PREPARED STATEMENT OF

THE FEDERAL TRADE COMMISSION

on

"Foreclosure Rescue and Loan Modification Scams"

Before the

HOUSE COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON HOUSING AND COMMUNITY OPPORTUNITY
UNITED STATES HOUSE OF REPRESENTATIVES

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I. Introduction

Chairwoman Waters, Ranking Member Capito, and members of the Subcommittee, I am Peggy Twohig, Associate Director of the Division of Financial Practices at the Federal Trade Commission (FTC or Commission).[1] I appreciate the opportunity to appear before you today to discuss the Commission's efforts to protect consumers from foreclosure rescue and loan modification scams.

With the rapid increase in mortgage delinquencies and foreclosures, the FTC has intensified its efforts to protect consumers from foreclosure rescue and loan modification scams and to halt the proliferation of these types of scams. In a little over a year, the Commission has brought eleven cases targeting mortgage foreclosure rescue and loan modification scams. Most recently, on April 6, 2009, the FTC – along with other federal and state regulators – announced law enforcement actions and consumer education initiatives as part of a broader crackdown on loan modification and foreclosure rescue entities. In addition, the Commission announced a new consumer outreach and education initiative to reach borrowers directly with the help of a broad array of government, non-profit organizations, and mortgage industry members. Through this initiative, borrowers will receive materials about how to spot and avoid mortgage rescue scams directly from their mortgage companies, at housing counseling outreach centers, and online. These efforts are part of a larger focus on financial services: for example, the Commission has brought more than 70 enforcement actions in the past five years and provided $465 million in redress to American consumers in financial services cases in the last ten years.

[1] The views expressed in this statement represent the views of the Commission. My oral presentation and responses to any questions are my own, however, and do not necessarily reflect the views of the Commission or any particular Commissioner.

The FTC also will be considering what rules are warranted to more comprehensively protect consumers in this marketplace. The Omnibus Appropriations Act of 2009 authorized the FTC to issue rules to prohibit unfair or deceptive practices with respect to mortgage loans. The Commission anticipates that this rulemaking authority will be helpful in addressing mortgage loan modification and foreclosure rescue services.

This testimony provides an overview of the FTC's consumer protection authority and describes the Commission's recent law enforcement, consumer education, and policy development efforts to protect financially distressed homeowners from mortgage relief scams.

II. Overview of FTC Authority

The Commission has law enforcement authority over a wide range of acts and practices throughout the consumer credit life-cycle. The agency enforces Section 5 of the Federal Trade Commission Act, which prohibits "unfair" or "deceptive" acts or practices in or affecting commerce.[2] The Commission also enforces other consumer protection statutes that govern financial services providers. These include the Truth in Lending Act,[3] the Home Ownership and Equity Protection Act,[4] the Consumer Leasing Act,[5] the Fair Debt Collection Practices Act,[6] the

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[2] 15 U.S.C. 45(a)(1).

[3] 15 U.S.C. 1601-1666j (mandates disclosures and other requirements in connection with consumer credit transactions).

[4] 15 U.S.C. 1639 (provides additional protections for consumers entering into certain high-cost mortgage refinance loans).

[5] 15 U.S.C. 1667-1667f (requires disclosures, limits balloon payments, and regulates advertising in connection with consumer lease transactions).

[6] 15 U.S.C. 1692-1692p (prohibits abusive, deceptive, and unfair debt collection practices by third-party debt collectors).

Fair Credit Reporting Act (FCRA),[7] the Equal Credit Opportunity Act,[8] the Credit Repair Organizations Act,[9] the Electronic Funds Transfer Act,[10] the Telemarketing and Consumer Fraud and Abuse Prevention Act,[11] and the privacy provisions of the Gramm-Leach-Bliley Act.[12]

Although the Commission has authority over a wide range of acts and practices related to financial products and services, many financial service providers are exempt from the Commission's jurisdiction under the FTC Act.[13] Banks, thrifts, and federal credit unions are exempt from the Commission's jurisdiction. The Commission's jurisdiction under the FTC Act reaches only to non-bank financial companies, including non-bank mortgage companies, mortgage brokers, and finance companies. In addition, the Commission does not have

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[7] 15 U.S.C. 1681-1681x (imposes standards for consumer reporting agencies and information furnishers; places restrictions on the use of consumer report information). The Fair and Accurate Credit Transactions Act of 2003 amended the FCRA. Pub. L. No. 108-159, 117 Stat. 1952 (2003).

