Having examined the record of this investigation, including the final ID, and the parties’ submissions, the Commission has determined to modify the ID’s construction of the claim term “mounted to a boat,” a claim term recited in each of the asserted claims of the ‘952, ‘974, and ‘825 patents (save for asserted claim 29 of the ‘825 patent), which the ID construed as “attached to a bottom surface of the boat.” Instead, the Commission adopts the construction proposed by complainants before the ALJ and construes the limitation to mean “proximately secured to the boat in a fixed manner.” The Commission finds that the record evidence supports the ID’s findings on infringement and invalidity based on this construction. The Commission has determined to affirm the ID’s finding of no violation of section 337 in connection with the asserted claims of the ‘952 patent, ‘825 patent, and claim 25 of the ‘974 patent. The Commission further finds a violation of Section 337 with respect to claims 14, 18, 21–23, and 33 of the ‘974 patent. The Commission adopts the ID’s findings to the extent they are not inconsistent with the Commission opinion issued herewith.

Having found a violation of section 337 in this investigation, the Commission has determined that the appropriate form of relief is: (1) A limited exclusion order prohibiting the unlicensed entry of marine sonar imaging systems, products containing the same, and components thereof that infringe one or more of claims 14, 18, 21, 22, 23, and 33 of the ‘974 patent that are manufactured by, or on behalf of, or are imported by or on behalf of Garmin or any of its affiliated companies, parents, subsidiaries, agents, or other related business entities, or their successors or assigns; and (2) cease and desist orders prohibiting domestic respondents Garmin International, Inc.; Garmin North America, Inc.; and Garmin USA, Inc. from conducting any of the following activities in the United States: Importing, selling, marketing, advertising, distributing, transferring (except for exportation), and soliciting U.S. agents or distributors for, marine sonar imaging systems, products containing the same, and components thereof covered by claims 14, 18, 21, 22, 23 and 33 of the ‘974 patent. The proposed cease and desist orders include the following exemptions: (1) If in a written instrument, the owner of the patents authorizes or licenses such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

The Commission has also determined that the public interest factors enumerated in section 337(d) and (f) (19 U.S.C. 1337(d) and (f)) do not preclude issuance of the limited exclusion order or cease and desist orders. Finally, the Commission has determined that a bond in the amount of zero is required to permit temporary importation during the period of Presidential review (19 U.S.C. 1337(j)) of marine sonar imaging systems, products containing the same, and components thereof that are subject to the remedial orders. The Commission’s orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.


Issued: November 18, 2015.
By order of the Commission.
Lisa R. Barton,
Secretary to the Commission.
II. The Defendants and the Transaction

3. Defendant Springleaf is a Delaware corporation headquartered in Evansville, Indiana. Springleaf is the second-largest provider of personal installment loans to subprime borrowers in the United States, with approximately 830 branches in 27 states. Springleaf has a consumer loan portfolio that totals $4.0 billion.

4. Defendant OneMain, a Delaware limited liability company headquartered in Baltimore, Maryland, is the largest provider of personal installment loans to subprime borrowers in the United States, with 1,139 branch locations in 43 states. OneMain has a consumer loan portfolio that totals $8.4 billion. OneMain is a subsidiary of Defendant CitiFinancial Credit Company ("CitiFinancial"), a Delaware corporation headquartered in Dallas, Texas. CitiFinancial is a holding company that is a wholly owned subsidiary of Citigroup, Inc.

5. Pursuant to a Purchase Agreement dated March 2, 2015, Springleaf agreed to purchase OneMain from CitiFinancial for $4.25 billion.
IV. Trade and Commerce

A. Personal Installment Loans to Subprime Borrowers

10. The average size of a personal installment loan typically falls in the range of $3,000 to $6,000. Personal installment loans to subprime borrowers are closed-end, fixed-rate, fixed-term, and fully amortized loan products. In a fully amortized loan, both principal and interest are paid fully through scheduled installments by the end of the loan term, which typically is between 18 and 60 months in duration. Each monthly payment is the same amount and the schedule of payments is clear. If the borrower makes each scheduled payment, at the end of the loan term, the loan is repaid in full.

11. Personal installment lenders target a unique segment of borrowers who may not be able to obtain cheaper sources of credit from other financial institutions but have enough cash flow to afford the monthly payments of personal installment loans. Borrowers of personal installment loans are considered “subprime” because of blemishes in their credit histories, such as serious delinquencies or defaults. These borrowers likely have been denied credit by a bank in the past and turn to personal installment lenders for the speed, ease, and likelihood of success in obtaining credit. Their borrowing needs vary, for example, from paying for unexpected expenses, such as car repairs or medical bills, to consolidating debts. A typical subprime borrower’s annual income is in the range of $35,000 to $45,000.

12. The blemished credit histories of subprime borrowers suggest a higher propensity for default on future loans relative to so-called “prime” borrowers. Personal installment lenders mitigate this credit risk by closely analyzing a borrower’s characteristics and ability to repay the loan. The lender examines several categories of information about the borrower, including, among other criteria, credit history, income and outstanding debts, stability of employment, and availability or value of collateral. Lenders typically require borrowers to meet face-to-face at a branch location to close the loan, even if the application begins online. This face-to-face meeting allows the lender to efficiently collect information used in underwriting and verify key documents (reducing the risk of fraud). Subprime borrowers seeking installment loans also value having a branch office close to where they live or work; a nearby branch reduces the borrower’s travel cost to close the loan and allows convenient and timely access to loan proceeds. If approved, borrowers immediately obtain the funds at the branch.

13. Local branch presence also helps lenders and borrowers establish close customer relationships during the life of the loan. Local branch employees monitor delinquent payments of existing customers and assist borrowers in meeting their payment obligations to minimize loan loss. Borrowers also benefit from knowing the local branch employees. Borrowers may visit a branch to make payments, refinance their loans, or speak with a branch employee at times of financial difficulties. Lenders place branches where their target borrowers live or work so that it is convenient for their borrowers to come into a branch.

14. The interest rate on a personal installment loan is the largest component of the total cost of a loan. Other costs, such as origination fees, maintenance fees, and closing fees, increase the effective interest rate that a borrower will pay. The Annual Percentage Rate (“APR”) combines the two components, interest rates and fees, to indicate the annual charges associated with the loan. Although the maximum interest rates and fees charged on personal installment loans vary by state, Springleaf and OneMain have a self-imposed interest rate cap of 36 percent on their respective loans.

15. While borrowers consider APR in selecting a loan, subprime borrowers typically focus most on the monthly payment and on the ease and speed of obtaining approval. Subprime borrowers’ main concerns are whether the payment will fit into their monthly budget and whether they can obtain the money quickly to meet their needs. For these reasons, negotiations between borrowers and lenders tend to focus more on the amount of the loan, the repayment terms, and collateral requirements than on the rates and fees. When a subprime borrower needs or wants a lower monthly payment, personal installment lenders generally lower the amount of the loan or lengthen the term of the loan.

