

June 21, 2016

The Honorable Fred Upton, Chairman  
The Honorable Frank Pallone, Jr., Ranking Member  
U.S. House Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Upton and Ranking Member Pallone:

We, the undersigned consumer and public interest groups, write regarding the “FTC Process and Transparency Reform Act of 2016,” a discussion draft advanced by the Subcommittee on Commerce, Manufacturing, and Trade to the full Committee that would alter the processes used by the Federal Trade Commission (FTC) to carry out its work. We are very concerned that the legislation would harm the FTC’s ability to crack down on scam artists and protect consumers from unfair, misleading, or anticompetitive business practices.

Among other concerns, we are troubled that the legislation would:

- 1. Thoroughly undermine the FTC’s enforcement capabilities.** By allowing “[c]ompliance with any guidelines, general statement of policy, or similar guidance issued by the Commission” to be used as evidence of compliance with the law—rather than merely as evidence of a good-faith effort to comply with the law—the legislation could thoroughly undermine the Commission’s enforcement of the FTC Act. A company that is the target of an enforcement action or subject to a consent order could hunt for and cite a wide variety of general statements by the agency to evade liability for violating the law. Under these circumstances, the FTC might have to rescind the guidance it has given to businesses and consumers, and stop giving new guidance, in order to preserve its enforcement capabilities.
- 2. Constrain the FTC’s authority to find that a business practice is unfair.** By casting in statutory concrete portions of the FTC’s 35-year-old Policy Statement on Unfairness, but leaving out key context and references, the legislation would constrain and rigidify the agency’s authority to find that an act or practice is unfair. We are particularly concerned it would undermine the agency’s authority to find that an act or practice is unfair even though it may not directly cause physical effects, such as harassing late-night telephone calls.
- 3. End investigations arbitrarily.** By requiring the termination of any investigation after six months, unless the FTC sends the target of the investigation a written communication or votes to keep the investigation open, the legislation could result in critical investigations ending arbitrarily or their confidentiality being compromised. The FTC should have the flexibility to prioritize its time working on investigations in a manner consistent with the public interest, and to take the time necessary to determine how best to protect consumers.
- 4. Weaken the FTC’s ability to prevent repeat offenses.** By setting a shorter, eight-year standard length for FTC consent decrees, and requiring the FTC to justify continuing non-fraud decrees for more than five years, the legislation would weaken the FTC’s ability to prevent repeat

offenses. The FTC can in most cases only fine a company—and thus penalize a repeat offense—for violating an order, not simply for re-committing the offense itself.

The FTC’s work to promote competition and protect consumers from unfair or deceptive acts or practices is essential to the fair functioning of the marketplace. For over a century, the agency has stood up for the interests of consumers when threatened by unlawful behavior, such as predatory sales tactics, false advertising, price fixing, or abusive communications. The Commission—operating on a bipartisan basis and often via consensus—investigates consumer complaints and takes legal action as appropriate to stop illegal practices and deter others from engaging in them. As a result of these actions, consumers enjoy a far fairer, far more reasonable and dependable marketplace than otherwise would exist, and businesses operating fairly and honestly are rewarded with a more level playing field.

We urge you not to report legislation to the full House that would undermine the FTC’s critical work.

For any additional information, please contact William Wallace at Consumers Union, 202-462-6262.

Sincerely,

Agriculture and Trade Policy  
Americans for Financial Reform  
Center for Democracy & Technology  
Center for Digital Democracy  
Center for Science in the Public Interest  
Common Sense Kids Action  
Constitutional Alliance  
Consumer Action  
Consumers for Auto Reliability and Safety  
Consumer Federation of America  
Consumer Federation of California  
Consumers Union  
Consumer Watchdog  
Families Rally for Emancipation and  
Empowerment  
Food & Water Watch  
Free Press Action Fund  
Funeral Consumers Alliance

Georgia Watch  
Institute for Agriculture and Trade Policy  
(IATP)  
Knowledge Ecology International  
Massachusetts Consumers’ Council, Inc.  
Media Alliance  
National Association of Consumer  
Advocates  
National Consumer Law Center  
Privacy Times  
Public Citizen  
Public Good Law Center  
Public Health Advocacy Institute at  
Northeastern University School of Law  
U.S. PIRG  
Virginia Citizens Consumer Council  
Virginia Poverty Law Center  
World Privacy Forum

cc: Members of the Committee on Energy and Commerce