

Complaint

IN THE MATTER OF

**ALIYAH ASSOCIATES, LLC,
D/B/A AMERICAN ADVANCE**CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS
OF THE TRUTH IN LENDING ACT

*Docket C-4229; File No. 072 3206
Complaint, August 8, 2008 – Decision, August 8, 2008*

This consent order addresses payday loan advertisements disseminated by Aliyah Associates, LLC, doing business as American Advance. The advertisements failed to disclose the annual percentage rate for these loans. The order prohibits the respondent, in any advertisement of consumer credit, from stating the amount or percentage of any down payment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without disclosing clearly and conspicuously all of the terms required by the Truth in Lending Act and its implementing Regulation Z, including the amount or percentage of the down payment, the terms of repayment, and the annual percentage rate. The respondent is prohibited from stating a rate of finance charge without stating it as an annual percentage rate. The respondent is also prohibited from failing to comply in any other respect with the Truth in Lending Act or Regulation Z. Additional provisions of the order include requirements that the respondent retain documents, to ensure compliance with the proposed order; distribute copies of the order to various principals, officers, directors, and managers, and all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of the order; notify the Commission of any changes in its corporate structure that might affect compliance with the order; and file with the Commission one or more reports detailing compliance with the order.

Participants

For the *Commission*: Beverly Childs, Thomas B. Pahl, Cara Petersen, Peggy L. Twohig, and Quisaira Whitney.

For the *Respondent*: Michael Mallow, Loeb & Loeb LLP.

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The Federal Trade Commission, having reason to believe that Aliyah Associates, LLC d/b/a American Advance (“respondent”), has violated the provisions of the Truth in Lending Act, 15 U.S.C. §§ 1601-1667, as amended, and its implementing Regulation Z, 12 C.F.R. § 226, as amended, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Aliyah Associates, LLC d/b/a American Advance is a limited liability company with its principal office or place of business at 7525 E. Camelback, Suite 210, Scottsdale, Arizona 85251.

2. Respondent has disseminated advertisements to the public that promote extensions of closed-end credit in consumer credit transactions, as the terms “advertisement,” “credit,” “closed-end credit,” and “consumer credit” are defined in Section 226.2 of Regulation Z, 12 C.F.R. § 226.2, as amended.

3. Respondent advertises credit to consumers in the form of payday loans. Credit is defined as “the right to defer payment of debt or to incur debt and defer its payment.” Section 226.2 of Regulation Z, 12 C.F.R. § 226.2, as amended. Credit includes “a transaction in which a cash advance is made to a consumer in exchange for the consumer’s personal check, or in exchange for the consumer’s authorization to debit the consumer’s deposit account, and where the parties agree either that the check will not be cashed or deposited, or that the consumer’s deposit account will not be debited, until a designated future date. This type of transaction is often referred to as a ‘payday loan’ or ‘payday advance’ or ‘deferred-presentment loan.’” Comment 2 to Section 226.2(a)(14) of the Official Staff Commentary to Regulation Z; 12 C.F.R. Section 226.2(a)(14)-2, Supp.1, as amended. Payday loans have high rates and short repayment periods; they are often due on the borrower’s next payday, usually about every two weeks.

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4. Respondent has disseminated or has caused to be disseminated payday loan advertisements on the Internet, including but not necessarily limited to the attached Exhibit 1. Respondent collects information from consumers, called leads, through its online application, and then provides this information to lenders that ultimately offer payday loans to the consumers. Respondent is paid by the payday lenders for generating these consumer leads.

A. The advertisement states that “American Advance charges a fee of \$30 for every \$100 borrowed. Please see our Disclosures section for detailed rate information.” The Disclosures section of the website does not provide any additional information about costs or rates.

B. The advertisement also states that the loans are to be “repaid on your next pay date.”

5. On a \$100 loan with a \$30 fee repayable in a typical pay period of 14 days, the APR would be 782%.

Failure to Disclose Information Required by TILA

6. In credit advertisements, including but not necessarily limited to Exhibit 1, respondent has stated the number of payments or period of repayment and/or the amount of any finance charge, as terms for obtaining consumer credit in the form of a payday loan.

7. These advertisements have failed to disclose the “annual percentage rate” or “APR” using that term as required by Regulation Z.

8. Respondent’s practices have violated Section 144 of the Truth in Lending Act (“TILA”), 15 U.S.C. § 1664, and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c).

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THEREFORE, the Federal Trade Commission this eighth day of August, 2008, has issued this complaint against respondent.

By the Commission.

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EXHIBIT 1

American Advance - Instant Online Payday Loans

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AMERICAN ADVANCE | INSTANT ONLINE PAYDAY LOANS

[APPLY NOW](#) | [HOW IT WORKS](#) | [FAQ](#) | [DISCLOSURES](#) | [MY ACCOUNT](#) | [CONTACT US](#)



Instant online payday loans

APPLY NOW in under 2 minutes!

American Advance Payday Loans
The online payday loan specialists

American Advance provides express payday loan services for clients nationwide. Bad credit, slow credit, or no credit? We can help! Our application process is fast, easy and completely secure, with no credit checks or hidden application fees. American Advance will have you approved within minutes, and cash deposited directly to your bank account overnight. We offer flexible repayment options and friendly customer service experts.

Fast, secure and confidential – American Advance, your online payday loan specialists.

[Apply now](#)

First Name

Last Name

Email

Yes No
 Yes No I am currently employed or receive recurring income regularly
 Yes No I make at least \$1000 per month
 Yes No I currently have an active checking account

[APPLY NOW](#)

[Apply Now](#) | [How It Works](#) | [FAQ](#) | [Disclosures](#) | [My Account](#) | [Contact Us](#)

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AMERICAN ADVANCE | ONLINE PAYDAY LOANS

APPLY NOW HOW IT WORKS FAQ DISCLOSURES MY ACCOUNT CONTACT US



Frequently Asked Questions

Is a payday loan and cash advance the same thing?
 Payday loans are short-term personal loans collateralized against your next paycheck(s). For many of our customers it's the easiest and fastest way to emergency cash between paydays. Online payday loans from American Advance are electronically deposited into your checking or savings account overnight, and repaid on your next pay date with an authorized automatic withdrawal.

Who qualifies for a payday loan?
 To qualify for an American Advance payday loan you only need to meet the following requirements:

- Receive income regularly.
- Make at least \$800 a month.
- A checking account in good standing with direct deposit.

We do not perform credit checks, so even if you have bad credit, no credit, or a bankruptcy you can still qualify.

Do I need to fax anything?
 Some lenders do not require you to fax any documents, however sometimes you will be asked to provide some of the following information via a fax:

- Recent bank statement
- Valid ID (drivers license, military ID or state issued ID).
- Current pay stub.
- Personal check marked VOID

When will I receive the payday loan?
 Customers typically receive loan approval within a few hours of applying, and receive the cash advance loan amount via wire transfer overnight!

Will a poor credit history hurt me?
 American Advance doesn't perform credit checks on our payday loans. However we do verify information with several national consumer databases.

Do I need direct deposit?
 Yes.

Is there an application fee?
 Not at this time

Is my financial information secure?
 Please visit our disclosures section.

How often can I get a payday loan?
 You will want to pay off your existing payday loan before getting another one.

How much money can I borrow?
 Your actual loan amount is determined by various factors including state law, income, length of employment, and other outstanding loans.

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Frequently Asked Questions about Payday Loans

Page 2 of 2

How much does a payday loan cost?

American Advance charges a fee of \$30 for every \$100 borrowed. Please see our Disclosures section for detailed rate information.

When is my loan due

Payday loans are usually due when you receive your next paycheck via direct deposit. The standard time for loan repayment is usually no less than seven days and no longer than eighteen days. You may also pay back your loan early without prepayment penalties.

What are my repayment options?

An email reminder will be sent to you 3 days before your payday loan is due. American Advance offers flexible payment terms on all our payday loans. There are three payment options available to our clients:

1. You may pay the payday loan in full.
2. You may renew the loan by paying the finance fee and a portion of the principle.
3. You may renew by pay only the finance fee.

[Apply Now](#) | [How It Works](#) | [FAQ](#) | [Disclosures](#) | [My Account](#) | [Contact Us](#)

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Disclosures and Other Important Information

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AMERICAN ADVANCE | AMERICAN ADVANCE FINANCIAL SERVICES, INC.

[APPLY NOW](#) [HOW IT WORKS](#) [FAQ](#) [DISCLOSURES](#) [MY ACCOUNT](#) [CONTACT US](#)



Disclosures

Privacy Policy Information

American Advance is committed to protecting our clients privacy. This Privacy Statement explains our views and practices concerning privacy.

"You" or "Your" means you as participant in or as a user of the American Advance site. "We" or "Our" or "Us" means American Advance. "Our site" means americanadvance.com. All information transmitted, printed or otherwise submitted to American Advance via this website shall be deemed to be the property of American Advance and American Advance shall be free to use such information for any lawful purpose as detailed herein. This site contains links to other sites and we are not responsible for the privacy practices or the content of such sites. We reserve the right to release such information to law enforcement or other governmental officials as we, in our sole and absolute discretion, deem necessary to comply with the law.

Section 1.

Collected Information

We automatically collect and/or track the following:

- (1) web page http headers (home server domain names, IP address, type of client computer, and type of Web browser);
- (2) information knowingly provided by you through on-line forms, registration forms, surveys, and/or other entries, such as email addresses, personal, financial or demographic information;
- (3) information, user specific or aggregate, on what pages our visitors access and
- (4) the e-mail addresses of visitors that communicate with American Advance via e-mail.
- (5) Information from outside sources. Information from outside sources regarding their employment, credit and other relationships with our customers or verifying representations made by a customer. Examples include customer employment history, loan balances, balances and bank account information and balances.
- (6) Other general information. Information from outside sources, such as data from public records, that is not assembled or used for the purpose of determining your eligibility for a product or service.

Section 2.

Use of Data Collected

We use your personal, demographic and profile data to enhance your experience at our site and to enable us to present content we think you might be interested in. We use your contact information to send you information about our company and promotional material from our partners. We may also use your personal, demographic and profile data to improve our site, for statistical analysis, for marketing and promotional purposes, and for editorial or feedback purposes for our advertisers. Information collected by us may be added to our databases and used for future e-mails or postal mailings regarding site updates, new products and services, upcoming events, and/or status of orders placed online.

Section 3.

Disclosure of Data to Third Parties

If you choose to provide personal information, it will be used for the following purposes: (1) sharing of your information with trusted third parties such as credit bureaus and/or other financial services providers, (2) as required by law and (3) for marketing products and services which we

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Disclosures and Other Important Information

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determine, in our sole judgment, that you might find of interest. We reserve the right to share, rent, sell, or otherwise disclose data we collect to third parties. Any third party we share, rent, sell, or otherwise disclose data to will be carefully prescreened by us, determined by us to be reputable, and will use the personal data for marketing products and services which we determine, in our sole judgment, that you might find of interest.

