

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



Division of Financial Practices

May 30, 2014

Paul Sanford, Assistant Director
Supervision Examinations
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Washington, D.C. 20552

Dear Mr. Sanford:

This letter responds to your request for information concerning the Federal Trade Commission's (Commission or FTC) enforcement activities related to compliance with Regulation Z (Truth in Lending Act or TILA); Regulation M (Consumer Leasing Act or CLA); and Regulation E (Electronic Fund Transfer Act or EFTA) (collectively "the Regulations").¹ You request this information for use in preparing the Consumer Financial Protection Bureau's (CFPB) 2013 Annual Report to Congress. Specifically, you ask for information concerning the FTC's administration and enforcement of the Regulations, as well as compliance with the Regulations among entities within the FTC's jurisdiction, during 2013. We are pleased to do so below.²

I. FTC Role in Administering and Enforcing the Regulations

The Dodd-Frank Act, signed into law on July 21, 2010, substantially restructured the financial services law enforcement and regulatory system. Among other things, the Act made important changes to the EFTA, CLA, and TILA, and other consumer laws. Under the Act, the FTC retained its authority to enforce Regulations E, M, and Z. In addition, the Act gave the Commission the authority to enforce any CFPB rules applicable to entities within the FTC's jurisdiction, which include most providers of financial services that are not banks, thrifts, or

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

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

federal credit unions. In accordance with the memorandum of understanding that the Commission and the CFPB entered into in January 2012, and consistent with the Dodd-Frank Act, the Commission has been coordinating certain law enforcement, rulemaking, and other activities with the CFPB.³ The Commission is committed to continuing its enforcement of Regulations E, M, and Z, and it intends to do the same with other rules the CFPB issues that apply to entities within the FTC's jurisdiction.⁴

II. Regulation Z (TILA)

The FTC enforces TILA and its implementing Regulation Z with regard to most non-bank entities.⁵ In 2013, the Commission engaged in law enforcement; rulemaking, research and policy development; and consumer and business education (all relating to the topics covered by Regulation Z, including the advertisement, extension, and certain other aspects of consumer credit).

A. Truth in Lending: Enforcement Actions

1. Non-Mortgage Credit

In 2013, the FTC's law enforcement efforts against those who market or extend non-mortgage credit included two consent agreements for public comment, an important court ruling in another case, ongoing litigation in an appellate case, and final orders in two additional cases.

The FTC issued two consent agreements for public comment, settling charges that two automobile dealers made deceptive claims in advertisements about the cost and availability of discounts for their vehicles.⁶ According to the complaint, one dealer advertised discounts and prices that were not available to a typical consumer;⁷ the discounts and prices required consumers to qualify for a series of smaller rebates not generally available to them. Additionally, according to the complaint, in many instances even if a consumer qualified for all of the rebates, the cost of the vehicle still exceeded the advertised price. The other dealer

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

⁴ Your letter also asks for specific data regarding compliance examinations, including the extent of compliance, number of entities examined, and compliance challenges experienced by entities subject to the FTC's jurisdiction. The Commission does not conduct compliance examinations or collect compliance-related data concerning the non-bank entities within its jurisdiction. As a result, this letter does not provide this information.

⁵ The FTC has authority to enforce TILA and Regulation Z as to entities for which Congress has not assigned enforcement to some other government agency. 15 U.S.C. § 1607(c).

⁶ See FTC, Press Release, *FTC Halts Two Automobile Dealers' Deceptive Ads*, Sept. 3, 2013, available at <http://www.ftc.gov/opa/2013/09/autoads.shtm>.

⁷ *In re Timonium Chrysler, Inc.* F.T.C. File No. 1323014 (Sept. 3, 2013), available at <http://www.ftc.gov/enforcement/cases-and-proceedings/cases/2013/09/timonium-chrysler-inc-matter>.

allegedly failed to disclose that its advertised discounts only applied to specific, and more expensive, models of the vehicles advertised.⁸ The complaints charged that the dealers' representations are deceptive acts and practices, in violation of the FTC Act. Among other things, the proposed orders prohibit the dealers from advertising discounts or prices unless the ads clearly disclose any material qualifications or restrictions. The proposed orders also bar the dealers from misrepresenting any material fact about the price, sale, financing, or leasing of motor vehicles.

Additionally, the FTC obtained a significant victory in its efforts to combat deceptive tactics by payday lenders. A federal magistrate judge issued a report and recommendation in *AMG Services* finding, among other things, that the FTC could enforce the FTC Act and TILA against defendants regardless of tribal affiliation.⁹ In that case, the Commission had alleged that the defendants, among other things, violated the FTC Act and TILA by providing inaccurate payday loan information to borrowers.¹⁰ The defendants argued that their affiliation with Native American tribes immunized them from these statutes. The magistrate judge rejected this argument, and also held that TILA applies regardless of the defendants' disputed for-profit status. Litigation continues in this matter.