16. Every state requires personal installment lenders to obtain licenses to offer loans to subprime borrowers. Many states also have regulations governing the interest rates and fees on loans charged by consumer finance companies licensed to operate in the state. Some states impose a maximum rate and fee for all personal installment loans, while others have a tiered-rate system that establishes different interest rates and fees for different amounts. State regulations significantly affect the number of personal installment lenders offering loans to subprime lenders in the state.

B. Relevant Product Market

17. Subprime borrowers turn to personal installment loans when they need cash but have limited access to credit from banks, credit card companies, and other lenders. The products offered by these lenders are not meaningful substitutes for personal installment loans for a substantial number of subprime borrowers.

18. Banks and credit unions offer personal installment loans at rates and terms much better than those offered by personal installment lenders, but subprime borrowers typically do not meet the underwriting criteria of those institutions and are unlikely to be approved. Further, the loan application and underwriting process at banks and credit unions typically take much longer than that of personal installment lenders, who can provide subprime borrowers with funds on a far quicker timetable. For these and other reasons, subprime borrowers would not turn to banks and credit unions as an alternative in the event personal installment lenders were to increase the interest rate or otherwise make their loan terms less appealing by a small but significant amount.

19. Payday and title lenders provide short-term cash, but charge much higher rates and fees, usually lending in amounts well below $1,000, and require far quicker repayment than personal installment lenders. Specifically, rates and fees for these types of short-term cash advances can exceed 250 percent APR with repayment generally due in less than 30 days. Given these key differences, subprime borrowers likely would not turn to payday and title loans as an alternative in the event personal installment lenders were to increase the interest rate or otherwise make their loan terms less appealing by a small but significant amount.

20. Most subprime borrowers also cannot turn to credit cards as an alternative to personal installment loans. Subprime borrowers frequently have difficulty obtaining credit cards, and those who have credit cards have often reached their maximum available credit limits (which are much lower than those given to prime borrowers), or have limited access to additional credit extensions. Although subprime borrowers may use credit cards for everyday purchases, such as groceries or dining out, they typically have insufficient remaining credit to pay for larger expenses such as major car repairs or significant medical bills. Subprime borrowers therefore could not
generally turn to credit cards as an alternative in the event lenders offering personal installment loans to subprime borrowers were to increase the interest rate or otherwise make their loan terms less appealing by a small but significant amount.

21. Finally, although online lenders have been successful in making loans to prime borrowers, they face challenges in meeting the needs of and mitigating the credit risk posed by subprime borrowers. Without a local branch presence, online lenders do not maintain close customer relationships, nor can they conduct face-to-face meetings to verify key documents, measures which reduce the risk of fraud and borrower default. Online lenders tend to focus on borrowers with better credit profiles or higher incomes than the borrowers typically served by personal installment lenders with branches in local markets. Furthermore, online lenders are unable to process an application and distribute loan proceeds as quickly as local personal installment lenders. For these reasons, subprime borrowers generally would not turn to loans offered by online lenders in the event lenders offering personal installment loans to subprime borrowers were to increase the interest rate or otherwise make their loan terms less appealing by a small but significant amount.

22. Accordingly, the provision of personal installment loans to subprime borrowers is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

C. Relevant Geographic Market

23. Subprime borrowers seeking personal installment loans value convenience, which includes quick access to the borrowed funds and minimal travel time. Consequently, subprime borrowers considering a personal installment lender look for a branch near where they live or where they work. While the distance a borrower is willing to travel may vary by geography, the vast majority of subprime borrowers travel less than twenty miles to a branch for a personal installment loan.

24. Personal installment lenders have established local trade areas for their branches. Lenders usually rely on direct mail solicitations as the primary means of marketing and solicit customers who live within close proximity to their branches. Lenders who place branches in the same areas compete to serve the same target borrower base. Borrowers view lenders with branches in close proximity to each other as close substitutes.

25. For these reasons, the overlapping trade areas of competing personal installment lenders form geographic markets where the lenders located within the trade areas compete for subprime borrowers who live or work near the branches. The size and shape of the overlapping trade areas of these branches may vary as the distance borrowers are willing to travel depends on factors specific to each local area. Even so, typically more than three-quarters of the personal installment loans to subprime borrowers made by a given branch are made to borrowers residing within twenty miles of the branch. Personal installment lenders with branches located outside these trade areas usually are not convenient alternatives for borrowers.

26. Springleaf and OneMain have a high degree of geographic overlap between their branch networks. In local areas within and around 126 towns and municipalities in eleven states—Arizona, California, Colorado, Idaho, North Carolina, Ohio, Pennsylvania, Texas, Virginia, Washington, and West Virginia—Springleaf and OneMain have branches located within close proximity of one another, often within five miles. In these overlapping trade areas of Springleaf’s and OneMain’s branches, few other lenders have branches offering personal installment loans to subprime borrowers. In many of these overlapping trade areas, Springleaf and OneMain are the only two personal installment lenders.

27. In local areas within and around 126 towns and municipalities in Arizona, California, Colorado, Idaho, North Carolina, Ohio, Pennsylvania, Texas, Virginia, Washington, and West Virginia, subprime borrowers of personal installment loans would not seek such loans outside the local areas in the event lenders offering personal installment loans to subprime borrowers were to increase the interest rate or otherwise make their loan terms less appealing by a small but significant amount. Accordingly, the overlapping trade areas located in the 126 towns and municipalities identified in the Appendix hereto constitute relevant geographic markets within the meaning of Section 7 of the Clayton Act.

D. Anticompetitive Effects

28. Springleaf and OneMain are the two largest providers of personal installment loans to subprime borrowers in the United States. Both companies have a long history in the business of providing personal installment loans to subprime borrowers, have built an extensive branch network, and have established close ties to the local communities. Leveraging their years of experience and large customer base, both companies have developed sophisticated risk analytics that allow them to minimize expected credit losses when extending loans to borrowers with blemished credit histories.

29. Compared to Springleaf and OneMain, other lenders that offer personal installment loans to subprime borrowers have much smaller branch footprints and are present in a more limited number of states and local markets. These personal installment lenders may operate in states with regulations that permit higher interest rates and fees, rather than in those with low interest rate caps. State regulations, lack of scale, and other economic factors have limited the competitive presence of these lenders in many states and local areas.