Section 4.**Your Opt-Out Rights**

You may opt-out of receiving communications from us and/or our partners by not submitting your information. We also allow you to remove your information from our database. If you remove your information from our database it will no longer be used by us for secondary purposes, disclosed to third parties, or used by us or third parties to send promotional correspondence to you. You can remove your information by using our automated opt-out utility.

Section 5.**We Do Not Intend To Collect Data From Children**

The information and services provided to us or our affiliates, sponsors, and advertisers are not intended to be viewed by children (under 18 years old). No information collected from children is knowingly used for any marketing or promotional purposes whatsoever, either inside or outside American Advance.

Section 7.**Our Right To Contact You**

We reserve the right to contact you regarding your account status and changes to subscriber agreements, privacy policy, or any other policies or agreements relevant to you.

Section 8.**Our Right To Change Policy Information**

We reserve the right to change this policy at any time by notifying you of the existence and location of the new or revised privacy policy or by posting the changes online at our site.

Notice

This website does not constitute an offer or solicitation to lend. American Advance is not a lender and does not make loans or credit decisions. American Advance provides a matching service only and is not acting as a representative, agent, or correspondent for any of our Service Providers. American Advance does not endorse any particular Service Provider, or loan product. You are under no obligation to use American Advance's service to initiate contact, or apply for credit with any of our Service Providers. This service is not available in all States. The States this website services may change from time to time and without notice. All aspects and transactions on this site will be deemed to have taken place in the State of Arizona, regardless of where you may be accessing this site. American Advance does not guarantee that completing an application form will result in your being matched with a Service Provider, being offered a loan product with satisfactory rates or terms, or receiving a loan from a Service Provider. There is no charge for you to use American Advance's service.

[Apply Now](#) | [How It Works](#) | [FAQ](#) | [Disclosures](#) | [My Account](#) | [Contact Us](#)

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American Advance - Payday Loan Contact Form

Page 1 of 1

AMERICAN ADVANCE | INSTANT ONLINE PAYDAY LOANS

APPLY NOW | HOW IT WORKS | FAQ | DISCLOSURES | MY ACCOUNT | CONTACT US



Contact Form

In order to serve you better, please complete the short form below. If you have already completed an application, please use the same email address as used on your application.

A customer support representative will contact you as soon as possible.

Email

Name

Subject Comments

(Please do not use any html when adding your comments. It will be rejected)

[Apply Now](#) | [How It Works](#) | [FAQ](#) | [Disclosures](#) | [My Account](#) | [Contact Us](#)

Decision and Order

DECISION AND ORDER

The Federal Trade Commission has conducted an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Truth in Lending Act and its implementing Regulation Z; and

The respondent and counsel for the Federal Trade Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in the complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the Truth in Lending Act and its implementing Regulation Z, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Aliyah Associates, LLC d/b/a American Advance is a limited liability company with its principal office or place of business at 7525 E. Camelback, Suite 210, Scottsdale, AZ 85251.

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2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

For purposes of this order, the following definitions shall apply:

1. “Advertisement” shall mean a commercial message in any medium that promotes, directly or indirectly, a credit transaction.
2. “Consumer” means a cardholder or a natural person to whom consumer credit is offered or extended. The term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person’s ownership interest in the dwelling is or will be subject to a security interest.
3. “Consumer Credit” shall mean credit offered or extended to a consumer primarily for personal, family, or household purposes.
4. “Clearly and conspicuously” shall mean as follows:
 - A. In a print advertisement, the disclosure shall be in a type size, location, and in print that contrasts with the background against which it appears, sufficient for an ordinary consumer to notice, read and comprehend it.
 - B. In an electronic medium, the disclosure shall be:
 - (a) unavoidable;

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- (b) of a size and shade, and appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it;
 - (c) understandable language and syntax; and
 - (d) prior to the consumer incurring any financial obligation.
- C. In a television or video advertisement, the audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it, and shall be in understandable language and syntax.
- D. In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

Nothing contrary to, inconsistent with, or in mitigation of the material terms shall be used in any advertisement or promotion.

5. “Respondent” unless otherwise specified, shall mean Aliyah Associates, LLC d/b/a American Advance, its successors and assigns and its officers, agents, representatives, and employees.

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with any advertisement to promote, directly or indirectly, any

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extension of consumer credit in or affecting commerce, shall not, in any manner, expressly or by implication:

- A. State the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without disclosing clearly and conspicuously all of the terms required by Section 144 of the Truth in Lending Act (“TILA”), 15 U.S.C. § 1664, as amended, and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c), as amended, as more fully set out in Section 226.24(c) of the Federal Reserve Board’s Official Staff Commentary to Regulation Z, 12 C.F.R. § 226.24(c), as amended, including, but not limited to:
 1. The amount or percentage of the down payment;
 2. The terms of repayment;
 3. The annual percentage rate, using that term or the abbreviation “APR.” If the annual percentage rate may be increased after the consummation of the credit transaction, that fact must also be disclosed.
- B. State a rate of finance charge without stating the rate as an “annual percentage rate” or the abbreviation “APR,” using that term, as required by Section 144 of the TILA, 15 U.S.C. § 1664, as amended, and Section 226.24(b) of Regulation Z, 12 C.F.R. § 226.24(b), as amended, as more fully set out in Section 226.24(b) of the Federal Reserve Board’s Official Staff Commentary to Regulation Z, 12 C.F.R. § 226.24(b), as amended.
- C. Fail to comply in any other respect with the TILA, 15 U.S.C. §§ 1601-1667, as amended, and Regulation Z, 12 C.F.R. § 226, as amended.

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II.

IT IS FURTHER ORDERED that respondent shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying all records that will demonstrate compliance with the requirements of this order.

III.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, for a period of five (5) years from the date of issuance of this order, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

IV.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, for a period of five (5) years from the date of issuance of this order, shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect

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to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

V.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

VI.

This order will terminate on August 8, 2028, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the

Analysis to Aid Public Comment

order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Aliyah Associates, LLC d/b/a American Advance (“respondent”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement’s proposed order.

Respondent engaged in practices that violate Section 144 of the Truth in Lending Act (“TILA”), 15 U.S.C. § 1664, and Section 226.24(c) of its implementing Regulation Z, 12 C.F.R. § 226.24(c). Respondent disseminated payday loan advertisements on the Internet stating the number of payments or period of repayment, or the amount of a finance charge, as terms for obtaining a payday loan. These advertisements failed, however, to

Analysis to Aid Public Comment

disclose the “annual percentage rate” or “APR” for these loans as required by TILA and its implementing Regulation Z.

TILA and Regulation Z require that advertisers, including payday loan advertisers, disclose APRs on their loans to assist consumers in comparison shopping. The respondent’s failure to disclose the APR for the payday loans it advertised undermined consumers’ ability to compare these loans to those offered by other payday lenders. The respondent’s failure to disclose the APR for the payday loans it advertised also frustrated consumers’ ability to compare these loans to alternative forms of credit. Through its law enforcement actions the Commission intends to promote compliance with the APR disclosure requirements of TILA and Regulation Z, thereby promoting comparison shopping relating to payday loans.

The proposed consent order contains provisions designed to prevent respondent from failing to make disclosures required by TILA and Regulation Z in the future.

Part I.A. of the proposed order prohibits respondent, in connection with any advertisement of consumer credit, from stating the amount or percentage of any down payment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without disclosing clearly and conspicuously all of the terms required by TILA and Regulation Z, including the amount or percentage of the down payment, the terms of repayment, and the annual percentage rate, using that term or the abbreviation “APR.”

Part I.B. of the proposed order prohibits respondent from stating a rate of finance charge without stating the rate as an “annual percentage rate” or the abbreviation “APR.”

Part I.C. of the proposed order prohibits respondent from failing to comply in any other respect with TILA or Regulation Z.

Analysis to Aid Public Comment

Part II of the proposed order contains a document retention requirement, the purpose of which is to ensure compliance with the proposed order. It requires that respondent maintain all records that will demonstrate compliance with the proposed order.

Part III of the proposed order requires respondent to distribute copies of the order to various principals, officers, directors, and managers, and all current and future employees, agents and representatives having responsibilities with respect to the subject matter of the order.

Part IV of the proposed order requires respondent to notify the Commission of any changes in its corporate structure that might affect compliance with the order.

Part V of the proposed order requires respondent to file with the Commission one or more reports detailing compliance with the order.

Part VI of the proposed order is a “sunset” provision, dictating the conditions under which the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Complaint

IN THE MATTER OF

FLOW INTERNATIONAL CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS
OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL
TRADE COMMISSION ACT

Docket C-4231; File No. 081 0079

Complaint, August 15, 2008 – Decision, August 15, 2008

This consent order addresses the acquisition of OMAX Corporation by Flow International Corporation. The companies are the leading manufacturers of waterjet cutting systems in the United States, and the transaction may substantially lessen competition in the market for the development, manufacture, marketing, and sale of such systems. Both companies offer an efficient PC-based controller that compensates for the unique characteristics of how a waterjet cuts. Under the terms of the order, Flow must grant a royalty-free license to each competitor who seeks to license the two broad OMAX patents relating to controllers that Flow will acquire with its acquisition of OMAX. This will eliminate the entry barrier faced by current waterjet cutting system competitors and future entrants and ensure that other firms are able to replace the competition that would otherwise be eliminated by the acquisition. In addition, Flow may not provide, disclose, or otherwise make available any confidential business information to any person except as set forth in the order. If Flow fails to grant a license within the time periods specified, the Commission may appoint a Licensing Trustee to grant the license to any competitors to satisfy the requirements of the order. Additional provisions include the requirements that Flow notify the Commission of any changes in corporate structure and file written reports on its compliance with the order.

Participants

For the *Commission*: *Stuart Hirschfeld, Joe Lipinsky, Alan Loughnan, Susan Raitt, Robert J. Schroeder, Art Strong, and Lore Unt.*

For the *Respondent*: *Ramona Emerson and Jim Weiss, K&L Gates.*

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Clayton Act, and by virtue of the authority vested by said Acts, the Federal Trade Commission (the “Commission”), having reason to believe that respondent Flow International Corporation (“Flow”), a corporation, and OMAX Corporation (“OMAX”), a corporation, both subject to the jurisdiction of the Commission, have agreed to an acquisition by Flow of OMAX in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent Flow is a corporation organized and existing under the laws of the State of Washington, with its principal place of business at 23500 - 64th Avenue South, Kent, Washington 98032. Flow is a global company engaged in the development, manufacture, marketing, and sale of waterjet cutting systems.