[8] 15 U.S.C. 1691-1691f (prohibits creditor practices that discriminate on the basis of race, religion, national origin, sex, marital status, age, receipt of public assistance, and the exercise of certain legal rights).

[9] 15 U.S.C. 1679-1679j (mandates disclosures and other requirements in connection with credit repair organizations, including a prohibition against charging fees until services are completed).

[10] 15 U.S.C. 1693-1693r (establishes the rights and responsibilities of institutions and consumers in connection with electronic fund transfer services).

[11] 15 U.S.C. 6101-6108 (provides consumer protection from telemarketing deception and abuse and requires the Commission to promulgate implementing rules).

[12] 15 U.S.C. 6801-6809 (requires financial institutions to provide annual privacy notices; provides consumers the means to opt out from having certain information shared with non-affiliated third parties; and safeguards customers' personally identifiable information).

[13] *See* 15 U.S.C. 45(a)(2).

jurisdiction under the FTC Act over non-profit organizations.[14]

III. FTC's Protection of Consumers from Foreclosure Rescue and Loan Modification Scams

In this current economic crisis, homeowners in financial distress are particularly vulnerable to unfair, deceptive, and otherwise unlawful business practices. The rate of mortgage loan delinquency and foreclosure has risen to the highest level in three decades.[15] With the rapid increase in mortgage delinquencies and foreclosures, the Commission has intensified its efforts to protect consumers in the financial services marketplace from foreclosure rescue and loan modification scams. As detailed below, the FTC is employing all of its tools – law enforcement, consumer outreach and education, and policy development – to halt the proliferation of mortgage relief scams.

A. FTC Law Enforcement

With the rapid increase in mortgage delinquencies and foreclosures, the FTC has stepped up its efforts to protect consumers from foreclosure rescue and mortgage loan modification

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[14] *See* 15 U.S.C. 44. The FTC does, however, have jurisdiction over for-profit entities that provide mortgage-related services as a result of a contractual relationship with a non-profit organization. *See Nat'l Fed'n of the Blind v. FTC*, 420 F.3d 331, 334-35 (4th Cir. 2005). In addition, the Commission asserts jurisdiction over "sham charities" that operate as for-profit entities in practice.

[15] *See* Mortgage Bankers Association (MBA), *Delinquencies Continue to Climb in Latest MBA National Delinquency Survey* (Mar. 5, 2009), *available at* http://www.mbaa.org/NewsandMedia/PressCenter/68008.htm. According to the MBA's National Delinquency Survey, the delinquency rate for mortgage loans on one-to-four unit residential properties rose to a seasonally adjusted rate of 7.88% of all loans, as of the end of the fourth quarter of 2008, which is the highest rate ever based on data dating back to 1972. Over 11% of loans are either in foreclosure or delinquent by at least one payment, which is the highest rate ever recorded in the MBA national delinquency survey.

scams. In a little over a year, the FTC has brought eleven cases targeting mortgage foreclosure rescue and loan modification scams[16] and is actively engaged in ongoing, non-public investigations. On April 6, 2009, the FTC – along with Treasury Secretary Geithner, Attorney General Holder, HUD Secretary Donovan, and Illinois Attorney General Madigan – announced law enforcement actions and consumer education initiatives as part of a broader crackdown on loan modification and foreclosure rescue entities.[17] In connection with this effort, the Commission also sent warning letters to 71 companies for marketing potentially deceptive mortgage loan modification and foreclosure assistance programs.[18]

The FTC's law enforcement actions regarding foreclosure rescue and loan modification schemes typically allege the following:

First, the defendants use terms like "guarantee" and "97% success rate" to mislead

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[16] *FTC v. Federal Loan Modification Law Center, LLP*, Case No. SACV09-401 CJC (MLGx) (C.D. Cal. filed Apr. 3, 2009); *FTC v. Thomas Ryan*, Civil No. 1:09-00535 (HHK) (D.D.C. filed March 25, 2009); *FTC v. Home Assure, LLC*, Case No. 8:09-CV-00547-T-23T-SM (M.D. Fla. filed Mar. 24, 2009); *FTC v. Hope Now Modifications*, No. 1:09-cv-01204-JBS-JS (D.N.J. Mar. 17, 2009); *FTC v. New Hope Property LLC*, No. 1:09-cv-01203-JBS-JS (D.N.J. Mar. 17, 2009); *FTC v. National Foreclosure Relief, Inc.*, No. SACV09-117 (C.D. Cal. Feb. 2, 2009); *FTC v. United Home Savers, LLP*, No. 8:08-cv-01735-VMC-TBM (M.D. Fla. Sept. 3, 2008); *FTC v. Foreclosure Solutions, LLC*, No. 1:08-cv-01075 (N.D. Ohio April 28, 2008); *FTC v. Mortgage Foreclosure Solutions, Inc.*, No. 8:08-cv-388-T-23EAJ (M.D. Fla. Feb. 26, 2008); *FTC v. National Hometeam Solutions, Inc.*, No. 4:08-cv-067 (E.D. Tex. Feb. 26, 2008); *FTC v. Safe Harbour Foundation*, No. 08 C 1185 (N.D. Ill. Feb. 25, 2008).

