful. We think we are going to be able to find
908 malefactors and write good rules, but I think--and we have
909 deployed more resources. We have really doubled our
910 resources in the last 2 years to go after predatory financial
911 practices.

912 Having said that, there is just no shortage of bad acts
913 that we could look at in this area. Most companies, of
914 course, do the right thing but there are a lot of people who

915 have just been ripping off consumers and the cases that we
916 brought today sort of attest to that.

917 Mr. {Radanovich.} Right. Yeah. And I will get on to
918 those cases that you brought in just a second. One more
919 quick question though. Why can't the Commission use your
920 existing authority to propose rules defining unfair acts and
921 practices for financial services? Why can't you use what you
922 have now?

923 Mr. {Leibowitz.} Well, again, we could do it, but if
924 they are not--if it is not under APA rulemaking, notice and
925 comment rulemaking, then it takes us literally years to do
926 the rulemaking. I don't think that serves the American
927 people well. I don't think it effectuates what you want us
928 to effectuate on this committee.

929 Mr. {Radanovich.} Okay. Thanks. Now with regard to
930 the cases that you mentioned that you have presented a very
931 good record of the cases that the Commission has brought
932 under a multitude of laws that you already have to enforce
933 but unscrupulous actors continue to violate the law. Will
934 more laws or rules reduce that fraud?

935 Mr. {Leibowitz.} I think, look, and we will have some
936 of this discussion going forward when you look at our
937 reauthorization, and growing the agency would be something
938 that would be enormously important. We have about 1,100

939 employees. We do anti-trust and consumer protection. In
940 1980, we had 1,800 employees and the population of the United
941 States was a third smaller than it is now. So part of it is
942 more resources, but I also think part of it is the ability to
943 have--the ability to have rulemaking authority.

944 Mr. {Radanovich.} And you got to balance this idea of
945 dealing with the bad actors and there may be more of them out
946 there, you know, during this financial crisis or not. I
947 don't know how you measure how many bad actors are out there,
948 but the other side of over enforcement is higher compliance
949 costs, and where do you find the balance to where you are
950 regulating so much that, you know, we have higher cost of
951 goods out there as a result of it?

952 Mr. {Leibowitz.} Well, Congressman, you are right. We
953 have to strike the right balance, and reasonable people can
954 disagree about exactly where that balance should be. But,
955 look, we have brought 68 cases in the last 5 years in the
956 financial services area against malefactors. We have no
957 fining authority. Forty-seven attorney generals, I believe,
958 have fining authority to go after people who violate the law,
959 and so fining authority is something you get for violating a
960 rule and that would make us much--that would be an very
961 important tool in our arsenal. And, by the way, when you
962 pass pieces of legislation like Can-Spam, which came out of

963 this committee, you have given us that fining authority, at
964 least for specific matters. So it is a discussion we want to
965 have with you going forward but that would be one thing that
966 would make us more effective, I think.

967 Mr. {Radanovich.} All right. Thank you for your
968 answers. And thank you, Mr. Chairman. I yield back.

969 Mr. {Rush.} The chair thanks the gentleman. The chair
970 now recognizes the gentlelady from California, Ms. Matsui,
971 for 5 minutes for questioning.

972 Ms. {Matsui.} Chairman Leibowitz, as I mentioned in my
973 opening statement, the issue of loan modification scams is a
974 growing problem, particularly in California where we have the
975 highest number of homes going into foreclosure. We hear
976 individuals and companies advertising on radio and television
977 with a simple message that they can lower your mortgage
978 payments, stop your foreclosure. And many of these people
979 are calling themselves foreclosure consultants or in some
980 cases acting like they were government agencies like HUD.
981 They make guarantees and promises to homeowners seeking help
982 to save their home, but this help usually comes with a price
983 tag in the form of an advanced fee between \$1,500 up to
984 \$9,000.

985 That being said, I would like to hear what the FTC is
986 doing to crack down on these fraudulent loan modification

987 scams. In your written testimony, you announced two new
988 cases targeting mortgage foreclosure rescue scams bringing
989 the total to eight such cases. Is enforcement the right
990 approach to ending this type of fraud? You initiated 8
991 cases. Will those cases serve as a deterrent to other
992 scammers and other steps that the FTC can take to end these
993 practices?

994 Mr. {Leibowitz.} Well, that is a great question, and we
995 do think that these--and, by the way, I should mention that
996 we are also members of the Sacramento Task Force and many
997 task forces in your districts around the country. Well, I do
998 think that the cases against Hope Now and New Hope, which are
999 two entities that are claiming to be affiliated with the Hope
1000 Now alliance, are ones that will be helpful as a deterrent
1001 but we also think that rulemaking authority and fining
1002 authority will make our ability to deter more effective. And
1003 again we want to do rules because they are needed in the
1004 mortgage servicing area, in the mortgage modification, and
1005 rescue area, and going after rescue scams. So we would like
1006 to be able to use the whole arsenal. We have been given some
1007 authority in the Omnibus Appropriations Act that will be
1008 helpful. We are looking for more authority from this
1009 committee and we want to move forward with that if the
1010 committee believes it is appropriate.

1011 Ms. {Matsui.} Okay. Some examples of fraudulent
1012 schemes are, as we mentioned, advance fee scams where, you
1013 know, consumers are charged for services that are never
1014 rendered, and in exchange for this fee, it is up from \$1,500
1015 to \$9,000, homeowners are promised guarantees to save their
1016 homes. In some cases, consumers usually pay these fees with
1017 a credit card, which should make it easier to track the
1018 payment and help the consumer recoup their money. What is
1019 the government doing to help recoup these advance fees to
1020 make consumers whole again, and is there a mechanism in place
1021 to help consumers recoup their advance fees?

1022 Mr. {Leibowitz.} Sure. I mean when we bring these
1023 cases, and, by the way, the Hope Now case is a case that
1024 involved an advance fee of \$1,000 to \$1,500. My
1025 understanding is that when consumers--consumers got no help
1026 whatsoever or very little assistance. When they asked for
1027 their money back, it was done. So when we bring these cases,
1028 we try to ask for a disgorgement of profits. We try to get
1029 redress to consumers. In the case we brought against Bear
1030 Stearns as a subsidiary, EMC we got 86,000 redress checks
1031 issued. But it is tough because sometimes these assets
1032 dissipate and sometimes it is hard to determine, you know,
1033 not in these cases but in other cases which ones were
1034 fraudulently made or which advertisements were deceptive and

1035 which ones weren't and that is why a penalty authority will
1036 be very helpful to us if we can get it.

1037 Ms. {Matsui.} Well, do you think Congress should ban
1038 these advance fees?

1039 Mr. {Leibowitz.} I would want to come back--I would
1040 want to think about that. I would want to think about that.
1041 We certainly see experience--we certainly had experience with
1042 these advance fee scams including advance fee credit card
1043 scams that make us think that certainly the practice of a lot
1044 of companies should be prohibited. But as far as advance
1045 fees generally in the financial services area, I would want
1046 to think about that because there may be some value when
1047 legitimate companies are doing some things with advance fees.

1048 Ms. {Matsui.} So would you think then that the FTC
1049 should declare its view that it is an unfair practice to
1050 charge an advance fee for services that do nothing to save a
1051 home?

1052 Mr. {Leibowitz.} Well, I would certainly think that we
1053 could look at that in the context of our rulemaking and some
1054 states, I believe, so ban advance fees in the financial
1055 services area so it is something we can take a look at. I
1056 think we probably should in the context of any rulemaking
1057 authority we have been given in the Omnibus or that you give
1058 us additionally.

1059 Ms. {Matsui.} Well, thank you very much, and I see my
1060 time is up. Thank you.

1061 Mr. {Rush.} The chair now recognizes the gentleman from
1062 Nebraska, Mr. Lee Terry.

1063 Mr. {Terry.} Thank you, Mr. Chairman. I appreciate
1064 this. The gentlelady brings up, I think, several good
1065 points, and I think really gets to the heart of the matter,
1066 and that is if we are going to stream line rules, the
1067 procedures for the rules, we want to make sure that it is
1068 going to be effective in protecting consumers and that you
1069 will be able to use the FTC's authority. But the argument
1070 here about advance fees begs the question of who is
1071 ultimately going to be able to decide what is deceptive and
1072 what is not. Sometimes it is obvious where you can put 100
1073 people together and they will say that practice is deceptive.
1074 There are other things like maybe advance fees that some
1075 people will say are deceptive or that are wrong, but they are
1076 not deceptive.

1077 And so how are we going to split those hairs if you are
1078 coming to us and asking us to streamline the rules or the
1079 procedures to make your rulemaking. Who should have the
1080 authority in there to determine which specific practice is
1081 deceptive or not deceptive?

1082 Mr. {Leibowitz.} Well, I think that is right and in

1083 some practices maybe deceptive as practiced by some companies
1084 whereas other companies may do them in a legitimate way.

1085 Mr. {Terry.} That is why it is really--

1086 Mr. {Leibowitz.} Right. It is a good question and
1087 whether we have--whether we are bringing cases or whether we
1088 are enforcing rules that we promulgated, we have to go before
1089 a federal judge, so there is that mechanism as a check and
1090 balance against any excesses of the FTC, but I don't believe
1091 anybody has suggested at least in the last 25 years that we
1092 have engaged in any excesses at our agency. I think people
1093 think that we are a pretty good--I think people think that we
1094 are a pretty good agency and we try to do the right things
1095 with our limited resources and leverage of resources.

1096 Mr. {Terry.} In specific about streamlining the rule
1097 process so you can be more nimble, do you have specifics for
1098 us or is that just kind of a general statement that would be
1099 helpful for you?

1100 Mr. {Leibowitz.} Well, I think it is both in the sense
1101 that if we have a--if we have more agile rulemaking,
1102 something closer to APA rulemaking, we can respond more
1103 quickly. I do think that we are going to, you know, use the
1104 APA rulemaking authority given to us in the Omnibus Act to
1105 address foreclosure rescue scams where we know there are
1106 very, very serious problems, mortgage modification where we

1107 know there are problems. We know that both because we have
1108 testified to it and others have, and also because of the Bear
1109 Stearns case where we saw lots of embedded fees that
1110 consumers just didn't know about and are being hit with.

1111 Mr. {Terry.} Yeah, those get to be fairly obvious.

1112 Mr. {Leibowitz.} And let me just add my point to that
1113 that advance fees are prohibited under CROA. We prohibit the
1114 under the telemarketing sales rules which is an FTC rule, and
1115 in some instances, not in every, but in some instances it has
1116 really sort of helped clean up bad practices that harm
1117 consumers.

