

PREPARED STATEMENT OF THE FEDERAL TRADE COMMISSION

Hearing on

FISCAL YEAR 2024 FEDERAL TRADE COMMISSION BUDGET

Before the

**COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON INNOVATION, DATA, & COMMERCE**

UNITED STATES HOUSE OF REPRESENTATIVES

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I. INTRODUCTION

Chairman Bilirakis, Ranking Member Schakowsky, and members of the Subcommittee, the Federal Trade Commission (“FTC” or “Commission”) is pleased to appear before you today to discuss the FTC’s work to protect Americans from unfair or deceptive practices and unfair methods of competition.¹

The FTC is an independent agency that comprises three bureaus: the Bureau of Consumer Protection (“BCP”); the Bureau of Competition (“BC”); and the Bureau of Economics, which supports both BCP and BC. To strengthen the FTC’s ability to keep pace with technological challenges in the digital marketplace, the FTC also recently announced the creation of an Office of Technology, which is supporting the agency’s law enforcement and policy work.

This testimony provides an overview of the FTC’s consumer protection work, highlighting some of the agency’s major recent activities and initiatives, as well as major challenges. It also provides a short discussion of the Commission’s efforts to promote fair competition and the FTC’s international efforts to advance both missions. Finally, the testimony discusses resource constraints, the FTC’s FY2024 budget request, and limitations on the Commission’s authorities, which are ripe for Congress to address.

II. CONSUMER PROTECTION MISSION

As the nation’s primary consumer protection agency, the FTC has a broad mandate to protect the public from unfair or deceptive practices throughout the economy. It does this by, among other things, bringing lawsuits to stop unlawful practices, pursuing policy initiatives to ensure fairness in the marketplace, and educating consumers and businesses in communities

¹ This written statement presents the views of the Federal Trade Commission. The oral statements and responses to questions reflect the views of individual Commissioners, and do not necessarily reflect the views of the Commission or any other Commissioner.

throughout the country. The FTC’s enforcement and education efforts include working closely with federal, state, and international partners on joint initiatives. The Commission’s structure, research capacity, and committed staff enable it to meet its mandate of protecting consumers and competition in an ever-changing marketplace. Among other issues, the FTC works to protect privacy and data security, to stand up for consumers facing fraudulent or exploitative practices, to stop deceptive advertising, and to ensure that domestic manufacturers, independent repairers, and other small businesses have a chance to compete fairly.

A. Protecting Every Community from Fraud and Deceptive Business Practices

The FTC is undertaking comprehensive enforcement action to root out fraud and deceptive business practices, including those that target historically underserved or vulnerable communities.

1. Reducing the Scourge of Unwanted Calls

In FY 2022, the FTC received more than 3 million complaints about unwanted calls, including 1.8 million reports about robocalls.² The Commission uses every tool at its disposal to combat these calls. The FTC has filed 161 enforcement actions against 545 companies and 438 individuals alleged to be responsible for placing billions of unwanted telemarketing calls to consumers. We have also collected over \$393 million in civil penalties and equitable monetary relief from these violators. In cases where perpetrators ran telemarketing scams, the FTC has obtained court orders shutting down these businesses and freezing their remaining assets so that those funds could be returned to consumers.³ The FTC is making it a point to go after not only

² FTC, *Do Not Call Registry Data Book 2022: Complaint Figures for FY 2022* (2022), www.ftc.gov/system/files/ftc_gov/pdf/DNC-Data-Book-2022.pdf.

³ See, e.g., Temporary Restraining Order, *FTC v. Green Equitable Sols.*, No. 2:22-cv-06499-FLA (C.D. Cal. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/2022.09.14%20Order%20granting%20TRO.pdf (freezing the defendants’ assets and shutting down their deceptive practices). This action is being taken in conjunction with the state of California and involves allegations that the defendants illegally called consumers on the Do Not Call

individual bad actors, but also the platforms that enable these practices on a massive scale.⁴ The Commission has initiated two rulemakings that would modify the Telemarketing Sales Rule to further assist law enforcement in the fight against unwanted calls.⁵

2. Protecting Tenants and Homeowners from Unfair or Deceptive Practices

Amidst volatility in the housing market, the FTC is taking action to ensure that both buyers and renters are protected from unfair or deceptive practices. For example, the FTC recently ordered the online home buyer Opendoor not to make deceptive claims about potential sales prices and to pay \$62 million, which we will be returning to consumers.⁶ In October 2022, the FTC and State of California jointly took action against the home-improvement fintech company Ygrene Energy Fund, Inc. for, among other things, allegedly unfairly recording liens on consumers' homes without their consent using high-pressure sales tactics. The company entered into a settlement requiring it to rigorously monitor its sales force and to provide relief to consumers who did not consent to liens being placed on their homes.⁷ The Commission also recently expanded on its work in this area by issuing an RFI with the CFPB, seeking to learn more about tenant screening in the rental housing industry from all the various stakeholders who

Registry, pitching mortgage relief services and falsely claiming to be affiliated with government COVID-19 relief programs. *See also* Press Release, Fed. Trade Comm'n, Federal Trade Commission, California Take Action To Shut Down Mortgage Relief Operation that Preyed on Struggling Homeowners (Sept. 19, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/09/federal-trade-commission-california-take-action-shut-down-mortgage-relief-operation-preyed>.

⁴ Complaint, *United States v. Stratics Networks, Inc.*, No. 3:23-cv-00313 (S.D. Cal. Feb. 17, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/001-complaint.pdf.

⁵ Notice of Proposed Rulemaking, 87 Fed. Reg. 33,677 (June 3, 2022); Advance Notice of Proposed Rulemaking, 87 Fed. Reg. 33,662 (June 3, 2022).

⁶ Press Release, Fed. Trade Comm'n, FTC Takes Action to Stop Online Home Buying Firm Opendoor Labs, Inc. from Cheating Potential Sellers with Misleading Claims about its Home-Buying Service (Aug. 1, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-takes-action-stop-online-home-buying-firm-opendoor-labs-inc-cheating-potential-sellers>.

⁷ Press Release, Fed. Trade Comm'n, FTC, California Act to Stop Ygrene Energy Fund from Deceiving Consumers About PACE Financing, Placing Liens on Homes Without Consumers' Consent (Oct. 28, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-california-act-stop-ygrene-energy-fund-deceiving-consumers-about-pace-financing-placing-liens>.

play a part in that system, including tenants, advocacy groups, property managers and landlords of all sizes, tenant screening companies, and other members of the public.⁸

3. Combatting Fraud around COVID-19

Since obtaining authority under the COVID-19 Consumer Protection Act of 2020 (“CCPA”), the Commission has remained vigilant in ensuring that bad actors face severe consequences for using the pandemic to prey on American consumers. In February 2023, we obtained summary judgment against *Trend Deploy* for its false promises of availability and quick delivery of personal protective equipment.⁹ We also have brought several actions against companies claiming that their products treat, prevent, or cure COVID-19.¹⁰ Even before enactment of the CCPA, the FTC used Section 5 to challenge deceptive COVID-19 health

⁸ Press Release, Fed. Trade Comm’n, FTC and CFPB Seek Public Comment on How Background Screening May Shut Renters Out of Housing (Feb. 28, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-cfpb-seek-public-comment-how-background-screening-may-shut-renters-out-housing> (inquiring about how landlords set their screening criteria, the burdens on applicants, how public records are being used to make housing qualification decisions, how algorithms are being used to make predictions about individual tenants, and whether tenant screening practices can disproportionately affect historically underserved communities).

⁹ Press Release, Fed. Trade Comm’n, FTC Sues PPE Marketer for Falsely Promising Quick Delivery of N95 Facemasks (June 30, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/06/ftc-sues-ppe-marketer-falsely-promising-quick-delivery-n95-facemasks>.

¹⁰ See Press Release, Fed. Trade Comm’n, FTC Act to Stop Deceptive COVID-19 Advertising Claims by California’s Precision Patient Outcomes, Inc. (Nov. 22, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/11/ftc-acts-stop-deceptive-covid-19-advertising-claims-californias-precision-patient-outcomes-inc-0>; Press Release, Fed. Trade Comm’n, FTC Takes Action Against doTERRA Distributors for False COVID-19 Health Claims (Mar. 3, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-takes-action-against-doterra-distributors-false-covid-19-health-claims>. One of these matters is in ongoing litigation and three have been resolved with favorable orders. Stipulated Order, *FTC v. Eliza Johnson Bacot*, No. 1:23-cv-000058 (N.D. Ga.), https://www.ftc.gov/system/files/ftc_gov/pdf/2023-01-23-ECF-5-Stipulated-Order-Entered-%28Bacot%29.pdf; Stipulated Order, *FTC v. Lauren Busch*, No. 2:23-cv-00009 (D. Utah), https://www.ftc.gov/system/files/ftc_gov/pdf/2023-03-01-ECF-13-Stipulated-Order-for-Permanent-Injunction-Civil-Penalty-Judgment-and-Other-Relief-%28Busch%29.pdf; Order, *FTC v. Wong*, No. 2:23-cv-63 (C.D. Cal.), https://www.ftc.gov/system/files/ftc_gov/pdf/2023-01-11-ECF-No-7-US-v-Wong-Stipulated-Order.pdf.

claims,¹¹ illegal practices relating to sales of PPE¹² and sanitizing products,¹³ and false claims targeting struggling small businesses that were seeking to submit applications for the Paycheck Protection Program.¹⁴ The Commission recently won victories in two of these cases.¹⁵

4. Combatting Opioid Recovery Fraud and Other Health-Related Misconduct

The FTC has used the authority Congress gave us in the Opioid Addiction Recovery Fraud Prevention Act (“OARFPA”) to stop companies from exploiting Americans struggling with substance use disorders. In our first OARFPA case, we obtained a \$3.8 million civil penalty judgment against R360 for deceptive claims to consumers seeking substance abuse treatment.¹⁶ Just last month, we announced an OARFPA actions against AWAREmed for false efficacy claims and obtained a \$100,000 civil penalty.¹⁷

¹¹ Complaint, *FTC v. Golden Sunrise Nutraceutical, Inc.*, No. 1:20-cv-00540-DAD-SKO (E.D. Cal.), https://www.ftc.gov/system/files/documents/cases/202_3146_golden_sunrise_-_complaint.pdf; Stipulated Order for Permanent Injunction and Monetary Judgment as to Defendant Stephen Meis, *FTC v. Golden Sunrise Nutraceutical, Inc.*, No. 1:20-cv-00540-DAD-SKO (E.D. Cal.), https://www.ftc.gov/system/files/documents/cases/052-gs_stipulated_order_for_permanent_injunction_and_monetary_judgment_as_to_defendant_stephen_meis.pdf.

¹² See Complaint, *FTC v. SuperGoodDeals.com, Inc.*, No. 20-cv-3027 (E.D.N.Y.), https://www.ftc.gov/system/files/documents/cases/202_3135_supergooddeals_-_complaint.pdf; Complaint, *FTC v. Am. Screening, LLC*, No. 4:20-cv-1021 (E.D. Mo.), https://www.ftc.gov/system/files/documents/cases/202_3158_american_screening_-_complaint.pdf; Complaint, *FTC v. Zaappaaz LLC*, No. 4:20-cv-02717 (S.D. Tex.), https://www.ftc.gov/system/files/documents/cases/202_3136_zaappaaz_-_complaint.pdf.