30. In local markets within and around the 126 towns and municipalities in Arizona, California, Colorado, Idaho, North Carolina, Ohio, Pennsylvania, Texas, Virginia, Washington, and West Virginia identified in the Appendix, the market for the provision of personal installment loans to subprime borrowers is highly concentrated. In the local areas within these states, 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. Even if other providers of personal installment loans to subprime borrowers have a branch presence in these states, these lenders compete in a limited number of local markets or in communities located far from a Springleaf or OneMain branch. As a result, these local markets are highly concentrated.

31. In local markets within and around the 126 towns and municipalities in Arizona, California, Colorado, Idaho, North Carolina, Ohio, Pennsylvania, Texas, Virginia, Washington, and West Virginia identified in the Appendix, the proposed acquisition would substantially increase concentration in the market for personal installment loans to subprime borrowers. Without the benefit of head-to-head competition between Springleaf and OneMain, subprime borrowers are likely to face higher interest rates or fees, greater limits on the amount they can borrow and restraints on their ability to obtain loans, and more onerous loan terms. The proposed acquisition therefore likely will substantially lessen competition in the provision of personal installment loans to subprime borrowers.
E. Entry
32. Entry of additional competitors into the provision of personal installment loans to subprime borrowers in local markets in Arizona, California, Colorado, Idaho, North Carolina, Ohio, Pennsylvania, Texas, Virginia, Washington, and West Virginia is unlikely to be timely or sufficient to defeat the likely anticompetitive effects of the proposed acquisition. In some states, the state regulatory rate caps create unattractive markets for entry. In others, lenders face entry barriers in terms of cost and time to establish a local branch presence. Personal installment lenders need experienced branch employees with knowledge of the local market to build a base of customer relationships. A new lender in a local market faces more risks as it does not have knowledge of local market conditions. A lender also must obtain funding and devote resources to building a successful local presence.

33. As a result of these barriers, entry into the provision of personal installment loans to subprime borrowers in the local markets identified above would not be timely, likely, or sufficient to defeat the substantial lessening of competition that likely would result from Springleaf’s acquisition of OneMain.

V. Violation Alleged
34. The acquisition of OneMain by Springleaf likely would substantially lessen competition in the provision of personal installment loans to subprime borrowers in the relevant geographic markets identified the Appendix, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18; and

b. preliminarily and permanently enjoin and restrain Defendants and all persons acting on their behalf from entering into any other agreement, understanding, or plan by which Springleaf would acquire OneMain; and
c. award Plaintiffs their costs for this action; and
d. grant Plaintiffs such other and further relief as the Court deems just and proper.

DATED: November 13, 2015

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:
/s/
WILLIAM J. BAER (D.C. Bar #324723)
Assistant Attorney General.
/s/
RENBATA H. HESSE (D.C. Bar #466107)
Deputy Assistant Attorney General.
/s/
PATRICIA A. BRINK
Director of Civil Enforcement.
/s/
MARIBETH PETRIZZI (D.C. Bar #435204)
Chief, Litigation II Section.
/s/
DOROTHY FOUNTAIN (D.C. Bar #439469)
Assistant Chief, Litigation II Section.
/s/
ANGELA TING (D.C. Bar #449576)
STEPHANIE FLEMING.
LJAY D. OWEN.
TARA SHINNICK (D.C. Bar #501462),
REBECCA VALENTINE (D.C. Bar #989607),
United States Department of Justice,
Antitrust Division, Litigation II Section, 450
Fifth Street NW., Suite 8700, Washington, DC
20530, (202) 616–7721, (202) 514–9033
(Facsimile), angela.ting@usdoj.gov.

FOR PLAINTIFF STATE OF COLORADO:
/s/
CYNTHIA H. COFFMAN
Attorney General of Colorado.

/s/
DEVIN LAIHO
Assistant Attorney General, Consumer Protection Section, Colorado Department of Law, Ralph L. Carr Colorado Judicial Center, 1300 Broadway, 7th Floor, Denver, CO 80203, (720) 508–6219, (720) 508–6040 (Facsimile), devin.laiho@state.co.us.

FOR PLAINTIFF STATE OF IDAHO:
/s/
LAWRENCE G. WASDEN
Attorney General of Idaho.

/s/
PATRICIA A. BRINK
Director of Civil Enforcement.
/s/
MARIBETH PETRIZZI (D.C. Bar #435204)
Chief, Litigation II Section.
/s/
DOROTHY FOUNTAIN (D.C. Bar #439469)
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FOR PLAINTIFF STATE OF IDAHO:
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LAWRENCE G. WASDEN
Attorney General of Idaho.

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PATRICIA A. BRINK
Director of Civil Enforcement.
/s/
MARIBETH PETRIZZI (D.C. Bar #435204)
Chief, Litigation II Section.
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DOROTHY FOUNTAIN (D.C. Bar #439469)
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(Facsimile), angela.ting@usdoj.gov.

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LAWRENCE G. WASDEN
Attorney General of Idaho.

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PATRICIA A. BRINK
Director of Civil Enforcement.
/s/
MARIBETH PETRIZZI (D.C. Bar #435204)
Chief, Litigation II Section.
/s/
DOROTHY FOUNTAIN (D.C. Bar #439469)
Assistant Chief, Litigation II Section.
/s/
ANGELA TING (D.C. Bar #449576)
STEPHANIE FLEMING.
APPENDIX

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SOUTH CHARLESTON       WV

The United States filed a civil antitrust Complaint on November 13, 2015, seeking to enjoin the proposed acquisition. The Complaint alleges that the acquisition likely would substantially lessen competition for personal installment loans to subprime borrowers in numerous local markets across eleven states, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. That loss of competition likely would result in a reduction of consumer choice that may drive financially struggling borrowers to much more expensive forms of credit or, worse, leave them with no reasonable alternative.

At the same time the Complaint was filed, the United States filed an Asset Preservation Stipulation and Order and a proposed Final Judgment designed to
eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below. Springleaf is required to divest 127 branches in eleven states to Lendmark Financial Services, or to one or more other Acquirers acceptable to the United States. Under the terms of the Asset Preservation Stipulation and Order, Springleaf will take certain steps to ensure that the divestiture branches are operated as competitively independent, economically viable, and ongoing business concerns; that they remain independent and uninfluenced by the consummation of the acquisition; and that competition is maintained during the pendency of the ordered divestiture.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation
A. The Defendants and the Proposed Transaction

Defendant Springleaf Holdings, Inc. ("Springleaf") is a Delaware corporation with its headquarters in Evansville, Indiana. Springleaf is the second-largest provider of personal installment loans to subprime borrowers in the United States. Springleaf operates approximately 830 branches in 27 states and has a consumer loan portfolio of about $4.0 billion.

Defendant OneMain Financial Holdings, LLC ("OneMain") is a Delaware limited liability company, headquartered in Baltimore, Maryland. OneMain is the largest provider of personal installment loans to subprime borrowers in the United States. OneMain operates 1,139 branches in 43 states and has a consumer loan portfolio that totals $8.4 billion. OneMain is a subsidiary of CitiFinancial Credit Company, a holding company that is a wholly owned subsidiary of Citigroup, Inc.

