

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

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WASHINGTON, DC 20515-6115

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September 12, 2016

Mr. David Vladeck  
Professor of Law  
Georgetown Law  
600 New Jersey Avenue N.W.  
Washington, DC 20001

Dear Mr. Vladeck,

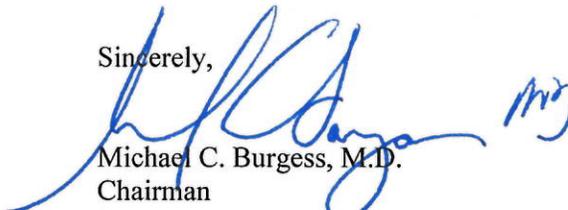
Thank you for appearing before the Subcommittee on Commerce, Manufacturing, and Trade on Tuesday, May 24, 2016, to testify at the hearing entitled "Legislative Hearing on 17 FTC Bills."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Monday, September 26, 2016. Your responses should be mailed to Giulia Giannangeli, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to [Giulia.Giannangeli@mail.house.gov](mailto:Giulia.Giannangeli@mail.house.gov).

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Michael C. Burgess, M.D.  
Chairman  
Subcommittee on Commerce,  
Manufacturing, and Trade

cc: Jan Schakowsky, Ranking Member, Subcommittee on Commerce, Manufacturing, and Trade

Attachment

Attachment - Additional Questions for the Record

**The Honorable Jan Schakowsky**

1. In 1980, the FTC issued a statement on the scope of its unfairness jurisdiction in response to an inquiry from Congress. That statement spells out the FTC's policy on unfairness in detail, giving consumers and business important information on how the Commission applies its unfairness jurisdiction. H.R. 5115 incorporates selected portions of that unfairness statement focusing on injuries suffered by consumers. Can you detail how the bill is different from FTC's statement and how codifying only selected portions of the unfairness statement would damage FTC authority? What kinds of cases may be affected or not be able to be brought because of this bill?
2. Currently, evidence that a company under FTC jurisdiction complied with FTC guidance is permitted to be used as evidence of the company's good faith. H.R. 5118 would allow companies to use evidence of compliance with guidance as evidence of compliance with law. How would this bill constrain the FTC's enforcement abilities? How would creating such an affirmative defense shift the burden of proof back to the FTC?
3. H.R. 5098 would require the FTC to annually submit to Congress a report with all of the Commission's planned activities for the next year, including plans to publish guidance for industry, plans to hold workshops or conferences, and a number of other things.
  - a. How would that bill limit the FTC's flexibility?
  - b. I have heard concerns that this bill would actually hold the agency back from being able to respond to emerging consumer issues. Do you share that concern? Would the FTC feel locked in to only doing what was in their annual plan?
  - c. How much time and resources does it take to produce this kind of report? Would it take resources away from other activities of the Commission?
4. H.R. 5093 would limit consent decrees in most cases to eight years, instead of the typical 20 years. How could that bill constrain the Commission? How would it ultimately harm consumers?