



Division of Financial Practices

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C.

May 21, 2021

Bryan A. Schneider, Associate Director
Supervision, Enforcement, and Fair Lending
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Dear Mr. Schneider:

This letter responds to your request for information concerning the Federal Trade Commission's (Commission or FTC) enforcement activities related to compliance with Regulation Z (the Truth in Lending Act or TILA); Regulation M (the Consumer Leasing Act or CLA); and Regulation E (the Electronic Fund Transfer Act or EFTA) (collectively, the Regulations).¹ You request this information for use in preparing the Consumer Financial Protection Bureau's (CFPB) 2020 Annual Report to Congress. Specifically, you ask for information concerning the FTC's activities with respect to the Regulations during 2020. We are pleased to provide the requested information below.²

I. FTC Role in Administering and Enforcing the Regulations

The Dodd-Frank Act, signed into law on July 21, 2010, substantially restructured the financial services law enforcement and regulatory system. Among other things, the Act made important changes to the TILA, CLA, and EFTA, and other consumer laws, such as giving the CFPB rulemaking and enforcement authority for the TILA, CLA, and EFTA. Under the Act, the FTC retained its authority to enforce the TILA and Regulation Z, the CLA and Regulation M, and the EFTA and Regulation E. In addition, the Act gave the Commission the authority to

¹ The TILA is at 15 U.S.C. § 1601 *et seq.*; the CFPB's Regulation Z is at 12 C.F.R. Part 1026; and the Federal Reserve Board's (Board's) Regulation Z is at 12 C.F.R. Part 226. The CLA is at 15 U.S.C. § 1667 *et seq.*; the CFPB's Regulation M is at 12 C.F.R. Part 1013; and the Board's Regulation M is at 12 C.F.R. Part 213. The EFTA is at 15 U.S.C. § 1693 *et seq.*; the CFPB's Regulation E is at 12 C.F.R. Part 1005; and the Board's Regulation E is at 12 C.F.R. Part 205. Our understanding is that your request encompasses the CLA, an amendment to the TILA.

² A copy of this letter is being provided to the Board's Division of Consumer and Community Affairs, in connection with its responsibility for some aspects of the Regulations after the transfer date of July 21, 2011. Among other things, the Board retained responsibility for implementing the Regulations with respect to certain motor vehicle dealers, under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act), Pub. L. 111-203, 124 Stat. 1376 (July 21, 2010). *See, e.g.*, Dodd-Frank Act, § 1029 and Subtitle H.

enforce any CFPB rules applicable to entities within the FTC’s jurisdiction, which include most providers of financial services that are not banks, thrifts, or federal credit unions.³ In accordance with the memorandum of understanding that the Commission and the CFPB entered into in 2012 and reauthorized in 2015 and 2019, and consistent with the Dodd-Frank Act, the Commission has been coordinating certain law enforcement, rulemaking, and other activities with the CFPB.⁴

II. Regulation Z (the TILA) and Regulation M (the CLA)

In 2020, the Commission engaged in law enforcement; rulemaking, research and policy development; and consumer and business education, all relating to the topics covered by the TILA and Regulation Z and the CLA and Regulation M, including the advertisement, extension, and certain other aspects of consumer credit and leasing.⁵

A. Truth in Lending and Consumer Leasing: Enforcement Actions

In 2020, the Commission’s law enforcement efforts against those who market or extend non-mortgage credit included actions involving automobile financing, payday loans, and credit repair and debt relief.

1. Automobiles (Credit and Leasing)

In 2020, the FTC continued its efforts to combat deceptive automobile dealer practices with litigation in two federal court actions involving the TILA and Regulation Z (credit) and the CLA and Regulation M (leasing). In May, the FTC brought an enforcement action in federal court against New York City car dealer Bronx Honda and its general manager, Carlo Fittanto, alleging, among other things, that defendants violated the FTC Act, TILA and Regulation Z.⁶

³ The FTC has authority to enforce the TILA and Regulation Z, the CLA and Regulation M, and the EFTA and Regulation E, as to entities for which Congress has not committed enforcement to some other government agency. See 15 U.S.C. § 1607(c) (the TILA and Regulation Z, and the CLA and Regulation M) and 15 U.S.C. § 1693o (the EFTA and Regulation E).

⁴ See FTC, *Memorandum of Understanding between the Consumer Financial Protection Bureau and the Federal Trade Commission*, Jan. 20, 2012, available at <https://www.ftc.gov/system/files/120123ftc-cfpb-mou.pdf>, and FTC, *Memorandum of Understanding between the Consumer Financial Protection Bureau and the Federal Trade Commission*, Mar. 6, 2015, available at https://www.ftc.gov/system/files/documents/cooperation_agreements/150312ftc-cfpb-mou.pdf. In 2019, the FTC and CFPB again reauthorized the MOU. See FTC, *Memorandum of Understanding between the Consumer Financial Protection Bureau and the Federal Trade Commission*, Feb. 25, 2019, available at https://www.ftc.gov/system/files/documents/cooperation_agreements/ftc-cfpb_mou_225_0.pdf. See also Dodd-Frank Act, § 1024.