B. Background on Personal Installment Loans to Subprime Borrowers

Personal installment loans to subprime borrowers are closed-end, fixed-rate, fixed-term, and fully amortized loan products that typically range from $3,000 to $6,000. Both the principal and interest are paid fully through scheduled installments by the end of the loan term, which typically is between 18 and 60 months in duration. Each monthly payment is the same amount and the schedule of payments is clear.

Personal installment lenders target a unique segment of borrowers who may not be able to obtain cheaper sources of credit from other financial institutions but have enough cash flow to afford the monthly payments of personal installment loans. Borrowers of personal installment loans are considered "subprime" because of blemishes in their credit histories, such as serious delinquencies or defaults. These borrowers likely have been denied credit by a bank in the past and turn to personal installment lenders for the speed, ease, and likelihood of success in obtaining credit. Their borrowing needs vary, for example, from paying for unexpected expenses, such as car repairs or medical bills, to consolidating debts. A typical subprime borrower’s annual income is in the range of $35,000 to $45,000.

The blemished credit histories of subprime borrowers suggest a higher propensity for default on future loans relative to so-called “prime” borrowers. Personal installment lenders mitigate this credit risk by closely analyzing a borrower’s characteristics and ability to repay the loan, including the borrower’s credit history, income and outstanding debts, stability of employment, and availability or value of collateral. Lenders typically require borrowers to meet face-to-face at a branch location to close the loan, even if the application begins online. This face-to-face meeting allows the lender to efficiently collect information used in underwriting and verify key documents (reducing the risk of fraud). Subprime borrowers seeking installment loans also value having a branch office close to where they live or work; a nearby branch reduces the borrower’s travel cost to close the loan and allows convenient and timely access to loan proceeds. If approved, borrowers immediately obtain the funds at the branch.

Local branch presence also helps lenders and borrowers establish close customer relationships during the life of the loan. Local branch employees monitor delinquent payments of existing customers and assist borrowers in meeting their payment obligations to minimize loan loss. Borrowers also benefit from knowing the local branch employees. Borrowers may visit a branch to make payments, refine their loan, or speak with a branch employee at times of financial difficulties. Lenders place branches where their target borrowers live or work so that it is convenient for their borrowers to come in to a branch.

The interest rate on a personal installment loan is the largest component of the total cost of a loan, but other fees increase the effective interest rate that a borrower will pay. The Annual Percentage Rate ("APR") combines the interest rates and fees to indicate the annual charges associated with the loan. Although the maximum interest rates and fees charged on personal installment loans vary by state, Springleaf and OneMain have a self-imposed interest rate cap of 36 percent on their respective loans.

While subprime borrowers consider APR in selecting a loan, they typically focus most on the monthly payment and on the ease and speed of obtaining approval. For these reasons, negotiations between borrowers and lenders tend to focus more on the amount of the loan, the repayment terms, and collateral requirements than on the rates and fees.

Every state requires personal installment lenders to obtain licenses to offer loans to subprime borrowers. Many states also have regulations governing the interest rates and fees on personal installment loans, with some states imposing maximum rates and fees and others utilizing a tiered-rate system that establishes different interest rates and fees for different loan amounts. The nature of state regulations significantly affects the number of personal installment lenders operating in a state.

C. Relevant Product Market

Subprime borrowers turn to personal installment loans when they need cash but have limited access to credit from banks, credit card companies, and other lenders. As explained in the Complaint, the products offered by these lenders are not meaningful substitutes for personal installment loans for a substantial number of subprime borrowers.

For example, banks and credit unions offer personal installment loans at rates and terms much better than those offered by personal installment lenders, but subprime borrowers typically do not meet the underwriting criteria of those institutions and are unlikely to be approved. Further, the loan application and underwriting process at banks and credit unions typically take much longer than that of personal installment lenders.

Payday and title lenders provide short-term cash, but charge much higher rates and fees, usually lend in amounts well below $1,000, and require far quicker repayment than personal installment lenders. Rates and fees for
these types of short-term cash advances can exceed 250 percent APR with repayment generally due in less than 30 days.

Credit cards are also not a viable alternative for most subprime borrowers. Subprime borrowers may have difficulty obtaining credit cards, and those who have credit cards have often reached their credit limits and have limited access to additional credit extensions. Although subprime borrowers may use credit cards for everyday purchases, they typically have insufficient remaining credit to pay for larger expenses such as major car repairs or significant medical bills.

Finally, although online lenders have been successful in making loans to prime borrowers, they face challenges in meeting the needs of and mitigating the credit risk posed by subprime borrowers. Without a local branch presence, online lenders do not maintain close customer relationships, nor can they conduct face-to-face meetings to verify key documents, measures which reduce the risk of fraud and borrower default. Online lenders are also unable to process applications and distribute loan proceeds as quickly as local personal installment lenders.

For all of these reasons, as explained in the Complaint, subprime borrowers generally would not turn to banks and credit unions, payday and title lenders, credit cards, or online lenders in the event lenders offering personal installment loans to subprime borrowers were to increase the interest rate or otherwise make their loan terms less appealing by a small but significant amount. Accordingly, the Complaint alleges that the provision of personal installment loans to subprime borrowers is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

D. Relevant Geographic Market

As explained in the Complaint, subprime borrowers seeking personal installment loans value convenience, including quick access to borrowed funds and minimal travel time, and look for a branch near where they live or work. While the distance a borrower is willing to travel may vary by geography, the vast majority of subprime borrowers travel less than twenty miles to a branch for a personal installment loan.

Personal installment lenders have established local trade areas for their branches. Lenders usually rely on direct mail solicitations as the primary means of marketing and solicit customers who live within close proximity to their branches. Lenders who place branches in the same areas compete to serve the same target borrower base. Borrowers view lenders with branches in close proximity to each other as close substitutes.

For these reasons, the overlapping trade areas of competing personal installment lenders form geographic markets where the lenders located within the trade areas compete for subprime borrowers who live or work near the branches. The size and shape of the overlapping trade areas of these branches may vary as the distance borrowers are willing to travel depends on factors specific to each local area. Even so, typically more than three-quarters of the personal installment loans to subprime borrowers made by a given branch are made to borrowers residing within twenty miles of the branch. Personal installment lenders with branches located outside these trade areas usually are not convenient alternatives for borrowers.

Springleaf and OneMain have a high degree of geographic overlap between their branch networks. In local areas within and around 126 towns and municipalities in eleven states—Arizona, California, Colorado, Idaho, North Carolina, Ohio, Pennsylvania, Texas, Virginia, Washington, and West Virginia—Springleaf and OneMain have branches located within close proximity of one another, often within five miles. In these overlapping trade areas of Springleaf’s and OneMain’s branches, few, if any, other lenders have branches offering personal installment loans to subprime borrowers.