Also, the Commission continued litigating an appeal in connection with a 2010 contempt order against Blue Hippo Funding, a consumer electronics retailer, for violating a consent order.¹¹ The consent order had settled charges that the company had, among other things, violated TILA and Regulation Z by failing to provide required disclosures to consumers in writing before the first transaction was made and failing to provide an account statement for each billing cycle for which a finance charge was imposed. In the contempt action, the FTC alleged that the company failed to provide the financing and did not order or ship the computers as advertised. The appellate court has heard oral argument in the Commission's appeal of the damage award in the 2010 contempt order, which seeks over \$14 million to compensate consumers. The case is still pending.

In addition, the FTC obtained final orders against two auto loan modification operations.¹² The complaints alleged that these two operations charged consumers hundreds of

⁸ *In re Ganley Ford West, Inc.*, F.T.C. File No. 1223269 (Sept. 3, 2013), available at <http://www.ftc.gov/enforcement/cases-and-proceedings/cases/2013/09/ganley-ford-west-inc-matter>.

⁹ *FTC v. AMG Services, Inc.*, No. 2:12-cv-00536 (D. Nev. July 16, 2013) (magistrate judge's order and report and recommendation), available at <http://www.ftc.gov/enforcement/cases-and-proceedings/cases/2013/07/amg-services-inc-et-al-federal-trade-commission>. The report and recommendation is subject to review by a United States District Judge.

¹⁰ *FTC v. AMG Services, Inc.*, No. 2:12-cv-00536 (D. Nev. filed Apr. 2, 2012), available at <http://www.ftc.gov/opa/2012/04/amg.shtm>.

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

¹² See FTC, Press Releases, *Settlement with FTC Bans Sellers of Alleged Fraudulent Auto Loan Modifications from Marketing Debt Relief Services*, Jan. 30, 2013, available at <http://www.ftc.gov/opa/2013/01/autodebt.shtm>, and *Court Bans Auto Loan Modification Company from the Debt Relief Services Business*, Mar. 7, 2013, available at

dollars in up-front fees based on false promises that they could reduce consumers' monthly car loan payments and help avoid repossession of their vehicles. According to the complaints, consumers were instructed to pay fees to the companies, and, in many instances, to stop paying their auto lenders. In one of the cases, the stipulated order imposes a \$279,728 judgment, which represents the total amount of consumer injury, and the companies' assets are being turned over to the FTC.¹³ In the other case, the FTC obtained a \$362,388 default judgment.¹⁴ In both cases, the orders ban the defendants from providing any type of auto loan or other debt relief service and prohibit them from making misrepresentations about any other products or services.

2. Mortgage Lending Advertisements

The FTC settled charges against one of the nation's leading refinancers of veterans' home loans, requiring payment of a \$7.5 million civil penalty for alleged violations of the FTC's Telemarketing Sales Rule (TSR), the Mortgage Acts and Practices—Advertising Rule (MAP-Ad Rule), and Regulation N.¹⁵ This was the largest fine the FTC has ever collected for alleged violations of the Do Not Call provisions of the TSR, and the first action enforcing the MAP-Ad Rule and Regulation N, which imposes civil penalties for deceptive mortgage advertising. The FTC's complaint charged the company with deceptive mortgage advertising, alleging that it misstated the terms of available loan products during telemarketing calls,¹⁶ targeting deceptive offers of home loan refinancing services to current and former U.S. service members. The telemarketers allegedly led military consumers to believe that low interest, fixed rate mortgages were available at no cost, often quoting rates that they implied would last the duration of the loan. In reality, the company only offered adjustable rate mortgages in which consumers' payments would increase with rising interest rates and which would require consumers to pay closing costs. In addition, the company allegedly misled consumers about its affiliation with the Department of Veterans Affairs (VA). In addition to the TSR and the MAP-Ad Rule violations, the FTC alleged that these practices violated the FTC Act.

The settlement, among other things, bars the company from misrepresenting any terms related to mortgage credit products including rates, closing costs, fees, interest, and savings. It

<http://www.ftc.gov/opa/2013/03/hope.shtm>. The defendants' representations pertain, among other things, to consumers' original terms of the loan or financing, which are found on the contract and disclosures.

¹³ *FTC v. NAFSO VLM Inc.*, No. 2:12-cv-00781 (E.D. Cal. Feb. 8, 2013) (stipulated final order for permanent injunction and settlement of claims), available at <http://www.ftc.gov/enforcement/cases-and-proceedings/cases/2013/01/nafo-vlm-inc-also-doing-business-vehicle-loan>. The judgment against the individual defendants is suspended, based on their inability to pay. The full amount of the judgment will become due if it is later determined that the financial information the defendants provided to the FTC was false.

¹⁴ *FTC v. Hope for Car Owners, LLC*, No. 2:12-cv-00778 (E.D. Cal. Feb. 21, 2013) (default judgment and order for permanent injunction), available at <http://www.ftc.gov/enforcement/cases-and-proceedings/cases/2013/03/hope-car-owners-llc-et-al-federal-trade-commission>. A settlement with the individual defendant was filed in 2012.

¹⁵ See FTC, Press Release, *Mortgage Broker Targeting U.S. Servicemembers Will Pay Record \$7.5 Million to Settle Alleged Telemarketing Violations*, June 27, 2013, available at <http://www.ftc.gov/opa/2013/06/donotcall.sfhtm>.

