

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



Division of Financial Practices

May 29, 2015

Paul Sanford, Assistant Director
Supervision Examinations
Consumer Financial Protection Bureau
1700 G Street, N.W.
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) 2014 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 2014. 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 TILA, CLA, and EFTA, and other consumer laws. Under the Act, the FTC retained its authority to enforce Regulations Z, M, and E. 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 federal

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.

credit unions.³ In accordance with the Memorandum of Understanding that the Commission and the CFPB entered into in 2012 and reauthorized in 2015, and consistent with the Dodd-Frank Act, the Commission has been coordinating certain law enforcement, rulemaking, and other activities with the CFPB.⁴ The Commission is committed to continuing its enforcement of Regulations Z, M, and E, and it intends to do the same with other rules the CFPB issues that apply to entities within the FTC's jurisdiction.⁵

II. Regulation Z (TILA)

The FTC enforces TILA and its implementing Regulation Z with regard to most non-bank entities.⁶ In 2014, 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 2014, the Commission's law enforcement efforts against those who market or extend non-mortgage credit included: two civil penalty actions in federal district court for violations of FTC consent orders; twelve administrative consent orders; one consent agreement for public comment; a stipulated order in federal district court; and two important court rulings in an ongoing litigation as well as a significant ruling in an appellate case.

a. Automobile Purchases and Financing

The FTC continued its efforts to combat deceptive automobile dealer practices in two civil penalty actions, which were filed in federal district courts.⁷ In one action, auto dealer Billion Auto and its affiliated advertising company entered into a stipulated final order settling charges that they

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

⁴ See FTC, Press Releases, *FTC, CFPB Reauthorize Memorandum of Understanding*, Mar. 12, 2015, available at <https://www.ftc.gov/news-events/press-releases/2015/03/ftc-cfpb-reauthorize-memorandum-understanding>, and *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.

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

⁶ The FTC has authority to enforce TILA and Regulation Z as to entities for which Congress has not specifically committed enforcement to some other government agency. 15 U.S.C. § 1607(c).

⁷ See FTC, Press Release, *FTC Takes Action Against Two Auto Dealership Chains For Violating 2012 Orders Prohibiting Deceptive Advertising of Vehicle Costs*. Dec. 12, 2014, available at <http://www.ftc.gov/news-events/press-releases/2014/12/ftc-takes-action-against-two-auto-dealership-chains-violating>.

deceptively advertised vehicle finance offers, in violation of the dealer's 2012 consent order with the FTC.⁸ According to the complaint, the defendants disseminated advertisements that misrepresented the transaction by focusing only on a few attractive terms such as a low monthly payment or annual percentage rate, and concealing other material terms that limit who can qualify or add significant extra costs. The complaint also charged that the defendants violated the prior order by promoting consumer credit using prominent terms such as the monthly payment or number of payments but failing to make, or clearly and conspicuously make, disclosures required by the order, and by failing to retain and produce required records and submit reports. The stipulated final order in the civil penalty action requires the defendants to pay a civil penalty of \$360,000 for all their violations; prohibits further violations of the FTC consent order; and requires compliance reporting and recordkeeping for (20) twenty years.⁹ In the other civil penalty action, the complaint alleged that the auto dealer Ramey Motors violated its 2012 consent order with the FTC, by disseminating advertisements misrepresenting the costs of financing a vehicle by focusing only on a few attractive terms such as a low monthly payment or low annual percentage rate, while concealing material terms, including large down payments.¹⁰ The complaint also charged these defendants with promoting credit terms such as payment amounts or the number of payments, but failing to state or clearly and conspicuously state disclosures required by the prior order, and with failing to retain and produce records. Litigation continues in this matter.

The FTC's auto enforcement initiatives also included twelve final consent orders, nine of which involved the purchase and/or financing of motor vehicles.¹¹ In two of the nine matters, the Commission issued final consent orders settling charges that the auto dealers Timonium Chrysler and Ganley Ford West deceptively advertised the cost or available discounts for their vehicles.¹² The complaints alleged that the auto dealers violated the FTC Act, by advertising discounts that either were unavailable to typical consumers,¹³ or applied only to specific, more expensive vehicle models.¹⁴ Among other things, the final 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.

⁸ *United States v. Billion Auto*, No. 5:14-cv-04118 (N.D. Iowa filed Dec. 11, 2014), available at <https://www.ftc.gov/system/files/documents/cases/141211billioncmpt.pdf>; (N.D. Iowa Dec. 16, 2014).

