**TESTIMONY OF**
**CHAIR LINA M. KHAN**

**Before the**

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

**UNITED STATES HOUSE OF REPRESENTATIVES**

**WASHINGTON, D.C**

**JULY 9, 2024**

## I. INTRODUCTION

Chair Bilirakis, Ranking Member Schakowsky, and members of the Subcommittee, thank you for inviting me to testify today.[1] This testimony will address the Federal Trade Commission's ("FTC") Fiscal Year 2025 budget request and highlight the agency's important work to protect the American public from fraud and corporate abuse and to promote open, competitive markets. For over a century, Congress has codified a policy in favor of competition over consolidation. In the more than a century since the FTC Act was passed, Congress has redoubled its commitment to open markets and free and fair competition as the economy and its players have evolved.

The FTC's statutory mandate places it on the front lines of some of the most significant hardships confronting American consumers, workers, and small businesses. I am endlessly impressed by the commitment and ingenuity of the agency's staff, whose hard work and fidelity to that mandate protect every American. For example, the FTC has brought numerous enforcement actions to secure stronger protections for the privacy of Americans' sensitive data. The Commission also continues its efforts to fight fraud, challenging everything from junk fees and deceptive advertising to scams of every stripe. To tackle the challenges posed by artificial intelligence, the FTC is ramping up its efforts across the agency, securing settlements to limit the use of illegally collected data for AI purposes and even launching a voice cloning challenge to spur the private sector to help innovate technological solutions.

The FTC has notched numerous wins to promote free and fair competition. For example, the Commission finalized a rule banning noncompete clauses, which would boost wages, unlock opportunity, spur entrepreneurship, and promote liberty. The Commission also challenged the largest supermarket merger in U.S. history, alleging that it would increase prices and reduce wages for hundreds of thousands of workers. And the Commission is holding pharmaceutical companies accountable for junk patent listings on critical prescription drugs, paving the way for three of the four major asthma inhaler manufacturers to lower out-of-pocket inhaler costs for Americans to just $35.

To advance these shared priorities, we are grateful to have bipartisan support from this Subcommittee, the full Committee, and Congress. To name a few:

- To protect the privacy rights and protections of all Americans, this Subcommittee has advanced comprehensive, bipartisan legislation that would enhance the FTC's tools to combat pervasive online tracking that is often undisclosed or difficult, or virtually impossible, for consumers to escape. I welcome broad federal legislation to establish baseline consumer protections for all Americans and build on the FTC's own numerous enforcement actions. For example, the FTC has brought enforcement actions against companies who improperly sold sensitive personal health data to large social media advertising companies, secured a first-time ban on the misuse of facial recognition software, and notched other victories that protect Americans' sensitive data.

[1] This written testimony reflects my own views. The oral statement and responses to questions are also my own and do not necessarily reflect the views of the Commission or any other Commissioner.

- The full Committee advanced the *Protecting Americans' Data from Foreign Adversaries Act of 2024*, which passed unanimously in the House, to prevent data brokers from selling Americans' most sensitive data to foreign adversaries, including the People's Republic of China. The FTC has taken groundbreaking actions against data brokers who sell these types of data to the highest bidder. Earlier this year, the Commission brought actions against two location data aggregators, X-Mode Social and InMarket Media, banning them from selling Americans' sensitive location data. Additionally, the FTC's ongoing suit against Kochava, Inc., alleges that the data broker sold datasets that make it easier to track consumers' visits to sensitive locations, such as doctors' offices, houses of worship, and temporary shelters for domestic violence survivors.

- This Subcommittee has advanced multiple bills that would prohibit junk fees and deceptive advertising across multiple sectors of the economy. In October 2023, the FTC announced a separate proposed rulemaking to crack down on deceptive or unfair junk fees—which cost consumers an estimated $90 billion a year—by prohibiting companies from advertising prices that do not include all mandatory fees and preventing companies from misrepresenting the amount and purpose of fees and whether they are refundable.

- The Commission continues to answer bipartisan calls to utilize authority provided by Congress to hold companies accountable when they use the "Made in America" label to deceive customers, at the expense of honest businesses who produce their products in the United States.

- Finally, reflecting broad concern around the rising cost of prescription drugs, the FTC continues to heed bipartisan calls of Congress to vigilantly scrutinize the opaque business practices of pharmacy benefit managers that limit access to life-saving drugs and squeeze independent pharmacists.

These accomplishments, many of which carry bipartisan support, represent only a small slice of the good work of this small-but-mighty agency, which has notched wins for everyday Americans in spite of opponents who often have near-infinite resources to deploy against us. While funding increases in recent years have contributed meaningfully to the FTC's accomplishments, unfortunately the FTC's current budget, as well as proposals for future funding, cannot sustain our current personnel levels and would mean far fewer resources to support the Commission's critical work.

The FTC provides remarkable value to the American public. In FY2023, every $1 of the FTC's costs returned an estimated $14 in benefits to the American public through its consumer protection and competition law enforcement efforts.[2] In total, the hard work of the FTC staff

[2] 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* FTC, *FTC Data Quality Appendix*, https://www.ftc.gov/system/files/ftc_gov/pdf/DQA-FY22-26%2C-3-1-2023.pdf (last visited Apr. 23, 2023). These figures have been updated from previously reported consumer savings estimates, originally

saved the public nearly $3 billion last fiscal year. The agency could do even more if Congress were to restore the power of the Commission to obtain equitable monetary relief for consumers under Section 13(b) of the FTC Act.

## II. BUDGET AND RESOURCES

More than most agencies, the FTC invests the resources Congress grants us in its people. Today, the agency has roughly 1,349 employees on board, the cost of which comprises approximately 70 percent of our total budget.[3] This is nonetheless nearly 400 fewer full-time employees ("FTE") than in 1980, when the agency had over 1,700 FTE, even though the nation's GDP has increased six-fold since that time.

The FTC's enacted budget for FY2024 of $425.7 million represented a 1% reduction from the previous year. The effect of this reduction, alongside a 5.2% pay raise and higher non-compensation costs resulting from inflation, means the FTC has significantly less resources this year to support its mission. We are deeply committed to long-term fiscal responsibility, which means we are making difficult choices now to ensure the agency maintains a strong position in the years to come.

As a result of the FY2024 funding level, the FTC, through reduced hiring actions and attrition, will decrease its current workforce as well as a variety of nonpayroll expenditures. We are also exploring ways to reduce facility costs, although savings from these efforts will likely not be realized before the end of FY2025.

The House of Representatives' proposed FY2025 budget of $388.7 million would be devastating to the FTC, and will necessitate both furloughs and likely a reduction in force. The House funding level would continue to reduce FTC capabilities, including our Consumer Complaint database (Sentinel), and impact our ability to retain personnel who are vital to both our Consumer Protection and Competition missions.

## III. 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. Among other issues, the FTC works to protect privacy and data security; fight fraud, junk fees, and related harms affecting consumers; combat opioid recovery fraud and other health fraud; stand up for all consumers, including older adults, servicemembers, and historically underserved communities; tackle dark patterns and subscription traps; and ensure that domestic manufacturers, independent repairers, and other small businesses have a chance to compete fairly.

provided in the FY 2023 Agency Financial Report as $3.6 billion of consumer savings and $17 per $1 spent. Fed. Trade Comm'n, Fiscal Year 2023 Agency Financial Report 44 (2023), https://www.ftc.gov/system/files/ftc_gov/pdf/508FY2023FTCAgencyFinancialReport11292023.pdf.

[3] Of the 1,349 employees on board, 22 are summer interns.

### A. Safeguarding Consumer Privacy and Strengthening Data Security

The FTC is taking bold steps to establish substantive protections for consumers' personal data, moving beyond the flawed "notice and choice" privacy framework that leads to consumers being constantly barraged with requests to collect and use their personal information. We are particularly focused on sensitive data, children and teens, data security, and market-wide initiatives to strengthen privacy and data security.

#### 1. Protecting Consumers' Sensitive Data

At the FTC, we are working to secure real limits on the handling of people's data, particularly when it comes to sensitive information, including health, biometric, Internet browsing, and location information.

First, the FTC has now brought half a dozen groundbreaking actions to protect consumers as they use new technology to access health care and to bar consumer-facing health providers from sharing consumers' sensitive health data for advertising purposes. In GoodRx (prescription drug discount provider),[4] BetterHelp (online counseling service),[5] Premom (period-tracking app),[6] Cerebral (online mental health provider),[7] and Monument (online alcohol treatment service),[8] the Commission alleged that companies broke their privacy promises by disclosing users' personal health information to advertising platforms such as Facebook and Google without consent. The settlements in these actions included important first-time provisions banning 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 and Premom settlements included civil penalties resulting from the Commission's first enforcements of the Health Breach Notification Rule. The BetterHelp order includes $7.8 million in monetary relief that will go back to consumers as partial refunds, another first in a health privacy case.[9] Finally, in May, the

[4] 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.

[5] 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.

[6] Order, *United States v. Easy Healthcare Corp.*, No. 23-cv-03107 (N.D. Ill. 2023), *available at* https://www.ftc.gov/system/files/ftc_gov/pdf/2023.06.22_easy_healthcare_signed_order_2023.pdf.

[7] Proposed Order, *United States v. Cerebral, Inc.,* No. 1:24-cv-21376 (S.D. Fla. Apr. 15, 2024), *available at* https://www ftc.gov/system/files/ftc_gov/pdf/cerebral_joint_stipulation_order_permanent_injunction.pdf.

[8] Proposed Order, *United States v. Monument*, No. 12:24-cv-01034 (D.D.C. Apr. 11, 2024), *available at* https://www.ftc.gov/system/files/ftc_gov/pdf/MonumentOrderFiled.pdf; *see also* Press Release, Fed. Trade Comm'n, Alcohol Addiction Treatment Firm Will Be Banned from Disclosing Health Data for Advertising to Settle FTC Charges That It Shared Data without Consent, *available at* https://www.ftc.gov/news-events/news/press-releases/2024/04/alcohol-addiction-treatment-firm-will-be-banned-disclosing-health-data-advertising-settle-ftc (Apr. 11, 2024).

[9] Press Release, Fed. Trade Comm'n, *BetterHelp Customers Will Begin Receiving Notices about Refunds Related to a 2023 Privacy Settlement with FTC*, *available at* https://www.ftc.gov/news-events/news/press-releases/2024/05/betterhelp-customers-will-begin-receiving-notices-about-refunds-related-2023-privacy-settlement-ftc (May 6, 2024).

Commission finalized amendments to its Health Breach Notification Rule. The amendments underscore that health apps and similar technologies are covered by the rule and that companies must notify consumers and the FTC when breaches occur, which include unauthorized disclosures of health information.[10]

Second, the FTC is taking action when biometric technologies, like facial recognition, harm consumers. In its case against Rite Aid, the FTC alleged the company deployed its facial recognition technology without reasonable safeguards, and falsely tagged consumers, particularly women and people of color, as shoplifters . The Commission secured a five-year ban on Rite Aid's use of facial recognition technology and other automated biometric systems for security or surveillance purposes.[11]

Third, the FTC is protecting consumers' sensitive browsing data. The Commission brought a recent case against browsing software company Avast for collecting and selling consumers' browsing information, which can reveal where consumers live and work, the health care they seek, their political and religious affiliations, and other online interests and activities. The order in this matter requires Avast to delete and not sell the web browsing information it collected without consumers' affirmative express consent, as well as any products or algorithms derived from that data.[12]

Finally, the FTC has followed through on its promise to ensure that geolocation data that reveals sensitive information is not indiscriminately sold to the highest bidder. The Commission is engaged in ongoing litigation against Kochava, Inc., alleging that the data broker 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.[13] And, earlier this year, the Commission secured settlements with location data aggregators, X-Mode Social and InMarket Media, to resolve allegations that these companies collected and sold precise geolocation information about consumers.[14] Both settlement orders contained

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[10] Business Blog, Fed. Trade Comm'n, Updated FTC Health Breach Notification Rule puts new provisions in place to protect users of health apps and devices (Apr. 26, 2024), Updated FTC Health Breach Notification Rule puts new provisions in place to protect users of health apps and devices | Federal Trade Commission.

[11] Press Release, Fed. Trade Comm'n, Rite Aid Banned from Using AI Facial Recognition After FTC Says Retailer Deployed Technology without Reasonable Safeguards (Dec. 19, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/12/rite-aid-banned-using-ai-facial-recognition-after-ftc-says-retailer-deployed-technology-without.

[12] Press Release, Fed. Trade Comm'n, FTC Order Will Ban Avast from Selling Browsing Data for Advertising Purposes, Require It to Pay $16.5 Million Over Charges the Firm Sold Browsing Data After Claiming Its Products Would Block Online Tracking (Feb. 22, 2024), https://www ftc.gov/news-events/news/press-releases/2024/02/ftc-order-will-ban-avast-selling-browsing-data-advertising-purposes-require-it-pay-165-million-over.