¹⁶ *United States v. Mortg. Investors Corp. of Ohio, Inc.*, No. 8:13-cv-1647 (M.D. Fla. filed June 25, 2013), available at <http://www.ftc.gov/enforcement/cases-and-proceedings/cases/2013/07/mortgage-investors-corporation-ohio-inc>.

also prohibits the company from misrepresenting its affiliation with any government entity or organization, including the VA.¹⁷ In addition to this case, the FTC continues other law enforcement investigations of mortgage advertisers that may have violated federal law, including the MAP-Ad Rule and Regulation N, TILA, and Regulation Z.

3. Forensic Audit Scams

The FTC settled charges in two cases, and filed a complaint in a third case, involving mortgage relief scams that allegedly deceived consumers, including through claims regarding forensic loan audits. In these scams, mortgage assistance relief providers offer, for a substantial fee, to review or audit the mortgage documents of distressed homeowners to identify violations of TILA, Regulation Z, and other federal laws. The defendants falsely claim that locating such violations will give consumers leverage over their lenders and servicers to persuade them to modify or cancel loans and allow consumers to avoid foreclosure.

In one case, the FTC announced a settlement against three companies and an individual behind an operation that allegedly lured people into paying \$1,995 or more by making false promises that they could help homeowners avoid foreclosure and renegotiate their mortgages.¹⁸ These defendants also deceptively claimed they could use the “forensic audits” to negotiate with lenders, and that if they failed to do as promised, they would provide a refund. Among other things, the complaint alleged that these practices violated the FTC Act. The settlement imposes a \$3.5 million judgment – partially suspended based on the defendants’ ability to pay — which reflects the full amount of consumer injury during the two years before the operation was shut down by the FTC.¹⁹ The settlement prohibits the defendants from marketing any mortgage assistance relief or other debt relief products or services. It also prohibits them from making misleading claims about any financial product or service, or any other type of product or service.

In another case, the Commission settled charges that two individuals and seven companies deceived consumers into believing that they could hold onto their homes and reduce their mortgage payments, including through forensic loan audits for which the defendants typically charged consumers between \$795 and \$1,595.²⁰ The complaint alleged that these defendants violated the FTC Act, among other things, falsely portraying themselves as nonprofit organizations and telling consumers that the loan audits would find lender violations 90 percent of the time or more, forcing lenders to give them better mortgage terms. In fact, the complaint

¹⁷ *Id.* (M.D. Fla. July 17, 2013) (order entered).

¹⁸ See FTC, Press Release, *Defendants in Alleged “Forensic Audit” Mortgage Scam Settle FTC Charges*, Feb. 7, 2013, available at <http://www.ftc.gov/opa/2013/02/cag.shtm>.

¹⁹ *FTC v. Consumer Advocates Group Experts, LLC* (C. D. Cal, Feb. 1, 2013) (final judgment and order for permanent injunction and other equitable relief), available at <http://www.ftc.gov/enforcement/cases-and-proceedings/cases/2013/02/consumer-advocates-group-experts-llc-et-al>.

²⁰ See FTC, Press Release, *Marketers of Alleged “Mass Joinder” and “Forensic Loan Audit” Mortgage Relief Services Scams Settle FTC Charges, Agree to Surrender Assets and Halt Deceptive Conduct*, Mar. 7, 2013, available at <http://www.ftc.gov/news-events/press-releases/2013/03/marketers-alleged-mass-joinder-and-forensic-loan-audit-mortgage>.

alleged that consumers rarely if ever obtained better mortgage terms as a result of the forensic loan audits. The settlement includes a judgment exceeding \$4.75 million partially suspended based on an individual defendant's ability to pay.²¹ All of the defendants must surrender their assets and are prohibited from making deceptive claims about any product or service, and all but one are banned from marketing mortgage- and debt- relief services.

In a third case, the FTC filed suit to halt a mortgage relief scheme that allegedly deceived and preyed on distressed homeowners by charging them \$2,000 to \$4,000 for purported foreclosure rescue services.²² The defendants allegedly falsely claimed that they would provide legal help, through a range of services including forensic loan audits, to save consumers' homes from foreclosure, lower their mortgage payments, and convert their adjustable interest rates to fixed rates.²³ According to the complaint, the defendants, in violation of the FTC Act, engaged in illegal conduct that included charging consumers up-front fees and delivering little or no help, driving them deeper into debt. The court granted preliminary relief, shutting down the defendants' websites, freezing their assets, and providing for appointment of a receiver pending trial.²⁴ Litigation continues in this matter.