1118 Mr. {Terry.} All right. And those were developed
1119 within your own rules? You decided in those instances--

1120 Mr. {Leibowitz.} The telemarketing sales rules were
1121 promulgated by us pursuant to legislation enacted by Congress
1122 in the early 1990's, I believe.

1123 Mr. {Terry.} Right. But for those specific instances
1124 with the specifics of advance fees, that was something that
1125 you did within the FTC by rulemaking?

1126 Mr. {Leibowitz.} Yes, that is exactly right.

1127 Mr. {Terry.} And that is the point that I am getting
1128 to. I guess there are two sides of the coin that we can look
1129 at here and one is we can criticize the FTC over the last 8
1130 years for not being aggressive enough. Eight years from now

1131 are we going to look back at the FTC when we streamline your
1132 rules and say you were overly aggressive and without specific
1133 congressional approval defining general practices as
1134 deceptive practices thereby freezing trade?

1135 Mr. {Leibowitz.} Look, it is a fair question but I
1136 think in these times of, you know, where we have seen so much
1137 harm to consumers by deceptive acts and practices, you might
1138 want to--given that we are an agency that has a track record
1139 for being aggressive but balanced, you might want to err on
1140 the side of giving us more authority. Believe me, in the
1141 1960's and 70's Congress was always able to pare us back when
1142 they thought we were going a little bit too far. But, again,
1143 you know, in areas like debt collection, in-house debt
1144 collection where we have seen problems including in the Bear
1145 Stearns case and debt negotiation, those would be areas not
1146 covered by the Omnibus where we think we could do--

1147 Mr. {Terry.} In my last 14 seconds, I am just very
1148 curious, in the last several years in the financial services
1149 area you have brought 40 or 60--

1150 Mr. {Leibowitz.} Sixty-eight cases.

1151 Mr. {Terry.} Sixty-eight complaints. Generally what
1152 were those? What is the major area?

1153 Mr. {Leibowitz.} It is really a combination of
1154 different areas. It is 7 mortgage advertising, 5 pay-day

1155 loan cases--6 pay-day loan cases, a couple of fair lending
1156 cases, mortgage servicing cases, 9 foreclosure rescue scam
1157 cases, and 12 credit counseling cases, and 11 debt collection
1158 cases. Those are the--and, sorry, 17 credit repair cases as
1159 well. So it is a combination of--it is different areas
1160 mostly within our financial services group, and then we have
1161 had our regions. We have 7 regional offices around the
1162 country doing more in this area because it is a high priority
1163 for us.

1164 Mr. {Rush.} The gentleman's time is up. The chair now
1165 recognizes the vice chair of the subcommittee, Ms.
1166 Schakowsky, for 5 minutes.

1167 Ms. {Schakowsky.} Thank you. Chairman Leibowitz, since
1168 2001, state attorney generals have been active, often
1169 aggressively pursuing the bad actors in the field of consumer
1170 credit. They took the lead on cases like Household Finance,
1171 AmeriQuest, Countrywide, and uncovered extensive abusive
1172 practices, inflated appraisals, fabricated income statements,
1173 misrepresentations to borrowers, illegal and deceptive fees,
1174 and rates. Was the FTC approached to participate in these
1175 activities?

1176 Mr. {Leibowitz.} You know, some of those cases took
1177 place before I came to the Commission. I believe in
1178 AmeriQuest, which is a terrific case by the state AGs, we

1179 approached them about whether they needed our help because we
1180 are always happy to help with cases and we work a lot with
1181 state AGs, and I think that they were--I think that they
1182 demurred on that, that they were--

1183 Ms. {Schakowsky.} But my understanding that in fact the
1184 Commission has often opted not to participate. In fact, a
1185 former attorney general, James Tierney, who will be sitting
1186 on our second panel, in his testimony he states that the past
1187 8 years have been a time of limited cooperation between the
1188 FTC and state attorney generals with respect to enforcing
1189 consumer protection in the areas of consumer credit, and so
1190 would you agree with this assessment?

1191 Mr. {Leibowitz.} Well, I would say this. I can't speak
1192 for the first four--from 2000 to 2004. I wasn't at the
1193 Commission. From 2005 through now, we have been working
1194 fairly often with the states. We are involved in regional
1195 task forces. But, look, we can certainly step it up and we
1196 certainly will. And one of the things I am very heartened
1197 about is our very positive conversations with Attorney
1198 General Holder about resurrecting the executive working
1199 group, which had sort of--which was very active in the 1990's
1200 and sort of was flailing in the last 8 years. It is a way
1201 for us to help coordinate with the Justice Department and
1202 with state AGs through regular meetings, regular consumer

1203 protection activities, so I think that will be a big plus.

1204 Ms. {Schakowsky.} Wonderful. Let me talk about a
1205 different area. Under Section 18 of the FTC Act whenever the
1206 Commission promulgates a rule on unfair or deceptive acts of
1207 practices dealing with consumer credit matters the Federal
1208 Reserve and other banking agencies are required to promulgate
1209 a similar rule for depository institutions or explain why
1210 such a rule is unnecessary. So were we to give the FTC
1211 speedier APA rulemaking under Section 18 of the FTC Act,
1212 would this not ameliorate at least somewhat the lack of
1213 functional or regulatory parity because of the reciprocal
1214 requirements under Section 18 whereby banking agencies have
1215 to consider the FTC's lead?

1216 Mr. {Leibowitz.} Well, Congresswoman, it might be very
1217 well be helpful but I think what your question touches on,
1218 and I know you know this, is the sort of incredible
1219 balkanization, right?

1220 Ms. {Schakowsky.} Right.

1221 Mr. {Leibowitz.} Consumers don't know whether they got-
1222 -consumers don't care whether they got a mortgage from a bank
1223 or whether it came from a mortgage, a non-bank mortgage.

1224 Ms. {Schakowsky.} Right.

1225 Mr. {Leibowitz.} If it is deceptive, if it is, you now,
1226 a sub-prime loan or a non sub-prime loan with hidden fees

1227 that they don't know about, it is hurting them. So we have a
1228 sort of balkanization of authority here. There are three or
1229 four different banking entities or banking agencies that have
1230 some jurisdiction over the 60 percent of the mortgages that
1231 are issued by banks. We have jurisdiction over the others.
1232 And I think that is why Elizabeth Warren and the professor at
1233 Harvard and a variety of folks on the hill are thinking, you
1234 know, that it may be time to have one single entity that
1235 protects consumers from predatory financial instruments. And
1236 certainly I know people on this committee are thinking about
1237 that, and I want to make sure that you know from our
1238 perspective we are a consumer protection agency.

1239 Ms. {Schakowsky.} So you could do banks as well is what
1240 you are saying?

1241 Mr. {Leibowitz.} We could do banks as well, I would say
1242 with this qualification. The banking agencies, you know,
1243 they are mostly concerned with safety and soundness. We
1244 don't do safety and soundness. We are not those kinds of
1245 bank regulators but if you want an entity to do consumer
1246 protection for consumers who have financial instruments, we
1247 can do that really, really well.

1248 Ms. {Schakowsky.} Let me ask the final thing.

1249 Mr. {Leibowitz.} Sure.

1250 Ms. {Schakowsky.} There was a colloquy on the Senate

1251 floor that clarified the authority that is this trigger under
1252 Section 18 was not under Section 18 and only applied to non-
1253 banks. Do you see this if it goes forward as a missed
1254 opportunity?

1255 Mr. {Leibowitz.} Well, you know, do I personally see
1256 this as a missed opportunity? I certainly think Congress
1257 needs to look at the notion of a single entity whether it is
1258 housed in the FTC or whether it is a new one to protect
1259 consumers from predatory financial instruments, deceptive and
1260 unfair ones. I see this as actually an opportunity for us
1261 because the language in the Omnibus Appropriations Act gives
1262 us rulemaking throughout the entire life cycle of a mortgage
1263 only of course for non-bank issued mortgages. But that is a
1264 real opportunity to do rulemaking, and after we do rulemaking
1265 to actually be able to have standards, get those from rules,
1266 and to find malefactors who fall below those standards.

1267 So I see your point, and we are very supportive of
1268 Congress having a discussion about creating an entity to
1269 protect consumers here, but I also think we have been
1270 struggling for this legislation for quite some time. It is
1271 going to be helpful to us.

1272 Mr. {Rush.} The chair now recognizes the gentlelady
1273 from Ohio, Ms. Sutton, for 5 minutes.

1274 Ms. {Sutton.} Thank you so much, and thank you, Mr.

1275 Chairman, for your commitment to look after the entire life
1276 cycle of credit. There are so many questions that I have, I
1277 am going to probably going to need to follow up after the
1278 course of this hearing to try and unravel exactly what is
1279 going on out there because I can tell you that my
1280 constituents are feeling the effects of all of this
1281 confusion. It is kind of confusing for anyone who is
1282 watching this hearing to figure out who has authority over
1283 what, and who has the responsibility to protect them let
1284 alone, you know, know where to turn. So in the last line of
1285 questioning from my distinguished colleague, Representative
1286 Schakowsky, we are talking about the new opportunity you have
1287 within limits for rulemaking.

1288 But if I was to ask you this question, it sounds to me
1289 like you have limited opportunity for rulemaking that will
1290 provide some people protection but there is whole other
1291 category of people out there who may be suffering from the
1292 very same thing and the same practices over which you have no
1293 ability to help them, is that correct?

1294 Mr. {Leibowitz.} That is correct.

1295 Ms. {Sutton.} Let me go on record as saying I don't
1296 think that makes any sense.

1297 Mr. {Leibowitz.} That makes a lot of sense, and again
1298 in going back to Ms. Schakowsky's questions, one of the other

1299 things that is sort of peculiar about this rulemaking is that
1300 the fed can enact, promulgate rules under the FTC Act by
1301 notice and comment rulemaking, APA rulemaking, the simple
1302 rulemaking that we can then enforce for over non-bank
1303 mortgage companies, over non-bank issued mortgages. But if
1304 we want to do that rulemaking right now, it would have to be
1305 under Magnusson-Moss and it would never get done because
1306 contested rulemakings under Magnusson-Moss just don't get
1307 done, so we are glad that they promulgated these rules. We
1308 are glad we can enforce them.

1309 We think those rules are going to be helpful in curbing
1310 bad advertising and things like liar's loans but it is like
1311 trying to--even for the Commission, and all the commissioners
1312 are very, very hard working, you know it is like running
1313 through a rabbit warren to try to figure out how these laws
1314 interact and regulations interact with each other.