[13] 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.

[14] Press Release, Fed. Trade Comm'n, FTC Finalizes Order with X-Mode and Successor Outlogic Prohibiting it from Sharing or Selling Sensitive Location Data (Apr. 12, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-finalizes-order-x-mode-successor-outlogic-prohibiting-it-sharing-or-selling-sensitive-location; Press Release, Fed. Trade Comm'n, FTC Order Will Ban InMarket from Selling Precise Consumer Location Data

groundbreaking provisions protecting consumers from unwanted surveillance, including bans on the use and disclosure of precise geolocation data.

### 2. Protecting Children and Teens

Children must be able to play and learn online without being endlessly tracked and manipulated by companies looking to hoard and monetize their personal data. Because online services can pose unique risks to children and teens, the FTC is taking an expansive and rigorous look at how to protect minors from digital harms, both through the Children's Online Privacy Protection Act Rule ("COPPA"),[15] which protects children under 13, as well as through Section 5 of the FTC Act. In December, the FTC proposed changes to COPPA for the first time in over a decade. The changes would place new restrictions on the use and disclosure of children's personal information, including requiring opt-in parental consent for behavioral advertising, and would further limit the ability of companies to condition access to services on monetizing children's data. The proposal aims to shift the burden from parents to providers to ensure that digital services are safe and secure for children.[16] Staff is currently reviewing the comments received from stakeholders on the proposed changes.

In the meantime, the Commission continues to use our existing authorities to protect children and teens. For example, we recently referred to the Department of Justice a complaint against TikTok and its parent company, ByteDance, after investigating violations of COPPA and the FTC Act.[17]

We brought a law enforcement action against Epic Games, Inc. ("Epic")—creator of the popular video game "Fortnite"—alleging that Epic violated COPPA[18] and engaged in an unfair practice by employing default settings that connected children and teens via voice and text chat to strangers, exposing them to harm. This action ultimately resulted in a federal court order securing strong and novel relief, 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 ever under COPPA.

We are also being forward-looking to prevent companies from using children's data to train AI models without parental consent. In the Amazon Alexa matter, the FTC alleged that Amazon violated COPPA and the FTC Act by indefinitely retaining children's voice recordings, which it used to train its speech recognition algorithm. The FTC also alleged that

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(Jan. 18, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-order-will-ban-inmarket-selling-precise-consumer-location-data.

[15] 16 C.F.R. § 312.

[16] Press Release, Fed. Trade Comm'n, Press Release, FTC Proposes Strengthening Children's Privacy Rule to Further Limit Companies' Ability to Monetize Children's Data (Dec. 20, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/12/ftc-proposes-strengthening-childrens-privacy-rule-further-limit-companies-ability-monetize-childrens.

[17] Statement of the Federal Trade Commission In the Matter of Bytedance/Musical.ly (June 18, 2024), https://www ftc.gov/system/files/ftc_gov/pdf/bytedance-musical-commission-statement.pdf.

[18] 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.

Amazon failed to honor users', including parents', requests to delete voice and geolocation data, which remained available to Amazon to use for machine learning. Under the FTC's settlement with Amazon, the company is required to delete inactive accounts and certain voice recordings and geolocation information from children and will be prohibited from using such data to train its algorithms.[19]

The Commission is also committed to preventing data abuses around educational technology services and issued a Policy Statement in 2022 making clear that we would use our full set of authorities to hold firms accountable.[20] Following the Policy Statement, we have obtained settlements under COPPA and Section 5 that lay down the rules of the road.

Educational technology company Edmodo entered a federal court order to resolve FTC allegations that Edmodo violated COPPA by failing to obtain verifiable parental consent before collecting children's personal information, and that it unlawfully outsourced its COPPA compliance responsibilities to schools. Our order against Edmodo banned the company from requiring children to disclose more personal data than is reasonably necessary to participate in online learning.[21]

The FTC also brought a data security enforcement action against online learning platform Chegg, Inc., whose customers are high school students. We alleged that Chegg collected sensitive information about its users and employees but 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.[22]

### 3. Strengthening Data Security

The best way for firms to protect consumers' data is to not collect it in the first place. In the last three years, we have secured 17 data security and privacy orders with mandated

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[19] Press Release, Fed. Trade Comm'n, FTC and DOJ Charge Amazon with Violating Children's Privacy Law by Keeping Kids' Alexa Voice Recordings Forever and Undermining Parents' Deletion Requests (May 31, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-doj-charge-amazon-violating-childrens-privacy-law-keeping-kids-alexa-voice-recordings-forever.

[20] Fed. Trade Comm'n, Policy Statement of the Federal Trade Commission on Education Technology and the Children's Online Privacy Protection Act (May 19, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Policy%20Statement%20of%20the%20Federal%20Trade%20Commission%20on%20Education%20Technology.pdf.

[21] Press Release, Fed. Trade Comm'n, FTC Says Ed Tech Provider Edmodo Unlawfully Used Children's Personal Information for Advertising and Outsourced Compliance to School Districts (May 22, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-says-ed-tech-provider-edmodo-unlawfully-used-childrens-personal-information-advertising.

[22] 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.

restrictions on what data firms can collect and retain.[23] For example, our order against Blackbaud, a provider of data services and financial, fundraising, and administrative software services, requires the company to delete data that it no longer needs and put in place a data retention schedule that would detail why it maintains personal data and when it will delete such information.[24] The Commission's orders against the online alcohol marketplace Drizly, LLC[25] and the online merchandise platform CafePress also require the companies to minimize the data they collect, store, and retain.[26]

The Commission has also obtained remedies that require companies to delete data they unlawfully collected or used, and to delete the algorithms they developed with that data. For example, in Rite Aid, we required the company to delete any images or photos it collected for use in Rite Aid's facial recognition system as well as any algorithms or other products that were developed using those images and photos.[27] And, in our final order with Avast, the Commission

[23] These include proposed or final orders in actions the FTC has taken against X-Mode Social (Apr. 11, 2024), https://www ftc.gov/legal-library/browse/cases-proceedings/2123038-x-mode-social-inc; RiteAid (Mar. 8, 2024), https://www.ftc.gov/legal-library/browse/cases-proceedings/2023190-rite-aid-corporation-ftc-v; Global Tel*Link (Feb. 23, 2024), https://www.ftc.gov/legal-library/browse/cases-proceedings/2123012-global-tel-link-corporation; Avast Limited (Feb. 22, 2024), https://www.ftc.gov/legal-library/browse/cases-proceedings/2023033-avast; Blackbaud (Feb. 14, 2024), https://www.ftc.gov/legal-library/browse/cases-proceedings/2023181-blackbaud-inc.; InMarket Media (Jan. 18, 2024), https://www.ftc.gov/legal-library/browse/cases-proceedings/2023088-inmarket-media-llc; Epic Games (Jan. 10, 2024), https://www ftc.gov/legal-library/browse/cases-proceedings/1923203-epic-games-matter; Edmodo (Aug. 28, 2023), https://www.ftc.gov/legal-library/browse/cases-proceedings/202-3129-edmodo-llc-us-v; Amazon Alexa (July 21, 2023), https://www.ftc.gov/legal-library/browse/cases-proceedings/192-3128-amazoncom-alexa-us-v; BetterHelp (July 14, 2023), https://www ftc.gov/legal-library/browse/cases-proceedings/2023169-betterhelp-inc-matter; Easy Healthcare (June 26, 2023), https://www ftc.gov/legal-library/browse/cases-proceedings/202-3186-easy-healthcare-corporation-us-v; Vitagene (June 16, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-says-genetic-testing-company-1health-failed-protect-privacy-security-dna-data-unfairly-changed; GoodRx Holdings (Feb. 17. 2023), https://www.ftc.gov/legal-library/browse/cases-proceedings/2023090-goodrx-holdings-inc; Chegg (Jan. 26, 2023), https://www ftc.gov/legal-library/browse/cases-proceedings/chegg; Drizly (Jan. 10, 2023), https://www.ftc.gov/legal-library/browse/cases-proceedings/2023185-drizly-llc-matter; CafePress (Jan. 10, 2023), https://www.ftc.gov/legal-library/browse/cases-proceedings/1923209-cafepress-matter; and Kurbo (f/k/a Weight Watchers) (Mar. 4, 2022), https://www.ftc.gov/legal-library/browse/cases-proceedings/1923228-weight-watchersww.

[24] Press Release, Fed. Trade Comm'n, FTC Finalizes Order with Blackbaud Related to Allegations the Firm's Security Failures Led to Data Breach (May 20, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/05/ftc-finalizes-order-blackbaud-related-allegations-firms-security-failures-led-data-breach.

[25] 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.

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

[27] Press Release, Fed. Trade Comm'n, Rite Aid Banned from Using AI Facial Recognition After FTC Says Retailer Deployed Technology without Reasonable Safeguards (Dec. 19, 2023), https://www ftc.gov/news-events/news/press-releases/2023/12/rite-aid-banned-using-ai-facial-recognition-after-ftc-says-retailer-deployed-technology-without.

required the company to delete any models, algorithms, or software developed from data unlawfully collected.[28]

### 4. Developing Market-Wide Initiatives to Protect Consumers' Data

In August 2022, the Commission issued an advance notice of proposed rulemaking on commercial surveillance and lax data security, which 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.[29] The Commission is reviewing the more than 11,000 comments we received and considering next steps. The Commission also has significantly strengthened the Safeguards Rule, amending the rule in 2021 to include more detailed requirements for financial institutions' information security programs, and again in 2023 to require financial institutions to notify the FTC of breaches of unencrypted data of 500 or more consumers.[30] The breach notification requirement went into effect on May 13, 2024. And we continue to review other rules, including COPPA, to assess whether changes are necessary to better protect consumers' data.

### 5. Confronting the Challenges of Artificial Intelligence

The rapid emergence of new tools powered by artificial intelligence ("AI") presents opportunities for the public and our economy. But it also poses significant risks, and the Commission is working to address these risks in a number of ways while also promoting innovation that affirms America's leadership around this emerging technology.

First, the Commission is using its existing legal authorities to take action against illegal practices involving AI.[31] For instance, the FTC alleged that Amazon and Ring used highly private data—voice recordings collected by Amazon's Alexa voice assistant[32] and videos

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[28] Press Release, Fed. Trade Comm'n, FTC Order Will Ban Avast from Selling Browsing Data for Advertising Purposes, Require It to Pay $16.5 Million Over Charges the Firm Sold Browsing Data After Claiming Its Products Would Block Online Tracking (Feb. 22, 2024), https://www ftc.gov/news-events/news/press-releases/2024/02/ftc-order-will-ban-avast-selling-browsing-data-advertising-purposes-require-it-pay-165-million-over.

[29] 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.

[30] Press Release, Fed. Trade Comm'n, FTC Strengthens Security Safeguards for Consumer Financial Information Following Widespread Data Breaches (Oct. 27, 2021), https://www ftc.gov/news-events/news/press-releases/2021/10/ftc-strengthens-security-safeguards-consumer-financial-information-following-widespread-data; Press Release, Fed. Trade Comm'n, FTC Amends Safeguards Rule to Require Non-Banking Financial Institutions to Report Data Security Breaches (Oct. 27, 2023), https://www ftc.gov/news-events/news/press-releases/2023/10/ftc-amends-safeguards-rule-require-non-banking-financial-institutions-report-data-security-breaches. 27, 2023 Press 7, 303)Press Release, Fed. Trade Comm'n, Trade Comm'n, FTC Amends Safeguards Rule to Require Non-Banking Financial Institutions to Report Data Security Breaches | Federal Trade Commission (Oct. 2023).

[31] Press Release, Fed. Trade Comm'n, FTC Chair Khan and Officials from DOJ, CFPB and EEOC Release Joint Statement on AI (April 15, 2023), https://www ftc.gov/news-events/news/press-releases/2023/04/ftc-chair-khan-officials-doj-cfpb-eeoc-release-joint-statement-ai.

[32] Press Release, FTC and DOJ Charge Amazon with Violating Children's Privacy Law by Keeping Kids' Alexa Voice Recordings Forever and Undermining Parents' Deletion Requests (May 31, 2023), https://www ftc.gov/news-

collected by Ring's internet-connected home security cameras[33]—to train their algorithms while violating customers' privacy.[34] The Alexa matter, in particular, underscored that COPPA's prohibition on the indefinite retention of children's data and similar legal rules are not superseded by claims from businesses that data must be indefinitely retained to improve machine learning algorithms. Claims about AI were the focus of allegations against two companies—Automators AI[35] and Wealthpress[36]—that the FTC alleged engaged in investment scams and touted the use of AI to enhance investment success. And, in Rite Aid, the Commission charged the company with failing to implement reasonable safeguards when the company deployed AI facial recognition technology that falsely tagged consumers, especially women and people of color, as shoplifters or other bad actors.[37]

Second, the Commission is using every tool to fight AI-related fraud. The Commission has issued a rule outlawing government and business impersonation scams—a type of fraud that generative AI can turbocharge, and which hurts not only consumers, including older Americans, but also small businesses.[38] The Commission has also embarked on a supplemental rulemaking to extend this ban to the impersonation of individuals.[39]

The Commission has also tapped American ingenuity to help fight back against fraud. On April 8, it announced the four winners of its groundbreaking Voice Cloning Challenge. Each winner's submission proposed a novel approach to detect and prevent voice cloning scams, which fraudsters often deploy to target older Americans.[40] The Commission has also made clear

events/news/press-releases/2023/05/ftc-doj-charge-amazon-violating-childrens-privacy-law-keeping-kids-alexa-voice-recordings-forever.