II. JURISDICTION

2. Flow is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. THE PROPOSED TRANSACTION

3. OMAX is a Washington company with its head office in Kent, Washington. OMAX is a global company engaged in the

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development, manufacture, marketing, and sale of waterjet cutting systems.

4. In December 2007, the parties signed an exclusive option agreement for the acquisition of OMAX. Under the agreement, Flow and OMAX will work to negotiate a definitive agreement for Flow to acquire OMAX. Upon closing, Flow will pay approximately \$109 million in cash and stock with the potential for a contingent earn-out in two years of up to \$26 million.

IV. WATERJET CUTTING SYSTEMS

5. The demand for waterjet cutting systems is growing very rapidly due to the versatility and ease of operation of these systems. Waterjet cutting systems can be used to cut and machine a much wider range of materials than other cutting systems. For most users of waterjet cutting systems, alternative cutting systems would not provide comparable features and therefore would not serve as adequate substitutes. Customers now using or seriously considering adopting waterjet cutting systems would be unlikely to switch to an alternative cutting technology if the prices of all waterjet cutting systems were to be raised by a small but significant non-transitory amount.

6. A waterjet cutting system contains four main parts: (1) pump, (2) cutting head, (3) cutting table, and (4) controller.

- The “pump” rated in pressure at or above 50,000 pounds per square inch creates ultra-high pressure water;
- The cutting head is a two-stage nozzle where the ultra-high pressure water passes through a small-diameter jewel orifice to form a narrow waterjet. In abrasive waterjet cutting systems, the resulting waterjet then passes through a small chamber where a slight vacuum pulls abrasive material into this area through a feed tube. The abrasive particles are accelerated by the narrow waterjet and

Complaint

together they pass into a long, hollow cylindrical ceramic mixing tube. The resulting mix of abrasive and narrow waterjet exits the mixing tube as a coherent stream and cuts the material;

- The cutting table holds the material to be cut and can utilize either a gantry or cantilever system to move the cutting head; and
- The controller is hardware and software that directs the cutting head. Controllers can be adapted from other cutting tools, such as lasers, that also use cutting tables, or they may be specifically designed to compensate for the unique characteristics of how the waterjet cuts, including taper (the waterjet expands after leaving the nozzle, forming a cone shape) and lag (the faster the cutting head moves, the more the waterjet will trail behind the cut).

7. Waterjet cutting systems are used by a wide variety of industrial machine tool customers. These customers include:

- job shops that produce a wide variety of short-run parts use waterjet cutting systems to complement their traditional Computer Numerical Control milling machines and flame cutters;
- wire Electrical Discharge Machining (“EDM”) shops because waterjet cutting systems are up to ten times faster than wire EDM and can cut both conductive and non-conductive material without creating a heat-affected zone;
- laser shops, which can capitalize on the ability of waterjet cutting systems to cut thicker materials than lasers can, and, unlike lasers, can cut reflective materials;

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- aerospace shops because waterjet cutting systems can cut without damaging materials that are affected by heat, such as titanium and aluminum;
- tooling shops because waterjet cutting systems can work with hardened tool steel;
- architectural fabricators, which use waterjet cutting systems to create large signs, decorative tiles, or intricate design work in a wide variety of materials; and
- metal fabricators, which value the enhanced ability of waterjet cutting systems to cut clean edges for plate work.

8. Most waterjet customers derive a gain in productivity, which is a function of cutting speed and set-up time, by using a waterjet cutting system instead of an alternative cutting technology. Cutting speed is affected by pump strength, the number of cutting heads used on the system, and the sophistication of the controller. Controllers are often the least expensive means of improving cutting speed and have the further virtue of reducing set-up time if they are easily programmable. Controllers can also improve the quality of the cut by, among other things, automatically adjusting the speed of the cut.

V. COMPETITION BETWEEN FLOW AND OMAX

9. Flow is the largest manufacturer of waterjet cutting systems in the United States. OMAX is the second largest.

10. OMAX has received U.S. Patent Nos. 5,508,596 and 5,892,345 relating, among other things, to controllers that may include a personal computer for determining appropriate machining commands to control velocity, acceleration and/or jerk for a cutting head. These commands help compensate for the

Complaint

unique characteristics of how the waterjet cuts, including taper and lag.

11. Both Flow and OMAX produce waterjet cutting systems that feature relatively inexpensive yet sophisticated PC-based controllers. Flow and OMAX are each other's closest competitors because they are the only two competitors that manufacture comparably priced waterjet cutting systems with the most advanced and efficient controllers.

VI. RELEVANT MARKET

12. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the development, manufacture, marketing, and sale of waterjet cutting systems.

13. For the purposes of this Complaint, the relevant geographic market within which to analyze the effects of the Acquisition is the United States.

VII. CONCENTRATION IN THE RELEVANT MARKET

14. The relevant market would be highly concentrated as a result of the acquisition. Post-acquisition, Respondent would account for more than 55 percent of waterjet cutting system sales in the United States.

VIII. LIKELIHOOD OF ENTRY

15. New entrants and existing competitors are deterred by the risk of violating OMAX patents from developing and producing competitive waterjet cutting systems. Developing an efficient controller that clearly works around the potential reach of OMAX's patents would likely be an expensive and time-consuming process, with no guarantees of success. Therefore, entry into the relevant market would not be timely, likely, or

Complaint

sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition.

IX. EFFECTS OF THE ACQUISITION

16. The effects of the acquisition, if consummated, may be substantially to lessen competition and to tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. Specifically, the acquisition would:

a. Eliminate actual, direct, and substantial competition between Flow and OMAX in the relevant market by eliminating competition for the development, manufacture, and sale of waterjet cutting systems that utilize PC-based controllers; and

b. Increase Respondent's ability to exercise market power unilaterally in the relevant market.

X. VIOLATIONS CHARGED

17. The agreement described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

18. The transaction described in Paragraph 4, if consummated, would constitute a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this fifteenth day of August, 2008, issues its Complaint against said Respondent.

By the Commission.

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DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Flow International Corporation (hereinafter “Flow International”, “Respondent”, or “Respondent Flow International”) of OMAX Corporation, and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

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1. Respondent Flow International is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its offices and principal place of business located at 23500 64th Avenue South, Kent, Washington 98032.

2. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that, as used in the Order, the following definitions shall apply:

- D. “Flow International” or “Respondent” means Flow International Corporation, its directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Flow International Corporation, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- E. “OMAX” means, OMAX Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its offices and principal place of business located at 21409 72nd Avenue, Kent, Washington 98032; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by OMAX Corporation.
- F. “Commission” means the Federal Trade Commission.

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- G. “Acquisition” means the proposed acquisition of OMAX by Flow International pursuant to an exclusive option agreement to negotiate the acquisition of Omax signed on December 5, 2007.
- H. “Acquisition Date” means the date the Acquisition is consummated.
- I. “Competitor” means any person that, during the five (5) years after this Order becomes final, is or seeks to become engaged in the research, development, manufacturing, marketing, or sale of Waterjet Cutting Systems or Waterjet Cutting System Controllers in the United States.
- J. “Confidential Business Information” means any information relating to the research, development, manufacture, distribution, marketing, or sale of Waterjet Cutting Systems or Waterjet System Cutting System Controllers by any Licensee or Authorized Sublicensee that comes into the possession or control of the Respondent as the result of the License, including, but not limited to, any information that any Licensee is required to provide to the Respondent under the terms of the License. “Confidential Business Information” includes, but is not limited to, any information provided to Respondent in any License Report.
- K. “Controller” means computer software and hardware that direct the cutting head.
- L. “License” means:
1. the license with a Licensee for the Licensed Patents attached as Exhibit A to this Decision and Order; or,

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2. a license that substantially complies with Exhibit A, that achieves the purposes of this Order, and that receives the prior approval of the Commission.
- M. “Licensed Patents” mean the OMAX ‘596 Patent and the OMAX ‘345 Patent.
- N. “Licensee” means any signatory (other than Respondent) to any License.
- O. “License Reports” means any report or information provided by any Licensee to Respondent under the terms of any License.
- P. “OMAX ‘345 Patent” means United States Patent No. 5,892,345, including all related patent applications, extensions, current or future United States patents that share a common parent application with or that claim a priority from an application for U.S. Patent No. 5,892,345, and all other rights included in the term Patent as it is defined in this Order.
- Q. “OMAX ‘596 Patent” means United States Patent No. 5,508,596, including all related patent applications, extensions, current or future United States patents that share a common parent application with or that claim a priority from an application for U.S. Patent No. 5,508,596, and all other rights included in the term Patent as it is defined in this Order.
- R. “Patent” means the United States patent and all related patent applications and includes all reissues, divisions, continuations, continuations-in-part, substitutions, reexaminations, restorations, and/or patent term extensions thereof, all inventions disclosed therein, all rights therein provided by international treaties and conventions, and all

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rights to obtain and file for patents and registrations thereto in the United States.

- S. "Person" means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or governmental entity, and any subsidiaries, divisions, groups or affiliates thereof.
- T. "Waterjet Cutting System" means a system that uses a high pressure stream of water to cut plastic, metal, composite, and other materials. A Waterjet Cutting System contains one or more of each of four main parts: (1) pump, (2) cutting head, (3) cutting table, and (4) controller.

II.**IT IS FURTHER ORDERED** that:

- A. Respondent Flow International shall grant a License to any and all Competitors that, during the five (5) years after this Order becomes final, request a License. Respondent shall execute the License not more than thirty (30) days after Respondent receives a written request from a Competitor.
- B. At the request of a Licensee, and subject to the prior approval of the Commission, the Respondent shall enter into an agreement to modify the License if the modification reasonably is related to achieving the purpose of this Order.
- C. Respondent Flow International shall not threaten to file, file suit, or make any claim for damages against any Licensee relating to any actual or claimed infringement of any of the intellectual property that is the subject of and within the scope of the License.

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- D. Respondent shall comply with all terms of each License, and any breach by Respondent of any term of a License shall constitute a violation of this Order. If any term of the License varies from the terms of this Order (“Order Term”), then to the extent that Respondent cannot fully comply with both terms, the Order Term shall determine Respondent’s obligations under this Order. Notwithstanding any paragraph, section, or other provision of the License, any modification of the License, without the prior approval of the Commission, shall constitute a failure to comply with this Order.
- E. The purpose of the License required by Paragraph II.A. of this Order is to create viable, independent Competitors to develop, manufacture, and sell Waterjet Cutting Systems or Waterjet Cutting System controllers, using the Licensed Patents, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission’s Complaint.

