



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

May 9, 2013

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Dear Ms. Ficklin and Mr. Sanford:

This letter responds to your request for information concerning the Federal Trade Commission's (Commission or FTC) enforcement activities related to compliance with Regulation B (Equal Credit Opportunity); Regulation E (Electronic Fund Transfer); Regulation M (Consumer Leasing); and Regulation Z (Truth in Lending) (collectively "the Regulations").¹ You request this information for use in preparing the Consumer Financial Protection Bureau's (CFPB) 2012 Annual Report to Congress. Specifically, you ask for information concerning the FTC's administration and enforcement of the Regulations, as well as compliance with the Regulations among entities within the FTC's jurisdiction, during 2012. The Commission is pleased to provide you with this information.²

¹ The Equal Credit Opportunity Act (ECOA) is at 15 U.S.C. § 1691 *et seq.*; the CFPB's Regulation B is at 12 C.F.R. Part 1002; *see also* the Board of Governors of the Federal Reserve System (Board)'s Regulation B, 12 C.F.R. Part 202. The Electronic Fund Transfer Act (EFTA) is at 15 U.S.C. § 1693 *et seq.*; the CFPB's Regulation E is at 12 C.F.R. Part 1005; *see also* the Board's Regulation E, 12 C.F.R. Part 205. The Consumer Leasing Act (CLA) is at 15 U.S.C. § 1667 *et seq.*; the CFPB's Regulation M is at 12 C.F.R. Part 1013; *see also* the Board's Regulation M, 12 C.F.R. Part 213. The Truth in Lending Act (TILA) is at 15 U.S.C. § 1601 *et seq.*; the CFPB's Regulation Z is at 12 C.F.R. Part 1026; *see also* the Board's Regulation Z, 12 C.F.R. Part 226. The Commission's 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. In addition, a copy of the Commission's 2011 letter that was provided to the CFPB and Board last year is also being forwarded to the CFPB with this current letter, pursuant to the CFPB's request.

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, including making important changes to the ECOA, EFTA, CLA, and TILA, and other consumer laws. Under the Act, the FTC retained its authority to enforce Regulations B, E, M, and Z. In addition, the Act gave the Commission the authority to enforce any CFPB rules applicable to entities within the FTC's jurisdiction, which include most providers of financial services that are not banks, thrifts, and federal credit unions. As you know, to implement the Dodd-Frank Act, in January 2012, the Commission and the CFPB entered into a memorandum of understanding that set forth a framework for coordinating certain law enforcement, rulemaking, and other activities.³ The Commission is committed to continuing its vigorous enforcement of Regulations B, E, M, and Z, and it intends to do the same with other rules the CFPB issues.

The FTC's primary focus in the financial services area is bringing law enforcement actions against those who violate statutes and regulations. In addition to its law enforcement activities, the FTC engages in research and policy development related to the types of financial services these statutes and regulations cover. Finally, the Commission provides the public with numerous business and consumer education materials to promote business compliance with the law and to help consumers protect themselves from noncompliant businesses. This letter provides information regarding some of the FTC's law enforcement, research and policy development, educational, and other activities related to financial services.

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 information on compliance examinations.

II. Regulation Z (Truth in Lending Act)

The FTC enforces TILA and its implementing Regulation Z with regard to most non-bank entities.⁴ In 2012, the Commission engaged in law enforcement; rulemaking, research and policy development; and consumer and business education (all relating to the topics covered by Regulation Z, including the advertisement, extension, and certain other aspects of consumer credit).

³ See FTC, Press Release, *Federal Trade Commission, Consumer Financial Protection Bureau Pledge to Work Together to Protect Consumers*, Jan. 23, 2012, available at <http://www.ftc.gov/opa/2012/01/ftccfpb.shtml>; see also Dodd-Frank Act, § 1024.

⁴ The FTC has authority to enforce TILA and Regulation Z as to entities for which Congress has not assigned enforcement to some other government agency. 15 U.S.C. § 1607(c).

A. Truth in Lending: Enforcement Actions

1. Non-Mortgage Credit Advertisements

In 2012, the FTC filed administrative complaints and settled charges with five automobile dealers that allegedly made deceptive claims in advertisements that they would pay off the full amount that the consumer owed on traded-in vehicles.⁵ Instead, the dealers rolled the loan balance on the consumer's trade-in, even if it exceeded the trade-in value (called "negative equity"), into the consumer's new vehicle loan or, in the case of one dealer, required the consumer to pay it out of pocket. The complaints charged that the dealers' representations are false and misleading, and violate the FTC Act. The complaints in three of the cases also alleged violations of TILA and Regulation Z for failing to disclose certain credit-related terms.⁶ Among other things, the final orders prohibit the auto dealers from making these types of deceptive claims and, in the three credit-related cases, require the dealers to comply with TILA and Regulation Z, and to make clear and conspicuous disclosures when advertising certain terms related to consumer credit. They also require that if any finance charge is advertised, the rate must be stated as an "annual percentage rate" or "APR."

