Overarching Consumer Recommendations for the Federal Trade Commission

1. Consumer Protection Must Be a Core Part of the FTC's Activities. The FTC is the only agency with a core mission of stopping unfair and deceptive practices that harm consumers. The major crises the nation faces today all stem from lack of consumer protection, because a strong consumer voice has been missing. It is time to restore the FTC's vital role as the nation's central consumer protection agency.

2. The FTC Should Receive Enhanced Rulemaking and Civil Penalty Authority. The FTC essentially stopped engaging in rulemaking shortly after it lost Administrative Procedures Act authority and was forced to issue rules under the cumbersome Magnuson-Moss Act. Relying solely on enforcement is inadequate for robust consumer protection. Enforcement is ad-hoc, requires a high burden of proof, has a punitive nature, and cannot be used proactively to stop unfair and deceptive practices, clarify statutory ambiguities, or set clear rules for industry. The FTC should be given APA rulemaking authority, as well as clear rule-writing authority under the FTC Act and the Fair Credit Reporting Act. The FTC's enforcement authority should also be strengthened by giving it civil penalty authority under Section 5 of the FTC Act.

3. The FTC Should Use Its Unfairness Authority, Not Just its Deception Authority. For decades, the FTC has failed to use its unfairness authority independent of its authority to address deceptive practices and thus has failed to address meaningfully the most abusive practices in the market. This focus on deception is essentially a move towards disclosure and away from substantive protections. Unfairness authority gives the agency the ability to stop practices that cause substantial injury, are unavoidable by consumers, and are not outweighed by other considerations, even if the practices are disclosed accurately. Borrowers often can not reasonably evaluate disclosures or avoid unfair practices, and deception is a weak tool for protecting consumers in complex financial transactions. The agency has unfairness authority and must use it.

4. The FTC Should Have Concurrent FTC Act Authority over National Banks and Thrifts. The FTC is the agency with long experience in enforcing the law against unfair and deceptive acts and practices, in contrast to the banking agencies, which neglected that authority for years and began to exercise it for the first time this year under congressional pressure. Unfair and deceptive practices are at the root of the credit crisis. Unlike the banking agencies, who have a responsibility to protect banks' bottom line, the FTC's sole focus is protecting consumers. It is also the only agency that has no conflict of interest from the fee income it receives, from the fear that aggressive enforcement will lead to charter-shopping, or from a close working relationship with banks and thrifts.

5. The FTC Act Should Be Enforceable by Victims of Unfair and Deceptive Practices and by State Attorneys General. The FTC will always have limited resources and cannot and should not stop every unfair and deceptive practice. The individuals who are harmed by those practices are in the best position to hold wrongdoers accountable, and state attorneys general are also closer to the ground and have the ability to stop practices when they are just starting, before they become national and entrenched. Individuals and attorney generals are essential complements to the FTC's enforcement role.

6. The FTC Should Play a Role in Preventing Unfair and Abusive Tactics in the Mortgage and Other Lending Areas. The litany of practices that led to the foreclosure crisis --

underwriting to the teaser rate, option ARMs, failing to require documentation of income, coercive prepayment penalties, yield spread-premiums, inflated appraisals, as well as foreclosure rescue scams – are unfair or deceptive and violate the FTC Act. The FTC has authority over mortgage brokers, appraisers, and many mortgage lenders. Even without enhanced authority over banks, the FTC could play a role in bringing enforcement actions against these actors and setting clear rules going forward. The FTC also could address payday loan, private student loan, and other abuses.

7. The FTC Chair Must Have a Proven Commitment to Consumer Issues and No Conflicts With Industry. The new chair must have a strong and demonstrable commitment to the FTC's core mission of protecting consumers from unfair and deceptive practices. He or she should not have worked, directly or indirectly, for an industry potentially subject to FTC jurisdiction for at least the past two years. The new chair must also have the skills to work with Congress and persuade it to restore the FTC's authority, and a commitment to have a closer dialogue with the consumer community.