III.**IT IS FURTHER ORDERED** that:

- A. Respondent shall:
1. not provide, disclose or otherwise make available any Confidential Business Information to any Person except as set forth in Paragraph III.B. of this Order;
 2. not use any Confidential Business Information for any reason or purpose other than as otherwise required or permitted by the License and this Order; and,
 3. require all License Reports to be sent to the attention of Flow’s general counsel, who shall not provide, disclose, or otherwise make available any information

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contained in any License Report except to persons whose duties relate solely to providing legal services and representation to Respondent.

- B. Respondent may use Confidential Business Information only (i) for the purpose of performing Respondent's obligations under this Order; and, (ii) for the purpose of exercising Respondent's rights explicitly granted to Respondent by the License.

IV.**IT IS FURTHER ORDERED** that:

- A. If the Commission finds that Respondent has failed to grant a License as required by Paragraph II. of this Order within the time periods specified therein, then the Commission may appoint a Licensing Trustee to grant the License to any Competitors to satisfy the requirements of Paragraph II of this Order.
- B. Neither the decision of the Commission to appoint a Licensing Trustee, nor the decision of the Commission not to appoint a Licensing Trustee, to grant the License under this Paragraph IV shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, for any failure by the Respondent to comply with this Order.
- C. If a Licensing Trustee is appointed by the Commission or a court, Respondent shall consent to the following terms and conditions regarding the Licensing Trustee's powers, duties, authority, and responsibilities:

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1. The Commission shall select the Licensing Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Licensing Trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Licensing Trustee, Respondent shall be deemed to have consented to the selection of the proposed Licensing Trustee.
2. Subject to the prior approval of the Commission, the Licensing Trustee shall have the exclusive power and authority to grant the License to a Competitor pursuant to the terms of this Order.
3. Within ten (10) days after appointment of the Licensing Trustee, Respondent shall execute a (or amend the existing) trust agreement (“Licensing Trustee Agreement”) that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the Licensing Trustee all rights and powers necessary to permit the Licensing Trustee to grant the License to a Competitor pursuant to the terms of this Order.
4. The Licensing Trustee may grant the License to any Competitor pursuant to the terms of this Order at any time after the Licensing Trustee Agreement is effective.
5. The Licensing Trustee shall have full and complete access to the personnel, books, records and facilities of Respondent related to each License, as the Licensing Trustee may request. Respondent shall develop such financial or other information as the Licensing Trustee may request and shall cooperate with the Licensing

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Trustee. Respondent shall take no action to interfere with or impede the Licensing Trustee's accomplishment of his or her responsibilities.

6. The Licensing Trustee shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The Licensing Trustee shall have the authority to employ, at the expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Licensing Trustee's duties and responsibilities. The Licensing Trustee shall account for all monies derived from the divestiture and all expenses incurred. Respondent shall pay the Licensing Trustee's fees and expenses in accordance with the Licensing Trustee Agreement.
7. Respondent shall indemnify the Licensing Trustee and hold the Licensing Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Licensing Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Licensing Trustee.
8. If the Commission determines that the Licensing Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute trustee in the same manner as provided in this Paragraph IV of this Order.

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9. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the Licensing Trustee issue such additional orders or directions as may be necessary or appropriate to comply with the terms of this Order.
 10. The Licensing Trustee shall report in writing to Respondent and to the Commission every two (2) months concerning his or her efforts to grant Licenses under this Order, and Respondent's compliance with the terms of this Order.
- D. Respondent shall comply with all terms of the Licensing Trustee Agreement, and any breach by Respondent of any term of the Licensing Trustee Agreement shall constitute a violation of this Order. Notwithstanding any paragraph, section, or other provision of the Licensing Trustee Agreement, any modification of the Licensing Trustee Agreement, without the prior approval of the Commission, shall constitute a failure to comply with this Order.

V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of Respondent;
- B. any proposed acquisition, merger or consolidation of Respondent; or
- C. any other change in the Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

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VI.**IT IS FURTHER ORDERED** that:

- A. Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter for one hundred and eighty (180) days, Respondent shall submit to the Commission (with simultaneous copies to the Licensing Trustee(s), as appropriate) verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraph II of this Order. Respondent shall include in the reports, among other things that are required from time to time, the name, address, and phone number of each person who has inquired about receiving a License (whether or not Respondent granted a License to such person), the name, address, and phone number of each Person to whom Respondent granted a License, and a full description of any dispute between Respondent and any person to whom Respondent granted a License concerning any claimed actual or alleged breach (whether or not Respondent believes there has been a breach) of any License. Respondent shall include in the reports:
1. Copies of all Licenses executed in each reporting period, together with copies of all written communications to and from each Licensee; and,
 2. The name, address, and phone number of each person who requested a License, but to whom Respondent did not grant a License, together with a description in reasonable detail of the reasons why Respondent did not grant the person a license.
- B. One (1) year from the date this Order becomes final on the anniversary of the date this Order becomes final, annually for the next nine years on the anniversary of the date this

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Order becomes final, and at other times as the Commission may require, Respondent shall file verified written reports with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order. Respondent shall include in the reports, among other things that are required from time to time, the name, address, and phone number of each person who has inquired about receiving a License (whether or not Respondent granted a License to such person), the name, address, and phone number of each Person to whom Respondent granted a License, and a full description of any dispute between Respondent and any person to whom Respondent granted a License concerning any claimed actual or alleged breach (whether or not Respondent believes there has been a breach) of any License. Respondent shall include in the reports:

1. Copies of all Licenses executed in each reporting period, together with copies of all written communications to and from each Licensee; and,
2. The name, address, and phone number of each person who requested a License, but to whom Respondent did not grant a License, together with a description in reasonable detail of the reasons why Respondent did not grant the person a license.

VII.

IT IS FURTHER ORDERED that for the purpose of determining or securing compliance with this Order, upon written request, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other

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records and documents in the possession or under the control of Respondent relating to any matters contained in this Order; and,

- B. Upon five (5) days' notice to Respondent and without restraint or interference from it, to interview officers, directors, employees, agents or independent contractors of Respondent relating to any matter contained in this Order.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on August 15, 2018.

By the Commission.

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EXHIBIT A**PATENT LICENSE AGREEMENT
(FOR U.S. PATENT NOS. 5,508,596 AND 5,892,345)**

This Patent License Agreement (the "Agreement") is entered into between Flow International Corporation, a Washington corporation, with offices at 23500 - 64th Avenue South, Kent, Washington 98032 U.S.A. ("Flow"), and _____, a _____ corporation, at the address specified below, ("Licensee"), effective as of the date it has been signed on behalf of all parties (the "Effective Date").

Section 1. Definitions

- 1.1 "Authorized Sublicensee" means any waterjet cutting system manufacturer, distributor, dealer or customer of Licensee granted a sublicense under Section 2.4 to make, use, sell or offer for sale copies of the Licensed Technology.
- 1.2 "Distributor" means any distributor that Licensee authorizes, directly or indirectly, to Distribute a Licensed Product that contains Licensed Technology to End Users in accordance with the terms of this Agreement.
- 1.3 "Distribute" or "Distribution" means selling, offering to sell, licensing, distributing, importing or otherwise making available in any manner to a third party.
- 1.4 "End User" means a third party customer to which a product containing the Licensed Technology is Distributed, and not for further sublicense or further Distribution.
- 1.5 "License" means the license granted by Flow to Licensee under Section 2 of this Agreement.
- 1.6 "Licensed Patent(s)" means U.S. Patent Nos. 5,508,596 (Motion Control With Precomputation) and 5,892,345 (Motion Control For Quality In Jet Cutting).
- 1.7 "Licensed Product" means any product that includes the Licensed Technology and is used by the End User as part of a waterjet cutting system.
- 1.8 "Licensed Technology" means those portions of a Licensed Product, designed and developed by or for Licensee or any Authorized Sublicensee, the making, using, selling, offering for sale or importing of which infringes at least one claim of the applicable Licensed Patents.

Section 2. License and Licensee Requirements

2.1 License Grant. Subject to Sections 2.2, 2.7 and 2.8 below, Flow hereby grants to Licensee a royalty-free, fully-paid personal, nonexclusive, nonsublicensable (except as specifically provided for in Section 2.4 of this Agreement) license under the Licensed Patents to do the following during the Term:

- (a) make and use the Licensed Technology for the research and development, production, offer for sale or sale of waterjet cutting systems;
- (b) Distribute the Licensed Technology to manufacturers of waterjet cutting systems; and
- (c) Distribute the Licensed Technology in the Licensed Products to End Users

2.2 Conditions. The licenses granted in Section 2.1 are conditioned upon: (i) Licensee's compliance with the notice requirements of Section 2.6; (ii) Licensee's compliance with the requirements of Sections 2.7 and 2.8; and (iii) Licensee's compliance with the reporting requirements of Section 3.

2.3 Covenant Not to Sue. Flow hereby covenants not to sue Licensee, or any Sublicensees or End Users or any of their subsidiaries, for any and all claims of infringement of the Licensed Patents, or a claim on any other patent the scope of which may be coextensive with any of the claims of the Licensed Patents, based on having at any time prior to or during the term of this License made, used, sold, offered for sale or imported, or on the making, use, selling, offering for sale or importing of the Licensed Technology, but only to the extent that such activities are permitted under the License.

2.4 Limited Right to Sublicense.

- (a) The License includes the right of Licensee to grant to any of its Distributors a sublicense to any waterjet cutting system manufacturer, distributor, dealer or customer of Licensee.

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(b) Licensee will ensure that each Authorized Sublicensee complies with this Agreement. The License does not include the right to grant or authorize any other sublicense under the License or otherwise to take or authorize any action outside the scope of the License.

2.5 Reservation of Rights. All rights not expressly granted in this Agreement are reserved. The License does not include, and Flow does not grant, any right under any patent or intellectual property other than the Licensed Patents.

2.6 Waiver. Licensee agrees and acknowledges that by signing this Agreement, Licensee waives its right to contest the validity of the Licensed Patents as applied to waterjet cutting systems.

2.7 Limitation. Licensee shall not represent directly or indirectly that any product it makes or sells pursuant to this License is made or endorsed by Flow International Corporation or OMAX Corporation.

2.8 Licensee Requirements. To qualify to be a licensee under this Agreement, the licensee must be engaged in the business of manufacture or distribution of, or creation of control equipment for, waterjet cutting systems. Additionally, the License does not modify the Licensee's obligations to comply with the law of the United States or any other jurisdiction, including export and trade laws (such as U.S. Export Administration Regulations, and end-user, end-use, and destination restrictions).

