UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, STATE OF COLORADO, STATE OF IDAHO, COMMONWEALTH OF PENNSYLVANIA, STATE OF TEXAS, COMMONWEALTH OF VIRGINIA, STATE OF WASHINGTON, and STATE OF WEST VIRGINIA, *Plaintiffs,* v. SPRINGLEAF HOLDINGS, INC., ONEMAIN FINANCIAL HOLDINGS, LLC, and CITIFINANCIAL CREDIT COMPANY, *Defendants.*	CASE NO.: 1:15-cv-01992 (RMC)

RESPONSE OF PLAINTIFF UNITED STATES TO
PUBLIC COMMENT ON THE PROPOSED FINAL JUDGMENT

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA" or "Tunney Act"), the United States hereby files the single public comment received concerning the proposed Final Judgment in this case and the United States's response to the comment. After careful consideration of the submitted comment, the United States continues to believe that the proposed Final Judgment provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint. The United States will move the Court for entry of

the proposed Final Judgment after the public comment and this Response have been published in the *Federal Register* pursuant to 15 U.S.C. § 16(d).

I. PROCEDURAL HISTORY

On March 2, 2015, Springleaf Holdings, Inc. ("Springleaf") entered into a purchase agreement to acquire OneMain Financial Holdings, LLC ("OneMain") from CitiFinancial Credit Company for $4.25 billion. On November 13, 2015, the United States and the States of Colorado, Idaho, Texas, Washington and West Virginia and the Commonwealths of Pennsylvania and Virginia (collectively "Plaintiffs") filed a civil antitrust Complaint seeking to enjoin Springleaf from acquiring OneMain. Plaintiffs alleged in the Complaint that the proposed acquisition likely would substantially lessen competition for personal installment loans to subprime borrowers in numerous local areas in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

Simultaneously with the filing of the Complaint, Plaintiffs filed a proposed Final Judgment, an Asset Preservation Stipulation and Order, and a Competitive Impact Statement ("CIS"). As required by the Tunney Act, the United States published the proposed Final Judgment and CIS in the *Federal Register* on November 24, 2015, *see* 80 Fed. Reg. 73212, and caused to be published summaries of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, in *The Washington Post* for seven days from November 20 to November 26, 2015. The 60-day period for public comments ended on January 25, 2016. The United States received one comment, which is described below and attached hereto as Exhibit 1.

II. THE INVESTIGATION AND THE PROPOSED SETTLEMENT

The proposed Final Judgment is the culmination of more than six months of investigation by the Antitrust Division of the United States Department of Justice ("Department"), along with Offices of the State Attorneys General of Colorado, Idaho, Texas, Washington, West Virginia, Pennsylvania, and Virginia (collectively "States"). As part of the investigation, the Department issued 21 Civil Investigative Demands for documents and information and collected more than 350,000 documents from the Defendants and third parties. The Department also conducted interviews with competitors, obtained information from state regulators, and deposed six Springleaf and OneMain business executives. In addition, the Department consulted consumer advocacy groups to solicit their views about the proposed acquisition. The Department carefully analyzed the information it obtained from these sources and thoroughly considered all of the issues presented.

The Department found that the proposed acquisition likely would have eliminated substantial head-to-head competition between Springleaf and OneMain in the provision of personal installment loans to subprime borrowers in local areas within and around 126 towns and municipalities in 11 states. In these areas, Springleaf and OneMain are the largest providers of personal installment loans to subprime borrowers, and face little, if any, competition from other personal installment lenders. Without the benefit of competition between Springleaf and OneMain, the Department concluded that prices and other terms for personal installment loans to subprime borrowers would become less favorable, and access to such loans by subprime borrowers would decrease. For these reasons, the Department, joined by the States, filed a civil

antitrust lawsuit to enjoin the merger and alleged that the proposed transaction violated Section 7 of the Clayton Act, 15 U.S.C. §18.

The proposed Final Judgment eliminates the anticompetitive effects identified in the Complaint by requiring Defendants to divest 127 Springleaf branches to Lendmark Financial Services or to one or more alternative acquirers acceptable to the United States. The branches to be divested are located in the local areas within and around the 126 towns and municipalities identified in the Complaint. The divestitures will establish Lendmark as a new, independent, and economically viable competitor in some states and local areas and allow Lendmark to enhance its competitive presence in others.

Since Plaintiffs submitted the proposed Final Judgment on November 13, 2015, Lendmark has begun the process of obtaining state licenses for the acquisition of the 127 Springleaf branches. In addition, the Court appointed Patricia A. Murphy as Monitoring Trustee on January 19, 2016.

III. STANDARD OF JUDICIAL REVIEW

The Tunney Act requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day public comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see also United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1, 10-11 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. InBev N.V./S.A.*, No. 08-cv-1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (discussing nature of review of consent judgment under the Tunney Act; inquiry is limited to "whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable").