1315 Ms. {Sutton.} Well, again, I appreciate that very much
1316 because it seems like we should be able to inject some more
1317 sense into the process and into this puzzle. In your
1318 testimony on page 8 you talked about suing a credit card
1319 marketing company. Obviously, you can reach the credit card
1320 marketing company. Can you tell me what exactly is a credit
1321 card marketing company?

1322 Mr. {Leibowitz.} Well, we can't reach--as you know, we

1323 can't reach bank issued credit cards, which is about, I think
1324 someone said 75 percent. I think it is now probably up to
1325 about 95 percent. So a credit card marketing company is
1326 simply a non-bank affiliate or surrogate that markets the
1327 credit card, and what we found with some of our advance fee
1328 cases is they will say you can have a credit card, give us
1329 \$500, and then when you give them \$500 some of it is taken
1330 away by fees, by prohibitive monthly costs or you can only
1331 use the credit card to buy from their catalog, so those are
1332 some of the types of cases we have brought.

1333 And then we had a major case involving a company called
1334 CompuCredit, which we brought jointly with the banking
1335 agencies where they had--and it was a credit card company
1336 that actually targeted sub-prime borrowers, people who
1337 couldn't otherwise get credit, so that is sort of laudatory
1338 at some level. But the credit card limit was \$300, and the
1339 first month had \$185 in fees, which weren't accurately
1340 disclosed we alleged, and we had a settlement for \$115
1341 million for consumers just the end of last year. That was
1342 very, very important for us.

1343 Ms. {Sutton.} Okay. So the question that I have though
1344 is if a bank is engaging in the exact same activity, can you
1345 do anything about it?

1346 Mr. {Leibowitz.} You know, we could run across the hall

1347 to the banking agencies where they are testifying and tell
1348 them they should take a look at it. We can go talk to them,
1349 but we can't do anything about it.

1350 Ms. {Sutton.} That is my point, and that is my concern.
1351 Okay. Mr. Chairman, I will hold my questions at this point
1352 until the next round.

1353 Mr. {Rush.} The chair thanks the gentlelady. The chair
1354 now recognizes my friend, the gentleman from Pennsylvania,
1355 Mr. Pitts, for 5 minutes.

1356 Mr. {Pitts.} Thank you, Mr. Chairman. Mr. Leibowitz,
1357 as an overwhelming number of mortgage fraud cases began to
1358 surface in 2007 the FBI formed a financial crimes task force
1359 and has had more cases than it can handle, and these are
1360 largely criminal fraud cases. Does the FTC have a role in
1361 investigating these cases? If so, would you elaborate?

1362 Mr. {Leibowitz.} I want to get back to you on those
1363 cases. We do a lot of work with the postal inspectors. We
1364 do some work with the FBI, of course, but when we see
1365 something that is criminal we generally refer it to the
1366 Justice Department, and if they will take it they have more
1367 appropriate sanctions than we do. We generally can only get
1368 redress and disgorgement and stop the bad conduct, so
1369 sometimes we are sort of the fallback entity for going after
1370 fraudulent behavior in this area, but I will get back to you

1371 on whether we have worked with the FBI task force
1372 specifically.

1373 Mr. {Pitts.} Okay. Thank you. The Commission has
1374 conducted research on ways to improve mortgage disclosure.
1375 If the disclosure documents were simplified in a manner that
1376 provided relevant information similar to the prototype
1377 disclosure developed by the Commission, would that have
1378 prevented any of the fraud that occurred in the home mortgage
1379 loan market in your opinion or might fraudsters simply find a
1380 way around that simplified uniform disclosure?

1381 Mr. {Leibowitz.} Well, I would say this. Fraudsters,
1382 you know, can often find a way around even simplified
1383 disclosures, and I hope all of you have the draft disclosure
1384 form on your desk. If not, we will make sure we get you
1385 copies. But sometimes what is happening is that consumers
1386 don't see imbedded fees, and what we have done with our sort
1387 of disclosure form, it is simple. We have copy tested it.
1388 In other words, we have asked consumers to look at this and
1389 compare it to the existing HUD, RESPA and TILA forms that
1390 they use. And those forms have both--they are both over
1391 inclusive and under inclusive. They have too much
1392 information so consumers don't know what to focus on, and
1393 they don't focus on some specific aspects of information.

1394 So can I say to you that it would prohibit--it would

1395 have stopped a specific fraud? I don't think so. But would
1396 it have sort of helped some consumers make more informed
1397 decisions when they are dealing maybe not with deception but
1398 more with unfairness? We think it might have. And even, by
1399 the way, for consumers these forms or this draft form and
1400 others like it, it doesn't just help the consumer who is
1401 being ripped off. It helps the consumer who wants to be able
1402 to make informed choices, and say, well, here, you know, the
1403 fees are going to be more and here the fees will be--here the
1404 fees and the overall cost of the loan will be less. So that
1405 is just helping consumers like all of us make choices from
1406 among competitors.

1407 Mr. {Pitts.} The FTC prohibits both unfair and
1408 deceptive practices.

1409 Mr. {Leibowitz.} That is correct.

1410 Mr. {Pitts.} Unfair is defined as any act that causes
1411 or is likely to cause substantial injury to consumers which
1412 is not reasonably avoidable by consumers themselves and not
1413 outweighed by countervailing benefits to consumers or to
1414 competition. Bringing an enforcement action for violation of
1415 a deceptive practice is much more common for the FTC. Why
1416 are unfair cases brought so infrequently?

1417 Mr. {Leibowitz.} Well, I think, you know, you
1418 articulated--I think you read directly from the statutory

1419 authority we have. It is harder to show unfairness.
1420 Unfairness is sometimes a more amorphous term, so when we
1421 see--when we are going after a typical bottom feeder who is
1422 ripping off consumers, we just see it is clear deception.
1423 But sometimes, for example, in our spyware cases and in a
1424 variety of our other cases involving data security and
1425 Internet-related problems, we will use unfairness. We have
1426 been using it actually more in the last several years because
1427 we think it is important.

1428 Mr. {Pitts.} Should unfair acts be better defined to
1429 provide greater certainty to make enforcement easier?

1430 Mr. {Leibowitz.} I would say certainly if we had a
1431 little more leverage in our unfairness standard, we might be
1432 able to bring unfairness cases more often. We had a much
1433 broader standard in the 1960's and 1970's, and through the
1434 late 1970's, and then Congress asked us to modify first of
1435 our own volition and then it put it in the statute, I think,
1436 in 1992, our unfairness authority. So this has been the
1437 subject of some debate going back and forth about whether we
1438 should have a little more flexibility here. We would love to
1439 work with you on this.

1440 Mr. {Pitts.} Thank you. My time is up. Thank you, Mr.
1441 Chairman.

1442 Mr. {Rush.} The chair now recognizes the gentleman from

1443 Texas, Mr. Green, for 5 minutes.

1444 Mr. {Green.} Thank you, Mr. Chairman. Mr. Chairman, an
1445 issue came up just now, and I was going to ask you, is there
1446 any numbers that the FTC could share with the committee on
1447 the number of criminal prosecutions it referred to the
1448 Justice Department that actually are taken by the Justice
1449 Department because I think that is something we would like to
1450 see.

1451 Mr. {Leibowitz.} Yeah, we will get you--we will get you
1452 that information. We do have Tim Yuris, who is the first
1453 chairman under Chairman Bush, set up a criminal liaison unit
1454 and which we still have and which takes some of the cases
1455 that are clearly of a criminal nature where we started
1456 investigations and sends it over to the Justice Department or
1457 to certain other prosecutors, so we can get you that
1458 information. Some of it--with the caveat that I have to go
1459 back and look. Some of it may be confidential. And then
1460 sometimes, again, as you know from the cases because you know
1461 our agency--

1462 Mr. {Green.} We just need the numbers.

1463 Mr. {Leibowitz.} Yeah, we will get them.

1464 Mr. {Green.} The percentages, and if there are cases
1465 that are definitely not controversial, it would be
1466 interesting to see what type of cases may not be accepted and

1467 what type would be.

1468 Mr. {Leibowitz.} Right. I can just tell you as a
1469 general matter sometimes the cases don't rise to the level of
1470 ones that the Justice Department wants to prosecute so we do
1471 it ourselves.

1472 Mr. {Green.} Okay. And you have the ability to do it
1473 yourself?

1474 Mr. {Leibowitz.} Not as a criminal matter but as a
1475 civil matter so to stop ongoing harm.

1476 Mr. {Green.} Our office has been hearing from
1477 constituents concerned that the free credit reports do not
1478 list all the information that credit lending entities have
1479 access to. Do you know if there is a case and, if so, do you
1480 believe consumers should have access to all this information?
1481 It seems that consumers should have access to all the credit
1482 information available to them. Have you heard of that or has
1483 that been an issue with the FTC?

1484 Mr. {Leibowitz.} Yeah. We brought a case, I think in
1485 2002-2003 before I got to the Commission
1486 freecreditreport.com. I think I am summarizing it but I
1487 believe they are actually charging fees. There is a place
1488 where consumers can go to get a free credit report without
1489 entering into a contract, a monthly contract, and I think
1490 that is called annual credit report. And we actually, not to

1491 make light of this, but we actually put out a spoof of
1492 freecreditreport.com that got picked up by You Tube and by a
1493 variety of other media outlets just 2 weeks ago. So this is
1494 an area of some concern to us, and I know the consumers--we
1495 do get complaints on this.

1496 Mr. {Green.} That is what I was going to say. There
1497 may be things that the consumer may not--that is not on that
1498 report that is being used for their credit rating.

1499 Mr. {Leibowitz.} Credit source, are you talking about
1500 credit source? Yeah, they are included in the free credit
1501 report.

1502 Mr. {Green.} And is there any restriction on what can
1503 be considered to go into your credit score either by practice
1504 or by rule or statute?

1505 Mr. {Leibowitz.} Let me, Congressman, get back to you
1506 on that. It is a legitimate question and I want to give you
1507 the right answer.

1508 Mr. {Green.} I know I only have a minute left, but
1509 there are many varieties of mortgage foreclosure rescue fraud
1510 but in each case the perpetrator makes misleading promises
1511 that the consumer's home will be safe from pending
1512 foreclosure permanently. Most consumers end up losing their
1513 home, however, as well as the money they paid to these
1514 scammers. I am aware the FTC took action in February to sue

1515 a company operating one of these scams, and I commend you for
1516 that. How widespread is the problem and does the Commission
1517 have the tools and resources to go after a lot of bad actors,
1518 not only the ones you see but it seems like some of it may be
1519 cottage industries that we are seeing in regional areas and
1520 not maybe national.