In 2012, the Commission also filed a complaint against a payday lender and related entities alleging that the defendants charged consumers undisclosed and inflated fees, and collected on loans illegally by threatening borrowers with arrest and lawsuits.⁷ According to the FTC, the defendants, among other things, allegedly violated TILA and Regulation Z by failing to accurately disclose the annual percentage rate and other loan terms.

The Commission continued litigating an appeal in connection with a 2010 contempt order against Blue Hippo Funding, a consumer electronics retailer, for violating a consent order. The consent order had settled charges that the company had, among other things, violated TILA and Regulation Z by failing to give required disclosures to consumers in writing before the first transaction was made and failing to provide an account statement for each billing cycle for which a finance charge was imposed. In the contempt action, the FTC alleged, among other things, that the company failed to deliver the financing and did not order or ship the computers as advertised. In 2012, the appellate court heard oral argument in the Commission's appeal of

⁵ See FTC, Press Release, *FTC Takes Action To Stop Deceptive Car Dealership Ads*, Mar. 14, 2012, available at <http://www.ftc.gov/opa/2012/03/autoloans.shtm>.

⁶ *In re Key Hyundai of Manchester, LLC*, F.T.C. Docket No. C-4358 (May 4, 2012), available at <http://www.ftc.gov/os/caselist/1123204/index.shtm>; *In re Billion Auto, Inc.*, F.T.C. Docket No. C-4356 (May 1, 2012), available at <http://www.ftc.gov/os/caselist/1123209/index.shtm>; *In re Ramey Motors, Inc.*, F.T.C. Docket No. C-4354 (Apr. 19, 2012), available at <http://www.ftc.gov/os/caselist/1123207/index.shtm>.

⁷ *FTC v. AMG Services, Inc.*, No. 2:12-cv-00536 (D. Nev. filed Apr. 2, 2012), available at <http://www.ftc.gov/opa/2012/04/amg.shtm>. Like other payday lenders in recent years, this operation has claimed in state legal proceedings that it is affiliated with Native American tribes, and therefore immune from legal action. However, the FTC alleges that the defendants' claims of tribal affiliation do not exempt them from complying with federal law.

the damage award in the 2010 contempt order, which seeks over \$14 million to compensate consumers.⁸

In addition, in 2012, the Commission filed charges against two auto loan modification operations,⁹ and later settled one of those cases.¹⁰ The complaints alleged that these two operations charged consumers hundreds of dollars in up-front fees, based on false promises that they could reduce consumers' monthly car loan payments and help avoid repossession of their vehicles.¹¹ According to the complaints, consumers were instructed to pay fees to the companies, and stop paying their auto lenders. The settlement, which involves the sole individual owner of one company, bans him from marketing auto loan modifications and any other debt relief services and prohibits misrepresentations about financial products or any other product or service. The settlement also imposes a \$362,388 judgment on the individual owner, suspended due to his inability to pay;¹² the corporate defendant is in default. These are the FTC's first cases against companies offering auto loan modifications.

2. Mortgage Lending Advertisements

Regulation Z sets forth disclosure and other requirements for mortgage advertising. To supplement existing consumer protections and the Commission's and the states' enforcement remedies, the FTC issued a rule in July 2011 that bans deceptive claims about consumer mortgages in advertising or other types of commercial communications, the Mortgage Acts and Practices - Advertising ("MAP-Ad") Rule.¹³ In November 2012, after a mortgage advertising

⁸ *FTC v. BlueHippo Funding, LLC*, No. 1:08-cv-1819 (S.D.N.Y. July 27, 2010) (contempt order entered), *appeal docketed*, No. 11-374 (2d Cir. Feb. 1, 2011) (argued Feb. 23, 2012). The court's decision is pending.

⁹ *FTC v. Hope for Car Owners, LLC*, No. 2:12-cv-00778 (E.D. Cal. Mar. 27, 2012); *FTC v. NAFSO VLM, Inc.*, No. 2:12-cv-00781 (E.D. Cal. Mar. 27, 2012) (preliminary injunction entered Apr. 20, 2012). Both matters are available at <http://www.ftc.gov/opa/2012/04/autoloans.shtm>.

¹⁰ *FTC v. Hope for Car Owners, LLC*, No. 2:12-cv-00778 (E.D. Cal. Nov. 30, 2012) (stipulated final order), available at <http://www.ftc.gov/opa/2012/12/hopeforcarowners.shtm>.

¹¹ The defendants' representations pertain to, among other things, consumers' original terms of the loan or financing, which are found on the contract and disclosures.