⁵ Your letter also asks for specific data regarding compliance examinations, including the extent of compliance, number of entities examined, and compliance challenges experienced by entities subject to the FTC’s jurisdiction. The Commission does not conduct compliance examinations or collect compliance-related data concerning the non-bank entities within its jurisdiction. As a result, this letter does not provide this information.

⁶ *FTC v. Liberty Chevrolet, Inc.*, No. 20-cv-3945 (S.D.N.Y. filed May 21, 2020), available at <https://www.ftc.gov/enforcement/cases-proceedings/162-3238/bronx-honda>. Commissioners Chopra and Slaughter

According to the FTC’s complaint, defendants failed to honor advertised sales prices and inflated the cost through a variety of methods – changing the sales price on paperwork during the sale without apprising consumers (which defendants referred to internally as adding “air money”), double-charging consumers for taxes and fees without their knowledge, and telling consumers they had to pay thousands of dollars in unnecessary fees to purchase “certified pre-owned” cars not required by that program.⁷ They also advertised monthly payment amounts without disclosing other key terms required by law such as the downpayment amount, terms of repayment, and APR, and stated a rate of finance charge but failed to disclose the rate as an “annual percentage rate,” in violation of TILA and Regulation Z.⁸ In May, the defendants agreed to pay \$1.5 million to settle the charges for their alleged unlawful sales and financing practices and certain other violations; the settlements also prohibit the defendants from misrepresenting the cost or terms to buy, lease, or finance a car, or whether a fee or charge is optional, require express informed consent for all charges, and prohibit violations of TILA and Regulation Z.⁹ The FTC issued refunds totaling nearly \$1.5 million to individuals affected by the allegedly unlawful financing and sales practices of defendants, with refunds averaging about \$371 each to 3,977 victims of Bronx Honda’s practices.¹⁰

The FTC continued litigation in a federal court action (previously reported on) alleging that a group of four auto dealers operating in Arizona and New Mexico, near the border of the Navajo Nation, engaged in a range of illegal activities including falsifying consumers’ income and down payment information on vehicle financing applications and contracts submitted to third-party financing companies, and misrepresenting important financial terms in vehicle advertisements, in violation of the FTC Act.¹¹ The complaint also charged Tate’s Auto with violating the TILA and Regulation Z (credit) and the CLA and Regulation M (leases) by failing

each issued concurring statements in this matter. *See Statement of Commissioner Rohit Chopra in the Matter of Liberty Chevrolet, Inc. d/b/a/ Bronx Honda* (May 27, 2020), available at <https://www.ftc.gov/public-statements/2020/05/statement-commissioner-rohit-chopra-matter-liberty-chevrolet-inc-dba-bronx>, *Statement of Commissioner Rebecca Kelly Slaughter in the Matter of Liberty Chevrolet, Inc. d/b/a Bronx Honda* (May 27, 2020), available at <https://www.ftc.gov/public-statements/2020/05/statement-commissioner-rebecca-kelly-slaughter-matter-liberty-chevrolet>.

⁷ *Id.* See also FTC, Press Release, *Auto Dealership Bronx Honda, General Manager to Pay \$1.5 Million to Settle FTC Charges They Discriminated Against African-American, Hispanic Car Buyers* (May 27, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/05/bronx-honda-to-pay-over-1-million-to-settle-charges>.

⁸ See *supra* note 6.

⁹ *FTC v. Liberty Chevrolet, Inc.*, No. 20-cv-3945 (S.D.N.Y. May 27, 2020) (stipulated orders for permanent injunction and other equitable relief), available at <https://www.ftc.gov/enforcement/cases-proceedings/162-3238/bronx-honda>.

¹⁰ See FTC, Press Release, *FTC Sends Nearly \$1.5 Million to Victims of Bronx Honda’s Illegal Financing and Sales Practices* (Nov. 10, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/11/ftc-sends-nearly-15-million-victims-bronx-hondas-illegal>.

¹¹ *FTC v. Tate’s Auto Center of Winslow, Inc.*, No. 18-cv-08176 (D. Ariz. filed July 31, 2018), available at <https://www.ftc.gov/enforcement/cases-proceedings/162-3207/tates-auto-center>.

to disclose required terms in advertisements, including online and social media.¹² In September 2020, the FTC announced a partial settlement with the auto dealership defendants who are in Chapter 7 bankruptcy proceedings and under control of a bankruptcy trustee, requiring those dealerships to cease business operations; the settlement includes a monetary judgment of \$7.2 million against the defendants and makes the Commission an unsecured claimant in the bankruptcy.¹³ Litigation in the matter continues against the remaining defendants.