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

In 2013, as part of its efforts to ensure that consumers are protected in the growing mobile marketplace, the FTC issued a staff report highlighting key issues facing consumers and companies as they adopt mobile payment services.²⁵ The report addresses issues discussed in a workshop held by the Commission in 2012. In both the report and workshop, staff took a broad view of mobile payments and included technologies and products in which a payment is made using a mobile device. The report addresses innovative products and services being developed and potential changes coming for consumers and merchants. The report also identifies major areas of possible concern for consumers in the quickly growing mobile payments arena. Among

²¹ Three orders were entered. *FTC v. Sameer Lakhany*, No. 812-cv-00337 (C.D. Cal. Feb. 28, 2013) (Final Order for Permanent Injunction and Settlement of Claims as to Defendants Sameer Lakhany, The Credit Shop, LLC, Fidelity Legal Services LLC, Titanium Realty, Inc., Precision Law Center, Inc. and Precision Law Center LLC; Final Order for Permanent Injunction and Settlement of Claims as to Defendants Brian Pacios and Nat'l. Legal Network, Inc.; and Final Order for Permanent Injunction and Settlement of Claims as to Defendant Assurity Law Group, Inc.), available at <http://www.ftc.gov/enforcement/cases-and-proceedings/cases/2013/03/lakhany-sameer-credit-shop-llc-fidelity-legal>.

²² See FTC, Press Release, *FTC Halts Allegedly Phony Mortgage Relief Scheme*, July 2, 2013, available at <http://www.ftc.gov/news-events/press-releases/2013/07/ftc-halts-allegedly-phony-mortgage-relief-scheme>.

²³ *FTC v. A to Z Marketing, Inc.*, No. 813-cv-00919 (C.D. Cal. filed June 18, 2013), available at <http://www.ftc.gov/enforcement/cases-and-proceedings/cases/2013/07/z-marketing-inc-also-doing-business-client-services>.

²⁴ *Id.* (C.D. Cal. June 19, 2013) (temporary restraining order); (C.D. Cal. July 12, 2013) (preliminary injunction as to Defendant Backend, Inc.); (C.D. Cal. July 18, 2013) (preliminary injunction as to Defendants A to Z Marketing, Inc.; Apex Members, LLC.; Apex Solutions, Inc.; Expert Processing Center, Inc.; Smart Funding Corp.; William D. Goodrich, Atty, Inc.; Ratan Baid; Madhulika Baid; and William D. Goodrich).

²⁵ See FTC, *Paper, Plastic ... or Mobile? An FTC Workshop on Mobile Payments*, FTC Staff Report (Mar. 2013), available at <http://www.ftc.gov/opa/2013/03/mobilepymts.shtm>.

other things, the report encourages companies to develop clear policies on how consumers can resolve disputes arising from a fraudulent mobile payment or an unauthorized charge. The report notes that currently, different funding sources for mobile purchases have different processes for consumers to dispute unauthorized charges. The processes have varying levels of consumer protection, from Regulation Z protections for credit cards to no specific statutory protections for certain other types of payment cards. The report explains that these differences create a potentially confusing landscape for consumers.

Additionally, in 2013, the Commission hosted a roundtable to examine unauthorized third-party charges on mobile phone bills, known as “mobile cramming,” and how this practice impacts consumers.²⁶ The roundtable focused on a variety of entities that fall within the FTC’s jurisdiction, including content providers, billing aggregators that are involved in the placement of third-party charges on mobile phone bills, and mobile carriers that bill for the third-party services. The roundtable explored how third parties place charges on consumers’ bills. It considered the types of companies that are involved in these practices, and the frequency with which various communities, such as unbanked or underbanked populations, pay for products or services through their mobile phone bills. The roundtable further addressed how cramming occurs and strategies that can be used to protect consumers from cramming. It also addressed different protections that are applicable to different payment mechanisms, such as credit cards (Regulation Z), and how that can impact mobile cramming.

Finally, the FTC staff is participating in an interagency group that is coordinating with the Department of Defense (DoD), regarding its possible changes to DoD’s military lending rule, in view of Congressional amendments to the Military Lending Act in 2013.²⁷ This coordination is ongoing.

C. Truth in Lending: Consumer and Business Education

In 2013, the Commission continued its efforts to educate consumers and businesses about issues related to the consumer credit transactions to which Regulation Z applies. The Commission now has several websites to provide information to the public, in English and Spanish.²⁸ The Commission also launched its new financial education site, with free information on diverse credit topics of particular interest to those engaged in educating consumers.²⁹

²⁶ See *Mobile Cramming: An FTC Roundtable* (May 8, 2013), available at <http://www.ftc.gov/news-events/events-calendar/2013/05/mobile-cramming-ftc-roundtable>. A transcript of the roundtable is also available at that site. *Id.*

²⁷ National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, 126 Stat.1785. The DoD current rule is at: Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 32 C.F.R. Part 232. See also DoD, Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, Advance notice of proposed rulemaking, 78 Fed. Reg. 36134 (June 13, 2013). Other participants in the interagency group include, for example, the CFPB, Department of Treasury, and federal banking agencies.

²⁸ See <http://www.consumer.ftc.gov>, <http://www.business.ftc.gov>, <http://www.consumer.gov>, <http://www.consumidor.ftc.gov>, and <http://www.consumidor.gov>.