¹² The full amount of the judgment will become due if it is later determined that the financial information the defendant provided to the FTC was false.

¹³ See Mortgage Acts and Practices – Advertising, Final Rule, 76 Fed. Reg. 43,826 (July 22, 2011), available at <http://www.ftc.gov/opa/2011/07/mortgageads.shtm>. The FTC issued the MAP-Ad Rule pursuant to Section 626 of the 2009 Omnibus Appropriations Act, as amended by Section 511 of the Credit CARD Act. It applies to all entities within the FTC's jurisdiction that advertise mortgages (mortgage lenders, brokers, and servicers; real estate agents and brokers; advertising agencies; home builders; lead generators; rate aggregators; and others). The Rule is designed to protect consumers from deceptive claims about mortgages and to create a level playing field for legitimate businesses to compete in the mortgage marketplace. On July 21, 2011, the Commission's rulemaking authority under the Omnibus Appropriations Act of 2009 was transferred to the CFPB, although the FTC retains the authority to enforce the MAP-Ad Rule. See 75 Fed. Reg. 57,252, 57,253 (Sept. 20, 2010). The CFPB republished the MAP-Ad Rule as an interim final rule: Regulation N, 12 C.F.R. Part 1014. See 76 Fed. Reg. 78,130 (Dec. 16,

review, FTC staff sent letters to 20 companies (real estate agents, home builders, and lead generators), warning them their advertisements may be deceptive and urging them to review their advertisements for compliance with the MAP-Ad Rule and the FTC Act.¹⁴ The FTC sent the letters in coordination with the CFPB, which issued warning letters to approximately a dozen other companies (mortgage brokers and lenders).¹⁵ Both agencies also have opened nonpublic law enforcement investigations of other advertisers found in the project that may have violated federal law, including the MAP-Ad Rule, TILA and Regulation Z.

3. Forensic Audit Scams

During the past year, the Commission continued its law enforcement activities against defendants engaged in forensic mortgage loan audit scams.¹⁶ In these scams, mortgage assistance relief providers offer, for a substantial fee, to review, or “audit,” the mortgage documents of distressed homeowners to identify violations of TILA, Regulation Z, and other federal laws. The defendants falsely claim that identifying such violations will give the consumers leverage over their lenders and servicers to persuade them to modify or cancel loans so that consumers can avoid foreclosure.

In 2012, the Commission reached settlements with The Debt Advocacy Center and 10 related defendants.¹⁷ The FTC charged the defendants with falsely claiming that, as a result of

2011). Among other things, the Commission, CFPB and states can seek civil penalties for violations of the MAP-Ad Rule.

¹⁴ See FTC, Press Release, *FTC Warns Mortgage Advertisers that Their Ads May Violate Federal Law*, Nov. 19, 2012, available at <http://www.ftc.gov/opa/2012/11/mortgageadvertise.shtm>.

¹⁵ See CFPB, Press Release, *Consumer Financial Protection Bureau Warns Companies Against Misleading Consumers with False Mortgage Advertisements*, Nov. 19, 2012, available at <http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-warns-companies-against-misleading-consumers-with-false-mortgage-advertisements>.

¹⁶ Forensic mortgage loan audit scams are one type of mortgage assistance relief service scam, and can include representations pertaining to review of the consumer’s loan documents for compliance with federal laws, such as disclosures or other rights under TILA. The Commission has brought more than 40 cases against all types of mortgage assistance relief service scams. To combat such scams, the Commission also promulgated the Mortgage Assistance Relief Services (“MARS”) Rule. See MARS, Final Rule, 75 Fed. Reg. 75,092 (Dec. 1, 2010), available at <http://www.ftc.gov/opa/2011/02/mars.shtm>. On Jan. 31, 2011, the rule’s advance fee ban took effect. See FTC, Press Release, *FTC’s Mortgage Assistance Relief Services Advance Fee Ban Takes Effect*, Feb. 10, 2011, available at <http://www.ftc.gov/opa/2011/02/mars.shtm>. The FTC issued the MARS Rule pursuant to Section 626 of the 2009 Omnibus Appropriations Act, Pub. L. No. 111-8, § 626, 123 Stat. 524 (Mar. 11, 2009), as amended by Section 511 of the Credit CARD Act. On July 21, 2011, the Commission’s rulemaking authority under the Omnibus Appropriations Act of 2009 was transferred to the CFPB, although the FTC retains authority to enforce the MARS Rule. See 75 Fed. Reg. 57,252, 57,253 (Sept. 20, 2010). The CFPB republished the MARS Rule as an interim final rule: Regulation O, 12 C.F.R. Part 1015. See 76 Fed. Reg. 78,130 (Dec. 16, 2011).