1521 Mr. {Leibowitz.} Right. Well, with the entity that we
1522 just brought an action against today that is impersonating
1523 HUD, we are having sort of a whack-a-mole problem with them
1524 because we found the site. We found the site. The HUD
1525 inspector general took it down. Then it popped up again
1526 under a web site from Germany, registered in Germany, and
1527 then we have taken that site down, so we have a little long
1528 arm problem in terms of asserting our jurisdiction. The
1529 other thing is that if we can find these malefactors which
1530 the Omnibus Appropriations Act will let us do or provision
1531 that Senator Jorgen got into the Omnibus Appropriations Act
1532 will let us do, I think that would be very, very helpful, and
1533 we will do a rulemaking on foreclosure rescue scams and also
1534 deceptive modifications.

1535 Mr. {Green.} If you would share that with us even
1536 though we are not a writer of the appropriations bill and
1537 maybe not rise to the need for an authorization, but some of
1538 us could help with getting the encouragement of the

1539 appropriators to include that.

1540 Mr. {Leibowitz.} We would love to work with you. We
1541 would love to help.

1542 Mr. {Green.} Thank you.

1543 Mr. {Rush.} The chair now recognizes the gentleman from
1544 Michigan, Mr. Stupak, for 5 minutes.

1545 Mr. {Stupak.} Thank you, Mr. Chairman. Chairman
1546 Leibowitz, thanks for being here. The Commission, as you
1547 have indicated, has authority under Section 18 of the Federal
1548 Trade Commission Act, and I understand it is particularly
1549 cumbersome. Instead of promulgating rules under the APA, the
1550 Commission must go through a far more difficult process known
1551 as the Magnusson-Moss Act. So my question is since you have
1552 been chair, has the Commission considered promulgating the
1553 rule under the Magnusson-Moss Act or have you just sort of
1554 disregarded the whole process?

1555 Mr. {Leibowitz.} We have a few rules that we are in
1556 the process of promulgating outside of this area under Mag-
1557 Moss, but they are generally sort of not good government
1558 rules but non-controversial rules because under Mag-Moss if
1559 you want to promulgate a rule and there is an opposition to
1560 that rule they get to require an independent referee,
1561 multiple rounds of submissions, and it takes a really long
1562 time.

1563 Mr. {Stupak.} Do you think Congress should just repeal
1564 that?

1565 Mr. {Leibowitz.} I would say this. There are probably
1566 some legitimate reasons why Congress gave us this cumbersome
1567 rulemaking.

1568 Mr. {Stupak.} Can you give me one reason why they would
1569 give you such a burdensome procedure if our purposes--

1570 Mr. {Leibowitz.} Off the top of my head, no, but I
1571 would say this. I certainly think some relief from
1572 Magnusson-Moss would be justified. I think the original--
1573 look, we are an agency that Congress wanted to give us when
1574 they created us in 1914 enormously broad jurisdiction but
1575 fairly limited remedies, as opposed to the Justice Department
1576 where they have to go after more specific crimes and they put
1577 people in jail. They have fining authority. And so the
1578 rationale for Mag-Moss, I suppose, is that it sort of slows
1579 things down because we have such broad jurisdiction. I do
1580 think over time what we found is that some relief to Mag-Moss
1581 would be helpful in allowing us to have leverage over the bad
1582 guys.

1583 So, for example, I think 47 attorneys--when you
1584 promulgate a rule, you can get a fine for a violation of a
1585 rule. Otherwise, when we use our Section 530, you can't do
1586 that, and so if we can find malefactors as 47 attorney

1587 generals can do, that would make us more effective in doing
1588 what you want us to do, which is protecting consumers.

1589 Mr. {Stupak.} In order to protect consumers, you have
1590 to move quicker. I mean we don't want you to be the Justice
1591 Department, you indicated you don't have fines and all that,
1592 but isn't really your power is to look for that unfair and
1593 deceptive practices and act quickly to cease and desist.
1594 Isn't that really the role of the FTC? It seems like
1595 Magnusson-Moss is just the opposite. It slows you down so
1596 you cannot be nimble and react to current trends.

1597 Mr. {Leibowitz.} That is exactly right. In a
1598 controversial rulemaking, you know, in a rulemaking where
1599 there is opposition, and many good rulemakings have
1600 opposition, you know, we would always look to see what all
1601 stakeholders want. Of course we are going to do that, and we
1602 are going to do that in the rulemakings that we got in the
1603 Omnibus Appropriations which will be APA rulemakings.

1604 Mr. {Stupak.} Right, but even that is limited in the
1605 Omnibus. Your rulemaking authority, that is somewhat
1606 limited, is it not?

1607 Mr. {Leibowitz.} It is limited. It applies to
1608 mortgages but not other financial instruments not issued by
1609 banks, and of course it only goes to non-bank issued
1610 mortgages, but it is still better than what we had so we are

1611 very grateful for it and we thank this committee for
1612 protecting it in the Omnibus.

1613 Mr. {Stupak.} Well, let me ask you this. Since 2001,
1614 the attorney generals have been active and very aggressive in
1615 pursuing bad actors in the field of consumer credit. They
1616 took the lead on cases against Household Finance, AmeriQuest
1617 and Countrywide, and uncovered extensive abuse of practices,
1618 inflated appraisals, fabricated income statements,
1619 misrepresentations of borrowers, and illegal and deceptive
1620 fees and rates. Was the FTC approached to participate with
1621 the AGs in their--

1622 Mr. {Leibowitz.} In some cases we have, and we have
1623 participated with them. In some cases, they have done it on
1624 their own, and I believe demurred when we offered help. And
1625 then probably there are some cases again in hindsight that we
1626 should have been involved in earlier but they took the lead.
1627 The attorney generals have been terrific in protecting
1628 consumers. I don't think we have been slackers at all. I
1629 think we have been pretty good but on a going forward basis
1630 we are going to work more with the attorney generals.

1631 Mr. {Stupak.} Okay. So how do you envision working
1632 closer relationship between the states as you are now the
1633 newly appointed chairmanship because I think it is important
1634 while the states bring forth but sometimes they look to you

1635 for resources and to help them with these investigations, and
1636 I would think what goes on in one part of the country is
1637 probably going on in the other part of the country and
1638 therefore the FTC should be more involved and should have a
1639 closer working relationship with the state AGs.

1640 Mr. {Leibowitz.} Well, I absolutely hear that, and of
1641 course we can have--it is easier for us to get remedies that
1642 apply across all states, and so many of the bad acts in the
1643 mortgage industry--

1644 Mr. {Stupak.} Well, have you reached out to the AGs?

1645 Mr. {Leibowitz.} Yes. We have reached out to the AGs,
1646 and we have also reached out to the attorney general. You
1647 may not have been here when I talked about this, but we are
1648 in the process of trying to resurrect something called the
1649 Executive Working Group which was very active in the 1990's,
1650 sort of stopped in the last 8 years, that involves Justice,
1651 the attorney generals, and the Federal Trade Commission
1652 having regular meetings to coordinate activities. That is
1653 going to be very, very helpful going forward.

1654 Mr. {Stupak.} You are right. I didn't hear that
1655 earlier testimony but I am glad to hear it and urge you to
1656 continue that progress. Thanks.

1657 Mr. {Rush.} The chair thanks the gentleman. The chair
1658 now recognizes himself for 2 minutes of additional questions.

1659 Chairman Leibowitz, if this Congress would enhance your
1660 authority, can the Commission set up a separate office to
1661 regulate and enforce consumer abuses and, if so, would this
1662 cover other substance of the FTC?

1663 Mr. {Leibowitz.} Well, I would say this. As you know,
1664 Mr. Chairman, we are a small agency with a pretty large
1665 mission and we have to leverage our resources all the time,
1666 so if you give us that authority, and I think a majority of
1667 the Commission would be willing to embrace that authority and
1668 I think we could do good things for consumers, we will need
1669 more resources. I don't know that we need to grow to the
1670 level we were at in 1980, which was 1,800 FTEs, but I think
1671 to discharge--what you don't want us to do is to take people
1672 from spyware cases and other types of fraud cases and then
1673 simply move them to the newest, most problematic area and
1674 forget about all the other things we do.

1675 So I think we need more resources. I do know the
1676 appropriations committees are interested in giving us more
1677 resources and have given us small plus ups over the last
1678 couple of years because they like what we are doing, but we
1679 probably need additional resources on top of that.

1680 Mr. {Rush.} I have less than 1 minute, and I just want
1681 to ask another question on pay-day lending. I believe that
1682 pay-day lenders have a role in our economy but there are far

1683 too many abuses. Does the FTC have authority to crack down
1684 on pay-day lending practices such as rollover fees and the
1685 specific statutory language leading to direct the Commission
1686 to adequately deal with certain abusive pay-day lending
1687 features?

1688 Mr. {Leibowitz.} Well, I would say yes and no. We have
1689 brought about a half dozen pay-day lending cases in the last
1690 5 years. We don't have obviously--Congress set a cap, I
1691 believe, for pay-day loans outside of military bases at 36
1692 percent a couple of years ago. We obviously don't have the
1693 authority to set a cap but one thing we found in our pay-day
1694 loan cases is the imbedded--is that malefactors have sort of
1695 imbedded fees that consumers don't know about, and so they
1696 will pay off their loan in 2 weeks but it will be a day late,
1697 and so then there will be a fee that pops up and then it is
1698 compounded and then they are sort of in a worse circle of
1699 debt. So we have the authority to do that.

1700 I think if you gave us the authority to go--if you gave
1701 us the authority to do rulemakings, we would look at ways to
1702 promulgate rules that would require better behavior by a lot
1703 of the pay-day lenders.