²⁹ See <http://www.consumer.ftc.gov/features/feature-0022-financial-educators>. See also Colleen Tressler, FTC Launches Its New Financial Educators Site Where Everything is FREE, FTC BUREAU OF CONSUMER

The Commission released new videos warning consumers about issues in the areas of payday lending and making minimum payments on credit cards (in English and Spanish).³⁰ The Commission also released a new article for Spanish language consumers, alerting the public about credit card blocking, which occurs when companies place a temporary hold for certain estimated amounts on a credit card until the total charge is processed.³¹

Additionally in 2013, the Commission released a blog post about purchasing new cars.³² It also conducted an hour-long Twitter chat, with staff from the FTC, DoD's Military One Source, and Military Saves, on topics related to new and used cars and other vehicle issues, including monthly payment amounts.³³ The Twitter chat was designed to start addressing issues that were more fully discussed in the FTC's first Military Consumer Protection Day, which was held in July 2013, along with the CPF and Military Saves.³⁴

The Commission also updated existing publications to provide additional information to consumers on the topics of high rate, high fee loans (in English and Spanish), payday loans, and

PROTECTION BLOG (Aug. 20, 2013), <http://www.consumer.ftc.gov/blog/ftc-launches-its-new-financial-educators-site-where-everything-free>.

³⁰ See PAYDAY LENDING, available at <http://www.consumer.ftc.gov/media/video-0078-payday-lending>, and PRESAMON DE DIA DE PAGO, available at <http://www.consumidor.ftc.gov/recursos/video-s0078-prestamos-de-dia-de-pago>; MINIMUM PAYMENTS ON CREDIT CARDS, available at <http://www.consumer.ftc.gov/media/video-0058-minimum-payments-credit-cards>, and TARJETAS DE CREDITO Y EL PAGOMINIMO, available at <http://www.consumidor.ftc.gov/recursos/video-s0058-tarjetas-de-credito-y-el-pago-minimo>.

³¹ See CUANDOUNA COMPANIA LE BLOQUEA SU TARJETA DE CREDITO O DEBITO, available at <http://www.consumidor.ftc.gov/articulos/s0217-cuando-una-compania-le-bloquea-su-tarjeta-de-credito-o-debito>.

³² Colleen Tressler, *Buying a New Car: But the ad from the dealer said*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Sept. 3, 2013), <http://www.consumer.ftc.gov/blog/buying-new-car-ad-dealer-said>.

³³ Carol Kando-Pineda, *A Little Birdie Told Me*, and *What You Auto Know*, FTC BUREAU OF CONSUMER PROTECTION BLOG (June 17 and 24, 2013), <http://www.consumer.ftc.gov/blog/little-birdie-told-me>, and <http://www.consumer.ftc.gov/blog/what-you-auto-know>.

³⁴ See FTC, Press Release, FTC, Partners to Kick Off First Military Consumer Protection Day, July 17, available at <http://www.ftc.gov/news-events/press-releases/2013/07/ftc-partners-kick-first-military-consumer-protection-day-july-17>. See also Carol Kando-Pineda, *Your First Line of Defense*, FTC BUREAU OF CONSUMER PROTECTION BLOG (July 16, 2013), <http://www.consumer.ftc.gov/blog/your-first-line-defense>.

buying a used car.³⁵ The agency also provided updated information on how to dispute credit card charges, and on consumer rights in credit transactions.³⁶

In addition, the Commission issued a new business publication in the FTC's Business Center Blog providing guidance for auto advertisers about promotions featuring pricing and discounts, and on making clear disclosures to consumers.³⁷ The Commission also issued a revised version of its popular disclosure guidance for businesses on how to make clear and conspicuous disclosures to avoid deception, updated to focus on mobile and other online advertisements.³⁸ This publication offers considerable information on FTC advertising requirements, and many tips and examples that demonstrate how to provide effective disclosures to consumers.

III. Regulation M (CLA)

The FTC enforces CLA and its implementing Regulation M as to most entities other than banks, thrifts, and federal credit unions.³⁹

A. Consumer Leasing: Enforcement Actions

As noted above, the FTC issued two consent agreements for public comment, settling charges that two automobile dealers made deceptive claims in advertisements about the cost and availability of discounts for their vehicles.⁴⁰ The proposed orders prohibit the dealers from advertising discounts or prices unless the ads clearly disclose any material qualifications or restrictions. The proposed orders also bar the dealers from misrepresenting any material fact about the price, sale, financing, or leasing of motor vehicles.

³⁵ See HIGH RATE HIGH FEE HOME LOANS, available at <http://www.consumer.ftc.gov/articles/0246-high-rate-high-fee-home-loans>, and PRESTAMOS CON CARGOS ALTOS Y TASAS ALTAS, available at <http://www.consumidor.ftc.gov/articulos/s0246-prestamos-con-cargos-altos-y-tasas-altas>; ONLINE PAYDAY LOANS, available at <http://www.consumer.ftc.gov/articles/0249-online-payday-loans>, and BUYING A USED CAR, available at <http://www.consumer.ftc.gov/articles/0055-buying-used-car>.