[17] *See* Press Release, *Federal and State Agencies Crack Down on Mortgage Modification and Foreclosure Rescue Scams* (Apr. 6, 2009), *available at* http://www.ftc.gov/opa/2009/04/hud.shtm; Press Release, *Federal, State Partners Announce Multi-Agency Crackdown Targeting Foreclosure Rescue Scams, Loan Modification Fraud* (Apr. 6, 2009), *available at* http://www.ftc.gov/opa/2009/04/loanfraud.shtm.

[18] An example of these letters is available at http://www.ftc.gov/os/2009/04/090406warningletter.pdf.

consumers about the foreclosure rescue and loan modification services they provide.[19] Sometimes, the defendants will also promise a full refund in the event that negotiation efforts to obtain a loan modification or to prevent foreclosure are unsuccessful. Second, they charge up-front fees for these "services." Lastly, after collecting the fee, the defendants do little or nothing to help consumers obtain a loan modification or stop foreclosure. For example, in one case the Commission charged a foreclosure rescue operation for promising consumers that it could stop "any foreclosure," but then failing to stop foreclosure or taking even minimal steps to do so.[20] Consumers are unlikely to receive a refund or recover the money they paid up-front as a fee, which is as high as thousands of dollars. Such operations not only defraud financially distressed consumers out of desperately needed funds but also may lead them to forgo viable options for avoiding foreclosure, such as getting assistance from a non-profit housing counselor.[21]

Sometimes the defendants use copycat names or look-alike websites to appear to be affiliated with a non-profit or government entity, when in fact they are not.[22] The defendants

[19] Additionally, some entities claim to be associated with or to have good relationships with the consumer's mortgage servicer. *See FTC v. Home Assure, LLC*, Case No. 8:09-CV-00547-T-23T-SM (M.D. Fla. filed Mar. 24, 2009).

[20] *See FTC v. National Hometeam Solutions, LLC*, Case No. 4:08-cv-067 (E.D. Tex. filed Feb. 26, 2008). *See also FTC v. Home Assure, LLC*, Case No. 8:09-CV-00547-T-23T-SM (M.D. Fla. filed Mar. 24, 2009) (alleging that defendant promised "100% SATISFACTION GUARANTEE OR YOUR MONEY BACK").

[21] In addition, some FTC defendants advise consumers, including those who are still current on their loans, to stop making mortgage payments and to cease communication with their mortgage servicer while the operator purportedly negotiates on their behalf. *See, e.g.*, *FTC v. Home Assure, LLC*, Case No. 8:09-CV-00547-T-23T-SM (M.D. Fla. filed Mar. 24, 2009); *FTC v. National Hometeam Solutions, LLC*, Case No. 4:08-cv-067 (E.D. Tex. filed Feb. 26, 2008).

[22] For example, the Commission alleged that a defendant marketing purported loan modification services represented, via his website, that he was the "House and Urban Department" by displaying a government-like seal and using a web address ("bailout-hud-

may also make express or implied misrepresentations that Members of Congress or other government officials endorse their services or products. In one case, against Federal Loan Modification Law Center LLP, the FTC alleged that the defendants misrepresented that they were part of or affiliated with the federal government and that they could obtain a loan modification in all or virtually all instances.[23] On April 24, 2009, the court in that matter issued a preliminary injunction prohibiting the company from making claims about its likelihood of obtaining or negotiating home loan modifications for consumers, collecting up-front fees, and claiming any affiliation with the United States government.