¹⁷ *FTC v. The Debt Advocacy Center, LLC*, No. 09-cv-2712 (N.D. Ohio Mar. 7, 2012) (second amended complaint) (stipulated permanent injunction orders entered as to certain defendants on June 6, 2012 and as to other defendants on May 2, 2012), available at <http://www.ftc.gov/os/caselist/0923143/index.shtm>.

the forensic loan audits they performed, consumers would obtain completed short sales or loan modifications that would decrease substantially their mortgage payments. To resolve the Commission's allegations, the defendants will pay more than \$750,000 in ill-gotten gains. The settlements also permanently ban the defendants from selling any mortgage assistance relief services.

The Commission also filed two new forensic audit cases. In the first case, the FTC charged, among other things, that the defendants promised but failed to deliver mortgage and foreclosure relief, typically charging consumers between \$795 to \$1595 each for a forensic loan audit.¹⁸ The defendants allegedly told consumers these audits would find lender violations 90 percent of the time or more, and that the resulting legal leverage would force their lender to give them a loan modification that would substantially improve their mortgage terms. The defendants also falsely portrayed themselves as non-profit, free, accredited, or HUD-certified housing counselors with special qualifications to help obtain mortgage loan modifications and avoid foreclosure. They promised consumers that the forensic loan audit would be the only charge not covered by their "free" service, and that if the "audit" did not turn up any violations, consumers could get a 70 percent refund and still obtain a loan modification. They also told consumers their loan modification requests would be seriously delayed without the audit, according to the complaint. The court has entered separate preliminary injunction orders with asset freezes against the various defendants. Litigation continues in this matter. Among other things, the agency seeks funds for possible refunds for consumers.

In the other case filed in 2012, the defendants also made allegedly false claims that consumers could use their forensic audits to avoid foreclosure and negotiate more favorable terms on their mortgages.¹⁹ According to the FTC's complaint, the defendants charged from \$1,995 to \$2,590 for the audits. Among other things, the complaint alleges that consumers often did not receive loan modifications or reduced payments and often found out from their lenders that the defendants either never contacted them, or did contact them but failed to follow up. The court has entered a preliminary injunction order with an asset freeze against the defendants. Litigation continues in this matter.

¹⁸ *FTC v. Lakhany*, No. 8:12-cv-00337-CJC-JPR (C.D. Cal. filed Mar. 22, 2012) (amended complaint) (preliminary injunction orders entered as to defendants on Apr. 24, 2012, Mar. 21, 2012, and Mar. 19, 2012), available at <http://www.ftc.gov/opa/2012/03/household.shtm>. The FTC's complaint also alleged that the defendants falsely promised to get help for homeowners who joined others to file so-called "mass joinder" lawsuits against their lenders. This is the FTC's first case against alleged scammers who pitch these kinds of lawsuits.

¹⁹ *FTC v. Consumer Advocates Group Experts, LLC*, No. CV12-04736 DDP (C.D. Cal. filed May 30, 2012) (preliminary injunction order entered June 7, 2012), available at <http://www.ftc.gov/opa/2012/06/consumeradvocate.shtm>.

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

FTC staff submitted an advocacy comment to the CFPB in response to its notice of proposed rulemaking regarding integrating the TILA and Real Estate Settlement Procedures Act disclosures that consumers receive when they apply for and close on a mortgage loan.²⁰ The comment commends the CFPB's efforts to develop improved mortgage disclosures that are designed to help consumers make better-informed decisions about mortgages. It states that the disclosures the CFPB developed will likely improve the information that consumers receive under current federal regulations; they are generally simpler and less technical, and should be easier to understand. However, it encourages the CFPB to conduct controlled quantitative testing before finalizing a rule to help ensure that the proposed disclosures effectively convey key mortgage terms to consumers and are not misinterpreted or misunderstood.

In April 2012, the FTC hosted a workshop to examine the use of mobile payments in the marketplace and how this emerging technology impacts consumers.²¹ Among other things, the discussions at the workshop addressed TILA issues, including dispute resolution.²² In May 2012, the FTC hosted a conference on the economics of "drip pricing," a pricing technique in which firms advertise only part of a product's price and reveal other charges later as the customer goes through the buying process.²³ Some discussions at the conference addressed credit information provided to consumers in automobile financing.²⁴ In May 2012, the FTC also hosted a workshop to consider the need for new guidance for online advertisers making disclosures.²⁵ Issues considered included technological advancements and marketing developments, how best to provide clear and conspicuous disclosures in the current online and mobile advertising environment, and the need for disclosure revisions to be consistent with consumer protection laws (including TILA).

²⁰ See FTC, Press Release, *FTC Staff Submits Comment to CFPB on Mortgage Disclosure Forms*, Oct. 2, 2012, available at http://www.ftc.gov/opa/2012/10/cfpb_mortgage.shtm.