³⁶ See DISPUTING CREDIT CARD CHARGES, available at <http://www.consumer.ftc.gov/articles/0219-disputing-credit-card-charges>, and CREDIT AND YOUR CONSUMER RIGHTS, available at <http://www.consumer.ftc.gov/articles/0219-disputing-credit-card-charges>.

³⁷ Lesley Fair, *CARDinal rules for online advertisers*, FTC BUREAU OF CONSUMER PROTECTION BUSINESS CENTER BLOG (Sept. 3, 2013), <http://www.business.ftc.gov/blog/2013/08/cardinal-rules-online-advertisers>.

³⁸ See .COM DISCLOSURES: HOW TO MAKE EFFECTIVE DISCLOSURES IN DIGITAL ADVERTISING, available at <http://business.ftc.gov/documents/bus41-dot-com-disclosures-information-about-online-advertising>.

³⁹ The FTC has authority to enforce CLA and Regulation M as to entities for which Congress has not committed enforcement to some other government agency. See 15 U.S.C. § 1607(c).

⁴⁰ See *supra* note 6.

B. Consumer Leasing: Consumer and Business Education

In 2013, as discussed above, the FTC released a new business publication on vehicle advertisements involving pricing and discounts, which offers guidance on disclosures that is also useful for lease promotions.⁴¹ In addition, the FTC's updated business guidance on making clear and conspicuous disclosures applies to lease promotions to consumers as well.⁴²

IV. Regulation E (EFTA)

The FTC enforces EFTA and its implementing Regulation E with regard to most nonbank entities.⁴³ In 2013, the agency had six new or ongoing cases involving EFTA and Regulation E issues. The Commission also engaged in research and policy work and educational activities involving EFTA and Regulation E.

A. Electronic Fund Transfers: Enforcement Actions

Three of the Commission's cases alleging violations of EFTA and Regulation E arose in the context of "negative option" plans.⁴⁴ Under these plans, a consumer agrees to receive various goods or services from a company for a trial period at no charge or at a reduced price. The company also obtains, sometimes through misrepresentations, the consumers' debit or credit card number. If the consumer does not cancel before the end of the trial period, the shipments of goods or provision of services continue, and the consumer incurs recurring charges. EFTA and Regulation E prohibit companies from debiting consumers' debit cards, or using other electronic fund transfers to debit their bank accounts, on a recurring basis without obtaining proper written authorization for preauthorized electronic fund transfers and without providing the consumer with a copy of the written authorization.

The three negative option cases were all ongoing matters. In one case, the FTC obtained settlements with two defendants resulting in monetary judgments of more than \$289 million and \$7.5 million;⁴⁵ litigation continues with the other parties.⁴⁶ In another case, the FTC filed a joint

⁴¹ See *supra* note 37.

⁴² See *supra* note 38.

⁴³ The FTC has authority to enforce EFTA and Regulation E as to entities for which Congress has not assigned enforcement responsibility to some other government agency. See 15 U.S.C. § 1693o(c).

⁴⁴ Negative option plans can involve the use of debit cards, credit cards, or both. EFTA and Regulation E apply to debit cards; the TILA and Regulation Z apply to credit cards.

⁴⁵ The judgments are suspended based on the defendants' ability to pay.

⁴⁶ *FTC v. Johnson*, No. 2:10-cv-02293 (D. Nev. Oct. 21, 2013) (orders granting stipulated permanent injunction and monetary judgments as to defendants Bryce Payne and Kevin Pilon), available at <http://www.ftc.gov/enforcement/cases-and-proceedings/cases/2013/11/i-works-inc-et-al>. See FTC, Press Release, *Two I Works Billing Scheme Marketers Agree to Settle FTC Charges*, Nov. 26, 2013, available at <http://www.ftc.gov/news-events/press-releases/2013/11/two-i-works-billing-scheme-marketers-agree-settle-ftc-charges>. If the defendants misrepresented their financial condition, the full judgments will become immediately due. Previously, with the court's permission, the Commission filed an amended complaint adding three persons and

motion for a stipulated settlement that would require the principal and three companies he controls to surrender their assets totaling approximately \$7 million and, among other things, ban violations of the EFTA.⁴⁷ In a third case, the FTC provided \$1.7 million in refunds to consumers, in connection with a prior settlement.⁴⁸

In 2013, the FTC settled a case previously filed in which an individual and four companies allegedly defrauded consumers with false promises of debt relief and charged them without their consent.⁴⁹ The FTC alleged that these practices violated federal law, including the FTC Act and EFTA. The settlement includes a monetary judgment of more than \$4.6 million against the defendants, suspended against the individual defendant based on ability to pay and upon surrender to the FTC of all assets previously frozen by the court.⁵⁰ The defendants also are banned from selling debt-relief services and misrepresenting material facts about any products or services. The settlement also prohibits them from making electronic fund transfers from consumers' accounts on a recurring basis without obtaining their written authorization, and without providing consumers with a copy of the authorization, among other things.