¹³ See, e.g., Complaint, *FTC v. QYK Brands LLC*, Case No. 8:20-cv-01431-JLS-KES (C.D. Cal.), https://www.ftc.gov/system/files/documents/cases/202_3147_qyk_brands_-_complaint.pdf; Complaint, *FTC v. One or More Unknown Parties Deceiving Consumers Into Making Purchases Through: www.cleanyos.com et al.*, No. 5:20-cv-02494 (N.D. Ohio), https://www.ftc.gov/system/files/documents/cases/complaint_w-a_filed.pdf.

¹⁴ Stipulated Final Order, *FTC v. Ponte Investments, LLC*, No. 1:20-cv-00177 (D.R.I.), https://www.ftc.gov/system/files/documents/cases/x200042_ponte_inv_-_stipulated_final_order.pdf.

¹⁵ Press Release, Fed. Trade Comm’n, Federal Trade Commission Scores Two Victories in Separate Actions Against Companies Who Failed to Deliver COVID Personal Protection Equipment During Early Days of the Pandemic (Aug. 1, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/08/federal-trade-commission-scores-two-victories-separate-actions-against-companies-who-failed-deliver>.

¹⁶ See Press Release, Fed. Trade Comm’n, FTC Hits R360 and its Owner With \$3.8 Million Civil Penalty Judgment for Preying on People Seeking Treatment for Addiction (May 17, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/05/ftc-hits-r360-its-owner-38-million-civil-penalty-judgment-preying-people-seeking-treatment-addiction>.

¹⁷ Press Release, Fed. Trade Comm’n, FTC Sues Medical Clinic and its Owner for False or Unsubstantiated Claims its Treatment Center Could Cure Addiction and Other Diseases (Mar. 16, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-sues-medical-clinic-its-owner-false-or-unsubstantiated-claims-its-treatment-could-cure-addiction>.

The FTC also has used its authorities to put an end to a variety of other deceptive treatment claims. In January 2023, the FTC put an end to allegedly deceptive bait-and-switch advertising for vision correction services, which cost consumers time and put honest businesses at a disadvantage.¹⁸ We continued aggressively litigating a case against health products marketers for allegedly making deceptive claims that their products grow bone and cartilage and relieve joint pain.¹⁹ And, to ensure businesses avoid running afoul of the FTC Act, FTC staff recently issued the *Health Products Compliance Guidance*, the first update the FTC has made to its health-product business guidance in nearly 25 years.²⁰

5. Combatting Fraud Targeting Older Americans

Protecting older consumers continues to be one of the FTC's top priorities, one that the agency pursues through aggressive law enforcement actions, innovative education and outreach campaigns, extensive research, and collaboration with partners and stakeholders. The FTC has brought a number of actions against companies targeting older adults with allegedly deceptive practices, including timeshares,²¹ sham health plans,²² and foot pain.²³ In addition, as with its work on unwanted calls, the FTC is going after platforms that allegedly facilitate scams (like the

¹⁸ Press Release, Fed. Trade Comm'n, FTC Approves Final Order against LCA-Vision, Halting Alleged Bait-and-Switch Advertising for LASIK Laser Eye Surgery (Mar. 15, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-approves-final-order-against-lca-vision-halting-alleged-bait-switch-advertising-lasik-laser-eye>.

¹⁹ Press Release, Fed. Trade Comm'n, FTC Order to Bar ZyCal Bioceuticals from Deceptive Health Marketing (Feb. 6, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-order-bar-zycal-bioceuticals-deceptive-health-marketing>.

²⁰ Press Release, Fed. Trade Comm'n, FTC Announces New Business Guidance for Marketers and Sellers of Health Products (Dec. 20, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/12/ftc-announces-new-business-guidance-marketers-sellers-health-products>.

²¹ Complaint, *United States v. Consumer Law Protection, LLC*, No. 4:22-cv-01243 (E.D. Mo.), <https://www.ftc.gov/legal-library/browse/cases-proceedings/2123065-square-one-development-group-inc-et-al-us-state-wisconsin-v>.

²² Press Release, Fed. Trade Comm'n, FTC Action Against Benefytt Results in \$100 Million in Refunds for Consumers Tricked into Sham Health Plans and Charged Exorbitant Junk Fees (Aug. 8, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-action-against-benefytt-results-100-million-refunds-consumers-tricked-sham-health-plans-charged>.

²³ Complaint, *FTC v. Gravity Defyer Medical Technology Corp.*, No. 1:22-cv-01464 (D.D.C.), https://www.ftc.gov/system/files/ftc_gov/pdf/1923114GravityDefyerComplaintrev.pdf.

grandparent and lottery or sweepstakes scams) at scale.²⁴ The FTC also has aggressively gone after companies making deceptive earnings claims, a business practice that disproportionately affects retirees and older adults looking to supplement their incomes. The Commission's deceptive earnings actions have included investment advisors,²⁵ crypto and other bogus business schemes,²⁶ and day trading.²⁷ Commission staff are continuing work on rulemaking efforts regarding earnings claims.²⁸ The Commission also has proposed a rule that seeks to put an end to business and government impersonation scams,²⁹ another area of persistent misconduct that disproportionately affects older Americans.³⁰

The agency's enforcement work is complemented by its education and outreach work. During 2022, the FTC updated its most popular³¹ education campaign, *Pass It On*³² (*Pásalo*³³ in Spanish), and promoted it through a series of webinars presented to thousands of representatives from congressional offices, aging services providers, banks, libraries, and military support

²⁴ Complaint, *FTC v. Walmart, Inc.*, No: 1:22-cv-03372 (N.D. Ill.), <https://www.ftc.gov/legal-library/browse/cases-proceedings/182-3012-walmart-ftc-v>.

²⁵ Press Release, Fed. Trade Comm'n, FTC Suit Requires Investment Advice Company WealthPress to Pay \$1.7 Million for Deceiving Consumers (Jan. 13, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-suit-requires-investment-advice-company-wealthpress-pay-17-million-deceiving-consumers>.

²⁶ Press Release, Fed. Trade Comm'n, FTC Takes Action to Stop DK Automation and Kevin David Hulse from Pitching Phony Amazon and Crypto Moneymaking Schemes (Nov. 16, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/11/ftc-takes-action-stop-dk-automation-kevin-david-hulse-pitching-phony-amazon-crypto-moneymaking>.

²⁷ Press Release, Fed. Trade Comm'n, Federal Trade Commission Cracks Down on Warrior Trading For Misleading Consumers With False Investment Promises (Apr. 19, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/04/federal-trade-commission-cracks-down-warrior-trading-misleading-consumers-false-investment-promises>.

²⁸ Advance Notice of Proposed Rulemaking on Deceptive or Unfair Earnings Claims, 87 Fed. Reg. 13,951 (Mar. 10, 2022); Business Opportunity Rule, 87 Fed. Reg. 72,428 (Nov. 25, 2022).

²⁹ Press Release, Fed. Trade Comm'n, FTC Proposes New Rule to Combat Government and Business Impersonation Scams (Sept. 15, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-proposes-new-rule-combat-government-business-impersonation-scams>.

³⁰ Analysis of FTC reports shows that older adults reported tremendous losses to impersonation scams, topping \$151 million for business impersonation scams and \$122 million for government impersonation scams in 2021. FTC, *Protecting Older Consumers 2021-2022* at 23 (Oct. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P144400OlderConsumersReportFY22.pdf.

³¹ Since its original launch in 2014, nearly 18 million Pass It On materials have been distributed nationwide in English and Spanish.

³² See <http://www.ftc.gov/PassItOn>.

³³ See <http://www.ftc.gov/Pasalo>.

groups, among others. The FTC also created the Senior Fraud Advisory Office, pursuant to the Seniors Fraud Prevention Act of 2022, to advise the Commission on fraud prevention strategies, monitor the market for emerging fraud trends impacting older adults, and coordinate with the agency's law enforcement partners to disseminate consumer education regarding these new trends. The Commission's external outreach was also formalized this year through the establishment of the Advisory Group, pursuant to the Stop Senior Scams Act, which facilitates collaborations with outside stakeholders and focuses on: (1) expanding consumer education and outreach efforts; (2) improving industry training on scam prevention; (3) identifying innovative or high-tech methods to detect and stop scams; and (4) reviewing research on scam prevention.³⁴

The FTC's work for older adults is described in greater detail in the Commission's annual report to Congress,³⁵ submitted pursuant to the Elder Abuse Prevention and Prosecution Act of 2017.³⁶

6. Protecting Servicemembers and Veterans

Combatting fraud aimed at servicemembers is an important part of the FTC's law enforcement and outreach priorities. In July 2022, in its first case enforcing the Military Lending Act,³⁷ the FTC and a group of 18 states took action against Harris Jewelry, a national jewelry retailer, to stop the company from targeting military families with illegal financing and sales practices, ultimately requiring the company to pay \$10.9 million in refunds and engage in other affirmative assistance to its victims.³⁸ The Commission's efforts to protect military and veteran

³⁴ See FTC, Scams Against Older Adults Advisory Group Meeting (Sept. 29, 2022), <https://www.ftc.gov/news-events/events/2022/09/scams-against-older-adults-advisory-group-meeting>.

³⁵ FTC, *Protecting Older Consumers 2021-2022* (Oct. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P144400OlderConsumersReportFY22.pdf.

³⁶ Pub. L. No. 115-70, § 101, 131 Stat. 1209 (2017) (codified in relevant part at 34 U.S.C. § 21711).

³⁷ 10 U.S.C. § 987.

³⁸ Press Release, Fed. Trade Comm'n, FTC and 18 States Sue to Stop Harris Jewelry from Cheating Military Families with Illegal Financing and Sales Tactics (July 20, 2022), <https://www.ftc.gov/news-events/news/press->

communities include a vigorous, long-standing educational campaign and close coordination with servicemember and veteran agencies.³⁹ This collaborative outreach is the cornerstone of the annual Military Consumer Month,⁴⁰ which the FTC created and manages with its partners; numerous online and in-person events; and the FTC’s work with AARP’s Veterans & Military Families Initiative,⁴¹ including FTC participation in webinars, a TeleTown Hall,⁴² conferences, and Facebook Live events for veterans.⁴³ The agency also participates in an ongoing working group led by the Department of Veterans Affairs (“VA”) to inform veterans how to avoid scams.

7. Preventing Financial Exploitation

The FTC brought eight federal court actions in recent years against companies that targeted financially insecure consumers and made false credit repair, mortgage, or other debt

[releases/2022/07/ftc-18-states-sue-stop-harris-jewelry-cheating-military-families-illegal-financing-sales-tactics](#); *see also* Press Release, Fed. Trade Comm’n, FTC Sues Burger Franchise Company That Targets Veterans and Others With False Promises and Misleading Documents (Feb. 8, 2023), <https://www.ftc.gov/news-events/news/press-releases/2022/02/ftc-sues-burger-franchise-company-targets-veterans-others-false-promises-misleading-documents>.