⁹ *Id.* (N.D. Iowa Dec. 16, 2014) (stipulated order for permanent injunction and civil penalty judgment), available at <https://www.ftc.gov/system/files/documents/cases/141211billionorder.pdf>.

¹⁰ *FTC v. Ramey Motors, Inc.*, No. 1:14-cv-29603 (S.D. W.Va. filed Dec. 11, 2014), available at <http://www.ftc.gov/system/files/documents/cases/141212rameycmpt.pdf>.

¹¹ The three other matters involved the leasing of motor vehicles, discussed *infra*.

¹² See FTC, Press Release, *FTC Approves Final Order Settling Charges Involving Two Auto Dealers' Deceptive Ads*, Feb. 11, 2014, available at <http://www.ftc.gov/news-events/press-releases/2014/02/ftc-approves-final-order-settling-charges-involving-two-auto>.

¹³ *In the Matter of Timonium Chrysler, Inc.*, Docket No. C-4429 (Jan. 28, 2014), available at <https://www.ftc.gov/enforcement/cases-proceedings/1323014/timonium-chrysler-inc-matter>.

¹⁴ *In the Matter of Ganley Ford West, Inc.*, Docket No. C-4428 (Jan. 28, 2014), available at <https://www.ftc.gov/enforcement/cases-proceedings/1223269/ganley-ford-west-inc-matter>.

The other seven consent orders involving purchase and financing of motor vehicles were part of a nationwide law enforcement sweep, “Operation Steer Clear.”¹⁵ The FTC filed administrative complaints and settled charges that these auto dealers – Nissan of South Atlanta, Paramount Kia, Southwest Kia, Fowlerville Ford, Casino Auto Sales, Rainbow Auto Sales, and Norm Reeves - made deceptive sale and/or financing promotions, in violation of the FTC Act.¹⁶ Three complaints alleged that the dealers – Nissan South Atlanta, Paramount Kia, and Southwest Kia - deceptively advertised low monthly finance payments in violation of the FTC Act, when in fact, the payments were temporary “teasers” after which the consumer would owe a different or higher amount, including in one complaint, a balloon payment exceeding \$10,000.¹⁷ In another matter, the complaint alleged that the auto dealer Fowlerville Ford deceptively advertised a sweepstakes promotion by misrepresenting that consumers had won a prize, when in fact they had not.¹⁸ Another complaint alleged that the auto dealer Norm Reeves boldly promoted a 0% APR, but failed to disclose adequately that consumers who finance more than a certain amount (\$12,000) will be charged a higher rate.¹⁹ Two other complaints charged the auto dealers, Casino Auto Sales and Rainbow Auto Sales, with making prominent deceptive claims, by offering vehicles at low purchase prices, when in fact, the price was \$5000 more than advertised.²⁰ Five complaints charged the respondents – Nissan of South Atlanta, Paramount Kia, Southwest Kia, Fowlerville Ford, and Norm Reeves - with violations of TILA and Regulation Z, by failing to state or failing to clearly and conspicuously state required credit terms.²¹ In all seven cases, the final consent orders prohibit the

¹⁵ See FTC, Press Releases, *FTC Approves Final Consent Orders in Deceptive Auto Dealers’ Ads Cases*, May 6, 2014, available at <http://www.ftc.gov/news-events/press-releases/2014/05/ftc-approves-final-consent-orders-deceptive-auto-dealers-ads>, and *FTC Announces Sweep Against 10 Auto Dealers*, available at <https://www.ftc.gov/news-events/press-releases/2014/01/ftc-announces-sweep-against-10-auto-dealers>. The sweep involved a total of ten cases alleging deceptive practices in sale, financing, and leasing of motor vehicles: seven cases involved sale and/or financing; five cases involved leases, discussed *infra*. Some cases involved a variety of alleged sale, financing and/or leasing violations.