According to the Complaint, in local areas within and around the 126 towns and municipalities in Arizona, California, Colorado, Idaho, North Carolina, Ohio, Pennsylvania, Texas, Virginia, Washington, and West Virginia, subprime borrowers of personal installment loans would not seek such loans outside the local areas in the event lenders offering personal installment loans to subprime borrowers were to increase the interest rate or otherwise make their loans less appealing by a small but significant amount. Accordingly, the overlapping trade areas located in the 126 towns and municipalities identified in the Appendix attached to the Complaint constitute relevant geographic markets within the meaning of Section 7 of the Clayton Act.

E. Anticompetitive Effects

As alleged in the Complaint, Springleaf and OneMain are the two largest providers of personal installment loans to subprime borrowers in the United States. Both companies have a long history in the business, an extensive branch network, and close ties to the local communities in which they operate. Both companies have used their years of experience and large customer base to develop sophisticated risk analytics that allow them to minimize expected credit losses. Other lenders that offer personal installment loans to subprime borrowers have much smaller branch footprints and are present in fewer states and local markets than Springleaf and OneMain.

In local markets within and around the 126 towns and municipalities in Arizona, California, Colorado, Idaho, North Carolina, Ohio, Pennsylvania, Texas, Virginia, Washington, and West Virginia identified in the Appendix to the Complaint, the market for the provision of personal installment loans to subprime borrowers is highly concentrated. In these local markets, 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. The Complaint alleges that the proposed acquisition would substantially lessen competition in the provision of personal installment loans to subprime borrowers.

F. Difficulty of Entry

According to the Complaint, entry of additional competitors into the provision of personal installment loans to subprime borrowers in the 126 local markets in Arizona, California, Colorado, Idaho, North Carolina, Ohio, Pennsylvania, Texas, Virginia, Washington, and West Virginia identified in the Complaint is unlikely to be timely or sufficient to defeat the likely anticompetitive effects of the proposed acquisition. In some states, the state regulatory rate caps create unattractive markets for entry. In others, lenders face entry barriers in terms of cost and time to establish a local branch presence. Personal installment lenders need experienced branch employees with knowledge of the local market to build a base of customer relationships. A new lender in a local market faces more risks as it does not have knowledge of local market conditions. A lender also must obtain funding and develop resources to build a successful local presence. As a result of these barriers, entry is unlikely to
remedy the anticompetitive effects of the proposed acquisition.

III. Explanation of the Proposed Final Judgment

The divestiture required by the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition by establishing an independent and economically viable competitor in the provision of personal installment loans to subprime borrowers in each of the local markets of concern. Specifically, Paragraphs IV(A) and IV(B) of the proposed Final Judgment require Defendants to divest 127 Springleaf branches, which are identified in the Attachment to the proposed Final Judgment, 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 markets within and around the 126 towns and municipalities identified in the Appendix to the Complaint. The divestiture will establish Lendmark or an alternative Acquirer as a new, independent and economically viable competitor in some states and will allow Lendmark or an alternative Acquirer to compete in new local areas and to enhance its competitive presence in others.

The divestiture of the 127 Springleaf branches includes all active loans originated or serviced at those branches, including all historical performance information (including account-level payment histories) and all customers' credit scores and other credit metrics with respect to loans that are active, closed, paid-off, or defaulted that have been originated or serviced at the Divestiture Branches at any point since January 1, 2010. The historical performance information will allow a lender to gain an understanding of local market conditions and to perform risk analytics essential to making personal installment loans to subprime borrowers. In the event that Lendmark is not the Acquirer, Paragraph III(G)(3) provides that Springleaf will further divest, at the Acquirer’s option, assets related to back office and technical support that would provide the Acquirer with additional capability and know-how.

Paragraph IV(A) of the proposed Final Judgment requires Springleaf to divest the Divestiture Assets within 120 calendar days after the filing of the Complaint or within five (5) calendar days after satisfaction of all state licensing requirements, whichever is sooner. The United States, in its sole discretion, may agree to one or more extensions of this agreement for a total of up to an additional six (6) months.

In the event that Lendmark is unable to acquire the Divestiture Assets in one or more states, Paragraphs IV(B) provide that Springleaf shall divest the remaining Divestiture Assets to an alternative Acquirer(s) acceptable to the United States, in its sole discretion, after consultation with the relevant Plaintiff States. Springleaf shall divest the remaining Divestiture Assets within thirty (30) days after the United States receives notice that Lendmark is not the Acquirer of such Divestiture Assets, or within five (5) days of satisfaction of all state licensing requirements, whichever is sooner. The United States, in its sole discretion, after consultation with the relevant Plaintiff States, may agree to one or more extensions of the time period, not to exceed sixty (60) calendar days in total. Pursuant to Paragraph VII, Springleaf must divest to a single Acquirer all of the Divestiture Branches located in a particular state.

Paragraph IV(C) prohibits Defendants from entering into non-compete agreements with any employee at any of Defendants’ branches or with any regional manager with responsibility for managing any of Defendants’ branches for a period of two (2) years from the date of the filing of the Complaint. Defendants also must waive any existing non-compete agreements with such employees. Paragraph IV(G) ensures that competing providers of personal installment loans, including the Acquirer, may hire Defendants’ branch employees and regional managers who are experienced in making personal installment loans to subprime borrowers.

Paragraph IV(H) provides for the possibility of a transition services agreement between Springleaf and the Acquirer(s) for a period of up to six (6) months. This provision is necessary because the transfer of loan records and customer information from Springleaf's data system to the Acquirer’s data system will require system testing, and the transition may take a period of months after the divestiture. The transition services provided pursuant to such an agreement shall include providing the Acquirer(s) access to a separate information technology environment within Springleaf’s information system for loan origination, administration and services. During the term of the transition services agreement, Springleaf shall implement and maintain procedures to preclude the sharing of data between Springleaf and the Acquirer(s). The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional six (6) months.

Section X of the proposed Final Judgment provides that the United States may appoint a Monitoring Trustee with the power and authority to investigate and report on Defendants’ compliance with the terms of the proposed Final Judgment and the Asset Preservation Stipulation and Order during the pendency of the divestiture. Because satisfaction of the state licensing requirements may take 120 calendar days or longer, a Monitoring Trustee will assist Plaintiffs in monitoring the divestiture process and ensuring Defendants’ compliance with the Asset Preservation Stipulation and Order. The Monitoring Trustee shall file monthly reports with the United States and shall serve until the completion of the divestiture and the expiration of any transition services agreement.