³⁹ *See, e.g.*, militaryconsumer.gov (launched by FTC and operated in cooperation with Department of Defense Office of Financial Readiness (DoD FinRed) and the Consumer Financial Protection Bureau’s Office of Servicemember Affairs (CFPB OSA)).

⁴⁰ *See* Carol A. Kando-Pineda, Military Consumer Month 2022, FTC (June 27, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/06/military-consumer-month-2022>.

⁴¹ *See* AARP, Veterans and Military Families, <https://www.aarp.org/volunteer/causes/veterans-military-families/>.

⁴² *See* AARP, AARP Launches Online Resource Center to Help Protect Veterans Against Rising Fraud, <https://states.aarp.org/connecticut/aarp-launches-online-resource-center-to-help-protect-veterans-against-rising-fraud>.

⁴³ *See, e.g.*, AARP Fraud Watch Network, Veterans and Identity Theft—Protecting Against Fraud (Jan. 25, 2023), <https://www.facebook.com/events/s/veterans-and-identity-theft-pr/1117465572257365/>.

relief promises,⁴⁴ as well as one action against a debt relief payment processor.⁴⁵ The Commission also is working closely with the Department of Education to prevent fraud around recent changes to the student loan program⁴⁶, and to ensure relief for those affected by deceptive practices by for-profit colleges.⁴⁷ In both cases, the agency has released multiple consumer alerts, along with business blogs on the FTC's for-profit college cases, and other kinds of outreach⁴⁸ to affected audiences.⁴⁹

⁴⁴ Complaint, *FTC v. ACRO Servs. LLC*, No. 3:22-cv-00895 (M.D. Tenn. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Complaint-Unsealed.pdf; Complaint, *FTC v. Fin. Educ. Servs Inc.*, No. 2:22-cv-11120-BAF-APP (E.D. Mich. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/DE%201%20-%20Complaint.pdf; Complaint, *FTC v. Green Equitable Sols.*, No. 2:22-cv-06499-FLA (C.D. Cal. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Home%20Matters%20-%20Complaint.pdf; Complaint, *FTC v. SLAC, Inc.*, No. 5:20-cv-00470 (C.D. Cal. 2020), https://www.ftc.gov/system/files/documents/cases/doc_1_complaint.pdf; Complaint, *FTC v. Am. Fin. Support Servs., Inc.*, No. 8:19-cv-02109-JWH (C.D. Cal. 2019), https://www.ftc.gov/system/files/documents/cases/192_3040_arete_financial_group_complaint_for_permanent_injunction_and_other_equitable_relief_11-12-19.pdf; Complaint, *FTC v. Manhattan Beach Venture LLC*, No. 2:19-cv-7849 (C.D. Cal. 2019), https://www.ftc.gov/system/files/documents/cases/172_3041_mbv_complaint_0.pdf; Complaint, *FTC v. Student Advocates Team, LLC*, No. 8:19-cv-1728 JVS (C.D. Cal. 2019), https://www.ftc.gov/system/files/documents/cases/172_3036_pag_complaint_1.pdf; Complaint, *FTC v. Elegant Sols., Inc.*, No. 8:19-cv-01333-JVS-KES (C.D. Cal. 2019), https://www.ftc.gov/system/files/documents/cases/192_3105_elegant_solutions_-_first_amended_complaint.pdf.

⁴⁵ Complaint, *FTC v. Automatic Funds Transfer Servs, Inc.*, No. 1:21-cv-02932 (D.D.C. 2021), <https://www.ftc.gov/legal-library/browse/cases-proceedings/192-3142-automatic-funds-transfer-services-inc>.

⁴⁶ See K. Michelle Grajales, *Student Loan Scammers Are Circling. Keep Them at Bay*, FTC (Oct. 3, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/10/student-loan-scammers-are-circling-keep-them-bay>; Terri Miller, *Got Student Loans? Spot Scams Related to the Sweet Lawsuit*, FTC (Sept. 16, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/09/got-student-loans-spot-scams-related-sweet-lawsuit>; Terri Miller, *Limited Waiver for Student Loan Forgiveness Ends October 31*, FTC (July 21, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/07/limited-waiver-student-loan-forgiveness-ends-october-31-0>.

⁴⁷ See Press Release, Fed. Trade Comm'n, *FTC Enforcement Action Leads U.S. Dept. of Education to Forgive \$71.7 Million in Loans for Students Deceived by DeVry University* (Feb. 16, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/02/ftc-enforcement-action-leads-us-dept-education-forgive-717-million-loans-students-deceived-devry>; Press Release, Fed. Trade Comm'n, *Federal Trade Commission Takes Action Against For-Profit Medical School for Using Deceptive Marketing to Lure Students* (Apr. 15, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/04/federal-trade-commission-takes-action-against-profit-medical-school-using-deceptive-marketing-lure>.

⁴⁸ The FTC sent emails to nearly 300,000 recipients of agency redress in its DeVry, University of Phoenix, and CEC cases, to ensure that they were aware of their eligibility for the U.S. Department of Education's Borrower Defense to Repayment program.

⁴⁹ See also Andrew Rayo, *Saint James School of Medicine: Operating on Lies*, FTC (Apr. 15, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/04/saint-james-school-medicine-operating-lies>; John D. Jacobs, *DeVry Students, Read This*, FTC (Feb. 24, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/02/devry-students-read>; Lesley Fair, *FTC Prescribes Remedy for Practices of For-Profit Medical School*, FTC (Apr. 15, 2022), <https://www.ftc.gov/business-guidance/blog/2022/04/ftc-prescribes-remedy-practices-profit-medical-school>; John D. Jacobs, *Share This With Any DeVry Students You Know*, FTC (Feb. 24, 2022), <https://www.ftc.gov/business-guidance/blog/2022/02/share-any-devry-students-you-know>.

8. Expanding Consumer and Business Education

The FTC’s Every Community Initiative represents the agency’s coordinated effort to ensure that the FTC is responsive to the needs of historically underserved communities. Through this initiative, the agency has provided historically underserved communities with practical, language-appropriate, and user-friendly educational resources and information to help them spot, avoid, and report scams.⁵⁰ The FTC continues to translate all of its consumer education materials into Spanish and recently expanded its reach to speakers of other languages. With the launch of [ftc.gov/languages](https://www.ftc.gov/languages), the agency now provides information on how to spot, avoid, and recover from scams in 12 languages.⁵¹ All of these Every Community education and outreach efforts are supported by ethnic media telebriefings, in-person roundtables, and paid media campaigns that have led to millions of impressions through print, radio, and digital media.

B. Safeguarding Consumer Privacy and Strengthening Data Security

The FTC recognizes that the “notice and choice” model largely does not work, and we are taking aggressive steps to safeguard consumers’ privacy and strengthen data security. We have deployed a multi-pronged approach, with a particular focus on health data, children and teens, and data security. We also are aggressively pursuing market-wide initiatives. The Commission appreciates the work of this Committee to support our efforts in this area and, in particular, continues strongly to support enactment of federal privacy legislation.

⁵⁰ See, e.g., FTC, *Consumer Issues Affecting American Indian and Alaska Native Communities* (2023), <https://www.ftc.gov/reports/consumer-issues-affecting-american-indian-alaska-native-communities> (describing expanded targeted education and outreach efforts with American Indian/Alaska Native (AI/AN) communities nationwide). Agency staff also employed listening sessions with sources trusted in AI/AN communities, built ongoing partnerships with tribal governments and organizations serving AI/AN populations, and created a website—as directed by Congress—to share information on the issues raised. See <https://consumer.ftc.gov/features/native-american-communities-spot-avoid-and-report-scams>.

⁵¹ See <https://consumer.ftc.gov/features/languages>. The 12 languages include: Amharic, Arabic, Chinese (Simplified and Traditional), French, Hmong, Korean, Russian, Somali, Spanish, Tagalog, Ukrainian, and Vietnamese.

1. Protecting Consumers' Sensitive Health Data

The FTC is taking action to address the privacy of health data where HIPAA does not apply, including data shared with direct-to-consumer health websites and apps that can reveal our medications, our visits to providers, and our health conditions. The Commission's work has included a lawsuit against a location data broker, settlements with health websites participating in the ad tech ecosystem, and activating the little-used Health Breach Notification Rule.

First, the FTC is taking action to ensure that geolocation data that reveals health conditions and other sensitive information is not indiscriminately sold to the highest bidder. In the summer of 2022, FTC staff warned the marketplace that we were prepared to bring enforcement actions to halt the illegal use and sharing of consumers' geolocation data.⁵² Last August, we filed an enforcement action in federal court against data broker Kochava, Inc.⁵³ The FTC's complaint alleges that Kochava compiled massive amounts of consumers' geolocation data and then sold it to customers in a format that makes it easy to track consumers' visits to sensitive locations, such as doctors' offices, houses of worship, and temporary shelters for domestic violence survivors. This matter remains in active litigation.

The FTC has also brought two groundbreaking actions barring consumer-facing health providers from sharing sensitive health data for advertising purposes. In GoodRx⁵⁴ and

⁵² Kristin Cohen, *Location, Health, and Other Sensitive Information: FTC Committed to Fully Enforcing the Law Against Illegal Use and Sharing of Highly Sensitive Data*, FTC Business Blog (July 11, 2022), <https://www.ftc.gov/business-guidance/blog/2022/07/location-health-and-other-sensitive-information-ftc-committed-fully-enforcing-law-against-illegal>.

⁵³ Press Release, Fed. Trade Comm'n, *FTC Sues Kochava for Selling Data that Tracks People at Reproductive Health Clinics, Places of Worship, and Other Sensitive Locations* (Aug. 29, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-sues-kochava-selling-data-tracks-people-reproductive-health-clinics-places-worship-other>.

⁵⁴ Press Release, Fed. Trade Comm'n, *FTC Enforcement Action to Bar GoodRx from Sharing Consumers' Sensitive Health Info for Advertising* (Feb. 1, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-enforcement-action-bar-goodrx-sharing-consumers-sensitive-health-info-advertising>.

BetterHelp,⁵⁵ the Commission alleged that the companies disclosed their users’ personal health information to advertising platforms such as Facebook and Google, without consent and in contravention of their privacy promises. The settlements in these actions included important provisions prohibiting the transfer of data to third parties for advertising purposes, as well as other strong injunctive provisions, including requirements for consent for certain information sharing, data retention limitations, and deletion requirements. The GoodRx settlement included civil penalties resulting from the Commission’s first enforcement of the Health Breach Notification Rule.⁵⁶ The BetterHelp order includes \$7.8 million in monetary relief which will go back to consumers as partial refunds, another first in a health privacy case.

2. Protecting Children and Teens

Online services can pose unique risks to children and teens, and the FTC is taking an expansive look at how to protect minors from digital harms, both through the Children’s Online Privacy Protection Act Rule⁵⁷ (which protects children under 13) as well as through Section 5 of the FTC Act. For example, we brought a law enforcement action against Epic Games, Inc. (“Epic”)—creator of the popular video game “Fortnite”—alleging that Epic violated COPPA⁵⁸ and engaged in an unfair practice by connecting children and teens via voice and text chat to

⁵⁵ Press Release, Fed. Trade Comm’n, FTC to Ban BetterHelp from Revealing Consumers’ Data, Including Sensitive Mental Health Information, to Facebook and Others for Targeted Advertising (Mar. 2, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-ban-betterhelp-revealing-consumers-data-including-sensitive-mental-health-information-facebook>.