1704 Mr. {Rush.} The chair recognizes Mr. Radanovich for 2
1705 minutes for additional questioning.

1706 Mr. {Radanovich.} Thank you, Mr. Chairman. Mr.

1707 Leibowitz, you had mentioned that the commissioners decided
1708 not to initiate a rulemaking on deceptive Internet
1709 advertising, and the reason was because Congress would
1710 eventually act on the issue which you would have if you could
1711 proceed under the APA. And it sounds like, and we can have a
1712 discussion about this, that you are suggesting that the FTC
1713 APA rulemaking would obviate the need for legislative body at
1714 all. And adding to that question, I think I would ask isn't
1715 the Magnusson-Moss process intentionally deliberate similar
1716 to the congressional legislative process? I mean the
1717 founding fathers set this whole thing up so that legislating
1718 was difficult, and should your job be made easier or should
1719 you have to deliberate with us for a proper approach--

1720 Mr. {Leibowitz.} All of us think our jobs should be
1721 made easier, but I don't mean to suggest that we would have
1722 obviated the need for congressional legislation if we had
1723 been able to do a rulemaking. And I don't mean to say that
1724 we wouldn't have stopped, you know, the economic mess that we
1725 all know we are in, but I do think we could have cleaned
1726 things up more quickly if we had APA rulemaking or something
1727 close to APA rulemaking, but again these were just
1728 discussions among commissioners because we knew that under
1729 APA--we knew that under Mag-Moss rulemaking it would be very,
1730 very hard to do a rule in a timely manner.

1731 And that is the problem with Mag-Moss rulemaking. I
1732 don't mean to say--I don't know if you were here when I was
1733 having a conversation with Mr. Stupak. There is a rationale
1734 for having us make rules more slowly, and certainly among
1735 folks who follow the FTC and have for years and decades there
1736 might have been some excesses perceived or real in the 1970's
1737 that led to some of the restrictions. For example, the
1738 restriction on unfairness that makes, as Mr. Pitts pointed
1739 out, makes it difficult for us to bring an unfairness case.
1740 But having said that, I think it is worth, and I know you are
1741 interested in just discussing this issue further about
1742 whether it makes sense to give us some relief from Mag-Moss.
1743 It doesn't necessarily mean it has to go all the way over to
1744 APA rulemaking, but I do think in some areas, you know, you
1745 want us to be able to act more nimbly, more agile and more
1746 quickly, maybe not in every area but in some.

1747 And when you pass new rules or new laws like Can-Spam,
1748 you have given us that APA rulemaking, and we have that APA
1749 rulemaking in the Omnibus for mortgages, for everything in
1750 the mortgage life cycle. So one thing is watch to see how we
1751 do in the mortgage with the rulemaking authority we have. If
1752 we do a balanced job, maybe it makes sense to give us just a
1753 little bit longer leash.

1754 Mr. {Radanovich.} Thank you.

1755 Mr. {Rush.} The chair now recognizes the gentlelady
1756 from Ohio for 2 minutes.

1757 Ms. {Sutton.} Thank you, Mr. Chairman. You heard some
1758 discussion here about the state attorney generals, and in my
1759 opening statement I talked about some of the actions that we
1760 have taken in Ohio, but even after all that we have done, I
1761 am going to read to you the headline of a report from the
1762 Housing Research and Advocacy Center that is in Cleveland.
1763 The headline reads pay-day lenders operating in 81 Ohio
1764 counties charging up to 680 percent interest. Lenders
1765 avoiding the 28 percent APR cap passed by legislature and
1766 voters, and that is at the state level, in 1,020 stores
1767 statewide. And just to give you an idea of what is happening
1768 here despite legislation passed in 2008 aimed at lowering
1769 interest rates on short-term loans pay-day lenders are
1770 operating, as the headline reads, in 81 of Ohio's 88 counties
1771 making loans in some cases that carry that extraordinary
1772 annual percentage rate, 24 times more the rate that was
1773 approved by the legislature for such lending.

1774 And they have avoided the 28 percent cap by using other
1775 laws, so they are very crafty and they are very quick making
1776 the necessary adjustments to continue to reap what they reap.
1777 I guess my question just is what can you do to help or what
1778 can we do to help?

1779 Mr. {Leibowitz.} Well, I mean there is no magic bullet
1780 for solving these problems, as I am sure you know. I was
1781 asking my staff about usury laws in different states
1782 yesterday as I was preparing for the hearing, and someone
1783 pointed out that in Missouri the cap is 2000 percent, so you
1784 borrow \$100, you forget about it, the next year you owe
1785 \$2,000. Look, one part is working with attorney generals
1786 because we have to leverage our limited resources, and that
1787 is a part of it. Another part is consumer education. We
1788 have a terrific consumer education group and that is a part
1789 of it. You know, I wish I could tell you there is a
1790 particular answer to this problem but it is--there just
1791 isn't, and we all have to sort of pull--and, by the way, as
1792 more people are unemployed as the economy continues to spiral
1793 down, you are going to see more of these problems. You are
1794 going to see more people borrowing from pay-day lenders.

1795 Now Congress made the determination that outside of
1796 military bases pay-day lenders should be capped at, I think,
1797 36 percent. I suppose Congress could make the determination
1798 that pay-day lenders should be capped at 36 percent and
1799 limited in fees, but that is a decision for you to make. I
1800 will say this. If you give us more authority to do
1801 rulemaking in this area, we will take a look at pay-day
1802 loans.

1803 Ms. {Sutton.} With the chair's indulgence, I appreciate
1804 that, and thank you for bringing up the issue about loans
1805 near military bases, and I would like to follow up with you
1806 about that as well because I understand that still problems
1807 remain, and I would like to talk about how we actually
1808 aggressively go after that.

1809 Mr. {Rush.} The chair thanks the gentlelady, and the
1810 chair thanks the chairman again for the extensive use of his
1811 time. We know that you are quite busy and we certainly thank
1812 you for your enlightening commentary to this committee. We
1813 do intend to work with you on these and other matters as we
1814 proceed. And we just want to let you know that we appreciate
1815 your presence here.

1816 Mr. {Leibowitz.} Thank you.

1817 Mr. {Rush.} The chair now calls the second panel to the
1818 witness table. The chair wants to welcome this extraordinary
1819 panel before the committee, and we want to introduce you
1820 individually, and then we will ask that you all stand after
1821 your introduction so that we can swear you in. To my left,
1822 Mr. James Tierney. He is a Lecturer-in-Law at Columbia Law
1823 School, and he is the former attorney general of Maine.
1824 Welcome, Mr. Tierney. Next to Mr. Tierney is Mr. Christopher
1825 Peterson, Professor of Law at the S.J. Quinny College of Law.
1826 Welcome, Mr. Peterson. Next to Mr. Peterson is Mr. Ira

1827 Rheingold. He is the Executive Director of the National
1828 Association of Consumer Advocates. Mr. Rheingold, welcome.
1829 And next to Mr. Rheingold is Mr. Nathan Benson. He is the
1830 CEO of the Tidewater Finance Company, Inc., and he is
1831 testifying on behalf of the American Financial Services
1832 Association. Welcome, Mr. Benson. And now I would like to
1833 swear the witnesses in. Will the witnesses please stand and
1834 raise your right hand?

1835 [Witnesses sworn]

1836 Mr. {Rush.} Let the record reflect that the witnesses
1837 all answered in the affirmative. The chair recognizes Mr.
1838 Tierney for 5 minutes for the purposes of an opening
1839 statement.

|
1840 ^TESTIMONY OF JAMES TIERNEY, LECTURER-IN-LAW, COLUMBIA LAW
1841 SCHOOL; CHRISTOPHER PETERSON, PROFESSOR OF LAW, S.J. QUINNY
1842 COLLEGE OF LAW; IRA RHEINGOLD, EXECUTIVE DIRECTOR, NATIONAL
1843 ASSOCIATION OF CONSUMER ADVOCATES; AND NATHAN BENSON, CHIEF
1844 EXECUTIVE OFFICER, TIDEWATER FINANCE COMPANY, INC., FOR THE
1845 AMERICAN FINANCIAL SERVICES ASSOCIATION

|
1846 ^TESTIMONY OF JAMES TIERNEY

1847 } Mr. {Tierney.} Thank you, Mr. Chairman. My name is Jim
1848 Tierney. I am the Director of the National State Attorney
1849 General Program at Columbia Law School, and in that capacity
1850 I work closely with the men and women who serve as your
1851 attorney generals and your staff, all of whom are deeply
1852 committed to rooting out fraud in the area of credit. My
1853 testimony is obviously my own, but I have discuss it with a
1854 number of attorney generals, including your own, Mr.
1855 Chairman, Lisa Madigan, and I think I broadly reflect the
1856 views of those attorney generals who are committed to this
1857 important issue. I think if there is one thing that is clear
1858 is that we have insufficient consumer protection in the field
1859 of credit. That is the bottom line. We are not doing
1860 enough. The crisis is real and it is growing. And if there

1861 is one single lesson that has to be received in the halls of
1862 Congress and the halls of federal regulators, including the
1863 Federal Trade Commission, is that the states got it right and
1864 the states got it first.

1865 Speaking bluntly, until we have effective state
1866 regulation from state attorney generals and state banking
1867 commissioners, we will never get ourselves out of this hole.
1868 The question is how do we get from here to there, and that is
1869 a challenge. There is a long history of relationships
1870 between the federal and state approach to working with these
1871 issues. The federal government has a number of very narrow
1872 federal statutes enforced by not the Federal Trade Commission
1873 but enforced by banking regulatory agencies whose first job
1874 is to assure the safety and soundness of the banking
1875 community, and we see how well they have done that.

1876 But in addition to that, it is their responsibility
1877 allegedly to deal with consumer protection and they just
1878 don't do it. It is not their highest priority. It never
1879 will. On the state side you have broader laws, state unfair,
1880 deceptive and trade practices act, which are flexible, and
1881 state attorney generals get it right and get it first not
1882 because of--although they show great leadership and great
1883 courage they get it because they are structured to do it.
1884 They live in communities. Like you, they have constituents.

1885 They are able to move and move quickly, and they are able to
1886 move on a national basis and on a bipartisan basis so that
1887 they are able to achieve some very specific and concrete
1888 results.

1889 Now get to the hearing of the Federal Trade Commission.
1890 There is a long history between the Federal Trade Commission
1891 and the state attorney generals. Sometimes it is very
1892 positive. In the 1970's federal funding with the help of the
1893 Federal Trade Commission actually went to the states to get
1894 states more involved in consumer protection. Again, during
1895 the terms of the first President Bush and President Clinton,
1896 again we had warm and solid relationships with the Federal
1897 Trade Commission and the states were on the same side. The
1898 last 8 years have been very cold years. And I commend our
1899 new chairman. Our new chairman did the best he could to
1900 explain the facts as he found them, but the bottom line is
1901 that the Federal Trade Commission has been on the sidelines
1902 on a number of very, very important cases, and this is very
1903 unfortunate.