In August 2020, the FTC also issued an administrative complaint against a marketer, Traffic Jam Events, LLC, and its owner, David J. Jeanson II, alleging multiple counts of deceptive conduct, including that the respondents have deceived consumers with mailers supposedly directing them to obtain federal COVID-19 stimulus benefits and through prize mailers, in violation of the FTC Act.¹⁴ In addition, the FTC's complaint claims the respondents violated the TILA and Regulation Z by failing to clearly disclose required credit information in their advertising.¹⁵ The administrative complaint mirrors a prior federal court complaint, which the Commission voluntarily dismissed to pursue a broader administrative proceeding.¹⁶

2. Payday Lending (Credit)

In 2020, the FTC filed a complaint against a payday lending enterprise (Harvest Moon), involving 11 companies operating through Internet websites and telemarketing, alleging that Harvest Moon deceptively overcharged consumers millions of dollars and used deceptive tactics to convince consumers that their loans would be repaid in a fixed number of payments when, in many instances, the defendants had applied the payments to finance-charge only amounts, and

¹² *Id.*

¹³ See *FTC v. Tate's Auto Center of Winslow, Inc.*, No. 18-cv-08176 (D. Ariz. Aug. 18, 2020) (order), available at <https://www.ftc.gov/enforcement/cases-proceedings/162-3207/tates-auto-center>; see also FTC, Press Release, *Auto Dealer Group to Cease Business Operations As Part of FTC Settlement* (Sept. 4, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/09/auto-dealer-group-cease-business-operations-part-ftc-settlement>.

¹⁴ See *In the Matter of Traffic Jam Events, LLC*, FTC Dkt. No. 9395 (filed Aug. 7, 2020), available at <https://www.ftc.gov/enforcement/cases-proceedings/x200041-2023127/traffic-jam-events-llc-matter>; see also FTC, Press Release, *FTC Adds Charges Against Auto Marketer For Deceptive "Prize" Mailers* (Aug. 13, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/08/ftc-adds-charges-against-auto-marketer-deceptive-prize-mailers>.

¹⁵ *Id.*

¹⁶ See *FTC v. Traffic Jam Events, LLC*, No. 20-cv-01740 (E.D. La. filed June 16, 2020), available at https://www.ftc.gov/system/files/documents/cases/traffic_jam_events_complaint.pdf; (E.D. La. Aug. 10, 2020) (order dismissing without prejudice). See also FTC, Press Release, *Marketer Used Deceptive COVID-19 Stimulus Mailers To Lure Consumers to Used Car Sales, FTC Alleges* (June 17, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/06/marketer-used-deceptive-covid-19-stimulus-mailers-lure-consumers>.

also failed to make required loan disclosures.¹⁷ The FTC charged the defendants with violating the FTC Act, the TILA and Regulation Z, and the Telemarketing Sales Rule (TSR).¹⁸ A federal court entered a temporary restraining order halting the operation and freezing the defendants' assets, at the FTC's request.¹⁹ In 2020, litigation was continuing in this matter.

3. Credit Repair and Debt Relief (Credit)

The FTC obtained settlements with the defendants in Grand Teton Professionals, a credit repair scheme in which the defendants allegedly charged illegal upfront fees and falsely claimed to repair consumers' credit, previously reported on.²⁰ Under the settlements, the defendants are permanently banned from operating or promoting any credit repair service.²¹ Defendants also are prohibited from misleading consumers about financial services like credit offerings or debt relief and from further violations of several federal laws and regulations, including the TILA and Regulation Z.²² The settlements also provide for monetary judgments that were suspended or partially suspended, based on ability to pay.²³ In November 2020, the FTC sent refunds totaling nearly \$150,000 to individuals who lost money in this scheme.²⁴

¹⁷ See FTC, Press Release, *FTC Halts Deceptive Payday Lender That Took Millions From Consumers' Accounts Without Authorization* (May 22, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/05/ftc-halts-deceptive-payday-lender-took-millions-consumers>.

¹⁸ *FTC v. Lead Express, Inc.*, No. 20-cv-00840 (D. Nev. filed May 11, 2020), available at <https://www.ftc.gov/enforcement/cases-proceedings/192-3208/lead-express-inc-harvest-moon-financial>.

¹⁹ *FTC v. Lead Express, Inc.*, No. 20-cv-00840 (D. Nev. May 19, 2020) (order granting in part ex parte emergency motion for temporary restraining order and requiring defendants to show cause), available at <https://www.ftc.gov/enforcement/cases-proceedings/192-3208/lead-express-inc-harvest-moon-financial>.

²⁰ See FTC, Press Release, *Defendants in FTC Credit Repair Scheme Case Agree to Settle Charges* (Jan. 17, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/01/defendants-ftc-credit-repair-scheme-case-agree-settle-charges>.

²¹ See, e.g., *FTC v. Grand Teton Professionals, LLC*, No. 19-cv-00933 (D. Conn. Jan. 17, 2020) (stipulation to enter order for permanent injunction and monetary judgment as to defendants Grand Teton Professionals, LLC, 99th Floor, LLC, Mait Management Inc., Demand Dynamics LLC, Atomium Corps Inc. (Wyo), Startup Masters NJ Inc. (Wyo), First Incorporation Services Inc. (Wyo), Douglas Filter, and Marcio Andrade) (First Incorporation Services Inc. order), No. 19-cv-00933 (D. Conn. Jan. 17, 2020) (stipulation to enter order for permanent injunction and monetary judgment as to defendant Atomium Corps Inc. (Colo)), No 19-cv-00933 (D. Conn. Jan. 17, 2020) (Atomium Corps Inc. order), available at <https://www.ftc.gov/enforcement/cases-proceedings/182-3168/grand-teton-professionals-llc>. The settlement with defendant Startup Masters NJ Inc. (NJ) occurred in December 2019 but was released by the FTC with the other settlements in 2020, and was not previously reported. See *FTC v. Grand Teton Professionals, LLC*, No. 19-cv-00933 (D. Conn. Dec. 13, 2019) (stipulation to enter order for permanent injunction and monetary judgment as to defendant Startup Masters NJ Inc.) (New Jersey) (Startup Masters NJ Inc. (NJ) order), available at <https://www.ftc.gov/enforcement/cases-proceedings/182-3168/grand-teton-professionals-llc>.