⁵⁶ The Health Breach Notification Rule also is subject to a rule review to consider, among other things, whether modifications of the rule are appropriate to increase its benefits to consumers. *See* Health Breach Notification Rule, 85 Fed. Reg. 31,085 (Aug. 20, 2020).

⁵⁷ 16 C.F.R. § 312.

⁵⁸ Press Release, Fed. Trade Comm’n, Fortnite Video Game Maker Epic Games to Pay More Than Half a Billion Dollars Over FTC Allegations of Privacy Violations and Unwanted Charges (Dec. 19, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/12/fortnite-video-game-maker-epic-games-pay-more-half-billion-dollars-over-ftc-allegations>.

strangers by default, exposing them to psychological harm.⁵⁹ This action ultimately resulted in a federal court order securing strong and novel relief for consumers—requiring Epic to adopt strong default privacy settings for children and teens, implement a privacy program subject to outside assessments, and pay a \$275 million civil penalty (the largest penalty ever obtained for violating an FTC rule).

The Commission is also using its rulemaking authority to protect children in the marketplace. Namely, the FTC is currently undertaking a review of the COPPA Rule to determine what changes are necessary to effectively protect children online.⁶⁰ This review is particularly important given continuing technological developments and children’s expanded access to online services, including through the increasingly widespread use of education technology.

The FTC is also taking steps to ensure that children and teens who rely on online educational services are not being subject to illegal surveillance or lax handling of their data. Last year, the Commission issued a policy statement addressing how COPPA applies in the online learning context.⁶¹ The Commission also brought an enforcement action against Chegg, Inc., which operates an online learning platform.⁶² We alleged that Chegg collected sensitive

⁵⁹ The FTC is considering steps to deepen this work, including retaining psychologists and youth development experts to allow the agency to analyze conduct, assess harms and remedies, and pursue studies with an interdisciplinary approach, including conduct affecting children. FTC, Federal Trade Comm’n Annual Performance Report for Fiscal Year 2021 and Annual Performance Plan for Fiscal Years 2022 to 2023 [hereinafter “FTC FY22-23 Annual Performance Report”] at 79, https://www.ftc.gov/system/files/ftc_gov/pdf/21apr_22-23app.pdf; FTC, Federal Trade Comm’n Strategic Plan for Fiscal Years 2022-2026 [hereinafter “FTC FY22-26 Strategic Plan”] at 24, https://www.ftc.gov/system/files/ftc_gov/pdf/fy-2022-2026-ftc-strategic-plan.pdf.

⁶⁰ Press Release, Fed. Trade Comm’n, FTC Seeks Comments on Children’s Online Privacy Protection Act Rule, Federal Trade Commission (July 25, 2019), <https://www.ftc.gov/news-event/news/press-releases/2019/07/ftc-seeks-comments-childrens-online-privacy-protection-act-rule>.

⁶¹ Press Release, Fed. Trade Comm’n, FTC to Crack Down on Companies that Illegally Surveil Children Learning Online (May 19, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/05/ftc-crack-down-companies-illegally-surveil-children-learning-online>.

⁶² Press Release, Fed. Trade Comm’n, FTC Brings Action Against Ed Tech Provider Chegg for Careless Security that Exposed Personal Data of Millions of Customers (Oct. 31, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-brings-action-against-ed-tech-provider-chegg-careless-security-exposed-personal-data-millions>.

information about its users and employees but had failed to properly protect this data, leading to several data breaches that exposed the personal data of millions of customers. Now under FTC order, Chegg is required to implement strong data security measures, including documenting and following a data collection and retention schedule, providing multifactor authentication or an equivalent authentication method to its customers and employees, and providing customers with access and deletion rights for the information that Chegg collects about them.

Finally, the FTC is increasingly concerned about how commercial surveillance may be fueling—or fueled by—manipulative advertising practices targeting children and teens. Last October, we held an event exploring stealth advertising to kids.⁶³ In addition, as discussed further below, the Commission recently began a study and issued orders under Section 6(b) of the FTC Act for information from social media and video streaming platforms to better understand, among other things, how children may be targeted with deceptive ads.

3. Strengthening Data Security

The best way for firms to protect consumers' data is to not collect it in the first place. Accordingly, a host of recent data security actions shows how the Commission is pivoting toward requiring restrictions on what data firms can collect and retain. For example, one of the key measures required in our recent orders against Chegg and the online alcohol marketplace Drizly, LLC was that the companies minimize the data they collect and keep from consumers.⁶⁴

⁶³ Press Release, Fed. Trade Comm'n, Protecting Kids from Stealth Advertising in Digital Media (Oct. 19, 2022), <https://www.ftc.gov/news-events/events/2022/10/protecting-kids-stealth-advertising-digital-media>.

⁶⁴ Press Release, Fed. Trade Comm'n, FTC Brings Action Against Ed Tech Provider Chegg for Careless Security that Exposed Personal Data of Millions of Customers (Oct. 31, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-brings-action-against-ed-tech-provider-chegg-careless-security-exposed-personal-data-millions>; Press Release, Fed. Trade Comm'n, FTC Takes Action Against Drizly and its CEO James Cory Rellas for Security Failures that Exposed Data of 2.5 Million Consumers (Oct. 24, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-takes-action-against-drizly-its-ceo-james-cory-rellas-security-failures-exposed-data-25-million>. The Drizly settlement also names the CEO, and thus imposes separate obligations on him which will follow him beyond Drizly, underscoring the need for C-Suite attention to data security obligations.

Likewise, the settlement with online merchandise platform CafePress required the company to implement policies to minimize the data it collects, stores, and retains. The settlement order also required the company to stop using security questions and answers, and instead to use secure multi-factor authentication methods.⁶⁵

4. Developing Market-wide Initiatives to Protect Consumers' Data

Finally, notwithstanding its successes through case-by-case enforcement, the Commission continues to have concerns around illegal surveillance and lax data security throughout the economy. As a result, we are taking a number of actions to root out unlawful conduct market-wide.

In August 2022, the Commission issued an Advance Notice of Proposed Rulemaking on commercial surveillance and lax data security, where we sought comment on the widespread collection of consumers' personal information (such as browsing data, precise geolocation data, and health-related data), ongoing concerns around the security of consumer data, harm to kids and teens, and concerns around automated decision-making.⁶⁶ The Commission is reviewing the more than 11,000 comments we received and considering next steps.

The Commission has also significantly strengthened the Safeguards Rule, amending the rule in 2021 to include more detailed requirements for financial institutions' information security

⁶⁵ Press Release, Fed. Trade Comm'n, FTC Takes Action Against CafePress for Data Breach Cover Up (March 15, 2022), www.ftc.gov/news-events/news/press-releases/2022/03/ftc-takes-action-against-cafepress-data-breach-cover.

⁶⁶ Press Release, Fed. Trade Comm'n, FTC Explores Rules Cracking Down on Commercial Surveillance and Lax Data Security Practices (Aug. 11, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-explores-rules-cracking-down-commercial-surveillance-lax-data-security-practices>.

programs.⁶⁷ And we continue to review other rules, including COPPA⁶⁸ and the Health Breach Notification Rule,⁶⁹ to assess whether changes are necessary to better protect consumers' data.

Moreover, the FTC engages in significant international consumer protection work to support its domestic enforcement program. During the last fiscal year, the FTC cooperated in 35 investigations, cases, and enforcement projects with foreign consumer, privacy, and criminal enforcement agencies. The U.S. SAFE WEB Act is key to much of the agency's international work on consumer protection and privacy matters.⁷⁰ Passed in 2006 and renewed in 2012 and 2020, the Act strengthens the FTC's ability to work on cases with an international dimension. We look forward to providing the Committee with more information about SAFE WEB Act cooperation and our cross-border complaint data as we satisfy the reporting requirements included in both the Act's 2020 reauthorization and the RANSOMWARE Act.⁷¹

C. Combatting Junk Fees and Unwanted Charges

One of the FTC's major policy initiatives is rooting out junk fees and unwanted charges throughout the economy, including making it easier for consumers to avoid or cancel unwanted subscriptions.

⁶⁷ Press Release, Fed. Trade Comm'n, FTC Strengthens Security Safeguards for Consumer Financial Information Following Widespread Data Breaches (Oct. 27, 2021), www.ftc.gov/news-events/news/press-releases/2021/10/ftc-strengthens-security-safeguards-consumer-financial-information-following-widespread-data.

⁶⁸ Press Release, Fed. Trade Comm'n, FTC Seeks Comments on Children's Online Privacy Protection Act Rule (July 25, 2019), www.ftc.gov/news-events/news/press-releases/2019/07/ftc-seeks-comments-childrens-online-privacy-protection-act-rule.

⁶⁹ Press Release, Fed. Trade Comm'n, FTC Seeks Comment as Part of Review of Health Breach Notification Rule (May 8, 2020), www.ftc.gov/news-events/news/press-releases/2020/05/ftc-seeks-comment-part-review-health-breach-notification-rule.

⁷⁰ Undertaking Spam, Spyware, and Fraud Enforcement with Enforcers Beyond Borders Act (U.S. SAFE WEB Act), Pub. L. No. 109-455, 120 Stat. 3372, extended by Pub. L. No. 112-203, 126 Stat. 1484 and Pub. L. No. 116-173, 134 Stat. 837 (both amending 15 U.S.C. §§ 41 et seq.). Certain provisions, such as a secondment program for foreign officials, also apply to the FTC's competition work.

⁷¹ Reporting Attacks from Nations Selected for Oversight and Monitoring Web Attacks and Ransomware from Enemies Act (RANSOMEWARE Act), Pub. L. No. 117-328.

1. Protecting Consumers from Junk Fees

Junk fees are unavoidable charges for products with little or no value that are imposed on consumers with inadequate notice. Consumers can get hit with junk fees at any stage of the purchase process, and companies may use digital dark patterns and other tricks to hide or mask them. These fees undercut honest businesses by making it harder to compete on price and cause harm to consumers who are often surprised and frustrated by unexpected charges.

Our law enforcement actions show that these fees are often most harmful to children, historically underserved communities, and older Americans. For example, we recently charged Epic Games, maker of the popular video game Fortnite, with unlawfully using design tricks to bill consumers—many of them children—for unwanted items. Epic agreed to pay \$245 million to refund consumers, the FTC’s largest-ever administrative settlement.⁷² The FTC has also taken action to ensure historically underserved communities are not harmed by junk fees. Last year, the FTC brought actions against two car dealers, the Ed Napleton Automotive Group⁷³ and Passport Automotive Group,⁷⁴ for allegedly tacking illegal junk fees onto customers’ loans and discriminating against Black consumers (in Napleton) and Black and Latino consumers (in Passport) by charging them more for financing. The orders settling these matters required both companies to pay millions of dollars and to implement fair lending programs. Finally, the FTC has taken action to ensure that older Americans, who are often living on a fixed income, are not

⁷² Press Release, Fed. Trade Comm’n, FTC Finalizes Order Requiring Fortnite Maker Epic Games to Pay \$245 Million for Tricking Users into Making Unwanted Charges (Mar. 14, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-finalizes-order-requiring-fortnite-maker-epic-games-pay-245-million-tricking-users-making>.