Section 3. Reporting

Licensee will provide quarterly reports to Flow, no later than 45 days following the end of each calendar quarter, identifying the number, location (by state or province or by country if outside the U.S. or Canada) and type (to Distributor, End User, etc.) of any sale, lease or other disposition of a Licensed Product. Such reports should be sent to the addresses designated in Section 8.4. Flow shall treat the quarterly reports provided under this Section as Confidential Business Information, the use and dissemination of which are subject to the terms of the Decision & Order of the Federal Trade Commission.

Section 4. Term and Termination

4.1 General. The term of the License will commence as of the Effective Date and terminate upon the first of the following to occur: (a) the expiration of the last of the Licensed Patents to expire or (b) Flow gives Licensee written notice of termination in accordance with Section 4.2 or 8.6 ("Term").

4.2 Early Termination by Flow. Flow may terminate the Term by giving Licensee written notice of termination if Flow has determined, in good faith, that Licensee has breached the Agreement and has failed to cure such breach within sixty (60) days after Flow has given Licensee written notice of such breach.

4.3 Effect of Expiration or Termination. Only Sections 2.3, 2.6, 5, 6, 7 and 8 of this Agreement will survive any expiration or termination of the Term.

Section 5. Warranties, Exclusion of Warranties, Exclusive Remedy and Sole Liability

5.1 Warranties. Flow represents and warrants to Licensee that: (a) it is the owner of the Licensed Patents; and (b) it has the right to grant the License. Each Party represents and warrants that it has the power and authority to enter into this Agreement.

5.2 Exclusion of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5.1, TO THE MAXIMUM EXTENT PERMITTED BY LAW, FLOW EXCLUDES ALL CONDITIONS, WARRANTIES AND OTHER TERMS WHICH MIGHT HAVE EFFECT BETWEEN THE PARTIES OR BE IMPLIED OR INCORPORATED INTO THIS AGREEMENT (INCLUDING WITHOUT LIMITATION, THE IMPLIED CONDITIONS, WARRANTIES AND OTHER TERMS AS TO SATISFACTORY QUALITY, FITNESS FOR PURPOSE, NON-INFRINGEMENT, TITLE AND THE USE OF REASONABLE SKILL AND CARE). WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, FLOW HAS NOT MADE, AND DOES NOT MAKE, ANY REPRESENTATION OR WARRANTY OF ANY KIND: (i) WITH REGARD TO THE SCOPE, COVERAGE, VALIDITY OR ENFORCEABILITY OF ANY OF THE LICENSED PATENTS; (ii) WITH RESPECT TO ANY LICENSED PRODUCT OR LICENSED TECHNOLOGY; OR (iii) THAT ANY LICENSED TECHNOLOGY MADE, USED, SOLD, OFFERED FOR SALE OR IMPORTED UNDER THE LICENSE IS OR WILL BE FREE FROM INFRINGEMENT OF ANY PATENT OR OTHER INTELLECTUAL PROPERTY RIGHT OF ANY THIRD PARTY.

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Section 6. Exclusive Remedy of Licensee and Sole Liability of Flow.

BOTH PARTIES AGREE THAT LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THIS AGREEMENT BY FLOW WILL BE TERMINATION OF THIS AGREEMENT AND COMPENSATORY DAMAGES LIMITED TO AN AMOUNT NOT TO EXCEED ONE HUNDRED DOLLARS.

Section 7. Limitation of Liability

IN NO EVENT WILL FLOW BE LIABLE FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INDIRECT LOSSES OR DAMAGES OR ANY LOSS OF REVENUE, PROFIT, USE, BUSINESS OPPORTUNITY OR GOODWILL ARISING OUT OF OR RELATED TO THE LICENSE OR THIS AGREEMENT EVEN IF FLOW HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES, INCLUDING THAT FLOW SHALL NOT BE LIABLE FOR ANY DEATH, PERSONAL INJURY OR OTHER HARM ARISING FROM ANY MANUFACTURE, USE, OFFER FOR SALE, SALE, EXPORT OR OTHER ACTIVITY RELATING TO ABRASIVE WATERJET MACHINES MADE, USED, OFFERED FOR SALE, OR SOLD UNDER THIS LICENSE..

Section 8. Miscellaneous

8.1 **No Right to Technology.** Flow will not have any obligation under this Agreement to disclose or otherwise make available to Licensee any Technology, trade secrets, programs, specifications, designs, technical data, know how or other technology, whether or not the same may be required for the exercise or commercial exploitation of the License.

8.2 **Compliance with Laws.** Licensee and Sublicensed Subsidiaries will comply with all applicable international and national laws and regulations in the performance of all of their activities under the License and this Agreement.

8.3 **Actions on Behalf of the Parties.** Flow and Licensee are each liable for, and will be deemed for all purposes of this Agreement to have done or failed to do, any act or omission of their respective officers, employees, temporary personnel, or independent contractors related to acts or omissions in connection with this Agreement.

8.4 **Notices.** All notices and requests in connection with this Agreement are deemed given on the day they are received either by messenger, delivery service, or in the United States of America mails, postage prepaid, certified or registered, return receipt requested, and addressed to Licensee using the contact information indicated on the first page of this Agreement, to Flow using the contact information below, or to either party at such other address as the party to receive the notice or request so designates per this notice provision:

Flow International Corporation
John Leness
General Counsel and Corporate Secretary
23500 - 64th Avenue South
Kent, WA 98032
U.S.A.

8.5 **Jurisdiction, Governing Law and Attorneys' Fees.** This Agreement will be governed by and construed in accordance with the laws of the state of Washington. Each party hereby submits to the exclusive jurisdiction of the state and federal courts of the state of Washington. Process may be served on either party in the manner authorized by applicable law or court rule. In any formal action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party is entitled to recover its costs, including reasonable attorneys' fees, costs and other expenses.

8.6 **Assignment.** Either party may assign this Agreement or any of its rights or obligations hereunder, provided that the Licensee gives the Licensor written notice of its assignment within thirty (30) days of its assignment having been made. Such written notice will also include a signed statement by the assignee that it is willing to be bound by the terms and conditions of this Agreement. This Agreement will be binding upon, enforceable by, and inure to the benefit of the parties and their respective successors and permitted assignees. For purposes of this Agreement, an "assignment" by Licensee under this Section will be deemed to include, without limitation, each of the following: (a) a change in beneficial ownership of Licensee of greater than twenty percent (20%) (whether in a single transaction or series of transactions) if Licensee is a partnership, trust, limited liability company or other like entity; (b) a merger of Licensee with another entity, whether or not Licensee is the surviving entity; (c) the acquisition of more than twenty percent (20%) of any class of voting stock (or any class of non-voting security convertible into voting stock) of Licensee by another

FEDERAL TRADE COMMISSION DECISIONS
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entity (whether in a single transaction or series of transactions); and (d) the sale or other transfer of more than fifty percent (50%) of such Licensee's assets (whether in a single transaction or series of transactions). Any attempted transfer or assignment in violation of this Section will be void, and, in the event of any such assignment or attempted assignment by Licensee, Flow will have the right to immediately terminate the License.

8.7 **No Third Party Beneficiaries.** This Agreement is for the benefit of, and will be enforceable by, the Parties only. This Agreement is not intended to confer any right or benefit on any third party. No action may be commenced or prosecuted against a Party by any third party (including, without limitation, Subsidiaries) claiming as a third-party beneficiary of this Agreement or the License.

8.8 **Counterparts and Facsimile.** This Agreement may be executed on facsimile copies in two counterparts, each of which will be deemed an original and all of which together will constitute one and the same Agreement. Notwithstanding the foregoing, the parties will deliver original executed copies of this Agreement to one another as soon as practicable following execution thereof.

8.101 **Entire Agreement, Modifications and Waiver.** This Agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior and contemporaneous agreements, arrangements and understandings, whether written or oral, between the Parties in connection with this Agreement and on such subject matter. This Agreement will not be modified except by a written agreement signed by an authorized representative of the Party against whom such modification is sought to be enforced. Failure by either Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that provision.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be made and executed by duly authorized officers.

[LICENSEE NAME]

FLOW INTERNATIONAL CORPORATION

By (Sign) _____

By (Sign) _____

Name (Print) _____

Name (Print) _____

Title _____

Title _____

Date _____

Date _____

Licensee Information:

Licensee Full Legal Name:

Type of Legal Entity (corporation, company, partnership, sole proprietorship or other):

State/Province Organized:

Street Address:

City, State (or equivalent), Country and Postal Code:

Licensee Contact Name:

Phone Number:

Fax Number:

Email Address:

Licensee Legal Advisor Contact Information, if any:

Legal Advisor Name:

Legal Advisor Contact Phone Number:

Legal Advisor Contact Fax Number:

Legal Advisor Contact Email Address:

Analysis to Aid Public Comment

ANALYSIS OF THE CONSENT ORDER TO AID PUBLIC COMMENT**I. Introduction**

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) from Flow International Corporation (“Flow”). The proposed Consent Agreement is designed to remedy the likely anticompetitive effects arising from Flow’s proposed acquisition of OMAX Corporation (“OMAX”). Under the terms of the Consent Agreement, Flow will grant a royalty-free license to two Omax patents relating to waterjet controllers to any firm that seeks a license.

II. Background

Flow and OMAX are the leading manufacturers of waterjet cutting systems in the United States. Waterjet cutting systems use high pressure water and garnet to cut a wide variety of materials from steel to stone. The two companies have developed PC-based controllers that automatically compensate for the unique characteristics of how the waterjet cuts, such as taper (the waterjet expands after leaving the nozzle, forming a cone shape) and lag (the faster the cutting head moves, the more the waterjet will trail behind the cut). The controllers and related technology differentiate these two firms from other competitors in the marketplace. However, the controllers and related technology are also the subject of ongoing litigation between the two companies. In 2004, OMAX filed suit alleging that Flow’s products infringed its patents pertaining to controllers. Flow counterclaimed alleging that OMAX infringed its patents pertaining to controllers.

Flow, a publicly traded company headquartered in Kent, Washington, is the leading manufacturer of waterjet cutting systems in the United States market. OMAX is a privately-held company headquartered in Kent, Washington. OMAX owns two

Analysis to Aid Public Comment

very broad U.S. patents covering its controller. OMAX's controller is a significant factor behind its position as the second leading supplier of waterjet cutting systems in the United States.

On December 5, 2007, Flow signed an exclusive option agreement to negotiate the acquisition of OMAX. Under the agreement, Flow and OMAX will work to negotiate a definitive agreement for Flow to acquire OMAX. Upon closing, Flow would pay approximately \$109 million in cash and stock with the potential for a contingent earn-out in two years of up to \$26 million. The closing will also settle the long-running and expensive patent litigation between Flow and OMAX.

III. The Draft Complaint

The draft complaint alleges that the transaction may substantially lessen competition in the market for the development, manufacture, marketing, and sale of waterjet cutting systems. A waterjet cutting system contains four main parts: (1) pump, (2) cutting head, (3) cutting table, and (4) controller.