²¹ See FTC, *Paper, Plastic ... or Mobile? An FTC Workshop on Mobile Payments*, <http://www.ftc.gov/bcp/workshops/mobilepayments>, and FTC, Press Release, *FTC to Host Workshop on Mobile Payments and Their Impact on Consumers*, Jan. 26, 2012, available at <http://www.ftc.gov/opa/2012/01/mobilepayments.shtm>; see also <http://www.ftc.gov/bcp/workshops/mobilepayments/> (including webcast and transcript).

²² See *id.*

²³ See FTC, *A Conference on the Economics of Drip Pricing*, <http://www.ftc.gov/be/workshops/drippricing/index.shtml>.

²⁴ See *id.* (including transcript).

²⁵ See *In Short, Advertising and Privacy Disclosures in a Digital World* (including webcast and transcript), available at <http://www.ftc.gov/bcp/workshops/inshort/index.shtml>.

C. Truth in Lending: Consumer and Business Education

In 2012, the Commission continued its efforts to educate consumers and businesses about issues related to the consumer credit transactions to which Regulation Z applies. The Commission released new publications warning consumers about auto loan modification scams,²⁶ online payday lending fraud,²⁷ and auto trade-ins and negative equity scams.²⁸

The Commission also updated existing publications providing information on vehicle financing²⁹ and on mortgage topics, including deceptive mortgage advertisements.³⁰ These publications also provide guidance to consumers about current issues in these credit areas. In addition, the Commission's "Business Center Blog" posted guidance for auto dealers about avoiding misrepresentations about negative equity and trade-ins.³¹

²⁶ See AUTO LOAN MODIFICATION SCAMS, available at <http://www.consumer.ftc.gov/articles/0255-auto-loan-modification-scams>.

²⁷ The FTC released the publication in English and Spanish. See, e.g. FTC, ONLINE PAYDAY LENDERS, available at <http://www.consumer.ftc.gov/articles/0249-online-payday-lenders>, and PRESTADORES FRAUDULENTOS DE DIA DE PAGO, available at <http://www.consumidor.ftc.gov/articulos/s0249-prestadores-fraudulentos-de-dia-de-pago>.

²⁸ See AUTO TRADE-INS AND NEGATIVE EQUITY, available at <http://www.consumer.ftc.gov/articles/0257-auto-trade-ins-and-negative-equity>.

²⁹ See UNDERSTANDING VEHICLE FINANCING, available at <http://www.consumer.ftc.gov/articles/0056-understanding-vehicle-financing#leasing> and VEHICLE REPOSSESSION, available at <http://www.consumer.ftc.gov/articles/0144-vehicle-repossession>.

³⁰ See DECEPTIVE MORTGAGE ADS, available at <http://www.consumer.ftc.gov/articles/0087-deceptive-mortgage-ads>; HOME EQUITY LOANS AND CREDIT LINES, available at <http://www.consumer.ftc.gov/articles/0227-home-equity-loans-and-credit-lines>; SHOPPING FOR A MORTGAGE, available at <http://www.consumer.ftc.gov/articles/0189-shopping-mortgage>; USING YOUR HOME AS COLLATERAL, available at <http://www.consumer.ftc.gov/articles/0245-using-your-home-collateral>; <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea09.shtm>; TROUBLE PAYING YOUR MORTGAGE, available at <http://www.consumer.ftc.gov/articles/0194-trouble-paying-your-mortgage>; and MAKING PAYMENTS TO YOUR MORTGAGE SERVICER, available at <http://www.consumer.ftc.gov/articles/0190-making-payments-your-mortgage-servicer>.

³¹ Lesley Fair, *FTC to auto dealers: Back up your ad claims*, FTC BUREAU OF CONSUMER PROTECTION BUSINESS CENTER BLOG (Mar. 15, 2012, 1:50PM), <http://business.ftc.gov/blog/2012/03/ftc-auto-dealers-back-your-ad-claims>.

III. Regulation M (Consumer Leasing Act)

The FTC enforces CLA and its implementing Regulation M as to most entities other than banks, thrifts, and federal credit unions.³²

A. Consumer Leasing: Enforcement Actions

As noted above, in 2012, the FTC filed administrative complaints and reached settlements with five automobile dealers that allegedly made deceptive claims that they would pay off the remaining balance on consumers' trade-ins, no matter what they owed.³³ The complaints charged that the dealers' representations were false and misleading, and violated the FTC Act. The complaints in two of the cases also alleged violations of CLA and Regulation M for failing to disclose certain lease-related terms.³⁴ Among other things, the final orders prohibit the auto dealers from making these types of deceptive claims and, in the two leasing cases, require the dealers to clearly and conspicuously make all lease-related disclosures required by CLA and Regulation M, including the monthly lease payment.