In the event that Springleaf does not accomplish the divestiture to either Lendmark or an alternative Acquirer(s) within the periods prescribed in the proposed Final Judgment, pursuant to Section V, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture. If a Divestiture Trustee is appointed, the proposed Final Judgment provides that Springleaf will pay all costs and expenses of the trustee. After its appointment becomes effective, the Divestiture Trustee will file monthly reports with the Court and the United States setting forth its efforts to accomplish the divestiture. At the end of six (6) months, if the divestiture has not been accomplished, the Divestiture Trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the Final Judgment, including extending the trust or the term of the Divestiture Trustee’s appointment.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who
has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's Internet Web site and, under certain circumstances, published in the Federal Register.

Written comments should be submitted to:

Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 450 Fifth Street NW., Suite 8700, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Springleaf's acquisition of OneMain. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for personal installment loans to subprime borrowers. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day 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, and 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)(A) & (B). In considering these statutory factors, the Court’s inquiry is necessarily 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 generally United States v. SRC Comm’ns, Inc., 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); United States v. U.S. Airways Group, Inc., 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the “court’s inquiry is limited” in Tunney Act settlements); United States v. InBev N.V./S.A., No. 08–1965 (JR), 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11, 2009) (noting that the court’s review of a consent judgment is limited and only inquires “into whether the government’s determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.”).1

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government’s complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may possibly 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) (quoting United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir. 1981)); see also Microsoft, 56 F.3d at 1460–62; United States v. Alcoa, Inc., 152 F. Supp. 2d 37, 40 (D.D.C. 2001); InBev, 2009 U.S. Dist. LEXIS 84787, at *3. 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 is “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).2 In

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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)(4) (2004), with 15 U.S.C. 16(e)(1) (2006); see also SRC Connex’ns, Inc., 489 F. Supp. 2d at 11 (concluding that the 2004 amendments “effected minimal changes” to Tunney Act review).

2 Cf. BNS, 858 F.2d at 464 (holding that the court’s “ultimate authority under the [APPA] is Continued
determining whether a proposed settlement is in the public interest, a district court “must accord deference to the government’s predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.” *SBC Commc’ns*, 489 F. Supp. 2d at 17; see also *U.S. Airways*, 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be “deferential to the government’s 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’ prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. “[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 public interest.’” *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), aff’d sub nom. *Maryland v. United States*, 460 U.S. 1001 (1983); see also *U.S. Airways*, 38 F. Supp. 3d at 76 (noting that room must be made for the government to grant concessions in the negotiation process for settlements) (citing *Microsoft*, 56 F.3d at 1461); *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). To meet this standard, 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.

Moreover, the court’s role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to “construct [its] own hypothetical case and then evaluate the decree against that case.” *Microsoft*, 56 F.3d at 1459; see also *U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government’s decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 (“the ‘public interest’ is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged”). Because the “court’s authority to review the decree depends entirely on the government’s exercising its prosecutorial discretion by bringing a case in the first place,” it follows that “the court is only authorized to review the decree itself,” and not to “effectively redraft the complaint” to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60. As this Court confirmed in *SBC Communications*, courts “cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.” *SBC Commc’ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing 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); see also *U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: “[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.” 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, 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 Tunney Act proceedings.” *SBC Commc’ns*, 489 F. Supp. 2d at 11.3 A court can make its public interest determination based on the competitive impact statement and response to public comments alone.

**VIII. Determinative Documents**

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

**Dated:** November 13, 2015

Respectfully submitted,

Angela Ting
(DC Bar #449576)
U.S. Department of Justice, Antitrust Division, Litigation II Section, 450 Fifth Street NW., Suite 8700, Washington, DC 20530, (202) 616–7721, (202) 514–9033 (Facsimile)
angela.ting@usdoj.gov

**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**

**JUDGE:** Rosemary M. Collyer

**FILED:** 11/13/2015

**Proposed Final Judgment**

**Whereas,** Plaintiffs United States of America, and the States of Colorado, Idaho, Texas, Washington and West Virginia, and the Commonwealths of Pennsylvania and Virginia (collectively, “Plaintiff States”), filed their Complaint on November 13, 2015, Plaintiffs and Defendants Springleaf Holdings, Inc., OneMain Financial Holdings, LLC, and Citifinancial Credit Company, by their respective attorneys, have consented to the entry of this Final Judgment without interest determination on the basis of the competitive impact statement and response to comments alone”;

**United States v. Mid-Am. Dairymen, Inc.**, No. 73–CV–681–W–1, 1977–1 Trade Cas. (CCH) ¶ 61,506, at 71,980. *22* (W.D. Mo. 1977) (“Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.”); S. Rep. No. 93–298, at 6 (1973) (“Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.”).
And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the Defendants to assure that competition is not substantially lessened;

And whereas, Plaintiffs require Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to Plaintiffs that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ordered, adjudged and decreed:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted to this action. The Complaint states a claim against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. “Acquirer” means Lendmark or another entity to which Defendants divest the Divestiture Assets.

B. “Springleaf” means Defendant Springleaf Holdings, Inc., a Delaware corporation with its headquarters in Evansville, Indiana, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. “OneMain” means Defendant OneMain Financial Holdings, LLC, a Delaware limited liability company with its headquarters in Baltimore, Maryland, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. “CitiFinancial” means Defendant CitiFinancial Credit Company, a Delaware corporation, with its headquarters in Dallas, Texas, that is a wholly owned subsidiary of Citigroup and the holding company of OneMain.

E. “Lendmark” means Lendmark Financial Services, LLC, a Georgia limited liability company with its headquarters in Covington, Georgia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

F. “Divestiture Branches” means the Springleaf branches identified in the Attachment to this Final Judgment.

G. “Divestiture Assets” means the Divestiture Branches, including, but not limited to:

1. All real property and improvements, equipment, fixed assets, personal property, office furniture, materials, and supplies; all licenses, permits and authorizations issued by any governmental organization to the extent permitted by such governmental organization; and all contracts, leases and agreements related to the Divestiture Branches.

2. All active loans originated or serviced at the Divestiture Branches; all insurance and other ancillary products sold in conjunction with such loans; all loan documents, records, files, current and past customer information, accounts, and agreements related to such loans and ancillary products; all historical performance information (including account-level payment histories) and all customers’ credit scores and other credit metrics with respect to loans that are active, closed, paid-off, or defaulted that have been originated or serviced at the Divestiture Branches at any point since January 1, 2010.

3. In the event that Lendmark is not the Acquirer, at the Acquirer’s option, all tangible and intangible assets related to Springleaf’s back office and technical support for loan origination, underwriting, and servicing at the Divestiture Branches, including, but not limited to, all equipment and fixed assets; all patents, licenses and sublicenses, intellectual property, technical information, computer software and related documentation, know-how, and trade secrets; and all manuals and technical information Springleaf provides to its own employees.