[33] Press Release, FTC Says Ring Employees Illegally Surveilled Customers, Failed to Stop Hackers from Taking Control of Users' Cameras (May 31, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-says-ring-employees-illegally-surveilled-customers-failed-stop-hackers-taking-control-users.

[34] Press Release, FTC and DOJ Charge Amazon with Violating Children's Privacy Law by Keeping Kids' Alexa Voice Recordings Forever and Undermining Parents' Deletion Requests (May 31, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-doj-charge-amazon-violating-childrens-privacylaw-keeping-kids-alexa-voice-recordings-forever; Press Release, FTC Says Ring Employees Illegally Surveilled Customers, Failed to Stop Hackers from Taking Control of Users' Cameras (May 31, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-says-ring-employees-illegally-surveilledcustomers-failed-stop-hackers-taking-control-users.

[35] Press Release, FTC Action Leads to Ban for Owners of Automators AI E-Commerce Money-Making Scheme (Feb. 27, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/02/ftc-action-leads-ban-owners-automators-ai-e-commerce-money-making-scheme.

[36] Press Release, 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/ftcsuit-requires-investment-advice-company-wealthpress-pay-17-million-deceiving-consumers.

[37] Press Release, Rite Aid Banned from Using AI Facial Recognition After FTC Says Retailer Deployed Technology without Reasonable Safeguards (Dec. 19, 2023), https://www ftc.gov/news-events/news/press-releases/2023/12/rite-aid-banned-using-ai-facial-recognition-after-ftc-says-retailer-deployed-technology-without.

[38] Press Release, Fed. Trade Comm'n, FTC Announces Impersonation Rule Goes into Effect Today (Apr. 1, 2024), https://www ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-impersonation-rule-goes-effect-today.

[39] *Id.*

[40] Press Release, FTC Announces Winners of Voice Cloning Challenge (Apr. 8, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-winners-voice-cloning-challenge.

that AI robocalls are not exempt from the Telemarketing Sales Rule.[41] And the Commission proposed a rule cracking down on firms that generate fake reviews—an online scourge that AI threatens to exacerbate.[42]

Third, the Commission is helping guide consumers and businesses as they navigate the potential perils of AI. The Commission has issued award-winning consumer and business guidance around various AI-related issues.[43] The Commission also convened a Technology Summit focused on AI[44] and a roundtable concerning the impact of generative AI on creative fields.[45] Finally, the Commission wants to ensure that biometric information—a particularly sensitive category of health data—is being protected, and in 2023, issued a policy statement identifying factors the FTC will consider in determining whether business' use of biometric information or biometric information technologies, including those powered by AI and machine learning, could be unfair in violation of the FTC Act.[46]

Lastly, the FTC has focused on investing in technical skills to ensure we can keep pace with the technologies that we oversee. Last year we launched a new Office of Technology, which has hired technologists spanning a variety of fields—including data security, artificial intelligence, ad tech, and user design. Within a short period these technologists have embedded

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[41] Press Release, FTC Implements New Protections for Businesses Against Telemarketing Fraud and Affirms Protections Against AI-enabled Scam Calls, (Mar. 7, 2024), https://www ftc.gov/news-events/news/press-releases/2024/03/ftc-implements-new-protections-businesses-against-telemarketing-fraud-affirms-protections-against-ai.

[42] Press Release, Federal Trade Commission Announces Proposed Rule Banning Fake Reviews and Testimonials (Jun. 30, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/06/federal-trade-commission-announces-proposed-rule-banning-fake-reviews-testimonials.

[43] *See* esley Fair, *For Business Opportunity Sellers, FTC says "AI" Stands for "Allegedly Inaccurate"*, FTC Business Blog (Aug. 22, 2023), https://www.ftc.gov/business-guidance/blog/2023/08/business-opportunity-sellers-ftc-says-ai-stands-allegedly-inaccurate; Michael Atleson, *Succor Borne Every Minute*, FTC Business Blog (June 11, 2024), https://www ftc.gov/business-guidance/blog/2024/06/succor-borne-every-minute; Michael Atleson, *Can't Lose What You Never Had: Claims About Digital Ownership and Creation in the Age of Generative AI*, FTC Business Blog (Aug. 16, 2023), https://www.ftc.gov/business-guidance/blog/2023/08/cant-lose-what-you-never-had-claims-about-digital-ownership-creation-age-generative-ai; Michael Atleson, *Watching the Detectives: Suspicious Marketing Claims for Tools That Spot AI-Generated Content*, FTC Business Blog (July 6, 2023), https://www.ftc.gov/business-guidance/blog/2023/07/watching-detectives-suspicious-marketing-claims-tools-spot-ai-generated-content; Elisa Jillson, *Hey, Alexa! What Are You Doing With My Data?*, FTC Business Blog (June 13, 2023), https://www ftc.gov/business-guidance/blog/2023/06/hey-alexa-what-are-you-doing-my-data; Michael Atleson, *The Luring Test: AI and the Engineering of Consumer Trust*, FTC Business Blog (May 1, 2023), https://www.ftc.gov/business-guidance/blog/2023/05/luring-test-ai-engineering-consumer-trust; Michael Atleson, *Keep Your AI Claims in Check*, FTC Business Blog (Feb. 27, 2023), https://www.ftc.gov/business-guidance/blog/2023/02/keep-your-ai-claims-check; Elisa Jillson, *Aiming for Truth, Fairness, and Equity in Your Company's Use of AI*, FTC Business Blog (Apr. 19, 2021), https://www.ftc.gov/business-guidance/blog/2021/04/aiming-truth-fairness-equity-your-companys-use-ai.

[44] Press Release, FTC Hosts Virtual Tech Summit on January 25 Focused on Artificial Intelligence (Jan. 24, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-hosts-virtual-tech-summit-january-25-focused-artificial-intelligence.

[45] Press Release, FTC to Host Roundtable Discussion on October 4 on Artificial Intelligence and the Creative Fields (Oct. 3, 2023), https://www ftc.gov/news-events/news/press-releases/2023/10/ftc-host-roundtable-discussion-october-4-artificial-intelligence-creative-fields.

[46] Policy Statement of the Federal Trade Commission on Biometric Information and Section 5 of the Federal Trade Commission Act, https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-warns-about-misuses-biometric-information-harm-consumers.

across investigative teams and contributed their expertise to deepen the Commission's understanding of new technologies.

### B. Protecting Every Community from Fraud and Deceptive Business Practices

The FTC continues to focus on rooting out fraud and deceptive business practices. A top priority has been crafting enforcement strategies designed to promote deterrence, target root causes, and achieve greater protections for the American public.

#### 1. Reducing the Scourge of Unwanted Calls

In FY2023, the FTC received more than 2 million complaints about unwanted calls, including 1.1 million reports about robocalls.[47] The Commission uses every tool at its disposal to combat these calls. Over the years, the FTC has filed 170 enforcement actions against 563 companies and 446 individuals alleged to be responsible for placing billions of unwanted telemarketing calls to consumers. We have also collected nearly $400 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 securing monetary relief so monies could be returned to consumers.[48]

The FTC is also disrupting foreign-based scammers that bring illegal robocalls into the United States. The Commission continues to send warning letters as part of Project Point of No Entry ("PoNE"). PoNE targets "point of entry" or "gateway" Voice over Internet Protocol ("VoIP") service providers.[49] In collaboration with the Federal Communications Commission, the Industry Traceback Group, and state attorneys general, the FTC identifies point of entry VoIP service providers that are routing or transmitting illegal robocall traffic. The FTC then demands that they stop, warns that their conduct may violate the Telemarketing Sales Rule ("TSR"), monitors their pursuit of recalcitrant providers, and conducts law enforcement investigations and files lawsuits when appropriate. Through PoNE, the FTC has sent 31 warning letters to providers that were responsible for more than 450 robocall campaigns. Twenty-two of the 24 providers targeted in earlier rounds significantly curbed or altogether stopped the flow of illegal calls.

On July 18, 2023, the FTC announced Operation Stop Scam Calls, the largest crackdown on illegal telemarking in our history. The Operation consisted of more than 180 actions targeting those responsible for billions of illegal calls to U.S. consumers.[50] More than 100 state and federal

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[47] FTC, Do Not Call Registry Data Book 2023: Complaint Figures for FY 2023 (2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Do-Not-Call-Data-Book-2023.pdf.

[48] Temporary Restraining Order, *FTC v. Smith,* No. 2:23-cv-04848 (E.D. Pa. Dec. 8, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/Weblio-TRO.pdf (freezing the defendants' assets and prohibiting their deceptive practices); Order, *FTC v. Green Equitable Solutions*, No. 2:22-cv-6499 (C.D. Cal. Feb 2, 2024) (banning defendants from telemarketing and ordering them to pay a $15,891,536 monetary judgment).

[49] Press Release, Fed Trade Comm'n, FTC Ramps Up Fight to Close the Door on Illegal Robocalls Originating from Overseas Scammers and Imposters (Apr. 11, 2023), https://www ftc.gov/news-events/news/press-releases/2023/04/ftc-ramps-fight-close-door-illegal-robocalls-originating-overseas-scammers-imposters.

[50] Press Release, Fed. Trade Comm'n, FTC, Law Enforcers Nationwide Announce Enforcement Sweep to Stem the Tide of Illegal Telemarketing Calls to U.S. Consumers (July 18, 2023), https://www ftc.gov/news-

law enforcement partners participated in the sweep. The FTC's cases targeted robocalls at every level, including telemarketers that make robocalls, VoIP providers that provide telemarketers access to telephone networks, and the lead generators that obtain and sell the leads robocallers use to call consumers. In March 2024, a federal district court judge granted one of the VoIP providers' motion to dismiss, finding that the provider was immune from liability under Section 230 of the Communications Decency Act, 47 U.S.C. § 230.[51]

The FTC is determined to go after not only individual bad actors but also the platforms that enable these practices on a massive scale. In March, the Commission announced an amendment to the TSR that will protect businesses against telemarketing fraud and updates the rule's recordkeeping requirements in light of developments in technology and the marketplace. The Commission also has an ongoing rulemaking that would apply the TSR's protections to inbound technical support calls.[52]

Although robocalls remain a scourge, our strategy of targeting upstream facilitators of illegal telemarketing is paying dividends for the American people. In recent months, the number of complaints coming into the FTC around unwanted calls is down more than 60% from the monthly complaint average in the first quarter of 2021.

### 2. Combatting Junk Fees and Unwanted Charges

The FTC is taking bold action to make sure companies honestly compete on price, rather than by cheating consumers with hidden, deceptive junk fees. 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 both undercut honest businesses by making it harder to compete on price and frustrate consumers by hitting them with unexpected charges.

Just a few weeks ago, the FTC, in conjunction with DOJ, charged Adobe and two of its executives with deceiving consumers by hiding early termination fees.[53] The FTC initiated two new rulemakings to address this problematic conduct. In December 2023, the FTC announced a final CARS Rule, which bans certain junk fees and bait-and-switch advertising tactics that can plague consumers throughout the car-buying experience. The rule requires dealers to make key disclosures to consumers, including providing a true "offering price" for a vehicle that is the full price a consumer would pay, excluding only required government charges. The

events/news/press-releases/2023/07/ftc-law-enforcers-nationwide-announce-enforcement-sweep-stem-tide-illegal-telemarketing-calls-us.

[51] Tentative Order, *United States v. Stratics Networks Inc.*, No. 23-cv-0313 (S.D. Cal. March 6, 2024), https://caselaw.findlaw.com/court/us-dis-crt-s-d-cal/115913551.html.

[52] Final Rule 89 Fed. Reg. 26760 (Apr.16, 2024); Notice of Proposed Rulemaking, 89 Fed. Reg. 26798 (Apr. 16, 2024).

[53] Fed. Trade Commn'n, Press Release, FTC Takes Action against Adobe and Executives for Hiding Fees, Preventing Consumers from Easily Cancelling Software Subscriptions (June 17, 2024), *available at* https://www ftc.gov/news-events/news/press-releases/2024/06/ftc-takes-action-against-adobe-executives-hiding-fees-preventing-consumers-easily-cancelling.