²² *Id.*

²³ See *First Incorporation Services Inc. order* (\$9,641,982, partially suspended), *Atomium Corps Inc. order* (\$3,256,850, partially suspended), *Startup Masters NJ Inc. (NJ) order* (\$954,054, suspended), *supra* note 21. The full judgments will become due if the defendants are found to have misrepresented their financial condition.

In 2020, litigation continued against one operator of a student loan debt relief scheme, for violations of the FTC Act, the TSR, and the TILA, previously reported on. The complaint alleged that defendants charged illegal upfront fees that they led consumers to believe went towards consumers' student loans, falsely promised that their services would permanently lower or even eliminate consumers' loan payments or balances, and signed customers up for high-interest loans to pay the fees without making required disclosures.²⁵

B. Truth in Lending and Consumer Leasing: Rulemaking, Research, and Policy Development

1. Automobiles (Credit)

a. Auto Buyers Study

In 2020, the FTC announced two staff reports on consumers' experiences related to buying and financing automobiles at dealerships based, in part, on a study of auto buyers conducted by the FTC that consisted of in-depth interviews with 38 consumers about the car buying and financing process.²⁶ The Bureau of Consumer Protection staff report (BCP Staff Report) notes that consumers were sometimes not aware of key terms of sales and financing contracts, and it points in particular to issues that potentially keep them from having an accurate picture of the amount they are paying.²⁷ The BCP Staff Report also explained that the later stages of the buying and financing process, including involving "add-ons" like extended warranties, service plans, and GAP (guaranteed asset protection), and meeting with the dealer's financing office for additional negotiations after seemingly negotiating a price with a salesperson, also present issues. A companion report about the study was issued jointly by the staff of the Commission's Bureau of Economics and Bureau of Consumer Protection (BE-BCP Staff Joint Report or Joint Report).²⁸ The BE-BCP Staff Joint Report provides a detailed description of the study's methodology and analysis of the results of the in-depth consumer interviews, as well as a discussion of how the study fits within the existing framework of

²⁴ See FTC, Press Release, *FTC Sends Refunds to Victims of Credit Repair Scam* (Nov. 9, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/11/ftc-sends-refunds-victims-credit-repair-scam>.

²⁵ See *FTC v. Student Advocates Team, LLC*, No. 8:19-cv-1728 (C.D. Cal. filed Sept. 11, 2019), available at <https://www.ftc.gov/enforcement/cases-proceedings/172-3036/student-advocates-team-llc-et-al>.

²⁶ See FTC, Press Release, *FTC Announces Staff Reports on Car Buying and Financing Experience, Results of Auto Buyers Study* (July 30, 2020) available at <https://www.ftc.gov/news-events/press-releases/2020/07/ftc-announces-staff-reports-car-buying-financing-experience>.

²⁷ FTC STAFF REPORT OF THE BUREAU OF CONSUMER PROTECTION, *BUCKLE UP: NAVIGATING AUTO SALES AND FINANCING* (July 2020), available at <https://www.ftc.gov/reports/buckle-navigating-auto-sales-financing>.

²⁸ FTC JOINT STAFF REPORT OF THE BUREAU OF ECONOMICS AND BUREAU OF CONSUMER PROTECTION, *THE AUTO BUYER STUDY: LESSONS FROM IN-DEPTH CONSUMER INTERVIEWS AND RELATED RESEARCH* (July 2020), available at <https://www.ftc.gov/reports/auto-buyer-study-lessons-depth-consumer-interviews-related-research>.

academic research into the car buying and financing processes. The Joint Report analyzes the responses collected in the study and how they compare to existing literature about how consumers move through the car-buying process. The Joint Report also includes a number of overall lessons from the study regarding consumers' approaches to the car purchasing and financing process and their understanding of many elements of the process. It notes a number of areas where consumers did not understand the process, including what terms were negotiable, the terms and conditions of add-ons, and other important terms included in transaction paperwork.

b. Heartland Common Ground Conference

In March, the FTC, in cooperation with the Offices of the Attorney General for the States of Arkansas, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas, hosted a Common Ground Conference, in Memphis, Tennessee.²⁹ At the event, FTC staff, state and federal consumer protection officials, advocates, regulators, social service providers, and others addressed a variety of issues facing Heartland consumers. Among other topics, participants discussed auto sales and financing, including deceptive ads, and issues with titles and financing, including scams affecting the American Heartland.