⁷³ Stipulated Order, *FTC v. N. Am. Auto. Servs. Inc.*, No. 1:22-cv-01690 (N.D. Ill.), https://www.ftc.gov/system/files/ftc_gov/pdf/6-1%20Stipulated%20Order.pdf.

⁷⁴ Press Release, Fed. Trade Comm’n, Federal Trade Commission Takes Action Against Passport Automotive Group for Illegally Charging Junk Fees and Discriminating Against Black and Latino Customers (Oct. 18, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/federal-trade-commission-takes-action-against-passport-automotive-group-illegally-charging-junk-fees>.

targeted with junk fees. In August 2022, the FTC sued healthcare company Benefytt Technologies, alleging that it charged consumers exorbitant junk fees for unauthorized add-on products in the course of selling them sham insurance plans.⁷⁵ Benefytt paid \$100 million to resolve the charges, and its former CEO and a Vice President of Sales were permanently banned from marketing or selling any healthcare-related product.⁷⁶

In addition to our law enforcement actions, we are pursuing steps to combat these problematic practices market-wide. For example, last year the FTC published a notice of proposed rulemaking to ban certain junk fees and bait-and-switch advertising tactics that can plague consumers throughout the car-buying experience. The proposal also would require dealers to make key disclosures to consumers, including providing a true “offering price” for a vehicle that would be the full price a consumer would pay, excluding only taxes and government fees.⁷⁷ Separately, we are exploring a rulemaking to crack down on deceptive or unfair junk fees across multiple industries. We are reviewing thousands of comments we received from the public on the types of junk fees they’ve experienced, and the harm caused by such fees.⁷⁸

2. Making It Easier for Consumers to Cancel Subscriptions

The Commission is also taking comprehensive action to ensure marketers cannot create obstacles to prevent consumers from canceling an unwanted service. In a record-breaking settlement, the Commission obtained \$100 million in refunds to Vonage consumers harmed by the company’s alleged use of dark patterns. Vonage made it easy to sign up for Internet phone

⁷⁵ See *supra* note 22.

⁷⁶ See Stipulated Orders, *FTC v. Benefytt Tech., Inc.*, No. 22-cv-01794 (M.D. Fla.), <https://www.ftc.gov/legal-library/browse/cases-proceedings/192-3141-benefytt-technologies-et-al-ftc-v>.

⁷⁷ Press Release, Fed. Trade Comm’n, FTC Proposes Rule to Ban Junk Fees, Bait-and-Switch Tactics Plaguing Car Buyers (June 23, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-proposes-rule-ban-junk-fees-bait-switch-tactics-plaguing-car-buyers>.

⁷⁸ Press Release, Fed. Trade Comm’n, Federal Trade Commission Explores Rule Cracking Down on Junk Fees (Oct. 20, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/federal-trade-commission-explores-rule-cracking-down-junk-fees>.

service and hard to cancel, leaving consumers and businesses on the hook for services they no longer wanted. As a result of the Commission’s action, Vonage is required to implement a simple cancellation process that is easy to find, easy to use, and will be available through the same method the consumer used to enroll. The Order also prohibits Vonage from using dark patterns to frustrate consumers’ cancellation efforts.⁷⁹ In *First American Payment Services*, we took action against a company that allegedly signed up small businesses for payment processing services on a subscription basis, while burying information about how to cancel in an obscure hyperlink. We alleged that hiding the instructions on how to cancel violated the requirement in the Restore Online Shoppers’ Confidence Act (“ROSCA”) to provide “simple” cancellation methods. The company was required to pay \$4.9 million, make it easier for consumers to cancel services, and stop imposing early termination fees for existing customers.⁸⁰

The FTC also has proposed to amend the Negative Option Rule to better address deceptive or unfair practices around negative marketing, including perpetual subscriptions, difficulty in cancellation, and failure to obtain consumers’ express, affirmative consent.⁸¹ The proposed rule covers a broad scope of recurring subscriptions and similar arrangements in all media to ensure sellers provide important information about these contracts up front, obtain

⁷⁹ Press Release, Fed. Trade Comm’n, FTC Action Against Vonage Results in \$100 Million to Customers Trapped by Illegal Dark Patterns and Junk Fees When Trying to Cancel Service (Nov. 3, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/11/ftc-action-against-vonage-results-100-million-customers-trapped-illegal-dark-patterns-junk-fees-when-trying-cancel-service>.

⁸⁰ Press Release, Fed. Trade Comm’n, FTC Takes Action to Stop Payment Processor First American from Trapping Small Businesses with Surprise Exit Fees and Zombie Charges (July 29, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/07/ftc-takes-action-stop-payment-processor-first-american-trapping-small-businesses-surprise-exit-fees>.

⁸¹ Press Release, Fed. Trade Comm’n, Federal Trade Commission Proposes Rule Provision Making it Easier for Consumers to ‘Click to Cancel’ Recurring Subscriptions and Memberships (Mar. 23, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/federal-trade-commission-proposes-rule-provision-making-it-easier-consumers-click-cancel-recurring>.

consumers’ express informed consent, and provide simple cancellation mechanisms to allow consumers to easily cancel unwanted subscriptions.

D. Ensuring Fairness for Workers, Entrepreneurs, and Small Businesses

As American workers and small businesses attempt to recover from the effects of the pandemic, the Commission is taking a comprehensive approach—through enforcement, rulemaking, and advocacy—to ensuring that they are not held back by unfair or deceptive practices.

1. Ensuring Domestic Manufacturers Can Compete Fairly

As many firms look to onshore production and as many consumers look to buy “Made in America” goods, the FTC is taking comprehensive action to protect the integrity of the label and ensure a level playing field for domestic manufacturers. In 2021, the Commission finalized a rule that prohibits the misuse of the “Made in America” label and triggers stiff civil penalties, injunctive relief, and other remedies for those who violate it. The Commission is already taking action to enforce this rule. For example, in 2022, the Commission charged a manufacturer of lithium-ion batteries with falsely labeling its products as “Made in America.” And, months later, the Commission charged a seller of falsely advertised personal protective equipment. Both defendants were required to halt their allegedly deceptive labeling and to pay significant penalties.⁸²

Marketers making false “Made in USA” claims covered by other laws and rules that the FTC enforces can also expect consequences. For example, in the past year we charged

⁸² See *United States v. Lithionics Battery, LLC*, No. 8:22-cv-0868 (M.D. Fla. 2022) (imposing a civil penalty of treble profits on sales of deceptively marketed battery products); *United States v. Axis LED Group, LLC*, No. 3:22-cv-1389 (N.D. Ohio 2022) (imposing a civil penalty and suspended redress judgment based on sales of falsely labeled PPE and LED products).

companies with making false claims for imported textile products such as apparel and bedding.⁸³ We also recently sued a manufacturer of glass baking products for continuing to advertise its products as “Made in USA” during a shift to overseas production at the height of the pandemic.⁸⁴ The FTC continues to carefully monitor the market for false “Made in America” claims and will use all available tools to ensure scammers who cheat consumers, honest businesses, and American workers face heavy consequences for their lawbreaking.

2. Combatting Unfair or Deceptive Practices Affecting Gig Workers

The Commission is making clear that, regardless of whether gig workers are treated as employees or independent contractors under labor laws, they are fully protected by the FTC’s prohibition on unfair or deceptive practices. Last year, the Commission issued a Policy Statement highlighting how traditional principles of consumer protection and competition apply in the gig economy and identifying the Commission’s priorities in this space.⁸⁵ And the Commission continues to investigate potential law violations and bring enforcement actions to ensure fairness for these workers. In March 2022, the Commission filed an administrative complaint charging HomeAdvisor with making false, misleading, or unsubstantiated claims about the quality and source of the leads the company sells to home improvement and home maintenance service providers, including small businesses operating in the gig economy that are in search of potential customers. In January, the Commission issued a proposed order requiring HomeAdvisor to pay up to \$7.2 million in redress to service providers and barring the company

⁸³ See *In re Lions Not Sheep Products, LLC*, Docket No. C-4772 (July 28, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/C4772%20Decision%20and%20Order.pdf (imported apparel products relabeled as “Made in USA”); *In re Electrowarmth Products, LLC*, Docket No. C-4779 (Oct. 25, 2022) (imported bedding products entering the USA pre-labeled as “Made in USA”), https://www.ftc.gov/system/files/ftc_gov/pdf/222-3096-Electrowarmth-Decision-and-Order.pdf.

⁸⁴ *In re Instant Brands LLC*, Docket No. C-4788 (Mar. 1, 2023) (imported glass measuring cups advertised as “Made in USA”).

⁸⁵ See FTC, Policy Statement on Enforcement Related to Gig Work (Sept. 15, 2022), <https://www.ftc.gov/legal-library/browse/policy-statement-enforcement-related-gig-work>.

from the deceptive conduct alleged in the complaint.⁸⁶ Since November 2021, the FTC has sent more than \$60 million to 141,000 Amazon Flex drivers who allegedly had their tips deceptively withheld.⁸⁷ And, in July 2022, the FTC and NLRB entered a Memorandum of Understanding to facilitate collaboration between the agencies on gig work and other labor markets.⁸⁸

3. Allowing Consumers to Repair their Products and Giving Independent Repairers a Chance to Compete

The Commission is taking a number of actions to strengthen consumers' right to repair. In May 2021, the Commission submitted a report to Congress, entitled *Nixing the Fix: An FTC Report to Congress on Repair Restrictions* ("Nixing the Fix Report").⁸⁹ In the report, the Commission found that, based on a review of the comments and research submitted, as well as materials presented during the Nixing the Fix Workshop,⁹⁰ there was "scant evidence" to support manufacturers' justifications for repair restrictions.⁹¹ The Commission followed this report with three major actions against companies for allegedly imposing unlawful repair restrictions on consumers. Grill maker Weber-Stephen Products LLC, motorcycle manufacturer Harley-Davidson Motor Company Group, LLC, and MWE Investments, LLC, which manufactures Westinghouse outdoor power equipment, were alleged to have violated the Magnuson-Moss

⁸⁶ Proposed Order, *In re HomeAdvisor, Inc.*, Docket No. D-9047 (Jan. 23, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-order-requires-homeadvisor-pay-72-million-stop-deceptively-marketing-its-leads-home-improvement>.

⁸⁷ Press Release, Fed. Trade Comm'n, *FTC Returns Nearly \$60 Million to Drivers Whose Tips Were Illegally Withheld by Amazon* (Nov. 2, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/11/ftc-returns-nearly-60-million-drivers-whose-tips-were-illegally-withheld-amazon>.