III. Applicability

A. This Final Judgment applies to Springleaf, OneMain and CitiFinancial, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and V of this Final Judgment, Springleaf sells or otherwise disposes of all or substantially all of its assets or of lesser business units that include the Divestiture Assets, it shall require the purchaser to be bound by the provisions of this Final Judgment. Springleaf need not obtain such an agreement from the Acquirer(s) of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Springleaf is ordered and directed within 120 calendar days after the filing of the Complaint in this matter, or within five (5) calendar days after satisfaction of all state licensing requirements, whichever is sooner, to divest the Divestiture Assets in a manner consistent with this Final Judgment to Lendmark. The United States, in its sole discretion, after consultation with the Plaintiff States, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. In the event that Lendmark has initiated the state licensing process in a particular state but has not satisfied the state’s licensing requirements before the end of the period specified in this Paragraph IV(A), the period shall be extended until five (5) calendar days after satisfaction of the state licensing requirements with respect to those Divestiture Assets.

Springleaf agrees to use its best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In the event Lendmark is not the Acquirer of the Divestiture Assets in one or more states, Springleaf or the Monitoring Trustee shall promptly notify the United States of that fact in writing. In such circumstance, within thirty (30) calendar days after the United States receives such notice, or within five (5) days of satisfaction of all state licensing requirements, whichever is sooner, Springleaf shall divest the remaining Divestiture Assets in a manner consistent with this Final Judgment to an alternative Acquirer(s) acceptable to the United States, in its sole discretion, after consultation with the relevant Plaintiff States. The United States, in its sole discretion, after consultation with the relevant Plaintiff States, may agree to one or more extensions of either time period in this Paragraph IV(B), provided that the extension of either time period shall not exceed sixty (60) calendar days in total. The United States shall notify the Court of any such extension of time.

C. In the event that Lendmark is not the Acquirer of the Divestiture Assets in one or more states, Springleaf shall...
make known, by usual and customary means, the availability of the remaining Divestiture Assets. Springleaf shall inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Springleaf shall offer to furnish to all prospective acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine. Springleaf shall make available such information to Plaintiffs at the same time that such information is made available to any other person.

D. Springleaf shall provide the Acquirer(s) and the United States information relating to the personnel employed at each Divestiture Branch to enable the Acquirer(s) to make offers of employment. Springleaf shall not interfere with any negotiations by the Acquirer(s) to employ any Springleaf employee who works at any Divestiture Branch.

E. Springleaf shall permit prospective acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the Divestiture Branches; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other data and information customarily provided as part of a due diligence process.

F. Defendants shall not take any action that would impede in any way the permitting, operation, or divestiture of the Divestiture Assets. Springleaf shall use its best efforts to assist the Acquirer(s) in satisfying any state licensing requirements or obtaining any other needed governmental approvals relating to the acquisition of the Divestiture Assets.

G. For a period of two (2) years from the date of the filing of the Complaint in this matter, Defendants shall not enter into any non-compete agreement with any employee at any of Defendants’ branches or with any regional manager with responsibility for managing any of Defendants’ branches. Defendants shall waive all obligations under any existing non-compete agreement with any such employee.

H. At the option of the Acquirer(s), Springleaf shall enter into a transition services agreement with the Acquirer(s) for back office and technical support sufficient to meet all or part of the needs of the Acquirer(s) for a period of up to six (6) months. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional six (6) months. The transition services provided pursuant to such an agreement shall include, but are not limited to, providing the Acquirer(s) access to a separate information technology environment within Springleaf’s information systems for loan origination, administration and servicing. During the term of the transition services agreement, Springleaf shall implement and maintain procedures to preclude the sharing of data between Springleaf and the Acquirer(s). The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to market conditions.

I. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by a Divestiture Trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, after consultation with the relevant Plaintiff States, that the Divestiture Assets can and will be used by the Acquirer(s) as part of a viable, ongoing business involving the provision of personal installment loans to subprime borrowers in the United States. Divestiture of the Divestiture Branches may be made to one or more Acquirer(s), provided that Springleaf must divest to a single Acquirer all of the Divestiture Branches located in a particular state and that, in each instance, it is demonstrated to the sole satisfaction of the United States that the Divestiture Branches will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, (1) shall be made to an Acquirer or Acquirers that, in the United States’s sole discretion, after consultation with the Plaintiff States, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the provision of personal installment loans to subprime borrowers in the United States; and (2) shall be accomplished so as to satisfy the United States, in its sole discretion, after consultation with the Plaintiff States, that none of the terms of any agreement between the Acquirer(s) and Springleaf gives Springleaf the ability unreasonably to raise the Acquirer’s costs, to lower the Acquirer’s efficiency, or otherwise to interfere in the ability of the Acquirer(s) to compete effectively.

V. Appointment of Divestiture Trustee

A. If Springleaf has not divested the Divestiture Assets within the time period specified in Paragraph IV(A) or Paragraph IV(B), Springleaf shall notify Plaintiffs of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer or Acquirers acceptable to the United States, after consultation with the Plaintiff States, at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Paragraph V(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Springleaf any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee’s judgment to assist in the divestiture. Any such investment bankers, attorneys, or other agents shall serve on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications.

C. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee’s malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VI.

D. The Divestiture Trustee shall serve at the cost and expense of Springleaf pursuant to a written agreement, on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee’s accounting, including fees for its services yet unpaid...
and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Springleaf and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount. If the Divestiture Trustee and Springleaf are unable to reach agreement on the Divestiture Trustee’s or any agents’ or consultants’ compensation or other terms and conditions of engagement within fourteen (14) calendar days of appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other professionals or agents, provide written notice of such hiring and the rate of compensation to Springleaf and the United States.

E. Springleaf shall use its best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any consultants, accountants, attorneys, and other agents retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Springleaf shall develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial or other confidential research, or applicable privileges. Defendants shall take no action to interfere with or to impede the Divestiture Trustee’s accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and, as appropriate, the Court setting forth the Divestiture Trustee’s efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, Springleaf or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify Plaintiffs of any proposed divestiture required by Section IV or V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify Springleaf. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt of the United States of such notice, the United States, after consultation with the Plaintiff States, may require Springleaf, the proposed Acquirer(s), any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer(s), and any other potential Acquirer(s). Springleaf and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Springleaf, the proposed Acquirer(s), any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to Springleaf and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Springleaf’s limited right to object to the sale under Paragraph V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Springleaf under Paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Asset Preservation

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Asset Preservation Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, Springleaf shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee’s efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee’s judgment, why the required divestiture has not been accomplished, and (3) the Divestiture Trustee’s recommendations. To the extent such report contains information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purposes of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee’s appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute Divestiture Trustee.
acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Springleaf has taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Springleaf, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants’ earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Springleaf shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. Appointment of Monitoring Trustee

A. Upon application of the United States, the Court shall appoint a Monitoring Trustee selected by the United States and approved by the Court.