2. Military (Credit and Leasing)

In 2020, the FTC's Military Task Force, which includes a cross-section of agency representatives, continued work on military consumer protection issues.³⁰ The Task Force represents part of the agency's collaborative effort to provide resources for military consumers and is aimed at identifying their needs and formulating initiatives to empower servicemembers, veterans, and their families, including through law enforcement actions. Additional information concerning FTC initiatives in 2020 to assist military consumers is included below.

a. ABA Legal Assistance for Military Personnel

The FTC staff worked with the American Bar Association's Standing Committee on Legal Assistance for Military Personnel (ABA LAMP or committee). The FTC serves as a liaison to ABA LAMP, and staff coordinates on FTC initiatives to assist military consumers, and provides training to servicemembers' and veterans' representatives in conjunction with the committee on consumer financial issues, including the Military Lending Act (MLA) and the Department of Defense (DoD) military lending rule, consumer credit and TILA-related matters, and consumer leasing and CLA-related matters.

b. Department of Defense Military Lending Task Force

²⁹ See *Working Together to Protect Heartland Consumers: A Common Ground Conference* (Mar. 9-10, 2020), available at <https://www.ftc.gov/news-events/events-calendar/working-together-protect-heartland-consumers-common-ground-conference>.

³⁰ See FTC, *Military Task Force*, available at <https://www.ftc.gov/policy/advocacy/military-task-force>.

The FTC staff also participated in an interagency group that coordinates with the DoD on issues pertaining to the MLA and DoD’s military lending rule implementing the MLA, which includes issues related to the TILA and other credit matters.³¹

3. Small Business Forum – Staff Perspective (Credit)

In 2020, the FTC staff issued a Staff Perspective on the small business financing forum, “Strictly Business,” that the FTC held in May 2019.³² The Staff Perspective outlined a number of topics discussed by participants in the forum, provided an overview of small business lending and the emergence of new online options available to businesses seeking financing, and addressed potential benefits and consumer protection concerns around these online lending options for business.³³ Among other things, the Staff Perspective noted that inconsistent information is provided to business owners, and while the TILA requires disclosure of the annual percentage rate (APR) and other key pieces of information in personal credit transactions, it generally applies in transactions involving personal, family, or household credit. The Staff Perspective noted that small business finance providers often describe costs associated with their products differently: some lenders state the costs of their loans as an APR; others express it as the “total cost of capital” (the total overall dollar amount consumers will pay in fees or costs beyond repaying the principal); and still others use metrics, such as “interest rate,” “fees,” or “factor rate.” According to the Staff Perspective, panelists generally emphasized problems posed by non-uniform disclosures but disagreed about which methods for calculating costs would be most relevant and understandable. For example, some panelists, including consumer advocates, argued business owners would most likely understand costs and fees expressed as an APR or interest rate, while industry panelists argued that for shorter-term financing arrangements repaid within several months, business owners may view the total cost of capital as more useful and understandable than annualized metrics. The Staff Perspective also observed that small business consumers likely would benefit from more uniform and understandable financing disclosures to help them compare costs and other features of products in the small business marketplace.

C. Truth in Lending and Consumer Leasing: Consumer and Business Education

1. Automobiles (Credit)

The Commission issued blog posts discussing the FTC’s cases and other initiatives in the automobile areas, noted above. The FTC issued a blog post for consumers on the auto buyers

³¹ The MLA requires the DoD to coordinate with several federal agencies, including the FTC, in prescribing regulations and not less than every two years thereafter. 10 U.S.C. § 987.

³² See FTC, Press Release, *FTC Staff Perspective Recaps Small Business Financing Forum* (Feb.26, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/02/ftc-staff-perspective-recaps-small-business-financing-forum>.

³³ See FTC, “Strictly Business” Forum, Staff Perspective (Feb. 2020), available at <https://www.ftc.gov/reports/staff-perspective-paper-ftcs-strictly-business-forum>.

study reports.³⁴ The blog post noted some of the challenges the reports highlight that people face while buying and financing cars, especially charges for add-on items after price negotiations that can lead you to pay more than expected, and it provided steps to increase your chances of buying only what you need while avoiding the pitfalls. The FTC also issued a blog post for businesses on the auto reports, highlighting a significant finding of the BCP Staff Report in that consumers may be unaware of key terms in sales and financing contracts, in part because the negotiations process focuses on the monthly payments, leaving consumers in the dark about other important financial variables like the downpayment, length of financing, total sales price and APR.³⁵ In addition, the blog post noted that dealers often address add-ons, such as extended warranties, service plans, and GAP policies, with consumers at a last-lap meeting in the financing office; the post further explained that consumers might not know they are being charged for add-ons, or add-ons may have limits or conditions and may not cover what consumers expect. It also noted that the BE-BCP Staff Joint Report includes details about the study’s methodology and discusses existing research, underscores that many consumers in the study didn’t know they could negotiate terms other than price and trade-in, and highlights the need for consumer education about add-ons.

2. Payday Lending (Credit)

The FTC also issued a blog post informing consumers about the practices of the Harvest Moon payday lenders related to extending high-fee, short-terms “payday” loans.³⁶ The blog post alerted consumers that the defendants told people they would repay a set amount of a fixed number of payments but instead repeatedly took money from their accounts, and some consumers paid around \$1,200 for a \$250 loan. The defendants did not give people clear and accurate information about the loan’s key terms, and made it virtually impossible for people to get copies of their loan agreements or talk to someone about the payment terms. The Commission also released a blog post for businesses about this case, noting that despite the companies’ representations that consumers could repay their loans in a fixed number of payments, in many instances, they took finance charge-only payments from consumers, without ever crediting the payments to the principal that consumers owe, causing consumers to pay significantly more than what defendants represented.³⁷

The Commission released additional information about payday lending and car title loans through its blog posts, including a blog post warning consumers that although the coronavirus

³⁴ See Jim Kreidler, *FTC Announces Auto Buyers Study Reports*, FTC BUREAU OF CONSUMER PROTECTION BLOG (July 31, 2020), <https://www.consumer.ftc.gov/blog/2020/07/ftc-announces-auto-buyers-study-reports>.