In two other recent cases, the Commission alleged that the defendants misrepresented that they were part of the legitimate Hope Now Alliance of housing counselors and mortgage servicers – using similar sounding names and representing to consumers that they were part of the Alliance. In addition, the defendants misrepresented to delinquent borrowers that they would obtain mortgage loan modifications and prevent foreclosure and that, if unsuccessful, they would provide refunds to consumers.[24] In both cases, the court issued temporary restraining orders enjoining the deceptive practices and imposing an asset freeze. Last week, the court entered stipulated preliminary injunction orders continuing the core conduct prohibitions and asset freeze

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gov.us" or "bailout.dohgov.us") and other features to create the impression that his business was associated with the U.S. government. *FTC v. Thomas Ryan*, Civil No. 1:09-00535 (HHK) (D.D.C. filed Mar. 25, 2009).

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

[24] *FTC v. Hope Now Modifications,* No. 1:09-cv-01204-JBS-JS (D.N.J. filed Mar. 17, 2009); *FTC v. New Hope Property LLC,* No. 1:09-cv-01203-JBS-JS (D.N.J. filed Mar. 17, 2009).

provisions.

B. Consumer Outreach and Education

In tandem with its law enforcement actions, the Commission has initiated a stepped-up consumer outreach and education initiative on foreclosure rescue and loan modification fraud. The FTC has warned consumers about these mortgage-relief scams that charge hefty fees for their services – the same services that consumers can undertake by contacting their mortgage servicer directly or obtain for free through non-profit organizations like the Hope Now Alliance.[25]

Most recently, the FTC announced a new education initiative to reach borrowers directly with the help of a broad array of government, non-profit organizations, and mortgage industry members. Through this initiative, borrowers will receive materials about how to spot and avoid mortgage rescue scams directly from their mortgage companies, at housing counseling outreach centers, and online. Joining the FTC in the effort are the Hope Now Alliance, the Homeowners Preservation Foundation, and NeighborWorks America, which are non-profit organizations that work to help distressed homeowners get free help and counseling through HUD-certified housing counselors, all of whom work directly with borrowers to help them stay in their homes. Several national mortgage companies, including Chase Home Lending, Suntrust Mortgage, and GMAC Mortgage, will be voluntarily sending FTC consumer education information directly to consumers through a variety of methods, including during loan counseling sessions, in monthly statements, in correspondence to delinquent borrowers, and on their Web sites. Freddie Mac

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[25] *See, e.g.*, FTC Publication, *Foreclosure Rescue Scams: Another Potential Stress for Homeowners in Distress, available at* http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre42.shtm.

also is distributing consumer education materials to its servicing partners.[26] This week, the Commission provided mortgage servicers and others with audio public service announcements (PSAs) from the FTC warning consumers about mortgage foreclosure scams and giving them tips on how to avoid them. The FTC has encouraged servicers to play these PSAs while borrowers are on hold with servicers' customer service and loss mitigation departments as part of our efforts to reach out directly to borrowers.

C. Mortgage Loan Rulemaking

Pursuant to the Omnibus Appropriations Act of 2009, the FTC has new rulemaking authority to prohibit unfair or deceptive practices with respect to mortgage loans. The Omnibus Appropriations Act of 2009 enacted on March 11, 2009 directed the Commission to commence within ninety days a rulemaking proceeding with respect to mortgage loans.[27] This new legislation allows the FTC to use the relatively streamlined notice and comment rulemaking procedures under Section 553 of the Administrative Procedure Act (APA) in promulgating these rules, rather than Magnuson-Moss procedures.[28] As part of this rulemaking proceeding, the

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[26] *See* Press Release, *Federal and State Agencies Crack Down on Mortgage Modification and Foreclosure Rescue Scams* (Apr. 6, 2009), *available at* http://www.ftc.gov/opa/2009/04/hud.shtm; FTC Publication, *A Note to Homeowners*, *available at* http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea16.pdf.

[27] Omnibus Appropriations Act 2009, Pub. L. No. 111-8, § 626, __ Stat. __ (Mar. 11, 2009).

[28] 5 U.S.C. 553. Section 626 of the Omnibus Appropriations Act authorizes use of these procedures in lieu of the procedures set forth in Section 18 of the FTC Act, 15 U.S.C. 57a. Note that, because this rulemaking is not undertaken pursuant to section 18(a)(1)(B) of the FTC Act, 15 U.S.C. 57a(a)(1)(B), federal banking agencies are not required pursuant to section 18(f) of the Act, 15 U.S.C. 57a(f), to promulgate substantially similar regulations for entities within their jurisdiction. Nonetheless, the Commission plans to consult with the federal banking agencies in this proceeding, absent the findings required by the statute.

