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

Good afternoon. It's a pleasure to be here and have this opportunity to speak to you today about some of the FTC's work in the financial sector. As a Southern Californian, I particularly appreciate the effort you have made to trudge through the snow and slush to get here.

In the wake of the financial downturn, the FTC has been concentrating on what we call "last dollar" fraud — outright scams or deceptive practices that rob the most distressed consumers of what little money they have. In the housing arena, this has primarily taken the form of mortgage loan modification and foreclosure rescue fraud, in which consumers are bilked out of hefty fees by scammers falsely promising to renegotiate their mortgage.

As we all know, foreclosure rates are at historic highs — last year, nearly 2.9 million homes were the subject of a foreclosure filing, and this year is expected to be worse. Homeowners desperate for a way to save their homes are especially vulnerable to mortgage relief scams. The FTC has been aggressive in tackling such fraud through vigorous law enforcement and a tough new regulation that goes into full effect next week. Mortgage servicers that take advantage of struggling homeowners have also been an area of FTC focus both before and after the burst of the housing bubble.

Today, I'd like to speak to you about some FTC initiatives that are a direct response to the foreclosure crisis. I'd also like to touch on some of our other work in the housing arena, namely mortgage advertising, mortgage disclosures, and fair lending. I will close with a brief discussion of how I expect the FTC will coordinate its work with the newest cop on the beat, the Consumer Financial Protection Bureau.[1]

FTC Regulatory Regime

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

The heart of our authority is Section 5 of the FTC Act, which prohibits deceptive and unfair business practices and which we enforce primarily in federal court. We also enforce a wide range of statutes and Federal Reserve regulations that relate specifically to financial services. These include the Equal Credit Opportunity Act (ECOA), the Truth in Lending Act (TILA), the Fair Debt Collection Practices Act (FDCPA), and the Fair Credit Reporting Act (FCRA).

Significantly, banks, thrifts, savings and loans, federal credit unions, and insurance companies are outside the FTC's jurisdiction. The Commission's authority is limited to non-bank entities such as non-bank mortgage brokers, mortgage servicers, debt collectors, and credit reporting agencies. As a result, it's important to keep in mind that, while our authority covers a broad array of acts and practices in the financial sector, our power over financial service providers is limited. And yet, despite these limitations, the FTC has long been a leader in consumer protection in the financial services marketplace.

[1] The views stated here are my own and may not represent the views of the Commission or other Commissioners.

Mortgage Advertising

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

For many consumers, the first stage of the mortgage lifecycle is an advertisement that draws them in with the promise of a low interest rate. Across the board, false advertising is the bread-and-butter of the FTC's consumer protection work. And in the mortgage context, since the mid-1990s, we have brought a steady stream of cases alleging deceptive advertising of mortgages. In 2009, for example, the FTC filed three actions challenging deceptive claims in which advertisers represented low monthly payment amounts without clearly and prominently disclosing the actual terms of the loans to consumers.

Additionally, as mandated by Congress in 2009, the FTC is in the process of issuing a new rule regarding deceptive mortgage advertising by non-banks. The goal of our proposed Mortgage Acts and Practices — or MAP — Rule is to create a clear and simple prohibition on deceptive mortgage advertising that both federal and state law enforcers can use to obtain civil penalties. You can expect to see a final rule in the coming months.

Mortgage Disclosures

Of course, even in the absence of false advertising, many consumers have difficulty understanding mortgage terms.

In 2007, the FTC published an influential study conducted by our Bureau of Economics into the effectiveness — or, more accurately, the ineffectiveness — of existing mortgage disclosures. The study, not surprisingly, found that mortgage disclosure forms fail to convey key mortgage costs and terms to many consumers. And, having recently refinanced my own mortgage, I confess that I am one of those consumers who found the disclosures provided to be thoroughly confusing. Not even my law degree was enough to help me make sense of the ambiguous and sometimes conflicting documentation. I had to ask so many questions — many of which the bank representatives themselves could not answer — that, by the time all of the documents had been signed, the bank was completely fed up with me. If my rate hadn't already been locked in, they no doubt would have added several basis points to my loan because I was such a difficult customer. In short, there is no question that change is needed in this area.

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

Fair Lending

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

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

Mortgage Servicing

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

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

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

This scheme had two components. First, Countrywide substantially overcharged homeowners who were behind on their mortgage payments for default-related services, such as property inspections, title reports, or maintenance work. Many servicers provide these services themselves or hire third parties to do the work and then pass on the actual cost of the services to consumers. Countrywide, however, took a novel approach. It created affiliates, which it controlled, to provide the services. The Countrywide affiliates then added a dramatic markup to the actual cost of the services — 100%, 200%, and even 400% of their actual cost. Just mowing the lawn could lead to a $300 bill. Countrywide, in turn, passed along these vastly inflated fees to homeowners. As a result, even as the mortgage market collapsed and more homeowners fell behind on their mortgage payments, Countrywide was making handsome profits.