³⁵ See Lesley Fair, *Buckle up for a two-lane look at car buying*, FTC BUSINESS CENTER BUSINESS BLOG (July 30, 2020), <https://www.ftc.gov/news-events/blogs/business-blog/2020/07/buckle-two-lane-look-car-buying>.

³⁶ See Lisa Lake, *Paying, and paying, and paying payday loans*, FTC BUREAU OF CONSUMER PROTECTION BLOG (May 22, 2020), <https://www.consumer.ftc.gov/blog/2020/05/paying-and-paying-and-paying-payday-loans>.

³⁷ See Lesley Fair, *FTC challenges tactics of online payday lender*, FTC BUSINESS CENTER BUSINESS BLOG (May 22, 2020), <https://www.ftc.gov/news-events/blogs/business-blog/2020/05/ftc-challenges-tactics-online-payday-lender>.

pandemic has caused many consumers financial stress, payday loans or car title loans can be very expensive as a way to borrow money for a short period of time.³⁸ The blog post explained how these loans work, provided examples of the steep costs involved, and compared the loans numerically with the alternative of a bank or credit union loan. It guided consumers to look for the APR, which explains how much it costs to borrow money for one year, and offered tips for consumers needing other options if they can't pay their bills. The FTC also released another blog post on payday loans, noting that some people may have exhausted personal loans or other money toward the end of the month, and may be considering payday loans, which are sometimes as much as 500-700% APR.³⁹ The blog warned that, although consumers may think they will repay the loan when they get paid, studies have shown that few people are “one and done” with payday loans; instead, they may roll over the loan repeatedly, incurring more fees and interest, and wind up paying thousands of dollars for one \$500 loan. The blog post advised consumers to read the loan terms carefully, add up how much is required if they can't repay in two weeks, and consider if the payday loan will ultimately help or hurt them in the long-term.

III. Regulation E (the EFTA)

In 2020, the FTC had eight new or ongoing cases pertaining to the EFTA and Regulation E. The Commission also engaged in research and policy work and educational activities involving the EFTA and Regulation E.

A. Electronic Fund Transfers: Enforcement Actions

1. Negative Option Cases

Six of the Commission's cases alleging violations of the EFTA and Regulation E arose in the context of “negative option” plans.⁴⁰ These include plans where a consumer agrees to receive various goods or services from a company, often for a trial period at no charge or at a reduced price. The company also obtains, sometimes through misrepresentations, the consumer's debit or credit card number. If the consumer does not cancel before the end of the trial period, the shipments of goods or provision of services continue, and the consumer incurs recurring charges. The EFTA and Regulation E prohibit companies from debiting consumers' debit cards, or using other electronic fund transfers to debit their bank accounts, on a recurring basis without obtaining proper written authorization for preauthorized electronic fund transfers and without providing the consumer with a copy of the written authorization.

³⁸ Alvaro Puig, *What you should know about payday loans and car title loans*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Apr. 23, 2020), <https://www.consumer.ftc.gov/blog/2020/04/what-you-should-know-about-payday-loans-and-car-title-loans>.

³⁹ Jennifer Leach, *Paying the high cost of payday loans*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Aug. 27, 2020), <https://www.consumer.ftc.gov/blog/2020/08/paying-high-cost-payday-loans>.

⁴⁰ Negative option plans can involve the use of debit cards, credit cards, or both. The EFTA and Regulation E apply to debit cards; the TILA and Regulation Z apply to credit cards.

The FTC entered into a settlement with operators of an online subscription scheme (AH Media Group) pitching at least eight different product lines, primarily cosmetics and dietary supplements, where defendants misled consumers about supposedly “free trial” offers, enrolling them in unwanted continuity plans, billing them without their authorization, and making it nearly impossible for them to cancel or get their money back, based on the complaint (previously reported), which charged the defendants with violations of the FTC Act, the Restore Online Shoppers’ Confidence Act (ROSCA), and the EFTA.⁴¹ In addition to a ban on negative option marketing, the settlement orders ban the defendants from misrepresenting any fact material to consumers concerning any good or service, and require the defendants to provide clear and conspicuous disclosures regarding fees and refunds.⁴² The orders also require the defendants to obtain express informed consent from consumers before charging them or debiting money from their bank accounts, to obtain written authorization signed or similarly authenticated from the consumer before initiating any preauthorized electronic fund transfer from the consumer’s account, and to timely provide the consumer with a copy of the valid written authorization – which are required by the EFTA and Regulation E. The order against defendants AH Media and Block imposes a \$67 million judgment, and the order against defendants Schill and Zanello imposes a \$74.5 million judgment; both orders are partially suspended based on the defendants’ financial condition, and require defendants to turn over a total of approximately \$4.3 million.⁴³