Waterjet cutting systems are used by a wide variety of industrial machine tool customers. These customers range from job shops, which produce a wide variety of short-run parts, and use waterjet cutting systems to complement their traditional milling machines, lasers and flame cutters, to aerospace shops that use waterjet cutting systems because they cut without damaging materials that are affected by heat, such as titanium and aluminum. Industrial machine tool customers, as well as others, can increase cutting speed and minimize set-up time by using a waterjet cutting system instead of an alternative cutting technology. Cutting speed is affected by pump pressure, the number of cutting heads used on the system, and the sophistication of the controller. Controllers are often the least expensive means of improving cutting speed and have the further virtue of reducing set-up time if they are easily programmable. To compensate for the unique characteristics of how the waterjet

Analysis to Aid Public Comment

cuts, controllers can improve the quality of the cut by, among other things, automatically adjusting the speed of the cut.

Both Flow and OMAX produce waterjet cutting systems that feature relatively inexpensive yet sophisticated PC-based controllers that compensate for the unique characteristics of how the waterjet cuts. These controllers make Flow and OMAX each other's closest competitors because only they manufacture waterjet cutting systems with the most advanced and efficient controllers.

The relevant geographic market within which to analyze the likely effects of the proposed transaction is the United States. The draft complaint further alleges that new entry would not prevent or counteract the anticompetitive effects of this acquisition. New entrants and existing competitors are deterred by the risk of violating the OMAX patents from developing and producing competitive waterjet cutting systems. Developing an efficient controller that clearly works-around the potential reach of OMAX's patents would likely be an expensive and time-consuming process, with no guarantee of success.

The draft complaint also alleges that Flow's acquisition of OMAX, if consummated, may substantially lessen competition in the market for the development, manufacture, marketing, and sale of waterjet cutting systems in the United States in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by eliminating direct competition between Flow and OMAX and increasing the likelihood that Flow will unilaterally exercise market power.

IV. The Terms of the Consent Agreement

The proposed Consent Agreement will remedy the Commission's competitive concerns about the proposed acquisition. Under the terms of the proposed consent order, Flow

Analysis to Aid Public Comment

must grant a royalty-free license to each competitor who seeks to license the two broad OMAX patents relating to controllers that Flow will acquire with its acquisition of OMAX.

Currently Flow and OMAX are each other's closest competitor because they each offer an efficient PC-based controller that compensates for the unique characteristics of how a waterjet cuts. OMAX's two patents make the development of such a controller substantially more expensive and risky. Requiring Flow to grant a royalty-free license to these patents will ensure that other firms are able to replace the competition that would otherwise have been eliminated by the proposed acquisition.

While Flow has two patents relating to controllers, its patents are significantly narrower in scope than the OMAX patents and, as a result, do not prevent current or future competitors from offering a viable waterjet cutting system. Current and future competitors will not need licenses to these narrow patents in order to compete effectively in this market. Other aspects of Flow's and OMAX's business, such as customer lists, brand names, key employees, or the other parts of waterjet cutting systems, are easily duplicated by current competitors or future entrants. Consequently, to restore the competition lost by Flow's acquisition of OMAX, the proposed consent order eliminates the entry barrier faced by current waterjet cutting system competitors and future entrants by giving them a royalty-free license to the OMAX patents.

V. Opportunity for Public Comment

The proposed consent order has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed consent order and the comments received and will

Analysis to Aid Public Comment

decide whether it should withdraw from the agreement or make the proposed consent order final.

By accepting the proposed consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed consent order, in order to aid the Commission in its determination of whether to make the proposed consent order final. This analysis is not intended to constitute an official interpretation of the proposed consent order nor is it intended to modify the terms of the proposed consent order in any way.

Complaint

IN THE MATTER OF

WE GIVE LOANS, INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS
OF THE TRUTH IN LENDING ACT

*Docket C-4232; File No. 072 3205
Complaint, September 3, 2008 – Decision, September 3, 2008*

This consent order addresses payday loan advertisements disseminated by We Give Loans, Inc. The advertisements failed to disclose the annual percentage rate for these loans. The order prohibits the respondent, in any advertisement of consumer credit, from stating the amount or percentage of any down payment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without disclosing clearly and conspicuously all of the terms required by the Truth in Lending Act and its implementing Regulation Z, including the amount or percentage of the down payment, the terms of repayment, and the annual percentage rate. The respondent is prohibited from stating a rate of finance charge without stating it as an annual percentage rate. The respondent is also prohibited from failing to comply in any other respect with the Truth in Lending Act or Regulation Z. Additional provisions of the order include requirements that the respondent retain documents, to ensure compliance with the proposed order; distribute copies of the order to various principals, officers, directors, and managers, and all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of the order; notify the Commission of any changes in its corporate structure that might affect compliance with the order; and file with the Commission one or more reports detailing compliance with the order.

Participants

For the *Commission*: *Beverly Childs, Thomas B. Pahl, Cara Petersen, Peggy L. Twohig, and Quisaira Whitney.*

For the *Respondent*: *Glen Trudel, Connolly Bove Lodge & Hutz LLP.*

Complaint

COMPLAINT

The Federal Trade Commission, having reason to believe that We Give Loans, Inc., a Delaware corporation (“respondent”) has violated the provisions of the Truth in Lending Act, 15 U.S.C. §§ 1601-1667, as amended, and its implementing Regulation Z, 12 C.F.R. § 226, as amended, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent We Give Loans, Inc., is a Delaware corporation with its principal office or place of business at 2300 Lincoln Avenue, Apt. 201, Cloquet, MN 55720. We Give Loans, Inc. does business primarily through the website WeGiveLoans.com, but also operates under various other websites including but not limited to 1200Today.com.

2. Respondent has disseminated advertisements to the public that promote extensions of closed-end credit in consumer credit transactions, as the terms “advertisement,” “credit,” “closed-end credit,” and “consumer credit” are defined in Section 226.2 of Regulation Z, 12 C.F.R. § 226.2, as amended.

3. Respondent advertises credit to consumers in the form of payday loans. Credit is defined as “the right to defer payment of debt or to incur debt and defer its payment.” Section 226.2 of Regulation Z, 12 C.F.R. § 226.2, as amended. Credit includes “a transaction in which a cash advance is made to a consumer in exchange for the consumer’s personal check, or in exchange for the consumer’s authorization to debit the consumer’s deposit account, and where the parties agree either that the check will not be cashed or deposited, or that the consumer’s deposit account will not be debited, until a designated future date. This type of transaction is often referred to as a ‘payday loan’ or ‘payday advance’ or ‘deferred-presentment loan.’” Comment 2 to Section 226.2(a)(14) of the Official Staff Commentary to Regulation Z; 12 C.F.R. Section 226.2(a)(14)-2, Supp.1, as amended. Payday loans have high rates and short repayment periods; they are often

Complaint

due on the borrower's next payday, usually about every two weeks.

4. Respondent has disseminated or has caused to be disseminated payday loan advertisements on the Internet, including but not necessarily limited to the attached Exhibits 1 and 2. Respondent collects information from consumers, called leads, through its online application, and then provides this information to lenders that ultimately offer payday loans to the consumers. Respondent is paid by the payday lenders for generating these consumer leads.

5. The WeGiveLoans.com advertisement attached as Exhibit 1 states that We Give Loans provides borrowers with the means to "shop and compare more than 100 pay day lenders side by side."

A. This advertisement states that a payday lender's fee is "typically \$10-\$25 per \$100 borrowed," and the lender will debit your account for the fees it is owed on a "pre-agreed date (usually your next pay date)."

B. The WeGiveLoans.com advertisement states that payday loan "fees are based on a per \$100 borrowed basis. The lowest fee in [We Give Loan's] network is just \$10 per \$100 borrowed. The average is \$15 per \$100."

C. This advertisement also provides an interactive "payday loan calculator" that provides the total amount of fees due depending on how many payments it takes to pay off the loan. For example, the calculator shows that a \$100 loan that has a \$20 fee when the loan is paid off in full in a single payment will increase to \$30 in fees when the loan is paid off over 2 payments, \$41 in fees when the loan is paid off over 3 payments, and \$50 in fees when the loan is paid off over 4 payments.

Complaint

6. The 1200Today.com advertisement attached as Exhibit 2 states that “[y]ou may qualify for up to \$1,200 from a single lender” and that 1200Today.com will “match you with up to four different lenders.”

A. This advertisement states that the “lowest fee available in [1200Today.com’s] network of lenders is just \$10 per \$100 borrowed. The average is between \$10 and \$20 per \$100 borrowed.”

B. The 1200Today.com advertisement also states that payments are typically due on your next pay date.

7. On a \$100 loan with a \$10 fee, repayable in a typical pay period of 14 days, the APR would be 260%. On a \$100 loan with a \$15 fee repayable in a typical pay period of 14 days, the APR would be 391%. A \$100 loan with a \$20 fee, repayable in a typical pay period of 14 days, would have an APR of 521%.

Failure to Disclose Information Required by TILA

8. In credit advertisements, including but not necessarily limited to Exhibits 1 and 2, respondent has stated the number of payments or period of repayment and/or the amount of any finance charge, as terms for obtaining consumer credit in the form of a payday loan.

9. These advertisements have failed to disclose the “annual percentage rate” or “APR” using that term as required by Regulation Z.

10. Respondent’s practices have violated Section 144 of the Truth in Lending Act (“TILA”), 15 U.S.C. § 1664, and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c).

Complaint

THEREFORE, the Federal Trade Commission this third day of September, 2008, has issued this complaint against respondent.

By the Commission.

Complaint

EXHIBIT 1

Loans for; Auto, Home, Payday, and Personal Loan Needs - We Give Loans

Page 1 of 1



Loans for; Auto, Home, Payday, and Personal Loan Needs

Easy Loan Approval



We Give Loans provides; online loan services throughout the USA, and in Canada. Borrowers can shop and compare more than 800 lenders side by side. Then, securely apply online for their; auto, home, payday, and personal loan needs. Most of our loan approvals are instant, so many borrowers receive their money the same day.

Make sure you get the best rate and terms available anywhere. Tell us about your borrowing needs with our "Get Matched" online application. We'll instantly display a side by side comparison of the top six or so lenders matching your needs. Compare the rates, terms, and other key details. Then, apply for the best loan or loans for you.

Loan Features

- Secure
- 100% Online
- 24/7 Support
- Bad Credit ok
- 800+ Lenders
- USA & Canada
- Easy Approval
- Instant Results

Home Loans

Compare home loan offers. Programs for: purchase, refinance, home equity, second mortgage, and home equity line of credit needs. Bad credit ok.