Commission estimates that the rule will save car-buying consumers an estimated $3.4 billion dollars and 72 million hours each year.[54]

In October 2023, we announced a separate rulemaking to crack down on deceptive or unfair junk fees across multiple industries. The proposal would prohibit companies from advertising prices that do not include all mandatory fees and prevent companies from misrepresenting the amount and purpose of fees and whether they are refundable. We are reviewing and analyzing thousands of comments from the public on the proposal, and in April 2024, we held an informal hearing on the proposed rule to provide interested organizations an opportunity to provide oral statements.[55]

I am also concerned about junk fees and other unlawful conduct in the housing rental market, and on June 7, 2024, held a listening session in Atlanta with housing advocates, legal services providers, and renters to discuss trends and abuses. Participants provided insights and shared their experiences with various junk fees, such as charging renters to make a payment for "insurance" that in fact paid the landlord's insurance. They described "bait and switch" tactics in which the landlord lures renters with an advertised low rent but then revealing the true cost after renters have paid a non-refundable application fee. They also reported circumvention of state law protections, such as calling security deposits "liquidated damages" to avoid caps.

The Commission has proposed to amend the Negative Option Rule to more effectively address deceptive or unfair practices around negative marketing, including perpetual subscriptions, difficulty in cancellation, and failure to obtain consumers' express, affirmative consent.[56] The proposed rule amendment covers a broad range of recurring subscriptions to ensure that sellers provide important information about these contracts up front, obtain consumers' express informed consent, and provide simple cancellation mechanisms to allow consumers to easily cancel unwanted subscriptions.

### 3. Combatting Fraud Targeting Older Americans

Protecting older consumers continues to be one of the FTC's top priorities, which 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 for allegedly engaging in

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[54] Press Release, Fed. Trade Comm'n, FTC Announces CARS Rule to Fight Scams in Vehicle Shopping (Dec. 12, 2023),https://www.ftc.gov/news-events/news/press-releases/2023/12/ftc-announces-cars-rule-fight-scams-vehicle-shopping. The rule has been challenged in federal court, and the Commission has stayed the effective date of the rule pending judicial review. Press Release, Fed. Trade Comm'n, FTC Pauses CARS Rule Effective Date (Jan. 18, 2024), https://www ftc.gov/news-events/news/press-releases/2024/01/ftc-pauses-cars-rule-effective-date.

[55] Press Release, Fed. Trade Comm'n, FTC Proposes Rule to Ban Junk Fees (Oct. 11, 2023), https://www ftc.gov/news-events/news/press-releases/2023/10/ftc-proposes-rule-ban-junk-fees; Press Release, Fed. Trade Comm'n, FTC to Hold Virtual Informal Hearing on April 24, 2024 As Part of its Review of the Proposed Rule Prohibiting Junk Fees (Mar. 21, 2024) https://www.ftc.gov/news-events/news/press-releases/2024/03/ftc-hold-virtual-informal-hearing-april-24-2024-part-its-review-proposed-rule-prohibiting-junk-fees.

[56] 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.

illegal practices that disproportionately impact older adults, such as tech support scams,[57] sham health plans,[58] and deceptive sweepstakes.[59] In addition, as with its work on unwanted calls, the FTC is going after entities that allegedly facilitate scams (like the grandparent and lottery or sweepstakes scams) at scale.[60] Reports to the FTC suggest that older adults lose more money to investment scams than any other category of fraud.[61] The FTC has aggressively gone after companies for making allegedly deceptive earnings claims, including actions against investment advisors,[62] crypto and other bogus business scams,[63] and moneymaking schemes that capitalized on false claims about using AI to boost earnings.[64]

The agency's education and outreach work complement this vigorous enforcement with its most popular education campaign, Pass It On ("Pásalo" in Spanish).[65] Since its original launch in 2014, more than 20 million Pass It On materials have been distributed nationwide in English and Spanish. During 2022, the FTC released updated Pass It On content and promoted it through a series of webinars presented to thousands of representatives from congressional offices, aging services providers, and military support 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 strategies to protect older Americans.

The Commission coordinates with various stakeholders in its efforts to protect older adults from scams. Pursuant to the Stop Senior Scams Act of 2022, the Commission formalized its collaborations by establishing the Scams Against Older Adults Advisory Group. In April 2024, the Advisory Group issued guidance on effective consumer education and outreach, best

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[57] Press Release, Fed. Trade Comm'n, Tech Support Firms Will Pay $26 Million to Settle FTC Charges That They Deceived Consumers Into Buying Repair Services (Mar. 14, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/03/tech-support-firms-will-pay-26-million-settle-ftc-charges-they-deceived-consumers-buying-repair.
[58] Press Release, Fed. Trade Comm'n, FTC Obtains $195 Million Judgment, Permanent Ban on Telemarketing and Selling Healthcare Products Against Simple Health Over Charges It Sold Sham Health Insurance (Feb. 9, 2024), https://www ftc.gov/news-events/news/press-releases/2024/02/ftc-obtains-195-million-judgment-permanent-ban-telemarketing-selling-healthcare-products-against.
[59] Press Release, Fed. Trade Comm'n, FTC Action Leads to Sweepstakes Ban For Three Individuals Who Ran Massive Scheme That Cost Consumers Millions (June 24, 2024), https://www ftc.gov/news-events/news/press-releases/2024/06/ftc-action-leads-sweepstakes-ban-three-individuals-who-ran-massive-scheme-cost-consumers-millions; Press Release, Fed. Trade Comm'n, FTC Takes Action Against Publishers Clearing House for Misleading Consumers About Sweepstakes Entries (June 27, 2023), https://www ftc.gov/news-events/news/press-releases/2023/06/ftc-takes-action-against-publishers-clearing-house-misleading-consumers-about-sweepstakes-entries.
[60] Complaint, *FTC v. Walmart, Inc.*, No: 1:22-cv-03372 (N.D. Ill. June 28, 2022), https://www ftc.gov/legal- library/browse/cases-proceedings/182-3012-walmart-ftc-v.
[61] FTC, Protecting Older Consumers 2022-2023: A Report of the Fed. Trade Comm'n, at 26 (Oct. 2023), *available at* https://www ftc.gov/system/files/ftc_gov/pdf/p144400olderadultsreportoct2023.pdf (last visited Apr. 29, 2024).
[62] Press Release, Fed. Trade Comm'n, FTC Sends $1.2 Million in Refunds to Consumers Harmed by Deceptive Investment Claims (Apr. 9, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-sends-12-million-refunds-consumers-harmed-deceptive-investment-claims.
[63] Press Release, Fed. Trade Comm'n, FTC Sends $2.8 Million in Refunds to Consumers Harmed by DK Automation's Phony Online Business and Crypto Moneymaking Schemes (Mar. 28, 2024), https://www ftc.gov/news-events/news/press-releases/2024/03/ftc-sends-28-million-refunds-consumers-harmed-dk-automations-phony-online-business-crypto.
[64] Press Release, Fed. Trade Comm'n, FTC Action Leads to Ban for Owners of Automators AI E-Commerce Money-Making Scheme (Feb. 27, 2024), https://www ftc.gov/news-events/news/press-releases/2024/02/ftc-action-leads-ban-owners-automators-ai-e-commerce-money-making-scheme.
[65] *See* http://www ftc.gov/PassItOn and http://www.ftc.gov/Pasalo.

practices on training industry employees to spot and stop scams, and a report that highlights existing research on effective scam prevention messaging and outlines where additional research is necessary.[66] The Advisory Group made these resources publicly available to assist industry and others to stop scams from impacting older adults.[67] The Commission's annual report to Congress describes in detail our work for older adults.[68]

### 4. Protecting Servicemembers and Veterans

Combatting fraud aimed at servicemembers remains a top priority. In July 2022, in its first case enforcing the Military Lending Act,[69] the FTC and a group of 18 states took action against Harris Jewelry, a national jewelry retailer, to resolve allegations that the company targeted 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.[70] The Commission's efforts to protect military and veteran communities include a vigorous, long-standing educational campaign and close coordination with servicemember and veteran agencies.[71] This collaborative outreach is the cornerstone of the annual Military Consumer Month,[72] which the FTC created and manages with its partners, including AARP's Veterans & Military Families Initiative.[73] The agency also participates in an ongoing working group led by the Department of Veterans Affairs ("VA") to inform veterans how to avoid scams and recently joined the VSAFE, an initiative organized by the Executive Office of the President and the VA to collaborate on outreach resources and activities to alert veterans and their families of evolving scams. Additionally, the FTC's CARS Rule will protect servicemembers, who are frequent targets of vehicle scams, from dishonest practices, including misrepresentations that dealers are affiliated with the military.[74]

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[66] *See* FTC, Second Scams Against Older Adults Advisory Group Meeting (Apr. 2, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/03/ftc-convenes-advisory-group-fight-scams-against-older-adults.

[67] FTC, Addressing Scams Affecting Older Adults, available at https://consumer ftc.gov/features/addressing-scams-affecting-older-adults.

[68] FTC, Protecting Older Consumers 2022-2023: A Report of the Fed. Trade Comm'n (Oct. 2023), https://www ftc.gov/reports/protecting-older-consumers-2022-2023-report-federal-trade-commission.

[69] 10 U.S.C. § 987.

[70] 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-releases/2022/07/ftc-18-states-sue-stop-harris-jewelry-cheating-military-families-illegal-financing-sales-tactics; *see also infra* note 75 (discussing action against BurgerIM for deceiving veterans).

[71] *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)).

[72] *See* Consumer Alert, Fed. Trade Comm'n, Time to help your buddies (June 30, 2023), https://www militaryconsumer.gov/blog/time-help-your-buddies (military consumer alert celebrating Military Consumer Month and launching a blog series tackling topics including romance scams, veteran benefits, identity theft, and investment scams).

[73] *See* AARP, Veterans and Military Families, https://www.aarp.org/volunteer/causes/veterans-military-families/.

[74] Press Release, Fed. Trade Comm'n, FTC Announces CARS Rule to Fight Scams in Vehicle Shopping (Dec. 12, 2023), https://www ftc.gov/news-events/news/press-releases/2023/12/ftc-announces-cars-rule-fight-scams-vehicle-shopping. The rule has been challenged in federal court, and the Commission has stayed the effective date of the rule pending judicial review. Press Release, Fed. Trade Comm'n, FTC Pauses CARS Rule Effective Date (Jan. 18, 2024), https://www ftc.gov/news-events/news/press-releases/2024/01/ftc-pauses-cars-rule-effective-date.

### 5. Preventing Financial Exploitation

The FTC brought 18 federal court actions in recent years against companies that allegedly targeted financially insecure consumers and made false credit repair, mortgage, or other debt relief promises,[75] as well as one action against a debt relief payment processor.[76] For example, in February of this year, the FTC and the California Department of Financial Protection and Innovation were awarded $19 million for consumer refunds and civil penalties in their law enforcement action against several corporate and individual defendants doing business as Home Matters USA, for operating what the federal district court found to be sham mortgage relief services that misled consumers and cost them millions.[77] The court barred the defendants from engaging in telemarketing and debt relief services and from deploying further misrepresentations. The FTC also took action against two companies—Biz2Credit and Womply—that made false promises to small businesses seeking to take part in the Paycheck Protection Program (PPP), delaying and sometimes preventing them from obtaining funds they needed to keep their businesses afloat during the COVID-19 pandemic, securing settlements of $33 million in Biz2Credit and $26 million in Womply, which are the largest damages amounts ever secured by the agency under Section 19 of the FTC Act.[78] In addition, the Commission is

[75] Complaint, *FTC v. Intercont'l Sols. LLC*, No. 8:23-cv-01495-SB-JDE (C.D. Cal. 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/Complaint_0.pdf; Complaint, *FTC v. BCO Consulting Servs., Inc.*, No. 8:23-cv-00699-JWH-ADS (C.D. Cal. 2023), https://www ftc.gov/system/files/ftc_gov/pdf/FTC-v-BCO-Consulting-Services-Inc-et-al-23-cv-0699-Complaint.pdf; Complaint, *FTC v. SL Fin. LLC*, No. 8:23-cv-00698-JWH-ADS (C.D. Cal. 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/01-Complaint-FTC-v-SL-Finance-LLC.pdf; Complaint, *FTC v. Michael Rando*, No. 3:22-cv-00487-TJC-MCR (M.D. Fla. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/01%20-%20Complaint.pdf; 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*., 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 & Cal. Dep't of Fin. Prot. & Innovation 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; *FTC & Fla. Att'y Gen. v. GDP Network LLC*, No. 6:20-cv-01192-WWB-DCI (M.D. Fla. 2022), https://www ftc.gov/system/files/documents/cases/1923137yfsolutioncomplaint_0.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 & Minn. 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-01728-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 (C.D. Cal. 2019), https://www.ftc.gov/system/files/documents/cases/192_3105_elegant_solutions_-_first_amended_complaint.pdf.