Commission intends to address unfair or deceptive acts and practices regarding mortgage loan modification and foreclosure rescue scams. The Commission appreciates this new authority and believes that it will be instrumental in increasing the protection that the agency can provide to mortgage borrowers and financially distressed homeowners.

IV. Enhancing FTC Consumer Protection Efforts

In addition to its work protecting consumers from foreclosure rescue and loan modification scams, the Commission has continued its overall efforts to protect consumers in the financial services marketplace. In particular, the FTC has focused on six additional critical areas: (1) mortgage servicing; (2) fair lending; (3) credit advertising; (4) debt collection; (5) debt settlement; and (6) credit repair.[29]

The FTC believes that its past efforts have provided important protections to American consumers in the credit marketplace. The agency, however, recognizes that it must do more. To that end, the Commission recommends that Congress make the FTC more effective by providing it with additional authority.[30] First, the Commission recommends that Congress authorize the agency to employ APA notice and comment rulemaking procedures to establish rules pursuant to the FTC Act that set forth unfair or deceptive acts and practices relating to all financial services.

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[29] For a more detailed description of recent cases brought in these areas, see the FTC's March 24, 2009 testimony before the House Committee on Energy and Commerce, Subcommittee on Commerce, Trade, and Consumer Protection, which is available at http://www.ftc.gov/os/2009/03/P064814consumercreditdebt.pdf.

[30] These recommendations are discussed in greater detail in the FTC's March 24, 2009 testimony before the House Committee on Energy and Commerce, Subcommittee on Commerce, Trade, and Consumer Protection, which is available at http://www.ftc.gov/os/2009/03/P064814consumercreditdebt.pdf.

Under the burdensome and time-consuming procedures for rulemaking set forth in Section 18 of the FTC Act, 15 U.S.C. 57a, Commission rulemakings typically have required from three to ten years to complete.[31] Second, the Commission recommends that Congress authorize the agency to obtain civil penalties for unfair or deceptive acts and practices relating to all financial services and authorize the agency to bring suit in its own right in federal court to obtain civil penalties. Third, in response to the current Balkanization of federal consumer protection oversight over financial services, several bills have been introduced and proposals offered under which there would be some type of overall federal regulator of financial services.[32] There are differences in these bills and proposals to rationalize the oversight system, and there are numerous challenging issues that would have to be resolved to implement these concepts. Because of its unequaled and comprehensive focus on consumer protection, its independence from providers of financial services, and its emphasis on vigorous law enforcement, we ask Congress to ensure that the FTC is considered as Congress moves forward in determining how to modify federal oversight of consumer financial services.[33]

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[31] For example, the proceeding to promulgate the FTC's Credit Practices Rule, 16 C.F.R. Part 444, using Magnuson-Moss procedures took almost ten years. In contrast, the proceeding to promulgate the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310, using APA procedures took one year.

[32] *See, e.g.*, Financial Product Safety Commission Act of 2009, S. 566, 111th Cong. (1st Sess. 2009); Consumer Credit Safety Commission Act of 2008, S. 3629, 110th Cong. (2d Sess. 2008); Consumer Credit Safety Commission Act of 2008, H.R. 7258, 110th Cong. (2d Sess. 2008); Cong. Oversight Panel, "Special Report on Regulatory Reform: Modernizing the American Financial Regulatory System: Recommendations for Improving Oversight, Protecting Consumers, and Ensuring Stability" (Jan. 2009) at 34; U.S. Department of the Treasury, "Blueprint for a Modernized Financial Regulatory Structure" (Mar. 2008).

[33] For a discussion of possible restructuring options, see Oren Bar-Gill and Elizabeth Warren, *Making Credit Safer*, 157 U. Pa. L. Rev. 1, 98 (2008) (proposing "the creation of a single federal regulator – a new Financial Product Safety Commission or a new consumer credit division" in the Federal Reserve or the FTC).

Finally, the Commission asks that Congress provide additional resources to the FTC to increase its law enforcement activities related to financial services and to expand its critical research on the efficacy of mortgage disclosures and other topics.

V. Conclusion

Although the agency protects consumers throughout the credit life-cycle, the FTC recently has increased its focus on preventing harm to consumers who are already in debt and in financial distress. The FTC has used all of the tools in its arsenal – enforcement, consumer and business outreach, and policy development – to protect consumers from foreclosure rescue and loan modification scams. The Commission appreciates the opportunity to appear before you today to discuss the FTC's work.