11 June 2010

Americans for Financial Reform and the undersigned groups support a strong FTC

Senate Conferees Should Recede to the House on Section 4901 of HR 4173

Dear Conferee,

We write on behalf of Americans for Financial Reform, an unprecedented coalition of more than 250 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, religious and business groups as well as Nobel Prize-winning economists.

We urge Senate conferees to recede to the House and include Section 4901 of HR 4173 – restoring the Federal Trade Commission's authority to protect the public – in the final Wall Street reform package. The FTC has long operated under limited rulemaking and law enforcement authority compared to either other agencies or the proposed new CFPA's powers. Even after Congress establishes a CFPA, the Federal Trade Commission will still maintain broad authority over important parts of the marketplace and will also act as the CFPA's enforcement partner in many areas. Its efforts to protect consumers will be enhanced if it is given greater ability to impose civil penalties and its ability to seek redress for aiding and abetting violations and conduct modernized, more efficient rulemakings under the Administrative Procedures Act are restored.

The provisions described below were all in the original blueprint for financial reform and included in HR 4173 as Section 4901 during Financial Services Committee markup of the bill. The Senate bill is silent. **The Senate should agree to the House language, which protects consumers.**

For over 25 years, the FTC has been hampered by limited rulemaking and enforcement authority. Its powers must be enhanced so that it can respond to new threats to consumers and communities. Some of these threats – foreclosure relief, debt settlement scams, job offer scams, stimulus grant scams, and many other frauds are a direct result of the mortgage crisis and economic meltdown. The FTC can play a critical role in protecting consumers from its aftermath and ensuring that it won't happen again. The FTC will also retain authority over telemarketing fraud, credit repair fraud, prepaid calling card fraud and also over firms that will be subject to the Consumer Financial Protection Agency's rules, but not its enforcement, under various carve-outs and exemptions that may be retained (although our organizations oppose these carve-outs and exemptions).

Further, the role played by Internet-based services in that recent mortgage and banking crisis illustrates why Congress should ensure the FTC is empowered to prevent a repeat of abusive past practices. Millions of Americans relied on online financial services when they applied for mortgage loans during the subprime-lending era. For example, four mortgage or financial companies were in the top five of online advertising spending in August 2007.

The following are the key FTC improvement provisions as approved by the House in HR 4173.

APA RULEMAKING: First, the House-passed bill changes the FTC's cumbersome Magnuson Moss rulemaking process to the more prevalent Administrative Procedures Act (APA) rulemaking process used by other agencies. In recent testimony, FTC Chairman Jon Leibowitz called Magnuson-Moss rulemaking – which takes so long, 7-10 years or more, and is subject to so many procedural challenges by firms, that it has virtually been abandoned – both "draconian" and "medieval." As many have noted, the FTC's inability to swiftly enact predatory mortgage lending rules was a contributor to the mortgage meltdown.

CIVIL PENALTIES FOR UDAP VIOLATIONS: Second, the House-passed bill gives the FTC the authority to impose civil penalties for violations of the FTC Act. Currently, a firm that violates the FTC's core enforcement mechanism -- Section 5's prohibition on unfair and deceptive acts and practices (also called its UDAP authority) -- gets a free bite of the apple, no penalties. The inability of the FTC to impose civil penalties for first offenses limits its ability to police the marketplace. Unless a firm violates a trade rule that the FTC enforces, such as the Fair Credit Reporting Act, or violates an existing consent decree or order, the FTC cannot impose civil penalties. This lack of a credible threat of punishment is an inadequate deterrent against wrongdoing.

AIDING AND ABETTING AUTHORITY: Finally, the House-passed bill restores to the FTC the right to sanction professionals aiding and abetting illegal schemes and frauds by others. It is highly likely that many schemes designed to extract wealth from consumer pocketbooks involve lawyers, accountants, bankers and others advising the seller. Clarifying aiding and abetting liability will help assure that all those involved in the scheme or the scam can be reached by the law. This authority is vested with the SEC and the new CFPA, but not the FTC (under current law).

For more information, please contact Ed Mierzwinski of U.S. PIRG (edm@pirg.org) or Susanna Montezemolo of the Center for Responsible Lending (Susanna.Montezemolo@responsiblelending.org).

Sincerely,

Americans for Financial Reform

Center for Digital Democracy

Center for Science in the Public Interest

Center for Responsible Lending

Consumer Action

Consumer Federation of America

Consumers Union

Demos

The Leadership Conference on Civil and Human Rights

National Association of Consumer Advocates

National Consumer Law Center (on behalf of its low-income clients)

National Fair Housing Alliance

Public Citizen

SEIU

U.S. PIRG