[76] Complaint, *FTC v. Automatic Funds Transfer Servs., Inc.*, No. 1:21-cv-02932 (D.D.C. 2021), https://www ftc.gov/system/files/documents/cases/complaint_7.pdf.

[77] Press Release, Fed. Trade Comm'n, FTC, California DFPI Case Leads to Ban Against Operators of Mortgage Relief Scam Home Matters USA (Feb. 16, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/02/ftc-california-dfpi-case-leads-ban-against-operators-mortgage-relief-scam-home-matters-usa.

[78] Press Release, Fed. Trade Comm'n., FTC Actions Against Companies Making Deceptive Pandemic Loan Promises Lead to Record $59 Million in Damages (Mar. 18, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/03/ftc-actions-against-companies-making-deceptive-pandemic-loan-promises-lead-record-59-million-damages.

working closely with the Department of Education to prevent fraud around recent changes to the student loan program[79] and to ensure relief for those affected by deceptive practices of for-profit colleges.[80]

### 6. Fighting Opioid Recovery Fraud and Other Health-Related Misconduct

The FTC has activated 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 April 2024, we announced two OARFPA actions against Monument[81] and Cerebral,[82] whom the Commission alleged engaged in deceptive practices in disclosing to third parties for advertising purposes the personal health data of users seeking substance use disorder treatment. In Monument, we obtained a suspended $2.5 million civil penalty, and in Cerebral, we partnered with the Department of Justice to obtain a partially suspended civil penalty judgment of $10 million. In 2023, we brought three additional OARFPA actions challenging deceptive claims for products and services purporting to treat or cure substance use disorders. In Smoke Away, the FTC obtained a $7.6 million judgment for consumer redress and civil penalties in a settlement against the company for allegedly deceptive advertising that its products eliminate nicotine addiction.[83] In Rejuvica, we obtained a partially suspended $3.2 million judgment against the company for allegedly deceptive claims that its products reduced alcohol cravings.[84] Finally, in AWAREmed, we obtained a $100,000

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[79] *See* Terri Miller, *Scammers follow the news about student loan forgiveness*, FTC (Apr. 16, 2024), https://consumer ftc.gov/consumer-alerts/2024/04/scammers-follow-news-about-student-loan-forgiveness; Ari Lazarus, *Pay your student loans – not scammers*, FTC (Sept. 14, 2023), https://consumer ftc.gov/consumer-alerts/2023/09/pay-your-student-loans-not-scammers; Ari Lazarus, *Did you hear the SCOTUS decision on student loan debt relief? So did scammers.*, FTC (July 1, 2023), https://consumer.ftc.gov/consumer-alerts/2023/07/did-you-hear-scotus-decision-student-loan-debt-relief-so-did-scammers.

[80] *See* Press Release, Fed. Trade Comm'n, FTC Action Leads U.S. Dept. of Education to Forgive Nearly $37 Million in Loans for Students Deceived by University of Phoenix (Sept. 20, 2023), https://www ftc.gov/news-events/news/press-releases/2023/09/ftc-action-leads-us-dept-education-forgive-nearly-37-million-loans-students-deceived-university; 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; *see also* Press Release, Fed. Trade Comm'n, FTC Sues Grand Canyon University for Deceptive Advertising and Illegal Telemarketing (Dec. 23, 2023), https://www ftc.gov/news-events/news/press-releases/2023/12/ftc-sues-grand-canyon-university-deceptive-advertising-illegal-telemarketing.

[81] Press Release, Fed. Trade Comm'n, Alcohol Addiction Treatment Firm will be Banned from Disclosing Health Data for Advertising to Settle FTC Charges that It Shared Data Without Consent (April 11, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/04/alcohol-addiction-treatment-firm-will-be-banned-disclosing-health-data-advertising-settle-ftc.

[82] Press Release, Fed. Trade Comm'n, Proposed FTC Order will Prohibit Telehealth Firm Cerebral from Using or Disclosing Sensitive Data for Advertising Purposes, and Require it to Pay $7 Million (April 15, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/04/proposed-ftc-order-will-prohibit-telehealth-firm-cerebral-using-or-disclosing-sensitive-data.

[83] Press Release, Fed. Trade Comm'n, FTC Acts to Stop Owner, Marketers of 'Smoke Away' from Deceptively Claiming Products Enable Users to Quit Smoking (June 30, 2023), https://www ftc.gov/news-events/news/press-releases/2023/06/ftc-acts-stop-owner-marketers-smoke-away-deceptively-claiming-products-enable-users-quit-smoking.

[84] Press Release, Fed. Trade Comm'n, FTC Takes Action Against Makers of Sobrenix Supplement That Deceptively Claimed to Reduce Alcohol Cravings, Relied on Fake Endorsements July 19, 2023), https://www.ftc.gov/news-

civil penalty against a treatment clinic for allegedly deceptive claims about addiction and cancer treatment.[85] All three of these cases additionally involved alleged deceptive endorsements or testimonials.

The FTC also has used its authorities to put an end to a variety of other deceptive claims about health products or services. In January 2023, the FTC stopped allegedly deceptive bait-and-switch advertising for vision correction services, which waste consumers' time and put honest businesses at a disadvantage.[86] In November 2023, the FTC and the California Attorney General jointly obtained an order against CRI Genetics resolving allegations that the company deceived consumers about the accuracy of its test reports compared with those of other DNA testing companies; falsely claimed to have patented an algorithm for its genetic matching process; used fake reviews; and utilizedused "dark patterns" to trick consumers into paying for products they did not agree to buy. To settle these allegations, the company paid a $700,000 civil penalty.[87] Finally, to ensure businesses avoid running afoul of the FTC Act, in 2022 FTC staff issued the *Health Products Compliance Guidance*, the first update the FTC has made to its health-product business guidance in nearly 25 years.[88]

### 7. 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 all consumers, including veterans and servicemembers, rural communities, older adults, historically underserved and lower-income communities, among others. Through this approach, the agency has provided these communities with practical, language-appropriate, and user-friendly educational resources and information to help them spot, avoid, and report scams. The FTC continues to translate all its consumer education materials into Spanish and has expanded its reach to speakers of other languages. By translating key materials for consumers and small businesses into 12 languages, the FTC is paralleling its effort to expand in-language reporting capabilities of the Consumer Sentinel Network.[89] FTC resources in other languages include information on spotting and avoiding common scams, online safety for parents and children, identity theft, information for

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events/news/press-releases/2023/07/ftc-takes-action-against-makers-sobrenix-supplement-deceptively-claimed-reduce-alcohol-cravings.

[85] 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.

[86] 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.

[87] Press Release, Fed. Trade Comm'n, FTC, California Obtain Order Against DNA Testing Firm over Charges it Made a Myriad of Misrepresentations to Consumers to Entice Them to Buy Ancestry Reports (Nov. 21, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/11/ftc-california-obtain-order-against-dna-testing-firm-over-charges-it-made-myriad-misrepresentations.

[88] 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.

[89] See www ftc.gov/languages for consumer and business education in multiple languages, and www.ReportFraud ftc.gov and www.IdentityTheft.gov for how to submit in-language reports through the FTC's Call Center.

immigrants and refugees, as well as resources for small business owners.[90] To advance the agency's goal of reaching all consumers, the FTC engages in ethnic and community media telebriefings, in-person roundtables, and paid media campaigns that have led to millions of impressions through print, radio, and digital media.

### C. Ensuring Fairness for Workers, Entrepreneurs, and Small Businesses

American workers and small businesses are consumers too, and the Commission is taking a comprehensive approach—through enforcement, rulemaking, and advocacy—to ensure that they are not held back by unfair or deceptive practices.

#### 1. Ensuring Domestic Manufacturers Can Compete Fairly

Marketers making false "Made in USA" claims can expect consequences. Recently, the Commission announced its largest-ever action targeting deceptive Made in USA claims. In an action against Williams-Sonoma, the Commission secured a $3 million civil penalty and strong injunctive relief to prevent further deception. This action builds on nearly a dozen actions over the last three years to combat deceptive Made in USA marketing.

For example, in January we charged tractor maker Kubota North America Corporation with deceptively labeling thousands of imported replacement parts as Made in USA. That action resulted in a $2 million civil penalty.[91] Other recent Made in USA actions have involved companies making false claims for imported textile products,[92] glass baking products,[93] and motocross parts.[94]

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. The Commission will also continue to return significant funds to consumers deceived by these claims whenever possible.[95]

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[90] *See* FTC, *Consumer Education in Multiple Languages*, 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.

[91] *U.S. v. Kubota North America Corp*., No. 3:24-cv-00159-S (N.D. Tex. Jan 25, 2024).

[92] *See In re Lions Not Sheep Products, LLC*, 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*, No. C-4779 (Oct. 25, 2022) (imported bedding products entering the USA pre-labeled as "Made in USA").

[93] *In re Instant Brands LLC*, Docket No. C-4788 (Mar. 1, 2023) (imported glass measuring cups advertised as "Made in USA").

[94] In re Cycra, Inc., Docket No. C-4794 (May 2023).

[95] *See, e.g.*, redress programs in *In re Resident Home LLC*, No. C-4767; *In re Lions Not Sheep Products, LLC*, No. C-4772, and others.

### 2. Helping Consumers to Repair Their Products and Giving Independent Repairers a Chance to Compete

In May 2021, the Commission submitted a report to Congress entitled *Nixing the Fix: An FTC Report to Congress on Repair Restrictions*.[96] In the report, the Commission found "scant evidence" to support manufacturers' justifications for repair restrictions.[97] The Commission followed this report with an enforcement policy statement and three major actions against companies for allegedly imposing unlawful repair restrictions on consumers.[98] FTC staff also recently sent letters to eight companies regarding potentially improper repair restrictions.[99] The Commission also is exploring other avenues to strengthen consumers' rights, including by supporting legislative efforts to advance the right to repair.[100]

### 3. 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, for example, we partnered with the Department of Justice ("DOJ") to file a suit against a fast-food chain, 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.[101] In November 2023,

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[96] FTC, Nixing the Fix: An FTC Report to Congress on Repair Restrictions (May 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.

[97] *Id*. at 6.

[98] Policy Statement of the Federal Trade Commission on Repair Restrictions Imposed by Manufacturers and Sellers (July 21, 2021), https://www ftc.gov/system/files/documents/public_statements/1592330/p194400repairrestrictionspolicystatement.pdf; Press Release, Fed. Trade Comm'n, FTC Takes Action Against Harley-Davidson and Westinghouse for Illegally Restricting Customers' Right to Repair (June 23, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-takes-action-against-harley-davidson-westinghouse-illegally-restricting-customers-right-repair-0; Press Release, Fed. Trade Comm'n, FTC Takes Action Against Weber for Illegally Restricting Customers' Right to Repair (July 7, 2022), https://www ftc.gov/news-events/news/press-releases/2022/07/ftc-takes-action-against-weber-illegally-restricting-customers-right-repair.

[99] Press Release, Fed. Trade Comm'n, FTC Warns Companies to Stop Warranty Practices That Harm Consumers' Right to Repair (July 3, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-warns-companies-stop-warranty-practices-harm-consumers-right-repair.

[100] Press Release, Fed. Trade Comm'n, FTC Testifies Before California State Senate on Right to Repair (Apr. 11, 2023), https://www ftc.gov/news-events/news/press-releases/2023/04/ftc-testifies-california-state-senate-right-repair; Press Release, Fed. Trade Comm'n, FTC Testifies in Support of Colorado's Right-to-Repair Law (Feb. 29, 2024), https://www ftc.gov/news-events/news/press-releases/2024/02/ftc-testifies-support-colorados-right-repair-law; Press Release, Fed. Trade Comm'n, FTC and DOJ File Comment with the U.S. Copyright Office Supporting Renewal and Expansion of Exemptions Facilitating Consumers' and Businesses' Right to Repair Their Own Products (Mar. 14, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/03/ftc-doj-file-comment-us-copyright-office-supporting-renewal-expansion-exemptions-facilitating.