Payday Loans

Take up to 10 pay-periods to repay. Receive up to \$1000 in one hour, or \$1500 by tomorrow. No credit check, fax or faxing required. Safe and secure.

Personal Loans

Unsecured personal loan amounts from \$1500 to \$35,000. Instant online results, funds as-quick-as tomorrow. Offers for Renters and Homeowners with fair + credit.

Auto Loans

Online auto loan approvals up to \$100,000. Programs for new, used, purchase, refinance, dealer, and private party transactions. Bad credit ok. You can receive your funds by tomorrow. Oh yeah, motorcycle loans too.

Credit Cards

Instant credit card approvals. Limits up to \$100,000. Discover, Visa, MasterCard, and American Express. Card offers for; personal, business, student, unsecured, secured, and prepaid cards. Bad credit & no credit ok.

Credit Services

Find credit service companies that provide: debt help, debt consolidation loans, debt management, credit counseling, and credit monitoring services. Also, information on how to obtain a free credit report with score.

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Complaint

Online Payday Loans, and Cash Advance Loan Services

Page 1 of 1



You are here: Loans > "Payday Loans" - Main

Online Payday Loans, and Cash Advance Loan Services
Take up to 10 Pay-Periods to Repay.**Payday Qualifications**

18+ years old.
US or Canadian citizen.
Have a checking or savings account.

Receive \$800+ per month from all sources combined (before deductions)

APPLY NOW

We Give Loans provides: online **payday loans**, **bad credit personal loans**, and **cash advance loan services** throughout the USA, and in Canada. Borrowers can shop and compare more than 100 pay day lenders side by side. Then, when they're ready; **apply online securely**. Most of our loan approvals are **instant**, so borrowers can receive their money **within one hour**, or by the next day.

Make sure you get the lowest fees, and best pay day loan terms available anywhere. Tell us about your unique payday loan needs with our **online application form**. We'll instantly display a side by side comparison of the top six or so payday lenders matching your needs. Compare the fees, terms, and other important loan details. Then, apply for the best payday loan or loans for your needs. Safe and secure services.

Payday Loan Services

- Confidential
- 100% online
- \$100 - \$1500
- Fast & secure
- **No credit check**
- 100% faxless
- No fax or faxing
- 100+ lenders
- USA & Canada
- Easy approval
- Instant results
- Cash deposited **in one hour - or - by tomorrow.**

Payday Loan Resources

- [Online Application](#)
- [Payday Loan FAQ](#)
- [Payday Loan Example](#)
- [Payday Loan Calculator](#)
- [How a Payday Loan Works](#)

What's a "Payday Loan"?

A **Payday loan** is a short term loan that's based entirely on your source of income. With pay day loans, your source of income is your credit. For this reason no credit check or credit history is required. You simply provide who you are, what your source of income is, and where you want the money deposited. Borrowers can receive up to \$1000 in one hour, or as-much-as \$1500 by tomorrow. Cash advance services are convenient, quick, hassle free, and always confidential.

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Complaint

Online Payday Loan Application - We Give Loans

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Online Payday Loan Application
Take up to 10 Pay-Periods to Repay!

You are here: [Loans](#) > [Payday Loans](#) - Main > "Online Payday Loan Application"

Payday Loan Qualifications and Requirements are: You Must

- Be at least 18 years old and a resident of the USA or Canada.
- Have a checking or savings account.
- Earn at least \$800 per month (before deductions) from all sources combined.

*No a bank account? Consider a [personal loan](#).

Benefits of a Payday Loan

- No Fax or Faxing Required
- Fast and Easy Approval -
- No Credit Check Required
- Confidential and Secure -
- 100% Online
- Money in Your Account within 1 to 24 Hours

- Step-1** Complete the secure online payday loan application below.
- Step-2** We'll instantly search our database of more than 100 payday lenders. Then display which lenders match your loan requirements, and can approve your loan.
- Step-3** Compare the offers you matched with, and apply to the one (s) best for you.

State you live in. Select Canada if you live in Canada. Select - One

How much would you like to borrow? \$100 - \$1500 Select - One

How fast do you need to receive the money? Select - One

How often do you get paid or receive your benefits? Select - One

How many pay-periods would you like to pay the loan back in? Select - One

Estimated total MONTHLY earnings before deductions? Select - One

Is your paycheck or benefits electronically (directly) deposited to your account? Select - One

Do you have a checking account? Select - One

First Name _____

Last Name _____

(No SPAM) see our policy below. Email Address _____

Re-type Email Address _____

For increased security, please type the image code. 

Within 5 seconds of clicking submit, the top lenders that matched your requirements will display on-screen for you to review. By clicking "Submit - Find Matching Lenders" you are not submitting a loan application. You are requesting that we compare more than 100 payday lenders with your needs, and display the results.

(NO SPAM) We will not share the results of your search with anyone other than yourself and authorized employees of WeGiveLoans.com. All of your information, including your name and email address will never be sold, rented, traded or otherwise be made available to anyone for any reason. We guarantee it! For more details view our [privacy and security policies](#).

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Payday Loan FAQ- Answers to Your Payday Loan Questions

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Payday Loan FAQ - Answers to Your Payday Loan Questions

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Payday Loan Resources

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- [Payday Loan Example](#)
- [Payday Loan Calculator](#)
- [How Payday Loans Work](#)

APPLY NOW

- [Payday Loan - What is a payday loan?](#)
- [Alternatives - What are the alternatives to a payday loan?](#)
- [Application - How do I apply?](#)
- [Approval - When will I know if I'm approved?](#)
- [Credit Check - Is there a credit check?](#)
- [Faxing - Will I need to fax anything, or is it faxless?](#)
- [Fees - Cost - What are the fees? How much will it cost?](#)
- [How Fast - How quick can I receive my cash?](#)
- [Loan Amount - How much can I borrow?](#)
- [Payment - How much, and when will my payment be due?](#)
- [Qualifications - What are the qualifications?](#)
- [Security - Is my information safe and secure?](#)

What's a "Payday Loan"?

A *payday loan* is a short term loan that's based entirely on your source of income. With payday loans, your job or source of income is your credit. For this reason no credit check or credit history is required. You simply provide who you are, what your source of income is, and where you want the money deposited.

Payday Loan Alternatives

Payday loans are best used to take care of a temporary emergency need or cash flow crises. One alternative is a personal loan. If you have fair or better credit you could borrow up to \$35000 with repayment terms of up to seven years. If your credit is poor, and you know it, consider borrowing from friends and family as an alternative.

How do I Apply?

By using our [online payday loan application](#).

When will I know if I'm approved?

In most cases, you'll know instantly. In a few instances you will receive an email or call within one hour. You will always be provided with instant notification of whether your loan is approved, declined, or when to expect an email or call.

Is there a credit check?

No. Apply Now

Will I need to fax anything?

Odds are no. No fax or faxing is required from more than 90% of the lenders in our network. Some lenders that can deposit the money into your account within one hour may require some faxing.

What are the fees?

The fees are based on a per \$100 borrowed basis. The lowest fee in our network is just \$10 per \$100 borrowed. The average is \$15 per \$100. You'll always know what your fees are before accepting a loan.

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Payday Loan Example - We Give Loans

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Payday Loan Example

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[APPLY NOW](#)

Payday Loan Example

Here's an actual example of a payday loan and how it's paid back. OK, you've submitted our get matched [online payday loan application](#), selected your lender, and completed their online application. Your loan approval was instant, you reviewed the terms, and accepted the loan.

Let's assume that you borrowed \$500, and after using our helpful [payday loan calculator](#), decided that you want to pay the loan off in a single payment. We'll also assume that you were matched with and selected one of the lowest fee lenders in the network with a fee of just \$10 per \$100 borrowed.

Since the fee in this scenario was \$10 per \$100 borrowed, and you borrowed \$500. That's $\$10 \times 5 = \50 in total fees.

On the pre-agreed date (usually your next pay date) the lender will debit your account for the \$50 in fees they are owed. Generally that's all they're going to take out, just the fee. Unless you state specifically otherwise when completing the lenders application.

In most cases you will have to tell the lender how much additional monies you want debited from your account, to reduce or payoff the loan balance. In this example you wanted to pay the loan off in a single payment. So the total amount needed to be debited from your account is \$550. The \$500 that you borrowed and the lender fee of \$50. To run and check multiple loan payment strategies, try out our [payday loan calculator](#).

[Apply for a Payday Loan](#) | [Payday Loan FAQ](#) | [How the Loans Work](#)

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How a Payday Loan Works - We Give Loans

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APPLY NOW:**How a Payday Loan Works**

Consumers looking for an emergency loan of \$100 - \$1500 without the hassles of a credit check or mounds of paperwork, turn to payday lenders who are willing to take the risk on a short term loan. Typically these loans are for a period of four to sixty days.

Payday lenders agree to deposit the \$100 - \$1500 loan into the borrowers checking or savings account, usually the same or next day. The borrowers agree to let the lender debit their account on specific future dates (almost always the date the borrower receives their income) for a specific minimum amount (usually just the fee). Borrowers get the emergency funds when they need them without hassles, and lenders receive their fee (typically \$10 - \$25 per \$100 borrowed) for giving the short term loan.

Borrowers should pay these loans off as quick as possible. If stretched out more than four pay-periods or so, the fees add up.

A Borrower applies for a payday loan by providing very basic information to the lender. Typically the list looks like this:

The borrowers; name, address, phone numbers, and email address.

Some yes/no questions like: do you receive at least \$800 per month income? Do you have a checking or savings account?

Information to confirm the borrowers identity (to comply with the patriot act) such as date of birth and social security number.

Lastly, the lender will need the banks routing number and the account number that the money should be deposited into. This is also the account the lender will use to debit the money from later.

[Apply for a Payday Loan](#) | [Payday Loan FAQ](#) | [Payday Loan Example](#)

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Payday Loan Calculator - We Give Loans

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Payday Loan Calculator

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Payday

Qualifications

To qualify, you must:

Be 18+ years of age.
US or Canadian citizen.

Have a checking or savings account.

Receive \$800+ per month from all income sources combined (before deductions)

The **payday loan calculator** below calculates: minimum payments, total fees, and shows how to pay your payday loan off in a set number of payments, saving you money.

100	\$20 - Average+	Calc
*Min. payment 20 *fe e only payment		
Pay loan off in:		Total fees
1 payment of	120	20
or 2 payments of	70-60	30
or 3 payments of	54-47-40	41
or 4 payments of	45-40-35-30	50

As you can see, the longer it takes to pay a loan off, the more it costs. **IMPORTANT** see the calculator advice section below for more information and advice.