¹⁶ *In the Matter of Nissan of South Atlanta, LLC (Nissan of South Atlanta)*, Docket No. C-4441 (Feb. 20, 2014), available at <http://www.ftc.gov/enforcement/cases-proceedings/132-3163/nissan-south-atlanta-llc-dba-nissan-south-matter>; *In the Matter of Paramount Kia of Hickory, LLC (Paramount Kia)*, Docket No. C-4450 (Feb. 20, 2014), available at <http://www.ftc.gov/enforcement/cases-proceedings/132-3191/paramount-kia-hickory-llc-matter>; *In the Matter of New World Auto Imports, Inc., d/b/a Southwest Kia (Southwest Kia)*, Docket No. C-4437 (Feb. 20, 2014), available at <http://www.ftc.gov/enforcement/cases-proceedings/132-3165/new-world-auto-imports-inc-dba-southwest-kia-et-al-matter>, respectively); *In the Matter of Fowlerville Ford, Inc. (Fowlerville Ford)*, Docket No. C-4433 (Feb. 20, 2014), available at <http://www.ftc.gov/enforcement/cases-proceedings/132-3023/fowlerville-ford-inc-matter>; *In the Matter of Luis Alfonso Sierra, also d/b/a Casino Auto Sales (Casino Auto Sales)*, Docket No. C-4434 (Feb. 20, 2014), available at <http://www.ftc.gov/enforcement/cases-proceedings/132-3107/luis-alfonso-sierra-dba-casino-auto-sales-matter>; *In the Matter of Mohammad Sabha, also d/b/a Rainbow Auto Sales (Rainbow Auto Sales)*, Docket No. C-4435 (Feb. 20, 2014), available at <http://www.ftc.gov/enforcement/cases-proceedings/132-3140/mohammad-sabha-dba-rainbow-auto-sales-matter>; *In the Matter of Norm Reeves, Inc., (Norm Reeves)*, Docket No. 4436 (Feb. 20, 2014), available at <https://www.ftc.gov/enforcement/cases-proceedings/132-3151/norm-reeves-inc-dba-norm-reeves-honda-superstore-matter>.

¹⁷ See *id.*

¹⁸ See *supra* note 16.

¹⁹ See *supra* note 16.

²⁰ See *supra* note 16.

²¹ See *supra* note 16.

dealerships from misrepresenting, among other things, the purchase and financing of automobiles; the cost of vehicle financing; or any other material fact relating to such transactions. All the orders also include reporting and other compliance provisions. All orders in the five cases charging TILA and Regulation Z violations also require the dealers to clearly and conspicuously disclose required credit terms, and prohibit violations of any aspect of TILA and Regulation Z.²²

In addition, the FTC issued a consent agreement for public comment settling allegations that auto dealership Trophy Nissan deceptively advertised purchase and finance terms as well as other misleading promotional offers.²³ According to the complaint, in certain advertisements, the auto dealer represented that consumers could end their current auto loan agreements for only one dollar.²⁴ The claims were alleged as deceptive because the consumer could not in fact end an agreement for that amount; the dealer instead would add any outstanding obligation to the balance of a new loan. The complaint also charged that the dealership's offer to match consumers' income tax refunds for use as a down payment was deceptive because the advertisement limited the match tax refunds to no more than \$1,000, which was disclosed only in small print at the bottom of the ad. In addition, the complaint alleged violations of TILA and Regulation Z, by failing to disclose or clearly and conspicuously disclose required credit terms. The proposed consent order prohibits misrepresentations, including regarding the cost of purchasing or financing a vehicle, and requires compliance with TILA and Regulation Z, and other compliance and reporting obligations.

The Commission also obtained a stipulated order against a national subprime auto lender, Consumer Portfolio Services.²⁵ The complaint alleged that the company used illegal tactics to service and collect consumers' loans - including those purchased from automobile dealers - in violation of the FTC Act, among other laws.²⁶ The alleged violations include misrepresenting the fees and amounts consumers owed, unlawfully modifying consumers' retail installment sales contracts and increasing principal balances without consumers' written authorization, collecting money consumers did not owe, harassing consumers and third parties, and disclosing debts to friends, family, and employers. Among other things, the stipulated order requires the company to pay \$5.5 million in consumer refunds and civil penalties for its violations, and requires the defendant to change its business practices to comply with the federal legal requirements, including banning: misrepresentations about loan requirements or fees, collection of fees that are not

²² The final consent order settling charges against Fowlerville Ford contains an additional injunctive provision prohibiting the misrepresentation of any material terms of any prize, sweepstakes, giveaway, or other incentive. See *Fowlerville*, *supra* note 16.

²³ See FTC, Press Release, *FTC Halts Texas Auto Dealer's Deceptive Ads*, Dec. 23, 2014, available at <http://www.ftc.gov/news-events/press-releases/2014/12/ftc-halts-texas-auto-dealers-deceptive-ads>.

²⁴ *In the Matter of TXVT Limited Partnership, d/b/a Trophy Nissan*, FTC File No. 142 3117 (Dec. 23, 2014), available at <http://www.ftc.gov/enforcement/cases-proceedings/142-3117/txvt-limited-partnership-matter>.