In another negative option case (Apex Capital), the FTC obtained a settlement with the remaining defendants, a Latvian payment processor (Transact Pro) and its former CEO, in which case those defendants illegally maintained merchant accounts in the name of shell companies and enabled the Apex Capital defendants’ efforts to evade card chargeback monitoring programs for a scheme involving marketing supposedly “free trial” offers. Instead, the defendants charged consumers the full price of the products and enrolled them in negative option continuity plans without their consent.⁴⁴ The complaint (previously reported on) charged the defendants with violations of the FTC Act, the EFTA, and the ROSCA. The final order resolved the Commission’s charges against the Transact Pro defendants and prohibits them from the conduct alleged in the complaint, including credit card laundering.⁴⁵ It also bans them from payment

⁴¹ See FTC, Press Release, *FTC Halts Online Subscription Scheme that Deceived People with “Free Trial” Offers* (May 8, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/05/ftc-halts-online-subscription-scheme-deceived-people-free-trial>.

⁴² *FTC v. AH Media Group, LLC*, No. 19-cv-04022 (N.D. Cal. May 14, 2020) (stipulated order for permanent injunction and monetary judgment against AH Media Group, LLC and Henry Block), (N.D. Cal. Mar. 6, 2020) (stipulated order for permanent injunction and monetary judgment against Alan Schill and Zanello, LLC), available at <https://www.ftc.gov/enforcement/cases-proceedings/182-3047/ah-media-group-llc>.

⁴³ See *id.* The full judgments will become due if the defendants are found to have misrepresented their financial condition.

⁴⁴ See FTC, Press Release, *Overseas Payment Processor and its Former CEO Settle FTC Allegations That They Enabled a Deceptive “Free Trial” Offer Scheme*, (Jan. 17, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/01/overseas-payment-processor-its-former-ceo-settle-ftc-allegations>.

⁴⁵ *FTC v. Apex Capital Group, LLC*, No. 18-cv-09573 (C.D. Cal. Jan. 15, 2020) (stipulated order for permanent injunction and monetary judgment), available at <https://www.ftc.gov/enforcement/cases-proceedings/172-3189/apex-capital-group-llc>.

processing or assisting others in payment processing for certain categories of merchants, requires enhanced screening and monitoring procedures for the company’s “high-risk” clients, and prohibits unauthorized debiting or charging of consumer bank or credit card accounts. In addition, it imposes a \$3.5 million judgment against the Transact Pro defendants, which the FTC may use to provide refunds to consumers defrauded by the Apex Capital “free trial” scheme.

In 2020, the FTC continued litigation against the remaining defendants in an action that was previously reported on against Redwood Scientific, in which the FTC alleged that defendants engaged in a scheme that used illegal robocalls to deceptively market dissolvable oral film strips as effective smoking cessation, weight-loss, and sexual-performance aids, and enrolled consumers in auto-ship continuity plans without their consent, in violation of the FTC Act, the EFTA, the TSR, and the ROSCA. The FTC filed several briefs in the Ninth Circuit regarding appeals of district court rulings.⁴⁶ In October, the district court granted summary judgment on liability for defendants’ violations of the EFTA, the FTC Act, the TSR, and the ROSCA, and denied summary judgment in other parts.⁴⁷ Litigation continues in this matter.

The FTC and the State of Maine continued litigation against Health Research Laboratories and its principal, over allegations that the defendants deceptively marketed two of their health products, enrolled consumers in auto-renewal plans and charged consumers’ debit cards without authorization, in violation of the FTC Act and the EFTA. In November 2020, the FTC discontinued its civil contempt action against defendants for violating its 2018 stipulated order (previously reported on), after the court denied the Commission’s motion to show cause.⁴⁸ The FTC also filed an administrative complaint against the defendants for making unsubstantiated claims related to three products, in violation of the FTC Act.⁴⁹

In a fifth negative option case, in connection with orders that were previously filed, the FTC mailed refunds totaling more than \$8.7 million to 187,425 consumers who signed up online for “risk-free” trial offers, but were then charged full price and enrolled in expensive continuity

⁴⁶ See generally FTC, Enforcement, Cases and Proceedings, *Jason Cardiff (Redwood Scientific Technologies, Inc.)*, available at <https://www.ftc.gov/enforcement/cases-proceedings/172-3117-x190001/jason-cardiff-redwood-scientific-technologies-inc>.

⁴⁷ See *FTC v. Jason Cardiff, et al.*, No. 18-cv-02104 (C.D. Cal. Oct. 9, 2020) (order re cross-motions for summary judgment), available at <https://www.ftc.gov/enforcement/cases-proceedings/172-3117-x190001/jason-cardiff-redwood-scientific-technologies-inc>.

⁴⁸ *FTC v. Health Research Laboratories, LLC*, No. 17-cv-00467 (D. Me. Aug 12, 2020), available at <https://www.ftc.gov/enforcement/cases-proceedings/152-3021/health-research-laboratories-llc>.