APPLY NOW

Payday Loan Service

- Confidential
- 100% online
- \$100 - \$1500
- Fast & secure
- No credit check
- 100% faxless
- No fax or faxing
- 100+ lenders
- USA & Canada
- Easy approval
- Instant results
- **Cash deposited in one hour - or by tomorrow.**

Payday Loan Resources

- [Online Application](#)
- [Payday Loan FAQ](#)
- [Payday Loan Example](#)
- [Payday Loan Calculator](#)
- [How a Payday Loan Works](#)

Payment Calculator Advice

Lenders only require you pay the minimum payment, and allow you to make more than four payments. Our advice is this; if you won't be able to pay your payday loan off in four payments or less, don't get a payday loan. It just costs too much over an extended time. Consider a personal loan, or other source of funds such as friends, or family.

The calculator above is for illustration purposes only. Your payments may be more or less than what's shown above depending on multiple factors. Know what the terms of a loan are before accepting one.

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We Give Loans - How to Contact Us

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You are here: Loans > About Us > "Contact Us"

We Give Loans - How to Contact Us



Contact We Give Loans using any of the methods below. To learn more about a specific type of loan online, follow the appropriate link.

- Auto Loans
- Credit Cards
- Credit Services
- Home Loans
- General Loan Questions

Online: 24/7

By Phone:
1 (800) 985-5110
M-F 8am - 7pm EST

By mail, write to:
We Give Loans, Inc.
40 E. Main Street
#800
Newark, DE, 19711

Subject: _____

Question or Comment: _____

First Name: _____

Last Name: _____

Email: _____

Verify Email: Enter security code from left.

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EXHIBIT 2

1200 Today

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Receive up to \$1200 Cash Today
 10 Pay-Periods to Repay Funds
 No Credit Check and No Faxing
 Checking or Savings Accounts OK
 Instant Response
 Direct Deposit Not Required
 Funds in as Fast as 1 Hour

Bookmarks, History, Home, Favorites, Get Back

1200Today.com

To qualify you must...
 Have a checking or savings account
 Be a U.S. Citizen at least 18 years old
 Receive at least \$800 per month income. (employed, retired, receiving benefits - all OK)

Step 1 - Complete the secure form below.

For security, please enter the 4-digit code displayed

State where you live?

How much would you like to borrow?

of pay-periods you would like to pay the loan back in?

How is your pay or benefits deposited into your bank?

How often do you receive your pay or benefits?

Estimated total MONTHLY earnings before deductions?

First name

Last name

Email address (NO SPAM - see our policy below)

Please retype the e-mail address

Within seconds of clicking submit, the top few lenders matching your requirements will display on screen. By clicking "Submit - Find Matching Lenders" you are not submitting an application. You are requesting that we compare more than 100 lenders with your needs, and display the matching results on-screen for you to see and compare. Then you, simply choose which lender or lenders to submit your application to.
 (NO SPAM) We will not share the results of your search with anyone other than yourself and authorized employees of 1200Today.com. All of your information, including your name and email address will never be sold, rented, traded or otherwise be made available to anyone for any reason. We guarantee it! For more details view our privacy policy.
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1200 Today

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[Bookmark the page](#) [FAQ](#) [Contact Us](#)**Frequently Asked Questions** revised 02-01-2007**How much can I qualify for?**

You may qualify for up to \$1,200 from a single lender. We will match you with up to four different lenders. We suggest that if you do not get approved for all of the funds that you need from a single lender, that you accept what you are approved for, and apply with another lender that we matched you with to obtain the balance of funds that you need. [Apply Now](#)

When do I have to pay it back?

You will have up to ten pay-periods to pay off your loan. Typically payments will start on your next pay date that is at least four days away from when you apply. Specific dates can be obtained by reviewing the terms of your loan provided by your lender.

How long does approval take?

Most approvals are instant, some approvals may take up to an hour. It depends on the programs of the lender (s) that you select and are qualified for. [Apply Now](#)

How fast will I receive my funds?

Depending on the program and lender (s) that you select and are qualified for, you could receive your funds in as soon as a few minutes from now, or it may take a full 24 hours. Many borrowers receive their funds within hours of applying.

How much is the cost or fee?

You will always know your fee before you accept your loan terms. The lowest fee available in our network of lenders is just \$10 per \$100 borrowed. The average is between \$10 and \$20 per \$100 borrowed. [Apply Now](#)

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Online: 24/7

By Phone:

1 (800) 985-5110
M-F 9am - 7pm EST

Subject:

By mail, write to:
1200Today.com
40 E. Main Street
#800
Newark, DE, 19711

Question or
Comment:

[Return to 1200Today.com home page](#)

First Name:

Last Name:

Email:

Verify Email:

Enter security code from left.

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Decision and Order

DECISION AND ORDER

The Federal Trade Commission has conducted an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Truth in Lending Act and its implementing Regulation Z; and

The respondent and counsel for the Federal Trade Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in the complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the Truth in Lending Act and its implementing Regulation Z, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having duly considered the comments received from interested persons, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent We Give Loans, Inc. is a corporation with its principal office or place of business at 2300 Lincoln Avenue, Apt. 201, Cloquet, MN 55720. We Give Loans, Inc. does business

Decision and Order

primarily through the website WeGiveLoans.com, but also operates under various other websites including but not limited to 1200Today.com.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

For purposes of this order, the following definitions shall apply:

1. “Advertisement” shall mean a commercial message in any medium that promotes, directly or indirectly, a credit transaction.
2. “Consumer” means a cardholder or a natural person to whom consumer credit is offered or extended. The term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person’s ownership interest in the dwelling is or will be subject to a security interest.
3. “Consumer Credit” shall mean credit offered or extended to a consumer primarily for personal, family, or household purposes.
4. “Clearly and conspicuously” shall mean as follows:
 - A. In a print advertisement, the disclosure shall be in a type size, location, and in print that contrasts with the background against which it appears, sufficient for an ordinary consumer to notice, read and comprehend it.

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- B. In an electronic medium, the disclosure shall be:
- (a) unavoidable;
 - (b) of a size and shade, and appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it;
 - (c) understandable language and syntax; and
 - (d) prior to the consumer incurring any financial obligation.
- C. In a television or video advertisement, the audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it, and shall be in understandable language and syntax.
- D. In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

Nothing contrary to, inconsistent with, or in mitigation of the material terms shall be used in any advertisement or promotion.

5. “Respondent” unless otherwise specified, shall mean We Give Loans, Inc., a Delaware corporation, its successors and assigns and its officers, agents, representatives, and employees.

Decision and Order

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with any advertisement to promote, directly or indirectly, any extension of consumer credit in or affecting commerce, shall not, in any manner, expressly or by implication:

- A. State the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without disclosing clearly and conspicuously all of the terms required by Section 144 of the Truth in Lending Act (“TILA”), 15 U.S.C. § 1664, as amended, and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c), as amended, as more fully set out in Section 226.24(c) of the Federal Reserve Board’s Official Staff Commentary to Regulation Z, 12 C.F.R. § 226.24(c), as amended, including, but not limited to:
 1. The amount or percentage of the downpayment;
 2. The terms of repayment;
 3. The annual percentage rate, using that term or the abbreviation “APR.” If the annual percentage rate may be increased after the consummation of the credit transaction, that fact must also be disclosed.
- B. State a rate of finance charge without stating the rate as an “annual percentage rate” or the abbreviation “APR,” using that term, as required by Section 144 of the TILA, 15 U.S.C. § 1664, as amended, and Section 226.24(b) of Regulation Z, 12 C.F.R. § 226.24(b), as amended, as more fully set out in Section 226.24(b) of the Federal Reserve Board’s Official Staff Commentary to Regulation Z, 12 C.F.R. § 226.24(b), as amended.

Decision and Order

- C. Fail to comply in any other respect with the TILA, 15 U.S.C. §§ 1601-1667, as amended, and Regulation Z, 12 C.F.R. § 226, as amended.

II.

IT IS FURTHER ORDERED that respondent shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying all records that will demonstrate compliance with the requirements of this order.

III.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, for a period of five (5) years from the date of issuance of this order, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

IV.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, for a period of five (5) years from the date of issuance of this order, shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other

Decision and Order

action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however*, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

V.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

VI.

This order will terminate on September 3, 2028, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and

Analysis to Aid Public Comment

- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from We Give Loans, Inc. (“respondent”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement’s proposed order.

Respondent engaged in practices that violate Section 144 of the Truth in Lending Act (“TILA”), 15 U.S.C. § 1664, and Section 226.24(c) of its implementing Regulation Z, 12 C.F.R. §

Analysis to Aid Public Comment

226.24(c). Respondent disseminated payday loan advertisements on the Internet stating the number of payments or period of repayment, or the amount of a finance charge, as terms for obtaining a payday loan. These advertisements failed, however, to disclose the “annual percentage rate” or “APR” for these loans as required by TILA and its implementing Regulation Z.

TILA and Regulation Z require that advertisers, including payday loan advertisers, disclose APRs on their loans to assist consumers in comparison shopping. The respondent’s failure to disclose the APR for the payday loans it advertised undermined consumers’ ability to compare these loans to those offered by other payday lenders. The respondent’s failure to disclose the APR for the payday loans it advertised also frustrated consumers’ ability to compare these loans to alternative forms of credit. Through its law enforcement actions the Commission intends to promote compliance with the APR disclosure requirements of TILA and Regulation Z, thereby promoting comparison shopping relating to payday loans.

The proposed consent order contains provisions designed to prevent respondent from failing to make disclosures required by TILA and Regulation Z in the future.

Part I.A. of the proposed order prohibits respondent, in connection with any advertisement of consumer credit, from stating the amount or percentage of any down payment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without disclosing clearly and conspicuously all of the terms required by TILA and Regulation Z, including the amount or percentage of the down payment, the terms of repayment, and the annual percentage rate, using that term or the abbreviation “APR.”

Part I.B. of the proposed order prohibits respondent from stating a rate of finance charge without stating the rate as an “annual percentage rate” or the abbreviation “APR.”

Analysis to Aid Public Comment

Part I.C. of the proposed order prohibits respondent from failing to comply in any other respect with TILA or Regulation Z.

Part II of the proposed order contains a document retention requirement, the purpose of which is to ensure compliance with the proposed order. It requires that respondent maintain all records that will demonstrate compliance with the proposed order.

Part III of the proposed order requires respondent to distribute copies of the order to various principals, officers, directors, and managers, and all current and future employees, agents and representatives having responsibilities with respect to the subject matter of the order.

Part IV of the proposed order requires respondent to notify the Commission of any changes in its corporate structure that might affect compliance with the order.

Part V of the proposed order requires respondent to file with the Commission one or more reports detailing compliance with the order.

Part VI of the proposed order is a “sunset” provision, dictating the conditions under which the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.