1904 Not only were they not involved in the cases but even
1905 informally they never called up an attorney general and said
1906 what did you learn? What are you seeing about the patterns
1907 of fraud? And this is a serious problem. I commend the
1908 chairman for reinstating the Executive Working Group, which

1909 I called for in my formalized testimony. It is
1910 extraordinarily important. There are some regional directors
1911 of the FTC who work with the states, there are some who not.
1912 Certainly, the FTC are bringing cases but are these the
1913 biggest cases or is the FTC showing an instinct for the
1914 capillary. Are they striking at the major issues or are they
1915 grabbing onto low hanging fruit when they go after a case?
1916 We don't know. We don't know because people are not sitting
1917 down in the same work and discussing how do we put together a
1918 systematic, sophisticated process by which we can root out
1919 consumer fraud, and that requires a lot of work because there
1920 will never be enough lawyers in the Federal Trade Commission,
1921 never, never, never, to track down the kind of consumer fraud
1922 we are seeing.

1923 The FTC has to work with the states, state banking
1924 commissioners, the private bar, consumer advocacy groups, in
1925 other words, all the people that the states work with every
1926 day as they fashion the kind of priority prosecutions that
1927 are absolutely necessary to make this happen. Now not only
1928 have the states brought the cases that have been alluded to
1929 in the earlier testimony, the Household, the AmeriQuest, and
1930 the Countrywide, but they had to do it with one hand tied
1931 behind their back because they are litigating with the same
1932 federal agencies who are trying to pre-empt them from

1933 bringing these cases at all. That case is back before the
1934 United States Supreme Court again in April. It is a serious
1935 issue. The Banking Committee has held hearings on this. It
1936 is extraordinarily important that the Federal Trading
1937 Commission and the chair of the Federal Trade Commission
1938 stand up as has the chair of the FDIC, Sheila Bare, and said
1939 this is not a time to pre-empt states. We have a problem.
1940 We need more consumer protection, not less, and the timing is
1941 of extreme importance. So with that, Mr. Chairman, thank you
1942 for giving me this opportunity, and I look forward to
1943 answering any questions that you might have.

1944 [The prepared statement of Mr. Tierney follows:]

1945 ***** INSERT 2 *****

|
1946 Mr. {Rush.} Thank you. The chair now recognizes Mr.
1947 Christopher Peterson. Mr. Peterson, you are recognized for 5
1948 minutes.

|
1949 ^TESTIMONY OF CHRISTOPHER PETERSON

1950 } Mr. {Peterson.} Thank you, Mr. Chairman, ranking
1951 member. It is an honor to be here today and share a few
1952 thoughts. I would like to start with two quick statistics,
1953 if I could, about the sub-prime and alternative mortgage
1954 product crisis. The first is roughly 6 million foreclosures
1955 coming through the pipe according to Credit Suisse, and then
1956 foreclosure rescue scam cases brought by the Federal Trade
1957 Commission, 6. According to their testimony in the Senate
1958 last month, they brought 6 foreclosure rescue scam cases for
1959 6 million foreclosures. That is 1 in a million. Where I
1960 come from that is sort of a cliché you talk about when you
1961 said he is not doing anything, right? In my view, honorably,
1962 the Federal Trade Commission is a good agency that does their
1963 best but they are not doing anything. We are talking about
1964 taking teacups of water out of an ocean. It is just not even
1965 close to the sort of magnitude of problems that we are
1966 talking about.

1967 And so if I could just quickly, you talk about the rule
1968 of the law. We all have been talking about all these
1969 generalizations about separating good loans from bad loans.
1970 Just talk about the laws for a second. There is equal

1971 credit--they have four titles of the Consumer Credit
1972 Protection Act, and then they have their deceptive trade
1973 practices authority. The Equal Credit Opportunity Act is
1974 designed to prevent discrimination in awarding credit. It
1975 doesn't do anything in the way of preventing bad loans from
1976 being made. The Fair Credit Reporting Act tries to clear up
1977 inaccurate credit information, but that is not the problem
1978 that we had here. Lots of people had prime credit histories
1979 and were still getting non-amortizing loans that have gone in
1980 waves into foreclosure.

1981 The Fair Debt Collection Practices Act is a nice gesture
1982 but it generally doesn't apply to home mortgage loan
1983 servicers and it comes too late. I mean at the point where
1984 the loan is already in default and there is debt collection
1985 problems, it is too late at that point. Then the Truth in
1986 Lending Act is a nice idea but it is too late. The
1987 disclosures are confusing. People generally just don't read
1988 them. They ignore the disclosures. And even if that was a
1989 great strategy the statute that is designed to promote
1990 honesty in origination of loans doesn't apply to mortgage
1991 brokers who are the people that actually talk to consumers.
1992 What sort of a truth in lending idea doesn't apply to the
1993 people who talk to the borrower?

1994 And then in addition to those four statutes, they also

1995 have two significant regulations that they have done under
1996 their deceptive trade practices authority. The holder in due
1997 course notice rule which doesn't apply to home mortgages, and
1998 that was back in 1975 and it has never been updated. And,
1999 second, the credit practices rule which bans about 5
2000 different problematic contractual provisions including
2001 confessions of judgment and pyramiding late fees, but it
2002 hasn't been updated since 1984. And this regulation doesn't
2003 talk about any of the non-amortizing products and sub-prime
2004 products that we are talking about in the past few months.

2005 And that is it. I just did it. In 3 minutes I summed
2006 up their entire regulatory structure, and it really doesn't
2007 do much of anything to try and prevent home mortgage fraud.
2008 And what are the barriers that prevent more stuff from taking
2009 place? Well, it is true that they have this inefficient
2010 regulatory rulemaking process, and it seems to me it would be
2011 helpful to speed that up. But the real problem is the
2012 fragmented federal regulatory system. On my hand I can count
2013 11 different agencies that are supposed to be dealing with
2014 this problem, the Federal Reserve Board of Governors, the
2015 Office of the Comptroller, the Office of Thrift Supervision,
2016 FDIC, the National Credit Union Administration, the new
2017 Federal Housing Finance Administration, if I am getting that
2018 right, the new OFHEO, HUD, SEC, the FBI and Justice at the

2019 same time, and then finally the Federal Trade Commission.

2020 In this fragmented system, the capital flows to the
2021 weakest regulator like water going down into the basement.
2022 And the result is that there is very, very little actual
2023 rulemaking to try and deal with the problematic practices
2024 that are actually in our industry. So I have been coming up
2025 with a list of all the things that I think needs to get done,
2026 and I have this gigantic list of problems in our statutory
2027 system. It is a big list. We are talking a lot of changes
2028 that need to be made. Congress could do that but it is going
2029 to be a long and complicated bill. It is going to be very
2030 controversial. You could give it to a federal agency to try
2031 and do it but which one would you choose? The only plausible
2032 existing candidates are the Federal Reserve, which already
2033 have that authority under the Home Ownership and Equity
2034 Protection Act or the Federal Trade Commission, which is a
2035 good choice but has nowhere near the resources and has a too
2036 expansive mission.

2037 In my view, respectfully, it is time for a new
2038 regulatory agency that deals exclusively with this issue and
2039 has authority to pursue protection of consumers on consumer
2040 finance issues. And if you are not talking about that, if
2041 you are just talking about more tinkering then you are just
2042 kind of kidding yourself and you are not really going to fix

2043 anything.

2044 [The prepared statement of Mr. Peterson follows:]

2045 ***** INSERT 3 *****

|
2046 Mr. {Rush.} The chair thanks the gentleman. The chair
2047 now recognizes Mr. Rheingold for 5 minutes.

|
2048 ^TESTIMONY OF IRA RHEINGOLD

2049 } Mr. {Rheingold.} Thank you, Chairman, and thank you,
2050 Ranking Member Radanovich. It really is quite a honor to
2051 testify before you, Congressman Rush. I started my career as
2052 a consumer advocate in Chicago where I began a legal
2053 assistance foundation foreclosure prevention project, and I
2054 worked through the mid-90's dealing with all the mortgage
2055 crises that we had in Austin and Roslin, all over Chicago.
2056 And the things that we saw in Chicago in the 90's, we are
2057 seeing nationwide today. What I think disappoints me most
2058 about today's hearing is I am going to go through a litany of
2059 things that we consumer advocates saw in the 90's, saw in the
2060 early 2000's, and we see the exact same thing today. Nothing
2061 has changed except that things have gotten worse, and there
2062 has not been a federal response to it, including the FTC.

2063 I think about the world I see. I run an organization
2064 called the National Association of Consumer Advocates. We
2065 are the private attorneys, the legal service attorneys across
2066 this country who actually do the consumer advocacy work. We
2067 are on the ground every single day representing consumers who
2068 are losing their houses or having their car repossessed or
2069 being harassed by debt collectors. We see what is going on

2070 there but the federal regulatory agencies and the FTC have
2071 not talked to us. So what do we have out here? Oh, I should
2072 mention I also run a project called the Institute for
2073 Foreclosure Legal Assistance, so I am in contact and talk
2074 daily with all the private attorneys, the legal service
2075 attorneys in the community who are actually fighting
2076 foreclosures. We are on the ground. We know who the bad
2077 actors are. We see the bad practices, and we see what is
2078 going on out there.

2079 So what do we have? We have a completely broken
2080 mortgage lending industry. There is no question about it.
2081 Unfairness runs rampant. Bad lending practices are
2082 everywhere. We have a broken mortgage servicing system,
2083 completely broken. It is unaccountable. They can't figure
2084 out how much money people owe. They can't modify a loan to
2085 save their lives. We have seen, Chicago is a perfect example
2086 of it, a dual credit market. If you are middle income or
2087 rich, you have banks. If you are poor or you are low income,
2088 what do you have? You have currency exchanges and you have
2089 pay-day lenders, and you have rent to own, and you have
2090 refund anticipation loans. It is stealing wealth out of the
2091 communities that we care about most, and it has gone on
2092 unabated for the last decade with nobody really taking any
2093 real action and it is only getting worse.

2094 We have a debt collection industry that is completely
2095 out of control. We have growth of a debt buying industry
2096 that is sort of mind boggling in the way they go about
2097 collecting debts without actually even knowing--not having
2098 the contract that the person actually had that debt
2099 originally from. They don't have any proof that that is
2100 owed, yet they are using our nation's court and using our
2101 nation's private arbitration system to collect debts against
2102 people. We have a broken credit reporting system where
2103 consumers can't get real access to their credit reports.
2104 They don't get the information necessary and they can't fix
2105 those reports once they are broken.