[101] 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.

the court entered a stipulated permanent injunction against the individual defendant[102] and in January 2024, the court entered a default judgment against the corporate defendants.[103]

In March 2023, the agency issued a Request for Information ("RFI") related to franchise agreements and franchisor business practices. [104] The RFI sought information about the means by which franchisors may exert control over franchisees and their workers. In addition, last year the FTC launched the consumer education blog series entitled Franchise Fundamentals in which the FTC highlights for prospective franchisees factors they should consider when deciding whether to purchase a franchise. The five-part blog series covered: (1) debunking certain myths about being a franchisee;[105] (2) researching franchise opportunities;[106] (3) a review of the items listed in franchise disclosure documents;[107] (4) key steps prospective franchisees should take before joining a franchise;[108] and (5) reducing risk and reporting to the FTC.[109]

Finally, the agency is building on these efforts through policy and advocacy. In December 2021, the FTC filed an amicus brief in a class action suit by 7-Eleven franchisees in which the Commission successfully argued that the FTC's Franchise Rule does not address whether franchisees are employees under Massachusetts law. Most recently, the agency issued the Noncompete Clause Rule, which, among other things, prohibits imposing noncompete clauses on workers, including franchisees' employees.[110]

### 4. Protecting Gig Workers from Deceptive Earnings Claims

The Commission is taking action to ensure companies cannot make deceptive earnings or income claims to attract consumers seeking work in the "gig economy." The Commission recently took action against Arise Virtual Solutions Inc., alleging that the company inflated the amount of income and hourly wages that consumers would earn, including after the Commission sent a Notice of Penalty of Offenses Concerning Money-Making Opportunities to the company,

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[102] *FTC v. BurgerIM Group USA, Inc., et al.,* No. CV 22-825 (Feb. 7, 2022). Among other things, the order bans defendant Loni from selling franchises and includes a suspended monetary judgment of more than $38,000,000 in consumer redress and $5,000,000 in civil penalties.

[103] *Id.* The order, among other things, bans the defendants from selling franchises and includes a monetary judgment of more than $48,000,000 for consumer redress and $7,750,000 in civil penalties.

[104] 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.

[105] Lesley Fair, Franchise Fundamentals: Debunking five myths about buying a franchise (Apr. 24, 2023), https://www ftc.gov/business-guidance/blog/2023/04/franchise-fundamentals-debunking-five-myths-about-buying-franchise.

[106] Lesley Fair, Franchise Fundamentals: Researching franchise opportunities (May 2, 2023), https://www ftc.gov/business-guidance/blog/2023/05/franchise-fundamentals-researching-franchise-opportunities.

[107] Lesley Fair, Franchise Fundamentals: Taking a deep dive into the Franchise Disclosure Document (May 24, 2023), https://www ftc.gov/business-guidance/blog/2023/05/franchise-fundamentals-taking-deep-dive-franchise-disclosure-document.

[108] Lesley Fair, Franchise Fundamentals: Considering, calculating, and consulting (July 10, 2023), https://www ftc.gov/business-guidance/blog/2023/07/franchise-fundamentals-considering-calculating-consulting

[109] Lesley Fair, Franchise Fundamentals: Reducing the risks – and reporting if things go awry (Aug. 29, 2023), https://www ftc.gov/business-guidance/blog/2023/08/franchise-fundamentals-reducing-risks-reporting-if-things-go-awry.

[110] Press Release, Fed. Trade Comm'n, FTC Announces Rule Banning Non-competes (April 23, 2024), https://www ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes.

and violated the Business Opportunity Rule by, among others things, making earnings claims in the general media without the required substantiation and disclosures.[111] In addition to earning less than advertised, consumers who worked as "agents" for Arise were required to spend money on a mandatory background check fee and training enrollment prior to July 2022, and some were required to purchase equipment, all before they could work for Arise. The order prohibits unsubstantiated earnings claims and requires the company to pay $7 million.

## IV. COMPETITION MISSION

To ensure the Commission is faithfully discharging its statutory obligations, the FTC is using all its authorities to maximize the agency's impact as we combat and prevent unfair methods of competition.

### A. Prioritizing Vigorous Merger Enforcement to Combat Consolidation

The FTC is charged with preventing mergers that may substantially lessen competition or tend to create a monopoly. All too often, consolidation fueled by mergers and acquisitions have yielded markets with higher prices, less choice, lower quality, depressed wages, fewer opportunities, and less resiliency.

The work that the FTC does to prevent unlawful consolidation is enormously demanding, resource-intensive, and critically important. While merger filings have fallen from their recent peak in 2021, Commission staff and resources are still strained by the short statutory deadlines and the scale, volume, and complexity of mergers. Against this backdrop, the FTC remains committed to identifying and challenging unlawful mergers and acquisitions.

Consistent with these principles, in FY2023 and to date in FY2024, the FTC has moved to challenge major transactions in sectors across the economy, including retail grocery, energy, healthcare, mortgage technology, and digital markets.[112] This includes filing suit to block ten mergers outright,[113] as well as scrutinizing 21 other anticompetitive mergers that parties

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[111] Press Release, Fed. Trade Comm'n, FTC Takes Action Against Gig Work Company Arise Virtual Solutions for Deceiving Consumers About Pay in Marketing Its Business Opportunity (July 2, 2024), https://www ftc.gov/news-events/news/press-releases/2024/07/ftc-takes-action-against-gig-work-company-arise-virtual-solutions-deceiving-consumers-about-pay.

[112] 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.

[113] Press Release, Fed. Trade Comm'n, FTC Moves to Block Tempur Sealy's Acquisition of Mattress Firm (July 2, 2024), https://www ftc.gov/news-events/news/press-releases/2024/07/ftc-moves-block-tempur-sealys-acquisition-mattress-firm; Press Release, Fed. Trade Comm'n, FTC Moves to Block Tapestry's Acquisition of Capri (Apr. 22, 2024), https://www ftc.gov/news-events/news/press-releases/2024/04/ftc-moves-block-tapestrys-acquisition-capri; Press Release, Fed. Trade Comm'n, FTC Challenges Kroger's Acquisition of Albertsons (Feb. 26, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/02/ftc-challenges-krogers-acquisition-albertsons; Press Release, Fed. Trade Comm'n, FTC Sues to Block Novant Health's Acquisition of Two Hospitals from Community Health Systems (Jan. 25, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-sues-block-novant-healths-acquisition-two-hospitals-community-health-systems; Press Release, Fed. Trade Comm'n, FTC Seeks to Block Sanofi's Acquisition of Rare Disease Drug that Threatens Sanofi's Monopoly (Dec. 11, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/12/ftc-seeks-block-sanofis-acquisition-rare-disease-drug-threatens-sanofis-monopoly; Press Release, Fed. Trade Comm'n, FTC Sues to Block John Muir Health's

ultimately abandoned or restructured after the agency indicated competition concerns but before it filed a complaint.[114]

The Commission is particularly concerned about mergers that may cause significant economy-wide harm. Earlier this year, the Commission challenged Kroger Company's $24.6 billion acquisition of Albertsons, the largest supermarket deal in U.S. history. The Commission authorized staff to seek a preliminary injunction in federal court to block the merger, alleging that it would lead to higher prices for groceries and other essential household items for millions of Americans.[115] The Commission's complaint also alleges that the merger would eliminate competition for workers in certain areas of the country, threatening the ability of employees to secure higher wages, better benefits, and improved working conditions. A federal district court hearing is scheduled for August 2024.

The Commission remains committed to stopping illegal mergers, especially in markets for healthcare services.[116] Those mergers threaten patients with higher cost and lower quality

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Takeover of San Ramon Regional Medical Center (Nov. 17, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/11/ftc-sues-block-john-muir-healths-takeover-san-ramon-regional-medical-center; Press Release, Fed. Trade Comm'n, FTC Sues to Block IQVIA's Acquisition of Propel Media to Prevent Increased Concentration in Health Care Programmatic Advertising (July 17, 2023), https://www ftc.gov/news-events/news/press-releases/2023/07/ftc-sues-block-iqvias-acquisition-propel-media-prevent-increased-concentration-health-care; Press Release, Fed. Trade Comm'n, FTC Sues to Block Biopharmaceutical Giant Amgen from Acquisition That Would Entrench Monopoly Drugs Used to Treat Two Serious Illnesses (May 16, 2023), https://www ftc.gov/news-events/news/press-releases/2023/05/ftc-sues-block-biopharmaceutical-giant-amgen-acquisition-would-entrench-monopoly-drugs-used-treat; 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.

[114] *See, e.g.*, Press Release, Fed. Trade Comm'n, FTC Statement on Amendment to Global Partners, Gulf Oil Acquisition (Apr. 9, 2024), https://www ftc.gov/news-events/news/press-releases/2024/04/ftc-statement-amendment-global-partners-gulf-oil-acquisition; Press Release, Fed. Trade Comm'n, Statement Regarding the Termination of Qualcomm's Proposed Acquisition of Autotalks (Mar. 25, 2024), https://www ftc.gov/news-events/news/press-releases/2024/03/statement-regarding-termination-qualcomms-proposed-acquisition-autotalks; Press Release, Fed. Trade Comm'n, Statement Regarding the Termination of Choice Hotel's Proposed Takeover of Wyndham Hotels & Resorts (Mar. 12, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/03/statement-regarding-termination-choice-hotels-proposed-takeover-wyndham-hotels-resorts; Press Release, Fed. Trade Comm'n, Statement Regarding the Termination of Amazon's Proposed Acquisition of iRobot (Jan. 31, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/01/statement-regarding-termination-amazons-proposed-acquisition-irobot.

[115] Press Release, Fed. Trade Comm'n, FTC Challenges Kroger's Acquisition of Albertsons (Feb. 26, 2024), https://www ftc.gov/news-events/news/press-releases/2024/02/ftc-challenges-krogers-acquisition-albertsons.

[116] *See, e.g.*, Press Release, Fed. Trade Comm'n, FTC Sues to Block Merger Between Utah Healthcare Rivals HCA Healthcare and Steward Health Care System (June 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, Federal Trade Commission Opposition to Transaction Leads New Jersey Healthcare Rivals RWJBarnabas Health and Saint Peter's Healthcare System to Abandon Proposed Merger (June 14, 2022), https://www ftc.gov/news-events/news/press-releases/2022/06/federal-trade-commission-opposition-transaction-leads-new-jersey-healthcare-rivals-rwjbarnabas. 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

care[117] and healthcare workers with lower wages and poorer working conditions. Last November, the Commission took action to block John Muir Health's proposed acquisition of sole ownership rights in San Ramon Regional Medical Center, a rival hospital that also provides care to patients in California's I-680 corridor. In a joint complaint filed with the California Attorney General, the Commission alleged the deal would allow John Muir to demand higher rates at its two hospitals as well as San Ramon Medical for inpatient general acute care services, which covers a broad range of essential medical, surgical, and diagnostic services that require an overnight hospital stay. Soon after the Commission filed suit, the companies abandoned their plans.[118] Similarly, in January, the Commission moved to block Novant Health Inc.'s $320 million acquisition of two rival hospitals serving North Carolina's Eastern Lake Norman Area. The Commission alleged that the acquisition would allow Novant to control nearly 65 percent of inpatient general acute care services in the area, likely leading to higher costs that are passed on to patients.[119] Following the Commission's challenge, the companies called off the transaction.[120]

The Commission is also focused on acquisitions by pharmaceutical companies that threaten to raise the cost of life-saving treatments. In May 2023, the Commission moved to block Amgen's $27.9 billion acquisition of Horizon Therapeutics. In a joint complaint filed with the attorneys general from six states, the Commission alleged that the deal would allow Amgen to leverage its portfolio of blockbuster drugs to entrench the monopoly positions of Horizon medications used to treat two serious conditions, thyroid eye disease and chronic refractory gout. In particular, the Commission alleged that as one of the world's largest biopharmaceutical companies—with global sales of $24.8 billion and a product portfolio that included blockbuster drugs such as Enbrel (for rheumatoid arthritis), Otezla (psoriasis), and Prolia (osteoporosis)—Amgen could further entrench its position to negotiate with insurers and PBMs to gain advantages over potential rivals through strategies such as cross-market bundling. To settle these

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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.

[117] *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).

[118] *See* Press Release, Statement Regarding the Termination of John Muir's Takeover of San Ramon Regional Medical Center from Tenet Healthcare (Dec. 18, 2023), https://www ftc.gov/news-events/news/press-releases/2023/12/statement-regarding-termination-john-muirs-takeover-san-ramon-regional-medical-center-tenet.

[119] Press Release, FTC Sues to Block Novant Health's Acquisition of Two Hospitals from Community Health Systems (Jan. 25, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-sues-block-novant-healths-acquisition-two-hospitals-community-health-systems.

[120] *See* Press Release, Fed. Trade Comm'n, Statement Regarding the Termination of Novant Health's Acquisition of Hospitals from Community Health Systems (July 1, 2024), https://www ftc.gov/news-events/news/press-releases/2024/07/statement-regarding-termination-novant-healths-acquisition-hospitals-community-health-systems.

charges, Amgen agreed not to bundle any Amgen product with the two Horizon products, Tepezza or Krystexxa, or to condition any product rebate on the sale of these drugs.[121]

The Commission works to prevent dominant incumbents from acquiring nascent competitors that are poised to enter the market and challenge their existing monopoly power. In December 2023, the Commission filed suit to block Sanofi's proposed acquisition of an exclusive license to Maze Therapeutics Inc.'s therapy-in-development to treat Pompe disease, a debilitating and potentially fatal genetic disorder. According to the Commission's complaint, Sanofi is a monopoly supplier of Food and Drug Administration ("FDA") approved drugs to treat the disease, and Maze's Phase 2-ready developmental drug—a glycogen synthase 1 inhibitor called MZE001—threatened to undermine this monopoly as the first oral medication available for Pompe disease patients. After the Commission filed suit, Sanofi abandoned its plans.[122]

The Commission has also taken action to protect competition in energy markets. In May 2024, the FTC issued a consent order to resolve antitrust concerns surrounding Exxon Mobil Corporation's acquisition of oil producer Pioneer Natural Resources.[123] The FTC's complaint alleged that former Pioneer CEO Scott Sheffield had, through public statements and private communications, attempted to coordinate with representatives of OPEC and a related cartel of other oil-producing countries known as OPEC+ to reduce output of oil and gas. The proposed consent order prevents Sheffield from gaining a seat on Exxon's board of directors or serving in an advisory capacity at Exxon.