That may have been good for Countrywide's balance sheet, but it was a raw deal for consumers that was also a deceptive and an unfair practice. Under their mortgage contracts, Countrywide could only impose charges that were reasonable and appropriate to protect the mortgage holder's interest in the property. Based on that limitation, the Commission charged that each time Countrywide told consumers they were obligated to pay the marked-up fees, it engaged in deception. The FTC's complaint also asserted that charging fees not permitted by the contract was an unfair practice.

The second component of Countrywide's scheme involved its servicing of mortgages for consumers trying to save their homes in Chapter 13 bankruptcy. The FTC alleged that Countrywide made inaccurate or unsupported claims about the amounts borrowers owed and the status of their loans. Countrywide used antiquated technology and failed to implement adequate procedures to ensure the accuracy of their information. The Commission charged that

Countrywide's resulting false or unsupported statements in the bankruptcy proceedings were deceptive.

The FTC also alleged that Countrywide failed to tell borrowers during their bankruptcy cases when it was adding new fees and escrow charges. Then, after the bankruptcy cases were over — sometimes years later —and the borrowers no longer had the protection of the bankruptcy court, Countrywide sought to collect these fees, in some cases by initiating another foreclosure on the very same property. The FTC alleged that this practice was also unfair.

The court order settling these charges requires Countrywide to pay $108 million. This money is being used to provide refunds to more than 200,000 homeowners victimized by Countrywide's practices.

The consent decree also contains a comprehensive injunction, which I should point out currently applies to the entire Bank of America servicing portfolio.

I'd like to highlight two provisions of the injunction.

First, it bars fees for default-related services that are not reasonable charges for work actually performed by a third party. If the service is provided by an affiliate, there are additional requirements to ensure that the fees are reasonable and disclosed to consumers.

Second, the defendants can't initiate a foreclosure action until they have reviewed reliable evidence that supports the claim that the consumer is in default.

The *Countrywide* case builds on FTC actions against two other major servicers of subprime mortgages: EMC Mortgage and its parent, Bear Stearns (now part of JP Morgan Chase), and Fairbanks Capital (now Select Portfolio Servicing). These two cases involved a variety of alleged unlawful practices, including failing to post payments properly, charging unauthorized fees, using abusive debt collection tactics, and reporting erroneous information to credit reporting agencies. Together, the companies have paid $68 million for consumer refunds. And they have also agreed to broad injunctions that bar them from making inaccurate or unsubstantiated claims about what borrowers owe or initiating foreclosure actions without verifying that the homeowner is in default.

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

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

Mortgage Modification and Foreclosure Rescue Fraud

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

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

Perhaps you've seen their ads, which have run heavily in mass media and on the Internet. These companies try to link themselves to government programs like Making Home Affordable. They tell consumers that they may qualify to refinance their mortgage and urge them to call supposed "foreclosure experts." Consumers who answer these ads are told that, in exchange for up-front fees of thousands of dollars, the companies will get a loan modification or prevent foreclosure. But, once these companies receive their hefty fees, they typically do nothing. Or worse, they tell consumers not to pay their mortgages or talk to their lenders, putting consumers at even greater risk of losing their homes.

Hundreds of thousands of consumers have lost hundreds of millions of dollars through these scams. These are individuals who can least afford to be robbed of several thousand dollars. The FTC has made fighting this type of fraud one of its highest priorities. In the last three years, we have prosecuted over 30 cases against more than 180 defendants engaging in mortgage modification and foreclosure rescue scams. With our state partners, we have brought more than 200 cases in nationwide law enforcement sweeps.

The FTC now also has a new tool to attack these pernicious scams. Last November, we announced the final Mortgage Assistance Relief Services or "MARS" Rule, the product of mortgage-related rulemaking authority Congress gave us in 2009. The key feature of this rule is a ban on collecting fees before delivering an actual loan modification or other mortgage relief that the homeowner finds acceptable.

The rule, which can be enforced by the states as well as the FTC, also prohibits companies from advising consumers to stop communicating with their mortgage company. And it requires companies to tell consumers what their services will cost and that they aren't affiliated with the government. This new rule provides a powerful new tool that the FTC and the states will be able to use effectively to combat existing and emerging types of mortgage relief fraud.

Consumer Financial Protection Bureau

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

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

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

To be sure, the FTC is losing some of its rulemaking authority under certain of the Dodd-Frank "enumerated statutes." But the FTC has always fundamentally been a law enforcement agency rather than a regulator. And Dodd-Frank significantly expands the scope of our law enforcement authority. Most importantly, the FTC will have the power to enforce CFPB rules on unfair, deceptive, or abusive practices against entities within FTC jurisdiction.

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

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

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Let me stop there. Thank you again for inviting me to be here today. I will be happy to take any questions that you may have.