Also in 2013, the Commission continued its litigation in three other cases previously filed. In one case, the FTC reached a settlement with the principal defendants regarding charges that their payday lending contracts violated EFTA by requiring consumers to preauthorize electronic withdrawals from their bank accounts as a condition of obtaining credit. The partial settlement bars the settling defendants from requiring borrowers to agree in advance to electronic withdrawals from their bank accounts as a condition of obtaining credit, along with other relief.⁵¹

five companies they control as relief defendants. *Id.* (D. Nev. Feb. 25, 2013) (amended complaint entered). See FTC, Press Release, *FTC Seeks \$22 Million from Wife and Parents of Ringleader Behind Alleged Utah-based Internet Billing Scheme I Works*, Jan. 23, 2013, available at <http://www.ftc.gov/news-events/press-releases/2013/01/ftc-seeks-22-million-wife-and-parents-ringleaderbehind-alleged>.

⁴⁷ *FTC v. Leanspa, LLC*, No. 3:11-cv-01715 (D. Conn. Dec. 23, 2013) (joint motion for entry of stipulated order for permanent injunction and monetary judgment as to Boris Mizhen, Leanspa, LLC, NutraSlim, LLC, NutraSlim U.K. Ltd, and Angelina Strana). The FTC and the State of Connecticut jointly brought this action to stop an operation that allegedly used fake news websites to promote their products with deceptive claims, causing millions of dollars of unauthorized credit and debit card charges.

⁴⁸ See FTC, Press Release, *FTC Provides \$1.7 Million in Refunds to Nearly 23,000 Consumers Who Lost Money in "Free Government Grant" Scheme*, May 9, 2013, available at <http://www.ftc.gov/news-events/press-releases/2013/05/ftc-provides-17-million-refunds-nearly-23000-consumers-who-lost>. The FTC continued litigation in connection with an individual's appeal in this matter, including regarding the FTC Act and EFTA. See *FTC v. Grant Connect*, No. 2:09cv1349 (D. Nev. Nov. 2, 2011) (final monetary judgment entered), *appeal docketed sub nom. FTC v. Kimoto*, No. 11-18023 (9th Cir. Dec. 19, 2011). The case is pending.

⁴⁹ See FTC, Press Release, *FTC Settlement Bans Marketer from Selling Debt Relief Services, Telemarketing, and Robocalling*, Aug. 1, 2013, available at <http://www.ftc.gov/news-events/press-releases/2013/08/ftc-settlement-bans-marketer-selling-debt-relief-services>.

⁵⁰ *FTC v. Nelson Gamble and Associates LLC*, No. SACV12-1504 (C.D. Cal. Aug. 5, 2013) (stipulated final order for permanent injunction and settlement of claims entered).

⁵¹ *FTC v. AMG Services, Inc.*, No. 2:12-cv-536 (D. Nev. Oct. 8, 2013) (stipulated order for permanent injunction and judgment entered).

Additionally in that case, the magistrate judge issued a report and recommendation finding, among other things, that the FTC could enforce EFTA against the defendants regardless of their tribal affiliation.⁵² The report and recommendation also found that EFTA applies regardless of the defendants' disputed for-profit status. Litigation in this matter continues.

In another case, the FTC obtained a partial summary judgment of charges that a payday lender violated several laws, including EFTA and Regulation E, by requiring consumers' authorization for recurring electronic payments from their bank accounts as a condition of obtaining payday loans.⁵³ The court ruled that certain of the defendants had violated EFTA and Regulation E. Thereafter, the court entered a stipulated order that, among other things, prohibits these defendants from conditioning the extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers in violation of EFTA and Regulation E.⁵⁴

In a third case, the Commission continued litigation in connection with a 2010 contempt order against Blue Hippo Funding, a consumer electronics retailer. The contempt order had been issued for the defendants' violations of a consent order settling charges that the company had, among other things, violated EFTA and Regulation E by extending credit to consumers and conditioning that credit on mandatory preauthorized transfers.⁵⁵ The appellate court has heard oral argument in the Commission's appeal of the damage award in the 2010 contempt order, which seeks over \$14 million to compensate consumers. The decision is pending.

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

To protect consumers from deceptive telemarketing, the Commission issued a notice of proposed rulemaking regarding proposed amendments to the FTC's Telemarketing Sales Rule.⁵⁶

⁵² See *supra* note 9.

⁵³ *FTC v. Payday Financial LLC*, No. 11-3017 (D.S.D. Sept. 30, 2013) (opinion and order granting in part and denying in part plaintiff's motion for summary judgment).

⁵⁴ *Id.* (D.S.D. Dec. 5, 2013) (judgment and stipulated order for permanent injunction and monetary relief entered). The FTC also filed an amicus brief supporting a class action suit challenging this payday lender's arbitration practices. The FTC's interest in the class action stems from its above action suing the payday lender for unfair and deceptive practices and EFTA violations, among other things. Although arbitration is not an issue in the FTC's case, the FTC's allegations in its matter are relevant to the class action, including whether the defendants can legally compel consumers to submit to tribal arbitration. See FTC, Press Release, *FTC Files Amicus Brief Supporting Class Action Suit that Challenges Payday Lender's Arbitration Practices*, Sept. 26, 2013, available at <http://www.ftc.gov/news-events/press-releases/2013/09/ftc-files-amicus-brief-supporting-class-action-suit-challenges>. The Commission's brief noted, among other things, that in its case against the payday lender, the complaint alleged that the defendants violated EFTA and Regulation E by requiring borrowers to authorize electronic payments from their bank accounts as a condition of obtaining payday loans. See Brief for the FTC as Amicus Curiae at 3, *Jackson v. Payday Financial LLC*, No 12-2617 (7th Cir. July 10, 2012) (amicus brief filed Sept. 13, 2013).