⁸⁸ Press Release, Fed. Trade Comm'n, *Federal Trade Commission, National Labor Relations Board Forge New Partnership to Protect Workers from Anticompetitive, Unfair, and Deceptive Practices* (July 19, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/07/federal-trade-commission-national-labor-relations-board-forge-new-partnership-protect-workers>.

⁸⁹ *FTC, Nixing the Fix: An FTC Report to Congress on Repair Restrictions* (2021), https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf.

⁹⁰ *Nixing the Fix: A Workshop on Repair Restrictions* (Washington, D.C., July 16, 2019), <https://www.ftc.gov/news-events/events/2019/07/nixing-fix-workshop-repair-restrictions>.

⁹¹ *Id.* at 6.

Warranty Act and the FTC Act.⁹² Finally, the Commission recently sought public comment on whether it should propose updates to its Energy Labeling Rule to require manufacturers to provide consumers with repair instructions.⁹³

4. Protecting Franchisees from Unfair or Deceptive Practices

The agency continues to take an integrated approach to franchise issues, undertaking both enforcement and policy initiatives. In 2022, we partnered with DOJ to file a suit against fast-food chain BurgerIM, alleging that the chain made false promises and withheld information required by the Franchise Rule to persuade more than 1,500 consumers, some of them veterans, to purchase franchises.⁹⁴ And, in August 2022, the Commission published a business blog post by Sam Levine, the Director of the Bureau of Consumer Protection, reminding franchisees that, although the Franchise Rule does not provide for a private right of action, nothing in the Rule precludes franchisees from exercising their rights under the law.⁹⁵

The FTC is also taking steps to ensure that we have a comprehensive understanding of the industry. On March 10, 2023, the agency issued a Request for Information (“RFI”) related to franchise agreements and franchisor business practices.⁹⁶ The RFI seeks information about the means by which franchisors may exert control over franchisees and their workers. The comment period for this RFI expires on May 9, 2023. Further, the Commission continues to prioritize law

⁹² Press Release, Fed. Trade Comm’n, FTC Approves Final Orders in Right-to-Repair Cases Against Harley-Davidson, MWE Investments, and Weber (Oct. 27, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-approves-final-orders-right-repair-cases-against-harley-davidson-mwe-investments-weber>.

⁹³ 87 Fed. Reg. 64,399 (Oct. 25, 2022).

⁹⁴ See FTC Sues Burger Franchise Company, *supra* note 38.

⁹⁵ Samuel Levine, *Holding Franchisors Accountable for Illegal Practices*, FTC (Aug. 3, 2022), <https://www.ftc.gov/business-guidance/blog/2022/08/holding-franchisors-accountable-illegal-practices>.

⁹⁶ Press Release, Fed. Trade Comm’n, Solicitation for Public Comments on Provisions of Franchise Agreements and Franchisor Business Practices (Mar. 10, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-seeks-public-comment-franchisors-exerting-control-over-franchisees-workers>.

enforcement investigations and consumer outreach. Staff continues to encourage franchisees to file complaints through reportfraud.ftc.gov to assist in our law enforcement efforts.

Finally, we are thinking carefully about the intersection between franchise law and labor harms. We are coordinating closely with DOJ and the National Labor Relations Board over labor concerns and, in December 2021, we filed an amicus brief in a class action suit by 7-Eleven franchisees in which we successfully argued that the FTC's Franchise Rule does not address whether franchisees are employees under Massachusetts law. And, in January 2023, the agency issued a Notice of Proposed Rulemaking to prohibit employers from imposing noncompete clauses on workers.⁹⁷ As part of the proposed rulemaking, which would deem noncompete clauses an unfair method of competition, the FTC is seeking comment on whether noncompete clauses imposed by franchisors on franchisees should be covered by the rule.

5. Shining a Light on Small Business Credit Reports

Credit reports can be make-or-break for small businesses. To better understand this opaque market, the FTC recently voted to issue 6(b) orders to five business credit reporting agencies, requiring that they provide information about: (1) how they collect and report data on small businesses; (2) how they market their business credit reporting products; and (3) how and whether they address factual errors in the reports.⁹⁸ The 6(b) study will shine a needed light on an industry that has not been reported on extensively but can be a key and unavoidable part of operating as a smaller firm. It will also advance the agency's broader effort to ensure a fair shot in the marketplace for small businesses and entrepreneurs. The 6(b) study follows the FTC's

⁹⁷ Press Release, Fed. Trade Comm'n, FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition (Jan. 5, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-proposes-rule-ban-noncompete-clauses-which-hurt-workers-harm-competition>.

⁹⁸ In March 2023, the FTC issued 6(b) orders to D&B, Experian Information Solutions, Equifax, Ansonia Credit Data, and Creditsafe USA. See Press Release, Fed. Trade Comm'n, FTC Launches Inquiry into Small Business Credit Reports (Mar. 16, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-launches-inquiry-small-business-credit-reports>.

April 2022 complaint and order with Dun & Bradstreet (“D&B”) in which the FTC alleged, among other things, that D&B reported incorrect information about small businesses yet failed to provide a clear, consistent, and reliable way for those businesses to get corrections.⁹⁹ D&B is now subject to an order that bars it from misrepresenting certain types of credit improvement products and mandates better processes for businesses to correct errors.

E. Ensuring Honest Online Marketplaces

Our consumer reports data show that online platforms have become fertile ground for fraud and abuse, and we are taking on this problem using all of our tools. The newly enacted INFORM Consumers Act¹⁰⁰ requires online marketplaces to collect and verify information about certain third-party sellers, and to disclose third-party seller contact information to consumers to ensure transparency. The Commission will enforce the law to the fullest extent possible and will collaborate with our state partners as well.

The FTC also is committed to bringing transparency to the opaque world of fraudulent online advertising. We have highlighted how fraud originating on social media is a growing problem,¹⁰¹ but there is a critical lack of information on how the platforms are dealing with this problem. Recently, the Commission ordered eight social media and video streaming companies to provide data on how they screen and restrict deceptive paid advertising, as well as how they

⁹⁹ Decision and Order, *In re Dun & Bradstreet*, Docket No. C-4761, https://www.ftc.gov/system/files/ftc_gov/pdf/172%203196%20Dunn%20and%20Bradstreet%20combined%20package%20unsigned_0.pdf.

¹⁰⁰ Integrity, Notification, and Fairness in Online Retail Marketplaces for Consumers Act (INFORM Consumers Act), Consolidated Appropriations Act of 2023, Pub. L. No. 117-328, Div. BB, Title III, § 301 (2022), <https://www.govinfo.gov/content/pkg/BILLS-117hr2617enr/pdf/BILLS-117hr2617enr.pdf>.

¹⁰¹ See, e.g., Emma Fletcher, Reports Show Scammers Cashing in on Crypto Craze, FTC (Jun. 3, 2022), <https://www.ftc.gov/news-events/data-visualizations/data-spotlight/2022/06/reports-show-scammers-cashing-crypto-craze> (reporting that nearly half of crypto scams start with an ad, post, or message on social media); Emma Fletcher, Social Media a Gold Mine for Scammers in 2021, FTC (Jan. 25, 2022), <https://www.ftc.gov/news-events/data-visualizations/data-spotlight/2022/01/social-media-gold-mine-scammers-2021>.

ensure that consumers are able to identify commercial advertising on their platforms.¹⁰² The Commission has aggressively gone after deceptive review practices—not only fake reviews, but also review manipulation and suppression, including fake positive reviews,¹⁰³ suppressing negative reviews,¹⁰⁴ review hijacking,¹⁰⁵ and paid endorsements.¹⁰⁶

The Commission continues to use its authorities beyond individual enforcement actions. In 2021, we sent more than 800 Notices of Penalty Offenses regarding deceptive endorsement practices.¹⁰⁷ Finally, we have started a rulemaking to consider triggering civil penalty liability against those who buy fake reviews and engage in other deceptive or unfair review practices.¹⁰⁸ Most fake review fraud goes undetected, so it is critical, to deter it effectively, that those who are caught pay a price.

¹⁰² Press Release, Fed. Trade Comm’n, FTC Issues Orders to Social Media and Video Streaming Platforms Regarding Efforts to Address Surge in Advertising for Fraudulent Products and Scams (Mar. 16, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-issues-orders-social-media-video-streaming-platforms-regarding-efforts-address-surge-advertising>.

¹⁰³ Press Release, Fed. Trade Comm’n, States Sue Rental Listing Platform Roomster and its Owners for Duping Prospective Renters with Fake Reviews and Phony Listings (Aug. 30, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftcstates-sue-rental-listing-platform-roomster-its-owners-duping-prospective-renters-fake-reviews>.

¹⁰⁴ Press Release, Fed. Trade Comm’n, Fashion Nova will Pay \$4.2 Million as part of Settlement of FTC Allegations it Blocked Negative Reviews of Products (Jan. 25, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/01/fashion-nova-will-pay-42-million-part-settlement-ftc-allegations-it-blocked-negative-reviews>.

¹⁰⁵ Press Release, Fed. Trade Comm’n, FTC Charges Supplement Marketer with Hijacking Ratings and Reviews on Amazon.com and Using Them to Deceive Consumers (Feb. 16, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-charges-supplement-marketer-hijacking-ratings-reviews-amazoncom-using-them-deceive-consumers>.

¹⁰⁶ Press Release, Fed. Trade Comm’n, States Sue Google and iHeartMedia for Deceptive Ads Promoting the Pixel 4 Smartphone (Nov. 28, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/11/ftc-states-sue-google-iheartmedia-deceptive-ads-promoting-pixel-4-smartphone>.

¹⁰⁷ Press Release, Fed. Trade Comm’n, FTC Puts Hundreds of Businesses on Notice about Fake Reviews and Other Misleading Endorsements (Oct. 13, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/10/ftc-puts-hundreds-businesses-notice-about-fake-reviews-other-misleading-endorsements>.

¹⁰⁸ Press Release, Fed. Trade Comm’n, FTC to Explore Rulemaking to Combat Fake Reviews and Other Deceptive Endorsements (Oct. 20, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-explore-rulemaking-combat-fake-reviews-other-deceptive-endorsements>.

F. Enhancing the Commission’s Technical Expertise

In February, the FTC announced the launch of a new Office of Technology (“OT”) to support the agency’s law enforcement and policy work. Led by our Chief Technology Officer, this office offers critical in-house technical expertise, enabling the Commission to keep pace with technological challenges in the digital marketplace. This office houses staff with skills and expertise across software engineering, human-computer interaction design, data science, and product management. Subject matter expertise will range across topics such as security and privacy, digital markets, augmented and virtual reality, automated decision making, the gig work economy, and ad tracking technologies.

The OT will work across the FTC to ensure that the agency can move swiftly and with sophistication on a wide range of issues implicating technology across the agency, with the following three mandates: first and foremost, strengthen and support law enforcement investigations and actions; second, advise and engage with FTC staff and the Commission on policy and research initiatives; and third, engage the public and relevant experts to understand trends and to advance the Commission’s work.¹⁰⁹ The creation of the Office of Technology builds on the FTC’s efforts over the years to expand its in-house technological expertise, and it brings the agency in line with other leading antitrust and consumer protection enforcers around the world.