2106 All of those things is what our credit market looks like
2107 today. And I went and talked with consumer advocates who I
2108 talk with every single day in this country. I asked them
2109 about the FTC and their role over the last 8 years and the
2110 last 10 years in protecting consumers. I will just pick some
2111 of the adjectives that I got responded, passive,
2112 antagonistic, irrelevant, disengaged, counterproductive,
2113 stuck in a world that doesn't regulate. They have not been
2114 part of the ballgame here. They can cite statistics. They
2115 can talk about some cases that they brought. In the scheme
2116 of things, it is mostly irrelevant. Now to be fair to them,
2117 they are under resourced, and there are good career attorneys

2118 there who do their best. But the fact is they have been
2119 disengaged.

2120 I have been in Washington now 7 years after I left
2121 Chicago, and some day I hope to return. And on one hand I
2122 can count the conversations I have had with the FTC. We are
2123 the people out there doing this kind of work. We are out
2124 there on--it really is sort of mind boggling to me that we
2125 sit here today with the problems that existed 10 years ago
2126 and we have had federal regulatory agencies who have done
2127 nothing except exacerbated the problem. The Federal Trade
2128 Commission, as Chris said, was using the spoon to clean out
2129 an ocean. They simply did not do the job. There is a number
2130 of things that can be done to improve them. Hopefully in the
2131 new Administration they will be more assertive and more
2132 aggressive. They have been completely passive in using their
2133 unfairness authority. They need to use it. They need to
2134 declare things--we know when things are unfair.

2135 When you give somebody a loan that they can't afford to
2136 pay back, that is unfair. It is not a really hard thing to
2137 figure out. They do need greater rulemaking authority. It
2138 is crazy. Six to 8 years to make a rule to protect
2139 consumers, that is just not the way it should work.
2140 Hopefully, they will have leadership, and I hope Chairman
2141 Leibowitz will demonstrate some leadership in terms of being

2142 assertive and aggressive in this area. They should have
2143 concurrent authority over the banks. There is a special
2144 place in regulatory hell for the federal bank regulators over
2145 the last 8 years and their complete failure to what has
2146 happened here. So hopefully the FTC can use of their
2147 consumer protection powers. I will stop there but be happy
2148 to answer any questions you might have about the FTC and the
2149 credit crisis we are facing.

2150 [The prepared statement of Mr. Rheingold follows:]

2151 ***** INSERT 4 *****

|

2152 Mr. {Rush.} Thank you. The chair now recognizes Mr.

2153 Benson for 5 minutes.

|
2154 ^TESTIMONY OF NATHAN BENSON

2155 } Mr. {Benson.} Good morning, Chairman Rush, Ranking
2156 Member Radanovich, and members of the subcommittee. My name
2157 is Nathan Benson, and I am the CEO of Tidewater Finance
2158 Company, which was established in 1992 to purchase and
2159 service retail installment contracts. The company is based
2160 in Virginia Beach, Virginia, and has two lines of business,
2161 Tidewater Credit Services for consumer goods and Tidewater
2162 Motor Credit for auto services. I am here today in my
2163 capacity as a board director of American Financial Services
2164 Association, AFSA, whose 350 members include consumer and
2165 commercial finance companies, auto finance companies, card
2166 issuers, mortgage lenders, industrial banks and other firms
2167 that lend to consumers and small businesses. AFSA
2168 appreciates the opportunity to provide testimony to the
2169 members of the subcommittee.

2170 Today, I will focus my testimony on the role that the
2171 Federal Trade Commission has played, and continues to play,
2172 in helping to restore confidence in the financial services
2173 industry. I will also address the installment loan
2174 industry's importance in providing access to credit to
2175 millions of Americans. The FTC is the effective regulator.

2176 The FTC has been very successful in enhancing consumer
2177 protection under its current authority. It has addressed the
2178 economic crisis in two ways, first, by using its enforcement
2179 authority under Section 5 of the FTC Act to pursue bad actors
2180 in the sub-prime mortgage industry, and, second, by setting
2181 federal policy through guidance and public comment. I will
2182 start by providing some examples that fall into the first
2183 category.

2184 The FTC successfully negotiated a \$40 million settlement
2185 with Select Portfolio Services in November 2003 for engaging
2186 in unfair and deceptive practices in servicing sub-prime
2187 mortgage loans. The settlement was modified in August 2007
2188 to provide additional protections to borrowers, including
2189 mandatory monthly mortgage statements, a 5-year prohibition
2190 on marketing optional products such as home warranties and
2191 refunds for foreclosure attorney fees for services that were
2192 not actually performed. The FTC has entered into a \$65
2193 million settlement with First Alliance Mortgage Company for
2194 making deceptive sub-prime mortgage loans. The FTC
2195 distributed the \$65 million to nearly 20,000 affected
2196 borrowers.

2197 The FTC has successfully pursued other sub-prime
2198 mortgage lenders engaged in what the Commission deemed to be
2199 inappropriate conduct, including Capital City Mortgage

2200 Corporation and Quicken Loans. I want to just move on to the
2201 installment lending and its role in providing credit to
2202 consumers. At the outset, let me say that AFSA shares
2203 Congress' concern about predatory lending. We support the
2204 goal of protecting consumers from unfair, abusive, or
2205 deceptive lending and servicing practices while preserving
2206 access to responsible lenders.

2207 The installment lending industry was born in 1916 out of
2208 a need to provide credit to working men and women. The
2209 Russell Sage Foundation worked with lenders to develop a set
2210 of principles by which they would abide in their lending
2211 activities. Lenders agreed to make the cost of their loans
2212 transparent so that borrowers understood the true cost of the
2213 loan. Loans would be structured over a period of time
2214 allowing a repayment schedule that was long enough to match
2215 the earning power of the borrower. Finally, the lender would
2216 price the loan based on the character of the borrower, which
2217 was defined as a combination of the borrower's employment
2218 stability and previous history of handling credit.

2219 Today's installment lenders are a key element in
2220 improving the socio-economic status of poorer citizens and
2221 supporting our company's economic health. They do this by
2222 adhering to basic principle of economics, that people should
2223 borrow so they can consume based on their permanent income,

2224 and that such consumption is the fuel of our economy.
2225 Typically, the middle and upper class borrow through
2226 traditional banking and financial services relationships.
2227 However, average wage earners with few financial assets often
2228 cannot borrow in this way. Traditional banks simply are not
2229 equipped to offer products and services to these consumers in
2230 a manner that is profitable for the enterprise. As a result,
2231 these consumers need access to safe forms of small-sum
2232 credit. These are the very products the installment loan
2233 industry, an industry fully and completely regulated and
2234 examined at the state level, have been providing successfully
2235 for decades.

2236 Certainly, people turn to installment lenders for
2237 multiple reasons. Key among these, however, is the need to
2238 access small sums to deal with unforeseen circumstances. I
2239 could go on but if there are any questions.

2240 [The prepared statement of Mr. Benson follows:]

2241 ***** INSERT 5 *****

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2242 Mr. {Rush.} Thank you. I certainly want to thank the
2243 panel for their excellent testimony. The chair now
2244 recognizes himself for a round of questioning for 5 minutes.
2245 I want to address my first question to the entire panel, and
2246 each one of you can take a few seconds to answer the question
2247 as you will. Most of you have testified this morning that
2248 the FTC has not done enough to address consumer credit issues
2249 over the past years, particularly over the last 8 years. And
2250 let me just ask each one of you, do you believe that this has
2251 occurred because of a lack of action, political or structure
2252 in nature? In other words, do you believe the Commission has
2253 failed to act because of a lack of will or because of some
2254 underlying obstacles such as the lack of statutory authority,
2255 the lack of resources, burdensome procedures, or all of the
2256 above. If you could explain to me in your answer why you
2257 believe the FTC has failed to act. Mr. Tierney.

2258 Mr. {Tierney.} Well, we can go in the same order,
2259 Congressman. I think it is clear that the leadership of the
2260 Federal Trade Commission at the very highest level in the
2261 last 8 years, very highest level, shared the de-regulatory
2262 philosophy that was predominant at the time, and the
2263 philosophy was clearly stated to state attorney generals on a
2264 regular basis that you were vicious intermeddlers, you were

2265 denying credit to people who need it, you are applying the
2266 wrong standards, that we should let the marketplace prevail
2267 and it will be a self-regulatory procedure. And although
2268 time and again attorney generals would expressly predict, it
2269 turned out conservatively, a million home foreclosures they
2270 were characterized as alarmists, not necessarily by the
2271 Federal Trade Commission but by the tone of the times and by
2272 the interest groups that surrounded the Commission, so the
2273 Commission at the top reflected the reality.

2274 I would also make another smaller point that our past
2275 two presidents have consisted in naming people to the
2276 Commission with an anti-trust background, not a consumer
2277 protection background, and that is a bipartisan
2278 characterization of our past three presidents actually. And
2279 that it would be a really good idea if the Federal Trade
2280 Commission had someone on the Commission who had a consumer
2281 protection background, and, secondly, actually had worked
2282 with the states and did not come from a large law firm or
2283 from the Hill. And I don't mean the personal
2284 characterization, but I really do believe that the FTC is
2285 lacking that kind of background and experience at the very
2286 highest level.

2287 Mr. {Rush.} Does the other panel want to weigh in on
2288 this?

2289 Mr. {Peterson.} I do. I would like to say that in the
2290 past 12 years it has been primarily a political or lack of
2291 willpower issue, but going forward it is more likely to have
2292 something to do with the structural issues. I think that
2293 there are structural problems but even if 12 years ago we had
2294 cleared out all those structural problems they still wouldn't
2295 have done anything. Going forward, I think they are going to
2296 try and do some things now, and it is going to be harder for
2297 them to do it than it should be because of the structural
2298 barriers and it would probably help if we cleared some of
2299 those out. But even still, I think we are still talking
2300 about tinkering with things. We are not talking about the
2301 magnitude change that needs to happen in order to help
2302 facilitate more efficient and effective commerce.

2303 Mr. {Rheingold.} I would concur with my fellow
2304 panelists, I think a lot of it was ideological. I think
2305 there was this notion that self regulation would work and the
2306 FTC should not interfere in the commerce of credit, so I
2307 think that is part of it without a doubt. And in part that
2308 is why a lot of consumer advocates did not engage with the
2309 FTC and the AGs didn't engage with the FTCs because we fear
2310 that the work we did would actually be undercut by their
2311 philosophy. I do think that resources are a significant
2312 problem there. They have an awful lot of jurisdiction. They

2313 have very limited resources. They have very little
2314 rulemaking, and I also agree that if they had that authority
2315 over the last decade nothing would have changed, but I think
2316 going forward we have some opportunity to do something.