⁵⁵ See *supra* note 11.

⁵⁶ See FTC, Press Release, *FTC Seeks Public Comment on Proposal to Ban Payment Methods Favored in Fraudulent Telemarketing Transactions*, May 21, 2013, available at <http://www.ftc.gov/news-events/press-releases/2013/05/ftc-seeks-public-comment-proposal-ban-payment-methods-favored>. The FTC's Telemarketing

The proposal would curtail the use of four payment methods favored by scams. Specifically, the proposal would stop telemarketers from dipping into consumer bank accounts using unsigned checks and payment orders that were remotely created, and stop telemarketers from getting paid with “cash-to-cash” money transfers and “cash reload” mechanisms that are used to take money quickly and anonymously from consumers. The proposal discusses, among other things, that these payment methods differ significantly from debit card and Automated Clearinghouse (ACH) debits and other electronic fund transfers subject to EFTA and Regulation E. Instead, these four payment methods are cleared via check clearing and money transfer networks that provide little or no systematic monitoring to detect fraud.⁵⁷ The proposed rule would, among other things, ban the use of these payment methods in telemarketing due to their fraudulent usage.

In 2013, as discussed above, the FTC issued a staff report about the protection of consumers in the growing mobile marketplace, in view of the emerging technology in this area.⁵⁸ Among other issues, the report addressed consumer payments involving debit cards and electronic fund transfers and consumer protections under EFTA, such as for disputes regarding unauthorized use.

As noted above, the FTC also hosted a roundtable to examine unauthorized third-party charges on mobile phone bills, through mobile cramming. The roundtable considered how these charges are placed on consumers’ bills. It also considered, among other things, how to protect consumers from unauthorized charges and procedures for dispute resolution, and whether protections such as those that are available to consumers for debit cards under Regulation E should be extended to third-party charges on phone bills.⁵⁹

C. Electronic Fund Transfers: Consumer and Business Education

In 2013, the FTC issued a new video, in English and Spanish, which shows how prepaid cards work and what happens when the cards impose fees for use or other features.⁶⁰ In addition,

Sales Rule is at 16 C.F.R. Part 310. The FTC later extended time for public comment on its proposal. *See* FTC, Press Release, *FTC Extends Public Comment Deadline on Proposed Telemarketing Sales Rule Changes Through August 8, 2013*, July 12, 2013, available at <http://www.ftc.gov/news-events/press-releases/2013/07/ftc-extends-public-comment-deadline-proposed-telemarketing-sales>. The proposed rule and public comments that were submitted are under consideration in this matter.

⁵⁷ *See* Telemarketing Sales Rule, NPRM, 78 Fed. Reg. 41200, 41201-02 (July 9, 2013), available at <http://www.ftc.gov/policy/federal-register-notices/16-cfr-part-310-telemarketing-sales-rule-federal-register-notice>.

⁵⁸ *See supra* note 25.

⁵⁹ *See supra* note 26. *See also In the Matter of: Mobile Cramming Roundtable* (May 8, 2013) (Final Version) (transcript), at 32, available at http://www.ftc.gov/sites/default/files/documents/public_events/Mobile%20Cramming%20Roundtable/30508mob.pdf.

⁶⁰ *See* PREPAID CARDS, available at <http://www.consumer.ftc.gov/media/video-0062-prepaid-cards>, and TARJETAS PRE-PAGADAS, available at <http://www.consumidor.ftc.gov/recursos/video-s0062-tarjetas-pre-pagadas>. The CFPB has a rulemaking in progress on one type of prepaid cards — general purpose reloadable cards — that is considering covering these cards under Regulation E. *See* Electronic Fund Transfers (Regulation E)

the Commission's revised publication about credit and consumer rights (discussed above) also contains information about protections available under the EFTA.⁶¹

* * * *

We hope that the information discussed above responds to your inquiry and will be useful in preparing the CFPB's Annual Report to Congress.⁶² Should you need additional assistance, please contact me at (202) 326-3292, or Carole Reynolds at (202) 326-3230.

Sincerely,

James Reilly Dolan
Associate Director
Division of Financial Practices

ANPR, 77 Fed. Reg. 30923 (May 24, 2012). We previously reported on the FTC staff comment submitted in that matter.

⁶¹ *See supra* note 36.

⁶² Your letter also requests information regarding compliance by credit card issuers with the Federal Trade Commission Act (FTC Act). The Commission does not have jurisdiction over banks or Federal credit unions, and in 2013, the Commission did not have enforcement or other activity regarding compliance with the FTC Act by nonbank credit card issuers over which it has jurisdiction.