²⁵ See FTC, Press Release, *Auto Lender Will Pay \$5.5 Million to Settle FTC Charges It Harassed Consumers, Collected Amounts They Did Not Owe*, May 29, 2014, available at <http://www.ftc.gov/news-events/press-releases/2014/05/auto-lender-will-pay-55-million-settle-ftc-charges-it-harassed>.

²⁶ *United States v. Consumer Portfolio Services, Inc.*, No. SA-cv-000819 (C.D. Cal. filed May 28, 2014), available at <https://www.ftc.gov/enforcement/cases-proceedings/112-3010/consumer-portfolio-services-inc>.

prominently disclosed by loan agreements or amendments and not prohibited by law, and unilateral contract modifications; the order also requires compliance and reporting procedures.²⁷

b. Payday Lending

The FTC obtained three significant victories in its efforts to combat deceptive business practices of payday lenders.

In one case, a federal district court judge held that the Commission has the authority to enforce the FTC Act and statutes of general applicability (such as TILA) against the defendants, including AMG Services, regardless of tribal affiliation.²⁸ The district court judge rejected the argument that tribal affiliation immunized the defendants from consumer protection laws, including the FTC Act and TILA, and ruled that the requirements extend to all business entities.²⁹ In another significant ruling for the FTC in the same matter, the district court affirmed a magistrate's finding that the defendants' loan documents were deceptive and that the loan note disclosure violated TILA.³⁰ Notably the district court's opinion cited evidence that the defendants hid the true cost of the payday loans they offered to consumers by failing to disclose charges and fees and providing misleading repayment schedules.³¹ Litigation continues in this matter.

The FTC also filed a complaint and secured a temporary restraining order to halt an unlawful online payday lending scheme.³² The FTC's complaint alleged that the defendants, including CWB Services, violated the FTC Act and TILA by making unauthorized payday loans to consumers, by misrepresenting the terms, costs or repayment obligations of the purported loans, and by failing to disclose in writing before extending credit the terms of the legal obligation between the parties including the finance charge and annual percentage rate.³³ The temporary restraining order granted the FTC immediate access to the business premises; imposed an asset freeze; appointed a receiver to seize control of the business operations; and prohibited

²⁷ *Id.* (C.D. Cal. June 11, 2014) (stipulated order for permanent injunction and civil penalty judgment).

²⁸ See FTC, Press Release, *U.S. District Judge Finds that FTC Can Sue Deceptive Payday Loan Business Regardless of American Indian Tribal Loan Affiliation*, Mar. 19, 2014, available at <https://www.ftc.gov/news-events/press-releases/2014/03/us-district-judge-finds-ftc-can-sue-deceptive-payday-loan>.

²⁹ *FTC v. AMG Services, Inc.*, No. 2:12-cv-00536 (D. Nev. Mar. 7, 2014) (district court order accepting and adopting magistrate report and recommendation), available at <http://www.ftc.gov/enforcement/cases-proceedings/112-3024/amg-services-inc>.

³⁰ See FTC, Press Release, *U.S. District Judge Finds that Payday Lender AMG Services Deceived Consumers by Imposing Undisclosed Charges and Inflated Fees*, June 4, 2014, available at <https://www.ftc.gov/news-events/press-releases/2014/06/us-district-judge-finds-payday-lender-amg-services-deceived>.

³¹ See *supra* note 29 (D. Nev. May 28, 2014) (district court order accepting and adopting magistrate report and recommendation).

³² See FTC, Press Release, *FTC Action Halts Payday Loan Scheme That Bilked Tens of Millions From Consumers By Trapping Them Into Supposed "Loans" They Never Authorized*, Sep. 17, 2014, available at <http://www.ftc.gov/news-events/press-releases/2014/09/ftc-action-halts-payday-loan-scheme-bilked-tens-millions>.

³³ *FTC v. CWB Services, Inc.*, No. 4:14-cv-00783 (W.D. Mo. filed Sep. 5, 2014), available at <http://www.ftc.gov/enforcement/cases-proceedings/132-3184/cwb-services-llc>.

misrepresentations and unfair billing practices related to payday lending.³⁴ Litigation continues in this matter.

Also, the Commission continued litigating an appeal in connection with a 2010 contempt order against BlueHippo Funding, a consumer electronics retailer, for violating a consent order.³⁵ The consent order had settled charges that the company had, among other things, violated TILA and Regulation Z by failing to provide required written disclosures and account statements to consumers. 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. In 2014, the appellate court held that the FTC is entitled, when the proper showing has been made, to presume consumer reliance, and where the presumption applies, the baseline for assessing contempt damages is the defendants' gross sales receipts; after that, the defendants may present evidence that they may be entitled to any offset against the amount of sanctions.³⁶ The Commission seeks over \$14 million to compensate consumers. The case was remanded to the district court for further proceedings.