⁴⁹ See *In the Matter of Health Research Laboratories, LLC*, Dkt. No. 9397 (Nov. 13, 2020), available at <https://www.ftc.gov/enforcement/cases-proceedings/x180007/health-research-laboratories-llc-matter>; see also FTC, Press Release, *FTC Approves Administrative Complaint Against Supplement Marketer Health Research Laboratories, LLC* (Nov. 20, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/11/ftc-approves-administrative-complaint-against-supplement-marketer>.

plans without their knowledge by San Diego-based Triangle Media Corporation and related defendants, in violation of the FTC Act and the EFTA.⁵⁰

In a sixth negative option case, the FTC sent full refunds – totaling more than \$12 million – to individuals who lost money to a company called I Works, which operated deceptive “trial” memberships and bogus government-grant and money-making schemes in 2010. The company unlawfully enrolled consumers in the programs without disclosing, or without disclosing clearly, that it would charge their accounts on a recurring basis until consumers cancelled.⁵¹ The FTC provided 147,333 full refunds, averaging about \$86 each, to victims of the I Works scheme.⁵²

2. Other Cases

As described above, the FTC filed a complaint and obtained a temporary restraining order against Harvest Moon, a payday lending enterprise that allegedly deceptively overcharged consumers millions of dollars.⁵³ The complaint included charges that defendants violated the EFTA by withdrawing money repeatedly from consumers’ bank accounts without consumers’ bank accounts without their proper authorization, in violation of the EFTA and Regulation E.⁵⁴ Litigation continued in this matter in 2020.

As described above, the FTC settled with defendants in Grand Teton Professionals, a credit repair scheme that charged illegal upfront fees and falsely claimed to repair consumers’ credit.⁵⁵ Under the terms of the settlements, the defendants are permanently banned from operating or promoting any credit repair service.⁵⁶ Defendants also are prohibited from misleading consumers about financial services like credit offerings or debt relief and from further violations of the several federal laws and regulations, including the EFTA and Regulation E. In November 2020, the FTC sent refunds totaling nearly \$150,000 to individuals who lost money in this scheme.⁵⁷

B. Electronic Fund Transfers: Rulemaking, Research, and Policy Development

⁵⁰ See FTC, Press Release, *FTC Sending Refund Checks Totaling More Than \$8.7 Million to Consumers Defrauded by Deceptively Marketed Online “Risk-Free Trial” Offers* (June 22, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/06/ftc-sending-refund-checks-totaling-more-87-million-consumers>.

⁵¹ See FTC, Press Release, *FTC Sends More Than \$12 Million in Full Refunds to Victims of Online Billing Scam* (May 18, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/05/ftc-sends-more-12-million-full-refunds-victims-online-billing>.

⁵² *Id.*

⁵³ See *supra* notes 17-19.

⁵⁴ See *supra* notes 17-18.

⁵⁵ See *supra* notes 20-23.

⁵⁶ *Id.*

⁵⁷ See *supra* note 24.

The FTC does not have rulemaking authority under the EFTA but in 2020 engaged in research and policy work that addressed EFTA-related issues.

The FTC worked with the DoD interagency group and with ABA LAMP as discussed above, on electronic funds transfer issues. Among other things, the FTC staff coordinated with the DoD interagency group on issues related to preauthorized electronic fund transfers in the military lending rule. The FTC also provided input to ABA LAMP, and conducted trainings for judge advocates general and others in conjunction with ABA LAMP trainings, on EFTs, FTC cases in this area, and the EFTA requirements.

C. Electronic Fund Transfers: Consumer and Business Education

The Commission issued blog posts for consumers and business about payday lending, described above, that also addressed debiting of consumer bank accounts without proper authorization – which violates EFTA and Regulation E. In a blog for consumers about the Harvest Moon case described above, the FTC also noted that the companies allegedly debited the consumers’ bank accounts without notifying people and getting authorization; in many instances, people had to close their bank accounts to get the payments to stop.⁵⁸ The blog advised consumers to remember that payday loans are often short-term, high cost loans. The FTC also provided guidance to businesses on this settlement, which discussed that, based on the FTC’s complaint, the defendants never obtained proper authorization under Regulation E to debit consumers’ bank accounts or on a recurring basis in the first place.⁵⁹ The blog warned businesses that, in view of the economic upheaval affiliated with COVID-19, more people may be looking for ongoing payday loans, and this case serves as a reminder that companies must honor their representations and long-standing consumer protections build into the statutes, when offering loans to people struggling to stay afloat financially.

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⁵⁸ See *supra* note 36.

⁵⁹ See *supra* note 37.

We hope that the information discussed above responds to your inquiry and will be useful in preparing the CFPB's Annual Report to Congress.⁶⁰ Should you need additional assistance, please contact me at (202) 326-2972, or Carole Reynolds at (202) 326-3230.

Sincerely,

MALINI

MITHAL

Malini Mithal

Associate Director

Division of Financial Practices

Digitally signed by MALINI
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Date: 2021.05.24 08:42:37
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⁶⁰ Your letter also requests information regarding compliance by credit card issuers with the Federal Trade Commission Act (FTC Act). The Commission does not have jurisdiction over banks or federal credit unions, and in 2020, the Commission did not have enforcement or other activity regarding compliance with the FTC Act by nonbank credit card issuers over which it has jurisdiction.