2317 Mr. {Rush.} Mr. Benson, I have 30 seconds so please.

2318 Mr. {Benson.} Yes. We felt that through those cases
2319 that they have done anything about, that has affected over
2320 10,000 people, and when they pick on an entity in an industry
2321 that has helped everyone that is tied to that industry, so it
2322 is not just that entity that is being affected. It is
2323 everyone in that environment that gets cleaned up pretty
2324 quick, so we think they have been pretty effective. When
2325 they pick on one entity it goes through to the whole industry
2326 doing the same things, so we think so far they have been
2327 effective.

2328 Mr. {Rush.} Thank you very much. The chair now
2329 recognizes the ranking member, Mr. Radanovich, for 5 minutes.

2330 Mr. {Radanovich.} Thank you, Mr. Chairman. Mr. Benson,
2331 welcome to the subcommittee. I appreciate your testimony. I
2332 want to start off with you on a couple of questions. Do you
2333 believe the FTC needs APA procedures in order to be effective
2334 or can it use the existing authority that it has to
2335 effectively regulate the industry?

2336 Mr. {Benson.} We believe that it can use its existing

2337 authority that it has.

2338 Mr. {Radanovich.} Let me ask you, how can regulation be
2339 used to reduce fraud without adding unnecessary compliance
2340 costs that are inevitably passed on to the consumer?

2341 Mr. {Benson.} Well, most of our members through AFSA
2342 are state regulated so we are controlled by them. We are in
2343 favor of disclosure with all our members, so we work with
2344 those people so we believe with full disclosure and with
2345 obviously the regulations with the state, we believe that
2346 fraud will come out as long as it is monitored.

2347 Mr. {Radanovich.} I was looking at the new sample
2348 disclosure form by the FTC, which I thought was kind of
2349 interesting. Can you tell me your opinion of it? It seems
2350 it is easy to read. Have you seen it?

2351 Mr. {Benson.} No, we haven't seen it.

2352 Mr. {Radanovich.} Okay. Okay. My first glance at is
2353 it is something that looks kind of positive. I was curious
2354 to know what your thoughts would be on it.

2355 Mr. {Benson.} As I said earlier, our view is more
2356 disclosure and the simpler it gets, a lot better it is.

2357 Mr. {Radanovich.} Okay. One last question. The FTC
2358 has proposed disclosure simplification forms for mortgage--I
2359 think you have already answered that one. Thank you, Mr.
2360 Benson. I appreciate that. Mr. Rheingold, can I ask you,

2361 you testified that the FTC--that had the FTC had the will to
2362 actively engage in oversight much of the current credit
2363 crisis could have been avoided. We are talking about
2364 increasing authority through the APA and we are discussing
2365 that additional authority. Isn't that kind of a duplicative
2366 entrée statement?

2367 Mr. {Rheingold.} I don't think so. I actually think
2368 there are two things happening here, and I think to be fair
2369 the FTC was not the controlling regulatory agency. The OCC
2370 and the OTS really failed and they had a lot of things that
2371 they could have done to prevent the disaster we have today.
2372 I think the OCC through its enforcement powers, if they in
2373 fact had been effective enforcers and using those decisions,
2374 I think the perfect example of a strong enforcement agency
2375 can do is what the Massachusetts AG did in the Freemon case
2376 where they brought a case against the mortgage company who
2377 was engaged in unfair practices, where they were making loans
2378 that people could not afford, and using the unfairness
2379 authority that court declared that these practices, A, B, C,
2380 and D, making a loan at a teaser rate that explodes and
2381 people can't afford it is unfair.

2382 Making a loan to people over 50 percent of their gross
2383 income is per se unfair. If the FTC would have taken some of
2384 those actions, even in the Fairbanks case there was an

2385 opportunity to declare certain practices that the service
2386 industry does as unfair, it could have had a real impact on
2387 the type of practices that exist throughout the mortgage
2388 industry.

2389 Mr. {Radanovich.} Using that example, where was the
2390 problem then? Was it in the lack--was it in the application
2391 of Magnusson-Moss or was it--

2392 Mr. {Rheingold.} Well, I am talking about their
2393 enforcement power. There is a difference between rulemaking--
2394 -there are a couple of ways that they can set the law. By
2395 bringing in--if the FTC brings an action and gets a court
2396 order that declares as part of their court-agreed order that
2397 this practice is unfair, that will have a pretty large impact
2398 in terms of the rest of the industry because it will send a
2399 clear signal that this is an unfair practice and hopefully
2400 would stop it. That is one way they could do it, through
2401 their court enforcement procedures.

2402 I think the easier thing they could have done if they,
2403 in fact, had normal every day authority to make rulemaking is
2404 they could have done that without having to bring court
2405 cases. And the fact is, as someone who has been a veteran of
2406 dealing with a lot of the rulemaking that is done through all
2407 sorts of regulatory agencies, industry and consumer groups
2408 have ample opportunity through the APA procedure to get their

2409 voices heard and influence that process. And the notion that
2410 they need 6 to 8 years with this lengthy, excuse me,
2411 cockamamie system of developing a way of rulemaking really it
2412 is counterproductive and useless, and anything that they
2413 could do with the current system that we have in place if it
2414 takes 6 to 8 years by the time you get a decision the
2415 problems out there would have evolved to something completely
2416 different.

2417 Mr. {Radanovich.} All right. Thank you very much, Mr.
2418 Rheingold. I yield back, Mr. Chairman.

2419 Mr. {Rush.} The chair thanks the gentleman. The chair
2420 now recognizes the gentlelady from Ohio, Ms. Sutton, for 5
2421 minutes.

2422 Ms. {Sutton.} Thank you, Mr. Chairman. We have heard
2423 repeatedly here today about some of the shortcomings of what
2424 we are trying to accomplish in the process that now exists.
2425 A couple of those, of course, revolve around the fact that
2426 the FTC, we hear over and over again, doesn't have the
2427 authority over banks that it has over other entities, and we
2428 also hear about the rulemaking process being too cumbersome,
2429 but I guess one of the questions for this committee and for
2430 the Congress and for all of us here is if the FTC had
2431 rulemaking authority that was more streamlined, APA
2432 rulemaking authority, and they had greater authority over the

2433 banks, and they had resources to do the job, is it better for
2434 the FTC to be the agency that deals with this or some of you
2435 have suggested there should be a new entity to do so. If you
2436 could just answer those questions for me, I would appreciate
2437 your opinion.

2438 Mr. {Tierney.} I guess I would say, Congresswoman, I
2439 like many of us were studying the proposal by Professor
2440 Warren. It has been called the so-called Durbin-Delahunt
2441 bill. I have not taken a position on it yet but it has a lot
2442 to do it. But, if I may, to go back to your earlier point
2443 about pay-day lending, and remember the name of the song, If
2444 You Can't Be With the One You Love, Love the One You're With,
2445 we have enough authority now between the states and the trial
2446 lawyers and the legislatures and the Federal Trade
2447 Commission. If we just want to do something and focus on the
2448 problem such as pay-day, take the resources we have, set a
2449 national strategic goal, and just go do it.

2450 And my concern about discussion of the larger
2451 institution is that while we play that huge congressional
2452 effort that goes on for so long that we got millions of
2453 people suffering every day, and we should do something right
2454 now.

2455 Mr. {Benson.} I believe that the way you regulate it,
2456 and I am the only, I think, business person here, is you got

2457 to have some skin in the game, you got to have some money in
2458 the game, so if you are going to securitize you got to have--
2459 someone has got to hold a portion of the securitization on
2460 the books. If you are going to have loans out there, you got
2461 to have the risk factor, that you shouldn't be able to go and
2462 draw on someone's back account. You should be able to
2463 analyze the person's credit, make the loan that they can
2464 afford over time, payments over time, equal payments. That
2465 would solve the problem rather than the risk factor. When
2466 you have got nothing at risk, the issues come out.

2467 Mr. {Peterson.} If I could, I think that a new agency
2468 is the way to go. That is my honest opinion. The second
2469 choice would be the Federal Trade Commission. I don't think
2470 you should give it to the Federal Reserve Board. They have
2471 demonstrated that they are bankers at their heart and soul,
2472 and they have the authority to pass--they have extensive
2473 authority under the 1994 Home Ownership and Equity Protection
2474 Act. You passed that statute and gave them all the power
2475 that they needed and they did nothing. The Federal Reserve
2476 Board could have stopped this easily with their rulemaking
2477 authority under HOEPA, and they didn't do anything, so what
2478 is to think that that is going to change now?

2479 And what is more with the Federal Reserve Board, they
2480 have so much political autonomy. It is so hard to exercise

2481 oversight over them because of their justified and needed
2482 monetary policy independence. I just don't think that it is
2483 a good political entity that is going to be at the beck and
2484 call of Congress and will be responsive to the people. It is
2485 time for a new consumer finance regulator that deals with
2486 these types of questions, and if you can't get that passed
2487 the Federal Trade Commission is the next best choice. But
2488 the problem is that the FTC has a lot of other important
2489 stuff to do. It need to be out there on the anti-trust
2490 watchdog beat. It needs to be dealing with privacy issues,
2491 telemarketing issues, all very important issues, and very
2492 different than the consumer finance problems that we are
2493 talking about now. If this is ever going to happen, it is
2494 now, and if you don't do it now it will never happen, and we
2495 will continue to suffer from these systemic problems for the
2496 next 50 to 100 years.

2497 Mr. {Rheingold.} I agree.

2498 Ms. {Sutton.} Is that an I agree, Mr. Rheingold?

2499 Mr. {Rheingold.} I absolutely agree.

2500 Ms. {Sutton.} Okay. Thank you, and I yield back.

2501 Mr. {Rush.} The chair thanks the witnesses. We don't
2502 intend to go into a second round of questioning. I think
2503 that we have been well served by both panels today, and the
2504 chair really again--we are most grateful to this panel for

2505 the extensive use of your time. And we want to commend you
2506 on your patience with us through this particular issue. I
2507 just want to note that all witnesses should be prepared to
2508 receive and answer written questions from members of this
2509 subcommittee. And with that, thank you very much.

2510 Mr. {Benson.} Could I ask that my complete statement be
2511 included in the record?

2512 Mr. {Rush.} So ordered. And I would like to request
2513 unanimous consent to enter into the record a statement from
2514 the organization, Public Citizen. Without objection, so
2515 ordered.

2516 [The statement follows:]

2517 ***** COMMITTEE INSERT *****

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2518 Mr. {Rush.} This subcommittee now stands adjourned.
2519 [Whereupon, at 12:30 p.m., the subcommittee was
2520 adjourned.]