B. Consumer Leasing: Consumer and Business Education

In 2012, the FTC updated one publication that includes information on vehicle leasing.³⁵ The publication provides consumers with information about leasing terms, differences between leasing and buying vehicles, and on CLA, among other things.

IV. Regulation E (Electronic Fund Transfer Act)

The FTC enforces EFTA and its implementing Regulation E with regard to most non-bank entities.³⁶ In 2012, nine new or ongoing Commission cases involved EFTA and Regulation E issues. The Commission also engaged in research and policy development as well as educational initiatives involving EFTA and Regulation E.

³² The FTC has authority to enforce CLA and Regulation M as to entities for which Congress has not committed enforcement to some other government agency. *See* 15 U.S.C. § 1607(c).

³³ *See supra* note 5 and accompanying text.

³⁴ *In re Key Hyundai of Manchester, LLC*, F.T.C. Docket No. C-4358 (May 4, 2012), available at <http://www.ftc.gov/os/caselist/1123204/index.shtm>; *In re Billion Auto, Inc.*, F.T.C. Docket No. C-4356 (May 1, 2012), available at <http://www.ftc.gov/os/caselist/1123209/index.shtm>.

³⁵ *See* UNDERSTANDING VEHICLE FINANCING, *supra* note 29.

³⁶ The FTC has authority to enforce EFTA and Regulation E as to entities for which Congress has not assigned enforcement responsibility to some other government agency. *See* 15 U.S.C. § 1693o(c).

A. Electronic Fund Transfers: Enforcement Actions

Five of the Commission's cases alleging violations of EFTA and Regulation E arose in the context of "negative option" plans.³⁷ Under such a plan, a consumer agrees to receive various goods or services from a company for a trial period at no charge or at a reduced price. The company also obtains, sometimes through misrepresentations, the consumer's credit card or debit card number. If the consumer does not cancel before the end of the trial period, the shipments of goods or the provision of services continue, and the consumer incurs recurring charges. EFTA and Regulation E prohibit companies from debiting consumers' 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.

Of the five negative option cases, the Commission obtained a \$9.6 million judgment in one matter.³⁸ It also settled two other cases, obtaining \$1.5 million for consumer redress in one settlement.³⁹ The Commission continued to litigate the remaining two cases, which it filed before 2012.⁴⁰

In addition, the Commission filed two new cases involving electronic fund transfers in the payday lending and debt relief areas, respectively. In the first case, the FTC filed a complaint against a payday lender for, among other things, violating EFTA and Regulation E by conditioning the extension of credit to consumers on mandatory preauthorized electronic fund

³⁷ Negative options plans can involve the use of debit cards, credit cards, or both. EFTA and Regulation E apply to debit cards; the TILA and Regulation Z apply to credit cards.

³⁸ *FTC v. Ultralife Fitness Inc.*, No. CV08-07655 (C.D. Cal. June 6, 2012) (final judgment and order against individual defendant). The final judgment and order required payment of the full obligation, after the defendant failed to comply with the 2008 stipulated final order suspending payment of certain damages.

³⁹ *FTC v. Willms*, No. 2:11-cv-00828 (W.D. Wash. Feb. 22, 2012 and Mar. 3, 2012) (stipulated permanent injunction orders entered), available at <http://www.ftc.gov/os/caselist/1023012/index.shtm>. Among other things, the stipulated orders permanently ban the defendants from using negative option marketing and from debiting consumers' bank accounts without first obtaining express verifiable authorization. *FTC v. Central Coast Neutraceuticals, Inc.*, No. 10C-4931 (N.D. Ill. Jan. 3, 2012) (stipulated permanent injunction order entered), available at <http://www.ftc.gov/opa/2012/01/centralcoast.shtm>. This settlement order includes an \$80 million judgment, of which all but \$1.5 million was suspended. Among other things, the order prohibits the defendants from negative option sales and from charging consumers' credit cards or debiting their bank accounts without their consent.

⁴⁰ *FTC v. Leanspa, LLC*, No. 3:11-cv-01715 (D. Conn. July 26, 2012) (amended complaint filed). The FTC and the State of Connecticut jointly brought this action to stop an operation that allegedly used fake news websites to promote their products with deceptive claims, causing millions of dollars of unauthorized credit and debit card charges. *FTC v. Johnson*, No. 2:10-cv-02203 (D. Nev. filed Dec. 10, 2010), available at <http://www.ftc.gov/os/caselist/1023015/index.shtm>. In 2012, among other things, the court entered orders for the sale of various property of the defendants. (As previously reported, the court entered a preliminary injunction and asset freeze in 2011.)

transfers.⁴¹ In the second case, the defendants ran a purported debt relief operation and allegedly violated EFTA and Regulation E by debiting consumers' bank accounts on a recurring basis without their written authorization, and without providing consumers with a copy of the authorization.⁴²