III. COMPETITION MISSION

In addition to the consumer protection and privacy work discussed above, the FTC enforces the competition laws in many crucial sectors of our economy. Our competition mission

¹⁰⁹ See, e.g., Press Release, Fed. Trade Comm’n, FTC Seeks Comment on Business Practices of Cloud Computing Providers That Could Impact Competition and Data Security (Mar. 22, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-seeks-comment-business-practices-cloud-computing-providers-could-impact-competition-data>.

is driven by the tenet that vigorous antitrust enforcement is critical to the growth and dynamism of our economy, as well as to our shared prosperity and liberty. Recent decades, however, have vividly illustrated how Americans lose out when markets become more consolidated and less competitive. Prices rise, wages fall, and our markets become more fragile and less resilient. In light of these troubling realities, the FTC has been reassessing how we can enforce the antitrust laws to maximize our efficacy. Although this process is ongoing, as detailed below, we are proud of the significant accomplishments we have already made on this front.

A. Utilizing the FTC’s Full Set of Competition Tools

When Congress created the FTC, it gave the agency a wide range of authorities to combat unfair methods of competition. To ensure the Commission is faithfully discharging its statutory obligations, the FTC has renewed its commitment to use its entire suite of authorities to maximize the agency’s impact and faithfully execute the agency’s mission.

Notably, the Commission issued a policy statement outlining the scope of Section 5 of the FTC Act, an authority Congress provided to the FTC to combat unfair conduct that lies outside the boundaries of the Sherman Act.¹¹⁰ Reactivating the Commission’s competition rulemaking authority under Section 6(g) of the FTC Act is also central to this effort. In January, the Commission proposed a rule that would ban employers from imposing noncompete restrictions on workers in all but a limited set of circumstances.¹¹¹ The Commission is taking extensive steps to inform the public about the proposed rule to ensure that all viewpoints are

¹¹⁰ FTC, Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of The Federal Trade Commission Act (2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P221202Section5PolicyStatement.pdf.

¹¹¹ See *supra* note 97.

heard during the public comment period and will consider the input collected on the record before determining how to proceed.¹¹²

B. Prioritizing Vigorous Merger Enforcement to Combat Consolidation

Together, the FTC and the DOJ represent the American people's front-line defense against unlawful consolidation, and stopping illegal mergers is central to that mission. Consistent with that, over the past 16 months, the FTC has moved to challenge major transactions in critical sectors of the economy, including semiconductors, defense, energy, healthcare, mortgage technology, and digital markets.¹¹³ This includes filing suit to block eight mergers outright,¹¹⁴ as

¹¹² On February 16, 2023, the FTC hosted a public forum to provide an opportunity for people to directly share their experiences with noncompetes. FTC, FTC Forum Examining Proposed Rule to Ban Noncompete Clauses (Feb. 16, 2023), <https://www.ftc.gov/news-events/events/2023/02/ftc-forum-examining-proposed-rule-ban-noncompete-clauses>.

¹¹³ Fed. Trade Comm'n & Dep't of Justice, Hart-Scott-Rodino Annual Rep., Fiscal Year 2022 (2023), https://www.ftc.gov/system/files/ftc_gov/pdf/p110014fy2021hsrannualreport.pdf.

¹¹⁴ Press Release, Fed. Trade Comm'n, FTC Acts to Block Deal Combining the Two Top Mortgage Loan Technology Providers (Mar. 9, 2023) <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-acts-block-deal-combining-two-top-mortgage-loan-technology-providers>; Press Release, Fed. Trade Comm'n, FTC Seeks to Block Microsoft Corp.'s Acquisition of Activision Blizzard, Inc. (Dec. 8, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/12/ftc-seeks-block-microsoft-corps-acquisition-activision-blizzard-inc>; Press Release, Fed. Trade Comm'n, FTC Seeks to Block Virtual Reality Giant Meta's Acquisition of Popular App Creator Within (July 27, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/07/ftc-seeks-block-virtual-reality-giant-metas-acquisition-popular-app-creator-within>; Press Release, Fed. Trade Comm'n, FTC Sues to Block Merger Between Utah Healthcare Rivals HCA Healthcare and Steward Health Care System (Jun. 2, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-sues-block-merger-between-utah-healthcare-rivals-hca-healthcare-steward-health-care-system>; Press Release, Fed. Trade Comm'n, FTC Sues to Block Merger Between New Jersey Healthcare Rivals RWJBarnabas Health and Saint Peter's Healthcare System (Jun. 2, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-sues-block-merger-between-new-jersey-healthcare-rivals-rwjbarnabas-health-saint-peters>; Press Release, Fed. Trade Comm'n, FTC and Rhode Island Attorney General Step in to Block Merger of Rhode Island's Two Largest Healthcare Providers (Feb. 17, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/02/ftc-rhode-island-attorney-general-step-block-merger-rhode-islands-two-largest-healthcare-providers>; Press Release, Fed. Trade Comm'n, FTC Sues to Block Lockheed Martin Corporation's Vertical Acquisition of Aerojet Rocketdyne Holdings Inc. (Feb. 15, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/01/ftc-sues-block-lockheed-martin-corporations-44-billion-vertical-acquisition-aerojet-rocketdyne>; Press Release, Fed. Trade Comm'n, FTC Sues to Block \$40 Billion Semiconductor Chip Merger (Dec. 2, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/12/ftc-sues-block-40-billion-semiconductor-chip-merger>.

well as eleven other anticompetitive mergers that parties have abandoned after the agency indicated competition concerns but before it filed a complaint.¹¹⁵

The Commission is particularly concerned about mergers that may cause significant economywide harm. Just last month, the Commission challenged a \$13.1 billion merger between the two leading providers of mortgage technology, Intercontinental Exchange, Inc. (“ICE”) and Black Knight.¹¹⁶ The FTC’s complaint alleges that the merger would eliminate competition between the merging parties for certain key mortgage processing platforms and tools used by lenders to secure the best interest rates for customers, leading to higher prices for lenders and homebuyers.¹¹⁷

The FTC is also taking steps to better capture the full set of ways in which mergers can harm competition. Central to this effort is placing greater weight on assessing both non-horizontal and forward-looking competitive harm. For example, in December 2021, the FTC sued to stop U.S. chip supplier Nvidia’s proposed \$40 billion acquisition of U.K. chip design provider Arm.¹¹⁸ More than two months into its litigation with the FTC, Nvidia abandoned its acquisition of Arm—representing the first abandonment of a litigated vertical merger in many years.¹¹⁹

¹¹⁵ See, e.g., Press Release, Fed. Trade Comm’n, Expected Federal Trade Commission Opposition to Transaction Leads Great Outdoors Group, LLC and Rival Sportsman’s Warehouse Holdings, Inc. to Abandon Plans for Proposed Merger (Dec. 3, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/12/expected-federal-trade-commission-opposition-transaction-leads-great-outdoors-group-llc-rival>.

¹¹⁶ Press Release, Fed. Trade Comm’n, FTC Acts to Block Deal Combining the Two Top Mortgage Loan Technology Providers (Mar. 9, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-acts-block-deal-combining-two-top-mortgage-loan-technology-providers>.

¹¹⁷ *Id.*

¹¹⁸ See FTC Sues to Block \$40 Billion Semiconductor Chip Merger, *supra* note 114.

¹¹⁹ In addition to Nvidia/Arm, the FTC has a pending challenge to Microsoft’s proposed \$69 billion acquisition of independent videogame company ActivisionBlizzard. See FTC Seeks to Block Microsoft Corp.’s Acquisition of Activision Blizzard, Inc., *supra* note 114. In particular, the FTC’s December 2022 complaint highlights how Microsoft could use its control over ActivisionBlizzard’s valuable content to undermine competition for videogame consoles as well as fast growing game subscription services and cloud-gaming. See *id.*

The Commission also remains committed to stopping harmful mergers between direct competitors, especially in markets for healthcare services.¹²⁰ Those mergers threaten patients with higher cost and lower quality care¹²¹ and healthcare workers with lower wages and poorer working conditions.¹²²

C. Targeting Anticompetitive Conduct for Maximum Impact

Despite a heavy merger workload, the FTC continues to maintain and develop a robust program to identify and stop anticompetitive conduct. This includes continuing to scrutinize digital markets where dominant platforms control key arteries of commerce and communications in ways that can undermine competition.¹²³

¹²⁰ See, e.g., FTC Sues to Block Merger Between Utah Healthcare Rivals HCA Healthcare and Steward Health Care System, *supra* note 114; FTC Sues to Block Merger Between New Jersey Healthcare Rivals RWJBarnabas Health and Saint Peter’s Healthcare System, *supra* note 114. Additionally, the two largest healthcare systems in Rhode Island, Lifespan Corp. and Care New England Health System, called off their merger after the FTC, in conjunction with the Rhode Island Attorney General, sought to block the merger. See Press Release, Fed. Trade Comm’n, Statement Regarding Termination of Attempted Merger of Rhode Island’s Two Largest Healthcare Providers (Mar. 2, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/03/statement-regarding-termination-attempted-merger-rhode-islands-two-largest-healthcare-providers>.

¹²¹ See, e.g., Zack Cooper et al., *The Price Ain’t Right? Hospital Prices and Health Spending on the Privately Insured*, 134 Q.J. ECON. 51 (2019); Nancy Beaulieu et al., *Changes in Quality of Care after Hospital Mergers and Acquisitions*, 382 NEW ENG. J. MED. 51 (2020). For surveys of the research literature, see, e.g., Martin Gaynor & Robert Town, *The Impact of Hospital Consolidation*, THE SYNTHESIS PROJECT, ROBERT WOOD JOHNSON FOUNDATION (June 2012), http://www.rwjf.org/content/dam/farm/reports/issue_briefs/2012/rwjf73261; Martin Gaynor, Kate Ho & Robert Town, *The Industrial Organization of Health-Care Markets*, 53 J. ECON. LITERATURE 235 (2015).

¹²² See, e.g., Elena Prager & Matt Schmitt, *Employer Consolidation and Wages: Evidence from Hospitals*, 111 AM. ECON. REV. 397 (2021); Daniel Arnold & Christopher Whaley, *Who Pays for Health Care Costs? The Effects of Health Care Prices on Wages* (RAND Health Care Working Paper, 2021), <https://www.ehealthcon.org/pdfs/Whaley.pdf>. The Commission laid out much of this empirical evidence in a recent policy paper highlighting the pitfalls of Certificates of Public Advantage (COPAs), which are efforts by states to replace beneficial healthcare competition with state oversight, that have proven to be detrimental for patient costs, quality, and reduced employee wages. Press Release, Fed. Trade Comm’n, FTC Policy Paper Warns About Pitfalls of COPA Agreements for Patient Care and Healthcare Workers (Aug. 15, 2022), <http://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-policy-paper-warns-about-pitfalls-copa-agreements-patient-care-healthcare-workers>. Recently, two hospital systems abandoned their proposed merger after the FTC raised concerns with the New York State Department of Health, voicing opposition to the granting of a COPA that would immunize the deal from antitrust scrutiny. See Press Release, Fed. Trade Comm’n, Statement of Elizabeth Wilkins, Director of the FTC’s Office of Policy Planning, on the Decision of SUNY Upstate Medical University and Crouse Health System, Inc., to Drop Their Proposed Merger (Feb. 16, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/02/statement-elizabeth-wilkins-director-ftcs-office-policy-planning-decision-suny-upstate-medical>.