B. The Monitoring Trustee shall have the power and authority to monitor Defendants’ compliance with the terms of this Final Judgment and the Asset Preservation Stipulation and Order entered by this Court, and shall have such other powers as this Court deems appropriate. The Monitoring Trustee shall be required to investigate and report on the Defendants’ compliance with this Final Judgment and the Asset Preservation Stipulation and Order and the Defendants’ progress toward effectuating the purposes of this Final Judgment.

C. Subject to Paragraph X(E) of this Final Judgment, the Monitoring Trustee may hire at the cost and expense of Springleaf any consultants, accountants, attorneys, or other agents, who shall be solely accountable to the Monitoring Trustee, reasonably necessary in the Monitoring Trustee’s judgment. Any such consultants, accountants, attorneys, or other agents shall serve on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications.

D. Springleaf shall not object to actions taken by the Monitoring Trustee in fulfillment of the Monitoring Trustee’s responsibilities under any Order of this Court on any ground other than the Monitoring Trustee’s malfeasance. Any such objections by Springleaf must be conveyed in writing to the United States and the Monitoring Trustee within ten (10) calendar days after the action taken by the Monitoring Trustee giving rise to Springleaf’s objection.

E. The Monitoring Trustee shall serve at the cost and expense of Springleaf pursuant to a written agreement with Springleaf and on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The compensation of the Monitoring Trustee and any consultants, accountants, attorneys, and other agents retained by the Monitoring Trustee shall be on reasonable and customary terms commensurate with the individual’s experience and responsibilities. If the Monitoring Trustee and Springleaf are unable to reach agreement on the Monitoring Trustee’s or any agent’s or consultant’s compensation or other terms and conditions of engagement within fourteen (14) calendar days of appointment of the Monitoring Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Monitoring Trustee shall, within three (3) business days of hiring any consultants, accountants, attorneys, or other agents, provide written notice of such hiring and the rate of compensation to Springleaf and the United States.

F. The Monitoring Trustee shall have no responsibility or obligation for the operation of Springleaf’s business.

G. Defendants shall use their best efforts to assist the Monitoring Trustee in monitoring Defendants’ compliance with their individual obligations under this Final Judgment and under the Asset Preservation Stipulation and Order. The Monitoring Trustee and any consultants, accountants, attorneys, and other agents retained by the Monitoring Trustee shall have full and complete access to the personnel, books, records, and facilities relating to this Final Judgment, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Monitoring Trustee’s accomplishment of its responsibilities.

H. After its appointment, the Monitoring Trustee shall file reports monthly, or more frequently as needed, with the United States and, as appropriate, the Court, setting forth Defendants’ efforts to comply with their obligations under this Final Judgment and under the Asset Preservation Stipulation and Order. To the extent such reports contain information that the Monitoring Trustee deems confidential, such reports shall not be filed in the public docket of the Court.

I. The Monitoring Trustee shall serve until the divestiture of all the Divestiture Assets is finalized pursuant to either Section IV or Section V of this Final Judgment and the expiration of any continuing transition services agreement.

J. If the United States determines that the Monitoring Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute Monitoring Trustee.

XI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Asset Preservation Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

1. Access during Defendants’ office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, Defendants’ officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.
B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, or the Plaintiff States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, “Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure.” then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States’s responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date:

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16

United States District Judge

ATTACHMENT

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**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

[Docket No. OSHA–2015–0005]

**Federal Advisory Council on Occupational Safety and Health (FACOSH)**

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Announcement of the renewal of the FACOSH charter and appointment of new members to FACOSH.

**SUMMARY:** The Secretary of Labor has renewed the FACOSH charter and appointed six individuals to serve on FACOSH.

**FOR FURTHER INFORMATION CONTACT:**

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, Room N–3657, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email meilinger.francis2@dol.gov.

For general information: Mr. Francis Yebesi, Director, OSHA Office of Federal Agency Programs, N–3622, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2233; email yebesi.francis@dol.gov.

**SUPPLEMENTARY INFORMATION:**

**Renewal of FACOSH Charter**

On September 30, 2015, President Barack Obama signed Executive Order (E.O.) 13708 extending certain federal advisory committees, including FACOSH, until September 30, 2017 (80 FR 60271 [10/5/2015]). In response, the Secretary of Labor (Secretary) renewed and filed the FACOSH charter on October 14, 2015. FACOSH will terminate on September 30, 2017, unless the President continues the committee. (The FACOSH charter is available to read or download on the FACOSH page on OSHA’s Web page at http://www.osha.gov.)

FACOSH is authorized by 5 U.S.C. 7902, section 19 of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 668), and E.O. 11612, as amended, to advise the Secretary on all matters relating to the occupational safety and health of federal employees. This includes providing advice on how to reduce and keep to a minimum the number of injuries and illnesses in the federal workforce and how to encourage each federal Executive Branch department and agency to establish and maintain effective occupational safety and health programs.

**Appointment of FACOSH Members**

FACOSH is comprised of 16 members; eight who represent federal agency management and eight from labor organizations that represent federal employees. The Secretary has appointed or re-appointed the following individuals to serve on FACOSH:

- **Federal employee representatives:**
  - Mr. William Dougan, National Federation of Federal Employees (Reappointment). Term expires December 31, 2018;
  - Ms. Nan Thompson Ernst, American Federation of State, County and Municipal Employees. Term expires December 31, 2016;
  - Ms. Deborah Kleinberg, Seafarers International Union (Reappointment). Term expires December 31, 2018; and

- **Federal agency management representatives:**
  - Mr. Gregory Parham, U.S. Department of Agriculture (Reappointment). Term expires December 31, 2018; and
  - Mr. Charles Rosenfarb, U.S. Department of State. Term expires December 31, 2018.

**Authority and Signature**


Signed at Washington, DC, on November 19, 2015.

David Michaels,
Assistant Secretary of Labor for Occupational Safety and Health.

**NUCLEAR REGULATORY COMMISSION**

**Advisory Committee on Reactor Safeguards; Notice of Meeting**

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on December 3–5, 2015, 11545 Rockville Pike, Rockville, Maryland.

**Thursday, December 3, 2015, Conference Room T–281, 11545 Rockville Pike, Rockville, Maryland**

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–11:00 a.m.: 10 CFR 50.46c Rulemaking Activities (Open)—The Committee will hear presentations by and hold discussions with representatives of the staff regarding 10 CFR 50.46c rulemaking activities.