Under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the Complaint, whether the decree is sufficiently clear, whether the enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458-62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States v. Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)). Instead, courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the

> discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement in "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).

In determining whether a proposed settlement is in the public interest, "the court 'must accord deference to the government's predictions about the efficacy of its remedies.'" *United States v. U.S. Airways Grp., Inc.,* 38 F. Supp. 3d 69, 76 (D.D.C. 2014) (quoting *SBC Commc'ns,* 489 F. Supp. at 17). *See also Microsoft,* 56 F.3d at 1461 (noting that the government is entitled to deference as to its "predictions as to the effect of the proposed remedies"); *United States v. Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States's "prediction as to the effect of the proposed remedies, its perception of the market structure, and its views of the nature of the case"); *United States v. Morgan Stanley*, 881 F. Supp. 2d 563, 567-68 (S.D.N.Y. 2012) (explaining that the government is entitled to deference in choice of remedies).

Courts "may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns,* 489 F. Supp. 2d at 17. Rather, the ultimate question is whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'" *Microsoft,* 56 F.3d at 1461. Accordingly, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also United States v. Apple, Inc.* 889 F. Supp. 2d 623, 631 (S.D.N.Y. 2012). And, a "proposed decree must be

approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is within the reaches of the public interest." *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations and internal quotations omitted); *see also United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

In its 2004 amendments to the Tunney Act,[1] Congress made clear its intent to preserve the practical benefits of using consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2). The procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of the Tunney Act proceedings." *SBC Commc'ns*, 489 F. Supp. 2d at 11; *see also United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) ("[T]he Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to public comments alone."); *US Airways*, 38 F. Supp. 3d at 76 (same).

[1] The 2004 amendments substituted "shall" for "may" in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

IV. SUMMARY OF PUBLIC COMMENT AND THE UNITED STATES'S RESPONSE

The United States received one public comment from the Center for Responsible Lending ("CRL"), a nonprofit, nonpartisan research and policy organization that seeks to eliminate abusive financial practices. CRL submitted the comment to provide additional context about the personal installment loan industry and highlight what CRL believes to be abusive industry practices that the proposed Final Judgment does not address. In particular, CRL describes three alleged lending practices of particular concern: (1) the high incidence of repeat refinancing, which CRL claims is indicative of the industry's widespread extension of loans that borrowers do not have the ability to repay; (2) the sale of ancillary products such as credit insurance with installment loans, which CRL alleges significantly increases borrowing costs and lender fees; and (3) the tendency of personal installment lenders to charge the maximum interest rate permitted under state law, which CRL claims to occur regardless of the borrower's creditworthiness. Taken together, CRL suggests that these alleged practices demonstrate that personal installment loans offer little benefit to consumers and often lead to more financial harm than help.

The Department appreciates CRL's advocacy efforts on behalf of consumers and takes CRL's concerns about possible abusive industry practices seriously. However, the Department is tasked with enforcing the antitrust laws of the United States and does not have jurisdiction to address other issues of consumer protection that fall within the purview of agencies such as the Consumer Financial Protection Bureau. The Department's antitrust investigation was limited to analysis of Springleaf's proposed acquisition of OneMain and its likely competitive effects. In reaching the proposed settlement, the Department concluded that there was direct and

meaningful competition between Springleaf and OneMain (competition that was not limited to branding and branch location, as suggested in CRL's comment); that subprime borrowers benefitted from this head-to-head competition; and that the loss of this competition would likely result in higher prices and less favorable terms for personal installment loans in over 120 local areas in 11 states. The divestitures set forth in the proposed Final Judgment seek to eliminate these anticompetitive effects in all of the local areas of concern.

CRL's comment suggests that the Department should—as part of its review of the proposed merger—investigate and take steps to remedy alleged industry practices that are outside of the Department's merger review and thus are not (and cannot be) challenged in the Complaint. It is well-settled that comments, such as CRL's comment, that are unrelated to the concerns identified in the complaint reach beyond the scope of this Court's Tunney Act review. *See, e.g., SBC Commc'ns*, 489 F. Supp. 2d at 14 (holding that "a district court is not permitted to 'reach beyond the complaint to evaluate claims that the government did *not* make and to inquire as to why they were not made'") (quoting *Microsoft*, 56 F.3d at 1459) (emphasis in original); s*ee also US Airways*, 38 F. Supp. 3d at 76. Accordingly, CRL's comment does not provide a basis for rejecting the proposed Final Judgment.

V. CONCLUSION

After reviewing the public comment, the United States continues to believe that the proposed Final Judgment, as drafted, provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint, and is therefore in the public interest. The United States will move this Court to enter the proposed Final Judgment after the comment and this response are published in the *Federal Register*.

Dated: March 08, 2016

Respectfully submitted,

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