¹²³ See, e.g., *FTC v. Facebook, Inc.*, 581 F. Supp. 3d 34 (D.D.C. 2022).

The Commission is also committed to preventing anticompetitive conduct, including when it harms American farmers. In September 2022, the Commission and a bipartisan coalition of ten state attorneys general charged the two largest pesticides manufacturers, Syngenta and Corteva, with maintaining their monopoly positions by paying distributors to block competitors from selling their cheaper generic products to farmers.¹²⁴

D. FTC Research and Policy Development Related to Healthcare Competition

Through Section 6(b) of the FTC Act, Congress gave the agency broad investigative powers to conduct market-wide inquiries that allow us to keep pace with new business practices and market trends. A primary focus of Commission research and policy has been healthcare markets. For example, last June, the Commission authorized a 6(b) study of the contracting practices of pharmacy benefits managers (“PBMs”).¹²⁵ This comprehensive study will shine a light on the opaque operations of these large pharmacy middlemen who can dictate the pricing and access to life-saving drugs for so many Americans. The Commission also issued an RFI relating to the infant formula crisis.¹²⁶

¹²⁴ Press Release, Fed. Trade Comm’n, FTC and State Partners Sue Pesticide Giants Syngenta and Corteva for Using Illegal Pay-to-Block Scheme to Inflate Prices for Farmers (Sept. 29, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-state-partners-sue-pesticide-giants-syngenta-corteva-using-illegal-pay-block-scheme-inflate>.

¹²⁵ Press Release, Fed. Trade Comm’n, FTC Launches Inquiry Into Prescription Drug Middlemen Industry (Jun. 7, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-launches-inquiry-prescription-drug-middlemen-industry>. Consistent with the competition concerns that prompted the PBM study, the Commission issued a “Policy Statement on Rebates and Fees in Exchange for Excluding Lower Cost Products,” putting the drug industry on notice that paying rebates and fees to exclude competition from formularies violates the antitrust laws. Press Release, Fed. Trade Comm’n, FTC to Ramp Up Enforcement Against Any Illegal Rebate Schemes, Bribes to Prescription Drug Middlemen that Block Cheaper Drugs (Jun. 16, 2022), <http://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-ramp-up-enforcement-against-illegal-rebate-schemes>.

¹²⁶ Press Release, Fed. Trade Comm’n, Federal Trade Commission Launches Inquiry into Infant Formula Crisis (May 24, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/05/federal-trade-commission-launches-inquiry-infant-formula-crisis>.

IV. RESOURCE CONSTRAINTS AND LEGAL CHALLENGES

Despite the many successes highlighted above, we also want to highlight significant headwinds the Commission faces. First, as our work illustrates, Congress has charged the FTC with policing unlawful conduct across a broad swath of the U.S. economy. Although we are at the front lines of many of the most pressing economic issues Americans face today, the number of full-time employees we plan to have at the end of FY2023 will be about 80% of the number we had at the beginning of 1980, while the nation's GDP has increased six-fold.¹²⁷ Demands on the Commission continue to grow as we review corporate mergers,¹²⁸ conduct more complex and expensive litigation, receive consumer complaints,¹²⁹ try to stay abreast of transformative technological and market changes, and respond to burgeoning requests for research and investigation of various economic sectors. While we constantly strive to enforce the law to the best of our capabilities, there is no doubt that—despite the much-needed increased appropriations Congress has provided in recent years—we continue to lack sufficient funding.

¹²⁷ For example, as of March 2022, the UK's Information Commissioner's Office, the principal privacy enforcement agency in the UK, had 944 permanent staff. *See* Information Commissioner's Office, Information Commissioner's Annual Report and Financial Statements 2021-22 (July 2022) at 107, <https://ico.org.uk/media/about-the-ico/documents/4021039/ico-annual-report-2021-22.pdf>. Ireland's Data Protection Commission, responsible for enforcing the European privacy regulation, had 196 employees as of December 2022. *See* Data Protection Commission, Annual Report 2022 at 53, https://www.dataprotection.ie/sites/default/files/uploads/2023-03/DPC%20AR%20English_web.pdf. By contrast, the Federal Trade Commission's Division of Privacy and Identity Protection currently has just 48 employees. Although it is true that FTC employees in other units, including the regional offices, the Division of Enforcement, and the Division of Marketing Practices, contribute to the Commission's security and privacy efforts, the total number of FTC employees working on these issues is dwarfed by our European counterparts.

¹²⁸ As reflected in the annual report on the Hart-Scott-Rodino premerger program, the agencies reviewed an overwhelming number of HSR-reportable transactions in FY 2021 and issued more "Second Requests" for additional information from the merging parties than the year before, signaling a significant increase in the merger workload. *See* Press Release, Fed. Trade Comm'n, FTC, DOJ Issue Fiscal Year 2021 Hart Scott Rodino Premerger Notification Report (Feb. 10, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-doj-issue-fiscal-year-2021-hart-scott-rodino-premerger-notification-report>. While the number of HSR filings have fallen since the FY2021 peak, they remain high, with filings for over 3200 transactions in FY2022. (Monthly HSR numbers are posted on the FTC website at <https://www.ftc.gov/enforcement/premerger-notification-program>).

¹²⁹ *See, e.g.*, Press Release, Fed. Trade Comm'n, New FTC Data Show Consumers Reported Losing Nearly \$8.8 Billion to Scams in 2022, <https://www.ftc.gov/news-events/news/press-releases/2023/02/new-ftc-data-show-consumers-reported-losing-nearly-88-billion-scams-2022>.

We seek to work with Congress to ensure that the Commission has the resources and tools it needs to vigorously protect the American people.

For FY 2024, the FTC is requesting \$590 million and 1,690 FTE. This request to increase our budget by \$160 million will fund an additional 310 FTE over our planned FY2023 FTE level and enable us to address in part the increased demand on agency staff and resources.

Fully executing on our mission requires that our analytical capabilities keep up with changing market realities, and this budget request accordingly seeks to better position us to recruit a range of experts, including financial analysts, technologists, and others. In addition to expanding on existing expertise, we intend to expand into new areas, such as by retaining child psychologists and youth development experts to address harms and remedies.¹³⁰ These skills will allow us to continue building in-house expertise, to support our ability to conduct market-wide inquiries, and to scrutinize emerging business practices.

The FY 2024 budget request also funds additional expert witness levels commensurate with the additional FTE levels, given our need to support expert work in litigation, particularly in cases against large, well-financed defendants.

Additionally, the FTC seeks resources for systems modernization and infrastructure upgrades to support a larger decentralized workforce and enhance applications that directly support our mission, such as the comprehensive complaint database known as the Consumer Sentinel Network, which is accessible to law enforcement agencies across the country and internationally.

The FTC's budget request would be offset by fees collected from HSR filings and pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act. When possible,

¹³⁰ See FTC FY22-23 Annual Performance Plan at 79 & FTC FY22-26 Strategic Plan at 24, *supra* note 59.

the agency collects money to return to harmed consumers. During FY 2022, the FTC returned \$497 million to consumers and the U.S. Treasury General Fund. Of this amount, judgments resulting in redress disbursements to harmed consumers totaled \$325 million,¹³¹ and the Commission returned an additional \$14 million in disgorgements to Treasury. Also, civil penalty collections returned to Treasury totaled \$158 million.

Throughout FY 2022, the FTC saved consumers an estimated \$4.1 billion through its merger and nonmerger competition law enforcement actions and its consumer protection law enforcement actions.¹³² For FY 2022, every \$1 of the FTC's cost returned an estimated \$30 in FTC-provided benefits to consumers. We expect that a larger budget would position us to further improve on this return on investment.

Second, the FTC faces several significant legal challenges to statutory authorities that have been important tools in executing our mission. The Supreme Court issued its decision in *AMG Capital Management v. FTC* in April 2021, upending decades of lower court rulings that had held that Section 13(b) of the FTC Act enabled the FTC to pursue equitable monetary relief in federal court. Practically, *AMG* ended the FTC's ability to seek monetary relief for consumers in competition matters, most concretely in cases involving anticompetitive conduct by drug companies. In some consumer protection cases, Section 19 of the Federal Trade Commission Act allows the Commission to seek refunds for consumers in federal court either for certain rule

¹³¹ Most of the redress disbursements were from cases that were resolved prior to the Supreme Court's April 2021 decision in *AMG Capital Management, LLC. v. FTC*, 141 S. Ct. 1341 (2021), which invalidated the Commission's ability to obtain refunds for consumers under Section 13(b) of the FTC Act. Once the Commission completes distribution of funds obtained in cases resolved prior to *AMG*, future Commission distributions will likely decrease due to the loss of the ability to obtain monetary relief under Section 13(b).

¹³² These estimates were calculated based on performance measures 1.1.1 (money returned to consumers and treasury), 1.1.2 (consumer savings from consumer protection law enforcement), and 2.1.2 (consumer savings from antitrust enforcement). For more details on measurement and data quality, see the *FTC Data Quality Appendix*, FED. TRADE COMM'N, https://www.ftc.gov/system/files/ftc_gov/pdf/DQA-FY22-26%2C-3-1-2023.pdf (last visited March 13, 2023).

violations or in some cases after an administrative proceeding. While this avenue has always been more limited than Section 13(b), it may now face further constraints in light of various legal challenges to the administrative process. Simply put, some companies that profited by deceiving consumers are now able to keep that money.¹³³ That makes restoring our ability to use Section 13(b) to provide redress to consumers for law violations all the more important. We greatly appreciate this Committee’s work in the last Congress to address this situation and urge Congress to restore the FTC’s authority to return money to injured consumers under Section 13(b).

V. CONCLUSION

The FTC remains committed to marshalling its resources efficiently in order to effectively protect Americans from unfair or deceptive practices and unfair methods of competition. We look forward to continuing to work with you and we would be happy to answer your questions.

¹³³ See, e.g., Press Release, Fed. Trade Comm’n, FTC Order to Bar ZyCal Bioceticals from Deceptive Health Marketing (Feb. 6, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-order-bar-zycal-bioceticals-deceptive-health-marketing> (“Unfortunately, the Supreme Court decision in AMG Capital Management prevented us from obtaining refunds for consumers in this case. The Commission has urged Congress to enact legislation to restore the agency’s ability to obtain critical relief for consumers through federal court actions.”); Press Release, Fed. Trade Comm’n, Federal Court Rules in Favor of FTC, Halting Illegal Tactics Used to Promote Smoking Cessation, Weight-Loss, and Sexual-Performance Aids (Mar. 25, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/03/federal-court-rules-favor-ftc-halting-illegal-tactics-used-promote-smoking-cessation-weight-loss> (“[D]espite the fact that the FTC presented evidence that consumers lost \$18.2 million to the defendants’ deceptive marketing, the court declined to order any compensation because of [the] Supreme Court’s ruling in the case of *AMG v. FTC*, which undercuts the agency’s authority to obtain such consumer redress”).