Also in 2012, the Commission continued its litigation in two other cases previously filed. In the first case, the FTC filed an amended complaint that charged that a payday lender, among other things, violated several laws, including violating EFTA and Regulation E by requiring consumers' authorization for recurring electronic payments from their bank accounts as a condition of obtaining payday loans.⁴³ In the second case, the Commission continued litigation in connection with a 2010 contempt order against Blue Hippo Funding, a consumer electronics retailer, for violating a consent order settling charges that the company had, among other things, violated EFTA and Regulation E by extending credit to consumers and conditioning that credit on mandatory preauthorized transfers. In 2012, the appellate court heard oral argument in the Commission's appeal of the damage award in the 2010 contempt order, which seeks over \$14 million to compensate consumers.⁴⁴

Finally, the Dodd-Frank Act assigned the FTC new enforcement authority for payment cards by adding new Section 920 to EFTA.⁴⁵ Among other things, the provision restricts practices related to debit and credit card transactions. For example, this provision addresses business-to-business relationships and interactions between merchants, networks, issuers, and acquirers in the payment card transaction process, and it restricts certain debit card interchange fees. Although this provision involves EFTA, it pertains to Regulation II rather than Regulation E.⁴⁶ The FTC has responsibility for enforcing the new requirements and regulations for payment card networks and certain other non-bank entities, such as non-federally chartered credit unions.

⁴¹ *FTC v. AMG Services, Inc.*, No. 2:12-cv-00536 (D. Nev. filed Apr. 2, 2012), available at <http://www.ftc.gov/opa/2012/04/amg.shtm>. See also *supra* note 7 and accompanying text.

⁴² *FTC v. Nelson Gamble & Assoc. LLC*, No. 12-1503 (C.D. Cal. Sept. 10, 2012) (complaint filed; *ex parte* temporary restraining order and asset freeze entered) (stipulated preliminary injunction order entered Oct. 15, 2012), available at <http://www.ftc.gov/opa/2012/09/nelsongamble.shtm>.

⁴³ *FTC v. Payday Fin., LLC*, No. 11-3017 (D.S.D. Mar. 1, 2012) (amended complaint filed), available at <http://www.ftc.gov/opa/2012/03/payday.shtm>. Like the FTC's case against AMG Services, Inc., see *supra* note 7, this payday lender has claimed that it is affiliated with Native American tribes. The FTC's amended complaint added charges that the defendants illegally sued debt-burdened consumers in a South Dakota tribal court that did not have jurisdiction over their cases.

⁴⁴ See *supra* note 8.

⁴⁵ See Dodd-Frank Act, § 1075.

⁴⁶ The Board issued Regulation II. See Debit Card Interchange Fees and Routing, Final Rule, 76 Fed. Reg. 43,394 (July 20, 2011), and Interim Final Rule, 76 Fed. Reg. 43,478 (July 20, 2011), available at <http://www.federalreserve.gov/newsevents/press/bcreg/20110629a.htm>, and 77 Fed. Reg. 46,258 (Aug. 3, 2012), available at <http://www.federalreserve.gov/newsevents/press/bcreg/20120727a.htm>. Under the Dodd-Frank Act, the Board retains rulemaking responsibility for these requirements. See Dodd-Frank Act, § 1075.

These new rules primarily took effect on October 1, 2011, and April 1 and October 1, 2012. In 2012, as required by the Dodd-Frank Act, the FTC issued its first report to Congress on its law enforcement, outreach, and other activities to implement these new requirements; the report also contains information on the FTC's other efforts to protect consumers who use payment cards.⁴⁷ The FTC also continues to monitor Consumer Sentinel and its separate complaint intake system (paymentcard@ftc.gov), which was established to address concerns about Section 920 and Regulation II that merchants, consumers, or other entities raise.

B. Electronic Fund Transfers: Research and Policy Development

FTC staff submitted an advocacy comment in response to an advance notice of proposed rulemaking that the CFPB issued to determine whether to extend additional protections to users of general purpose reloadable (GPR) cards.⁴⁸ The FTC staff comment expressed support for protecting users of GPR cards and for the CFPB's proposal to solicit information about the costs and benefits of extending additional protections. Drawing on the FTC's enforcement and policy experience, the comment focused on four types of protections that have been applied to other payment cards under EFTA and Regulation E: (1) liability limits for fraud and unauthorized use, (2) disclosure of fees and expiration dates, (3) error resolution procedures, and (4) recurrent payments. The comment recommended that in assessing these protections, the CFPB consider specific problems that consumers experienced without the protections, and the available data about their costs and benefits, including any differences between GPRs and other payment cards that may affect the costs and benefits. The comment noted that even though GPR cards have expanded in function and use over time, Regulation E has not been revised to address them.⁴⁹

In April 2012, as noted above, the FTC hosted a workshop to examine the use of mobile payments in the marketplace and how this emerging technology impacts consumers.⁵⁰ Among other things, the discussions at the workshop⁵¹ addressed electronic fund transfers and EFTA issues, including dispute resolution.