In August 2023, the FTC issued a consent order to resolve antitrust concerns stemming from a deal between private equity firm Quantum Energy Partners and natural gas producer EQT Corporation, both direct competitors in the production and sale of natural gas in the Appalachian Basin, the largest natural gas-producing region in the United States.[124] According to the FTC's complaint, the proposed deal would have made Quantum one of EQT's largest shareholders and given Quantum, an active investor in natural gas in the region, a seat on EQT's board of directors. The Commission had reason to believe this was deal was illegal because it would provide Quantum with the ability to sway or influence EQT's competitive decision-making and to access EQT's competitively sensitive information. The FTC's order enacted ground-breaking structural relief, prohibiting Quantum from occupying the EQT board seat, requiring Quantum to divest its EQT shares, prohibiting information exchange, and unwinding a separate joint venture

[121] *See* Press Release, FTC Approves Final Order Settling Horizon Therapeutics Acquisition Challenge (Dec. 14, 2023), https://www ftc.gov/news-events/news/press-releases/2023/12/ftc-approves-final-order-settling-horizon-therapeutics-acquisition-challenge.

[122] Press Release, Fed. Trade Comm'n, FTC Acts to Prevent Interlocking Directorate Arrangement, Anticompetitive Information Exchange in EQT, Quantum Energy Deal (Aug. 16, 2022), https://www ftc.gov/news-events/news/press-releases/2023/08/ftc-acts-prevent-interlocking-directorate-arrangement-anticompetitive-information-exchange-eqt.

[123] Press Release, Statement Regarding the Termination of Sanofi's Proposed Acquisition of Maze Therapeutics' Pompe Disease Drug (Dec. 13, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/12/statement-regarding-termination-sanofis-proposed-acquisition-maze-therapeutics-pompe-disease-drug.

[124] Press Release, Fed. Trade Comm'n, FTC Order Bans Former Pioneer CEO from Exxon Board Seat in Exxon-Pioneer Deal (May 2, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/05/ftc-order-bans-former-pioneer-ceo-exxon-board-seat-exxon-pioneer-deal.

between the two entities, among other provisions. This action marks the Commission's first case in 40 years enforcing Section 8 of the Clayton Act, which prohibits interlocking directorates.

The Commission is also concerned about evolving business strategies, including those involving a series of acquisitions that can result in unlawful consolidation, even if each individual transaction seems benign. Roll-up strategies across sectors, including healthcare, make it especially critical that enforcers look at aggregate trends, not just isolated deals.[125] Consistent with these principles, last fall the Commission charged the dominant provider of anesthesia services in Texas with undertaking an illegal roll-up scheme to monopolize anesthesiology markets in Texas, using its dominance to raise prices and rake in tens of millions of dollars of extra profits, at the expense of Texas patients and businesses.[126] The court allowed the FTC's case to proceed after denying the anesthesiology provider's motion to dismiss. We are also studying closely the empirical work examining the effects of private equity expansion into healthcare,[127] and I have been concerned by studies showing that some private equity buyouts have resulted in not just higher prices but also a dramatic fall-off in quality—in some cases resulting in higher mortality rates.[128]

### B. Targeting Anticompetitive Conduct for Maximum Impact

Outside of the merger context, the FTC also continues to identify and stop anticompetitive conduct. The Commission is continuing to target root causes of anticompetitive conduct and tackle the most significant harms across markets, particularly by dominant firms whose unlawful business practices harm many Americans.

To this end, the FTC continues to scrutinize digital markets, recognizing that distinct features of digital technologies have ushered in new market dynamics and business strategies that require us to update our enforcement approach. Dominant digital platforms have captured control over key arteries of commerce and communications in ways that can undermine competition. The FTC's investigations in digital markets recognize the critical role of data,

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[125] *See* 2023 Merger Guidelines, *supra* note 116, Guideline 8.

[126] Press Release, Fed. Trade Comm'n, FTC Challenges Private Equity Firm's Scheme to Suppress Competition in Anesthesiology Practices Across Texas (Sept. 21, 2023), https://www ftc.gov/news-events/news/pressreleases/2023/09/ftc-challenges-private-equity-firms-scheme-suppress-competition-anesthesiology-practices-across.

[127] *See, e.g.*, Loren Adler, Conrad Milhaupt & Samuel Valdez, *Measuring Private Equity Penetration and Consolidation in Emergency Medicine and Anesthesiology*, 1 HEALTH AFFS. SCHOLAR 1 (June 20, 2023); Joseph D. Bruch, Sohas Gondi & Zirui Song, *Changes in Hospital Income, Use, and Quality Associated With Private Equity Acquisition*, 180 JAMA 1,428 (Nov. 1, 2020); Yashaswini Singh, Zirui Song & Daniel Polsky, *Association of Private Equity Acquisition of Physician Practices With Changes in Health Care Spending and Utilization*, 3 JAMA HEALTH FORUM 1 (Sept. 2, 2022).

[128] *See, e.g.*, Atul Gupta, et al., Owners Incentives and Performance in Healthcare: Private Equity Investment in Nursing Homes, NBER Working Paper 28474 (Aug. 2023), https://www nber.org/system/files/working_papers/w28474/w28474.pdf (finding that "private equity ownership increases short-term mortality by 10%, which implies about 21,000 lives lost due to private equity ownership over our sample period. Private equity ownership also increases spending by 19%, the vast majority of which is billed to taxpayers. We observe several channels that help explain the increase in mortality: declines in patient-level health measures, such as worsening mobility and elevated use of anti-psychotic medications; declines in nurse availability per patient; and declines in compliance with federal and state standards of care").

network externalities, moat-building strategies, and other key factors to ensure that our enforcement is reflecting commercial realities.

In September, following a thorough investigation, the Commission and 17 state attorneys general filed a lawsuit against Amazon alleging that the company has engaged in a course of exclusionary conduct to maintain its monopoly in the online superstore and the online marketplace services markets.[129] The complaint alleges that Amazon's conduct has stopped sellers from lowering prices, degraded quality for shoppers, overcharged sellers, stifled innovation, and prevented rivals from fairly competing. These alleged tactics include anti-discounting measures that deter online sellers from offering lower prices than Amazon, maintaining higher prices for products across the internet, and conditioning online vendors' ability to obtain Prime status on the use of Amazon's costly fulfillment services. This alleged exclusionary conduct has impacted hundreds of billions of dollars in retail sales every year, harming hundreds of thousands of online businesses, large and small, and tens of millions of American households.

The FTC also continues to prosecute its complaint against Meta in a lawsuit that, in addition to other forms of relief, seeks the divestment of Instagram and WhatsApp.[130] The FTC's amended complaint highlights the competitive importance of data and notes that privacy degradation can constitute an antitrust harm—a fact that the court also acknowledged when it denied Facebook's motion to dismiss the FTC's case.[131]

Preventing the abuse of monopoly power that harms American farmers also continues to be a priority for the Commission. In that vein, the FTC is pursuing the case it filed in September 2022 with a bipartisan coalition of ten state attorneys general that charges 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.[132] The complaint alleges that Syngenta Crop Protection and Corteva, Inc. rely on pay-to-block schemes in which distributors get paid only if they limit their dealings with competing manufacturers. The primary legal issue in this case is whether the antitrust laws bar firms from extending their patent monopolies through these pay-to-block schemes that restrict distributors from buying cheaper generic products. But for farmers, the question is more practical: whether the antitrust laws protect them from abusive monopoly practices that threaten their livelihood by denying them access to cheaper versions of critical inputs. The FTC and state AGs prevailed

[129] Press Release, Fed. Trade Comm'n, FTC Sues Amazon for Illegally Maintaining Monopoly Power (Sept. 26, 2023), https://www ftc.gov/news-events/news/press-releases/2023/09/ftc-sues-amazon-illegally-maintaining-monopoly-power.

[130] Press Release, Fed. Trade Comm'n, FTC Alleges Facebook Resorted to Illegal Buy-or-Bury Scheme to Crush Competition After String of Failed Attempts to Innovate (Aug. 19, 2021), https://www.ftc.gov/newsevents/news/press-releases/2021/08/ftc-alleges-facebook-resorted-illegal-buy-or-bury-scheme-crush-competitionafter-string-failed.

[131] *FTC v. Facebook, Inc.*, 581 F. Supp. 3d 34 (D.D.C. 2022).

[132] 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.

against the defendants' motion to dismiss and the case is pending in federal court in North Carolina.[133]

Continuing a long tradition of challenging illegal conduct by pharmaceutical manufacturers,[134] the FTC has partnered with the Food and Drug Administration (FDA) to challenge certain companies' patent listings in the FDA's publication of "Approved Drug Products with Therapeutic Equivalence Evaluations," commonly known as the Orange Book.[135] Improper or inaccurate Orange Book patent listings can delay cheaper generic alternatives from entering the market, keeping brand name drug prices artificially high. Last November, FTC staff issued warning letters to ten pharmaceutical companies stating that over a hundred patent listings on medical devices like inhalers and epi-pens may have been improperly listed in the Orange Book.[136] Soon after, several companies delisted their patents, opening a path for lower-priced generic versions to enter the market. And three of the four top asthma inhaler companies have announced plans to lower costs so that, starting in June, the maximum amount that any American will have to pay for an asthma inhaler is $35.[137] Just a few months ago, FTC staff issued warning letters to another ten pharmaceutical companies related to over 300 Orange Book listings for an additional 20 brand-name treatments for diabetes, weight loss, asthma, and COPD drugs, including Novo Nordisk Inc.'s blockbuster drug, Ozempic.[138]

Finally, the FTC is staying vigilant to the ways in which algorithms and artificial intelligence can enable new forms of price collusion. Through briefs filed jointly with the Department of Justice in private suits, the agencies have made clear that residential landlords[139] and hotels[140] cannot collude on pricing through the use of algorithms—and that firms cannot use an algorithm to engage in practices that would be illegal if done by a real person.

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[133] *See FTC v. Syngenta Crop Protection AG, et al.*, No. 1:22-cv-00828 (M.D.N.C.).
[134] The FTC has a long history of suing pharmaceutical companies for illegal pay-for-delay agreements that extend their patent monopolies and delay generic entry. *See FTC v. Actavis, Inc*., 570 U.S. 136 (2013).
[135] Press Release, Fed. Trade Comm'n, FTC Issues Policy Statement on Brand Pharmaceutical (Sept. 14, 2023), https://www ftc.gov/news-events/news/pressreleases/2023/09/ftc-issues-policy-statement-brand-pharmaceutical-manufacturers-improper-listing-patents-fooddrug.
[136] Press Release, Fed. Trade Comm'n, FTC Challenges More Than 100 Patents as Improperly Listed in the FDA's Orange Book (Nov. 7, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/11/ftc-challenges-more-100-patents-improperly-listed-fdas-orange-book.
[137] *See* Reuters, GSK to cap out-of-pocket inhaler costs in US, March 20, 2024, https://www reuters.com/business/healthcare-pharmaceuticals/gsk-cap-out-of-pocket-inhaler-costs-us-2024-03-20/#:~:text=March%2020%20(Reuters)%20%2D%20British,by%20two%20of%20its%20rivals.
[138] Press Release, FTC Expands Patent Listing Challenges, Targeting More Than 300 Junk Listings for Diabetes, Weight Loss, Asthma and COPD Drugs (Apr. 30, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-expands-patent-listing-challenges-targeting-more-300-junk-listings-diabetes-weight-loss-asthma.
[139] *See* Hannah Garden-Monheit & Ken Merber, *Price Fixing by Algorithm Is Still Price Fixing*, FTC (Mar. 1, 2024), https://www ftc.gov/business-guidance/blog/2024/03/price-fixing-algorithm-still-price-fixing.
[140] Press Release, Fed. Trade Comm'n, FTC and DOJ File Statement of Interest in Hotel Room Algorithmic Price-Fixing Case (Mar. 28, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/03/ftc-doj-file-statement-interest-hotel-room-algorithmic-price-fixing-case.