⁴⁷ See *Federal Trade Commission Report on Activities Related to Section 1075 of the Dodd-Frank Act* (Dec. 24, 2012), available at <http://www.ftc.gov/opa/2012/12/dodd-frankreport.shtm>.

⁴⁸ See FTC, Press Release, *FTC Staff Comment to CFPB Supports Protection of Consumers Who Use General Purpose Reloadable Cards*, July 30, 2012, available at <http://www.ftc.gov/opa/2012/07/cfpb.shtm>.

⁴⁹ GPR cards generally are not considered to be subject to EFTA and Regulation E, because they are not regarded as an "electronic fund transfer," or as tied to an "account," and no special exception exists to cover them. See Regulation E definition of "electronic fund transfer." 12 C.F.R. § 1005.3. See also definition of "account." 12 C.F.R. § 1005.2(b)(1). EFTA and Regulation E, however, do cover GPR cards that are specifically marketed as gift cards, for purposes of the gift card rules. See 12 C.F.R. § 1005.20. Essentially, EFTA and Regulation E's standards cover various types of payment cards (like traditional debit cards) that were available to consumers at the time these standards were developed. These standards were revised later to address new products and services, such as electronic benefits transfers, payroll cards, and gift cards.

⁵⁰ See FTC, *Paper, Plastic ... or Mobile? An FTC Workshop on Mobile Payments*, *supra* note 21.

⁵¹ See *id.*

C. Electronic Fund Transfers: Consumer and Business Education

In 2012, the FTC issued one new publication,⁵² and one revised publication,⁵³ for consumers to provide information about electronic payments. In addition, the FTC also released new Korean, Vietnamese, and Chinese translations of its 2011 publication, *New Rules on Electronic Payments Lower Costs for Retailers*, which explains Section 920 and the Board's Regulation II and informs merchants about new options available for processing debit and credit transactions.⁵⁴

V. Regulation B (Equal Credit Opportunity Act)

The FTC enforces ECOA and its implementing Regulation B as to most entities other than banks, thrifts, and federal credit unions.⁵⁵

A. Fair Lending: Enforcement Actions

The FTC continues to be a member of the Interagency Task Force on Fair Lending, a joint undertaking with the Department of Justice (DOJ), the Department of Housing and Urban Development (HUD), and the federal banking regulatory agencies. Task Force members meet regularly to share information on lending discrimination, predatory lending enforcement, and policy issues.

⁵² See ONLINE PAYDAY LENDERS, *supra* note 27.

⁵³ FTC, ELECTRONIC BANKING, *available at* <http://www.consumer.ftc.gov/articles/0218-electronic-banking>.

⁵⁴ See, e.g., FTC, NEW RULES ON ELECTRONIC PAYMENTS LOWER COSTS FOR RETAILERS, *available at* <http://business.ftc.gov/documents/bus78-new-rules-electronic-payments-lower-costs-retailers> (new translations cite the original September 2011 publication date from the English version, but they were released in 2012).

⁵⁵ The FTC has authority to enforce ECOA and Regulation B as to entities for which Congress has not committed enforcement to some other government agency. See 15 U.S.C. § 1691c(c).

B. Fair Lending: Consumer and Business Education

The Commission has continued its long-standing efforts to educate consumers concerning their rights under the fair lending laws. In 2012, the FTC released a revised publication for Spanish-speaking consumers seeking credit or insurance.⁵⁶ The Commission makes these and other consumer education materials available to the public through the FTC's website.⁵⁷

* * * *

The FTC hopes that the information discussed above responds to your inquiry and will be useful in preparing the CFPB's Annual Report to Congress. Should you need additional assistance, please contact Jessica Rich, Associate Director, Division of Financial Practices, at (202) 326-3224.

By direction of the Commission.

Donald S. Clark
Secretary

⁵⁶ FTC, COMO AFECTA EL PUNTAJE DE CREDITO EN EL PRECIO DEL CREDITO Y DEL SEGURO, *available at* <http://www.consumidor.ftc.gov/articulos/s0152-como-afecta-el-puntaje-de-credito-en-el-precio-del-credito-y-del-seguro>.

The FTC recently released a new website to better provide consumer resources and highlight information about current topics. The FTC also moved its pre-existing consumer publications to this site. *See generally* <http://www.consumer.ftc.gov>. For additional information about this material, see <http://www.consumer.ftc.gov/blog/welcome-ftcs-home-consumer-information>.

⁵⁷ *See* <http://www.ftc.gov/bcp/consumer.shtm>.