### C. Harnessing the Full Suite of FTC's Statutory Authorities to Protect Competition and Innovation

I am fully committed to faithfully exercising the full set of tools and authorities that Congress has granted the FTC. Exercising the Commission's competition rulemaking authority under Section 6(g) of the FTC Act is an example of this effort. On April 23, 2024, the Commission issued a final rule that prohibits new noncompete clauses ("noncompetes") with workers. The final rule provides that it is an unfair method of competition—and therefore a violation of Section 5—for employers to enter into noncompetes with workers. For existing noncompetes, the final rule adopts a different approach for senior executives than for other workers. For senior executives, existing noncompetes can remain in force. Existing noncompetes with workers other than senior executives are not enforceable after the final rule's effective date.[141] Based on the available evidence, the Commission estimates that approximately one in five American workers—or approximately 30 million workers—is subject to a noncompete.[142] Noncompetes are restraints on these workers' economic freedom, as they prevent workers from switching jobs or starting their own competing businesses. Substantial evidence shows that noncompetes are reducing the competitiveness of labor markets and depriving businesses of a talent pool that they need to enter, build, and expand. Substantial evidence also shows that noncompetes reduce competition in product and service markets, inhibiting new business formation and innovation. The Commission estimates that the final rule will increase new firm formation by 2.7%—over 8,500 new businesses each year—and will lead to an average of 17,000-29,000 patents each year. Moreover, the Commission estimates that the final rule will increase workers' total earnings by an estimated $400 billion to $488 billion over ten years.[143]

### D. Research and Policy Development

Alongside enforcement, the Commission is making long-term investments to maximize the impact of our policy and research work. To tackle the pressing issues of today and tomorrow, we are broadening our institutional skillsets to ensure we are fully grasping market realities, especially as the economy becomes increasingly digitized.

Despite a very heavy enforcement workload, we continue to prioritize making substantial investments to remain faithful to our mandate to engage in policy and research development pursuant to Section 6 of the FTC Act. 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. In seeking to examine and get diverse feedback from stakeholders about pressing or emergent issues, the agency has also issued requests for information.

The Commission recently issued a report on grocery supply chain disruptions resulting from the COVID-19 pandemic.[144] The report revealed that large market participants accelerated

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[141] *Id*.
[142] *See* Non-Compete Clause Rule, 89 Fed. Reg. 38342 (May 7, 2024), https://www federalregister.gov/documents/2024/05/07/2024-09171/non-compete-clause-rule#h-55.
[143] *Id.* Part X.F.6.
[144] Press Release, Fed. Trade Comm'n, FTC Releases Report on Grocery Supply Chain Disruptions (Mar. 21, 2024), https://www ftc.gov/news-events/news/press-releases/2024/03/ftc-releases-report-grocery-supply-chain-disruptions.

and distorted the negative effects associated with supply chain disruptions. The FTC's report also examined how supply chain disruptions affected competition among retailers, wholesalers, and producers, as well as the impacts on consumers and businesses. The report found that consumers felt the negative effects of supply chain disruptions in the form of sky-high prices for groceries and product shortages for essentials, like toilet paper. Notably, consumers are still facing the negative impact of the pandemic's price hikes, as the Commission's report finds that some in the grocery retail industry seem to have used rising costs as an opportunity to further raise prices to increase their profits, which remain elevated. As the report explains, supply chain disruptions did not equally impact every retailer, wholesaler, or producer. Instead, smaller firms, especially smaller grocery retailers, disproportionately faced difficulties obtaining products compared to larger firms. Some larger firms were better able to protect their product supply compared to smaller competitors. Taken together, the report's findings reveal how supply chain bottlenecks can leave markets exposed to major supply chain shocks—and that those shocks, in turn, can allow major firms to exploit and further entrench their dominance.

One focus of research and policy for the Commission has been healthcare markets. For example, in June 2022, the Commission authorized a 6(b) study of the contracting practices of pharmacy benefits managers ("PBMs").[145] In May and June 2023, the FTC expanded its PBM study by issuing three additional orders to companies that perform rebate services for their affiliated PBMs.[146] This important 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.

Based on an RFI relating to the infant formula crisis, in March the Commission issued a report on market factors relevant to infant formula supply disruptions, which details aspects of the U.S. infant formula market that rendered it vulnerable to supply disruptions in 2022.[147] The report also outlines considerations for policymakers to help create a more resilient infant formula market going forward.

In November 2023, the FTC staff published a summary of responses from the RFI on cloud computing.[148] The Commission is gathering information to inform our understanding of

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[145] Press Release, Fed. Trade Comm'n, FTC Launches Inquiry Into Prescription Drug Middlemen Industry (June 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 (June 16, 2022), http://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-ramp-up-enforcement-against-illegal-rebate-schemes.

[146] Press Release, Fed. Trade Comm'n, FTC Deepens Inquiry into Prescription Drug Middlemen (May 17, 2023), https://www ftc.gov/news-events/news/press-releases/2023/05/ftc-deepens-inquiry-prescription-drug-middlemen; Press Release, Fed. Trade Comm'n, FTC Further Expands Inquiry into Prescription Drug Middlemen Industry Practices (June 8, 2023), Launches Inquiry into Prescription Drug Middlemen Industry (June 7, 2022), https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-further-expands-inquiry-prescription-drugmiddlemen-industry-practices.

[147] Press Release, Fed. Trade Comm'n, FTC Issues Infant Formula Supply Disruptions Report (Mar. 13, 2024), https://www ftc.gov/news-events/news/press-releases/2024/03/ftc-issues-infant-formula-supply-disruptions-report.

[148] *See FTC Office of Technology*, Cloud Computing RFI: What we heard and learned (Nov. 16, 2023) https://www ftc.gov/policy/advocacy-research/tech-at-ftc/2023/11/cloud-computing-rfi-what-we-heard-learned.

key features of cloud computing; the potential for outages from large cloud providers to have widespread impact on large parts of the economy; security risks; and issues related to market power and business practices affecting competition.

In January, the Commission launched an inquiry into generative AI investments and partnerships, issuing orders to five companies requiring them to provide information regarding recent investments and partnerships involving generative AI companies and major cloud service providers. The agency's 6(b) inquiry will scrutinize corporate partnerships and investments with AI providers to build a better understanding of these relationships and their impact on the competitive landscape.[149]

To complement the Commission's existing enforcement work on anticompetitive roll-up strategies, the Commission in May jointly launched a public inquiry with the Department of Justice's Antitrust Division to identify serial acquisitions and roll-up strategies throughout the economy that have led to consolidation that may have harmed competition.[150] The RFI seeks input from a range of stakeholders and that input will help bolster the FTC's work to root out anticompetitive roll-ups.

### E. Collaboration Across Government to Promote Competition

The FTC continues to recognize the value and importance of deepening our collaboration and partnerships with other government entities to promote fair competition across our economy.

As part of the whole-of-government effort to protect consumers and competition and to further the FTC's policy research and development, this year the agency has launched two separate RFIs with other government agencies and issued a comment in response to another agency's Notice of Inquiry. The FTC and the U.S. Department of Health and Human Services ("HHS") jointly issued an RFI to understand how the practices of two types of pharmaceutical drug middlemen groups—group purchasing organizations and drug wholesalers—may be contributing to generic drug shortages.[151] In addition, the FTC, DOJ's Antitrust Division, and HHS jointly launched a cross-government public inquiry into private equity and other corporations' increasing control over health care.[152] The FTC and the DOJ's Antitrust Division also jointly submitted a public comment to the Federal Energy Regulatory Commission

[149] Press Release, Fed. Trade Comm'n, FTC Launches Inquiry into Generative AI Investments and Partnerships, (Jan. 25, 2024) https://www ftc.gov/news-events/news/press-releases/2024/01/ftc-launches-inquiry-generative-ai-investments-partnerships.
[150] Press Release, Fed. Trade Comm'n, FTC and DOJ Seek Info on Serial Acquisitions, Roll-Up Strategies Across U.S. Economy (May 23, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/05/ftc-doj-seek-info-serial-acquisitions-roll-strategies-across-us-economy.
[151] Press Release, Fed. Trade Comm'n, FTC, HHS Seek Public Comment on Generic Drug Shortages and Competition Amongst Powerful Middlemen, (Feb. 14, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/02/ftc-hhs-seek-public-comment-generic-drug-shortages-competition-amongst-powerful-middlemen.
[152] Press Release, Fed. Trade Comm'n, Federal Trade Commission, the Department of Justice and the Department of Health and Human Services Launch Cross-Government Inquiry on Impact of Corporate Greed in Health Care, (Mar. 5, 2024), https://www ftc.gov/news-events/news/press-releases/2024/03/federal-trade-commission-department-justice-department-health-human-services-launch-cross-government.

("FERC") urging it to consider the competitive risks of common ownership when assessing acquisitions involving less than a controlling interest in competing firms.[153]

We regularly engage with other federal agencies as well as our state and international enforcement partners on policy initiatives and enforcement matters. Given the reality of limited resources, these partnerships are even more critical as we learn and benefit from the experience of our counterparts.

## V. ENHANCING THE COMMISSION'S TECHNICAL EXPERTISE

In February 2023, the FTC announced the launch of a new Office of Technology (OT) to support the agency's law enforcement and policy work. Over the past year, the team has grown to a dozen staff actively working across the agency on critical matters. 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 ranges across topics such as security and privacy, artificial intelligence and automated decision-making, digital markets, augmented and virtual reality, the gig work economy, and ad-tracking technologies.

OT works across the FTC to strengthen and support law enforcement investigations and actions; advise and engage with FTC staff and the Commission on policy and research initiatives; and engage the public and relevant experts to understand trends and to advance the Commission's work.

OT's contributions in its first year have been significant. In addition to issuing a Cloud Computing RFI that identified both competition and consumer protection issues for further study,[154] OT contributed to the launch of an inquiry into generative AI investments and partnerships amid a quickly evolving marketplace to better understand these relationships and their impact on competition.[155] In January 2024, the team hosted the first ever FTC Tech Summit on Artificial Intelligence, which encompassed a series of conversations across the layers of the AI technology stack—from chips and cloud infrastructure to data and models to consumer facing applications.

Among other events to proactively engage with external stakeholders, OT hosted a public roundtable and published a summary report on Generative AI and the Creative Economy,

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[153] Press Release, Fed. Trade Comm'n, FTC, DOJ Submit Joint Comment to FERC Warning of Common Ownership Competition Risks in the Public Utilities Industry (Apr. 25, 2024), https://www ftc.gov/news-events/news/press-releases/2024/04/ftc-doj-submit-joint-comment-ferc-warning-common-ownership-competition-risks-public-utilities.

[154] *See* FTC Office of Technology, *An Inquiry into Cloud Computing Business Practices: The Federal Trade Commission is Seeking Public Comments* (Mar. 22, 2023) (seeking information about competition and data security, among other things), https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2023/03/inquiry-cloud-computing-business-practices-federal-trade-commission-seeking-public-comments. *See also* FTC Docket ID FTC-2023-0028, Solicitation for Public Comments on the Business Practices of Cloud Computing Providers (Mar. 22, 2023), https://www.regulations.gov/docket/FTC-2023-0028.

[155] Press Release, Fed. Trade Comm'n, FTC Launches Inquiry into Generative AI Investments and Partnerships, (January 25, 2024), https://www ftc.gov/news-events/news/press-releases/2024/01/ftc-launches-inquiry-generative-ai-investments-partnerships.

bringing together digital artists, voice actors, musicians, and other content creators to discuss various benefits and challenges posed by generative AI.[156] In addition, technologists and attorneys collaborated on the Voice Cloning Challenge, highlighting several winning submissions, which demonstrates the potential for cutting edge technology to assist in preventing and mitigating risks of AI-enabled voice cloning abuse.

Beyond inquiries and initiatives like the ones highlighted, technologists provide strategic guidance on technology matters through report recommendations, contribute to technical assistance and briefings with Hill staff, and participate in engagement with counterparts in partnership with the Office of International Affairs. OT also draws on the combined authority of its expertise and the stature of the Commission to engage the public and relevant experts to highlight key trends and encourage best practices, which has been a major asset to the agency amid a rapidly evolving technology landscape.

## VI. CONCLUSION

The FTC continues to seek to fulfill its broad mission on behalf of the American public using the range of tools and resources Congress has afforded us. We urge Congress to support the agency's critical needs in FY2025 so that the agency can continue delivering on its mandate. We look forward to continuing to work with the Subcommittee and Congress, and I am happy to answer your questions.

[156] Press Release, Fed Trade Comm'n, FTC to Host Virtual Roundtable on AI and Content Creation (Sept. 22, 2023) https://www ftc.gov/news-events/news/press-releases/2023/09/ftc-host-virtual-roundtable-ai-content-creation; Press Release, Fed Trade Comm'n, FTC Staff Report Details Key Takeaways from AI and Creative Fields Panel Discussion, (Dec. 18, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/12/ftc-staff-report-details-key-takeaways-ai-creative-fields-panel-discussion.