2. Mortgage Lending Advertisements

The FTC settled charges against two lead generators and a homebuilder, for alleged violations of the FTC Act, the Mortgage Acts and Practices–Advertising Rule (MAP-Ad Rule), Regulation N, TILA, and Regulation Z.³⁷ The stipulated orders imposed civil penalties and other relief.

The stipulated order against one lead generator, GoLoansOnline.com, assessed a civil penalty of \$225,000, settling charges that the company deceptively advertised low interest-rate loans as “fixed” when, in fact, they were adjustable-rate mortgages that could become more expensive for borrowers over time, in violation of the FTC Act and MAP-Ad Rule and Regulation N.³⁸ The complaint also alleged that the defendants advertised credit terms other than those that actually are or will be arranged or offered by the creditor, advertised a rate of finance charge without stating the rate as an annual percentage rate, and advertised a payment amount without disclosing the terms of repayment over the full term of the loan and the annual percentage rate, in

³⁴ See *id.* (W.D. Mo. Sep. 9, 2014) (ex parte temporary restraining order), available at <http://www.ftc.gov/enforcement/cases-proceedings/132-3184/cwb-services-llc>.

³⁵ *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).

³⁶ *Id.* No. 11-374 (2d Cir. Aug. 12, 2014) (appellate order vacating district court ruling and remanding case).

³⁷ See FTC, Press Releases, *Mortgage Lead Generator Will Pay \$225,000 to Settle FTC Charges That It Deceptively Advertised Mortgage Rates*, May 8, 2014, available at <http://www.ftc.gov/news-events/press-releases/2014/05/mortgage-lead-generator-will-pay-225000-settle-ftc-charges-it>; *Mortgage Lead Generator Will Pay \$500,000 to Settle FTC Charges That It Deceptively Advertised Mortgage Refinancing*, Sep. 12, 2014, available at <http://www.ftc.gov/news-events/press-releases/2014/09/mortgage-lead-generator-will-pay-500000-settle-ftc-charges-it>; *Pennsylvania Homebuilder Settles FTC Charges of Deceptive Mortgage Advertising*, Jun. 10, 2014, available at <http://www.ftc.gov/news-events/press-releases/2014/06/pennsylvania-home-builder-settles-ftc-charges-deceptive-mortgage>.

³⁸ *United States v. GoLoansOnline.com, Inc.*, No. 4:14-cv-1262 (S.D. Tex. filed May 7, 2014), available at <http://www.ftc.gov/enforcement/cases-proceedings/122-3228/goloansonlinecom-inc>.

violation of TILA and Regulation Z. In addition to the civil penalty, the stipulated order prohibits the defendants from misrepresenting the terms and conditions of any financial product or service and any mortgage credit product; assisting others to misrepresent any material fact about a mortgage credit product; disclosing, selling or transferring consumer data; and violating the FTC Act, Regulation N, TILA and Regulation Z.³⁹

The FTC obtained a stipulated order against a second lead generator, Intermundo Media, that imposed a civil penalty of \$500,000 to settle charges that the company had disseminated deceptive refinancing ads, with violations of the FTC Act, MAP-Ad Rule and Regulation N.⁴⁰ According to the complaint, the defendant ran ads on several search engines and its own websites; when consumers clicked on the ads, they were sent to a page that provided contact information that was passed on to providers of mortgage refinancing.⁴¹ In its ads, the defendant allegedly made deceptive and unsupported claims overstating how much consumers could reduce their payments if they refinanced, how low their annual percentage rate would be, and how easy it would be to qualify for refinancing. Some ads falsely claimed there were no hidden fees and that the mortgage refinancing was “free,” when in fact the mortgage products had significant fees and costs; other ads offered fixed interest rates, when in fact the rates and other amounts were variable. In addition to the civil penalty, the stipulated order prohibits the defendant from misrepresenting the terms or conditions of financial products or services, disclosing, selling or transferring consumer data obtained through its lead generation service, and from violating the FTC Act, Regulation N, TILA and Regulation Z.⁴²

The stipulated order in the case involving the homebuilders, Heritage Homes Group, also imposed a civil penalty, settling charges that the defendants violated the FTC Act, MAP-Ad Rule, Regulation Z, TILA, and Regulation Z.⁴³ According to the complaint, the defendants used the phrase, “Zip, Zero, Nada,” deceptively advertising that consumers could finance their homes without a down payment or closing costs, when in fact they were required to pay a good faith deposit, settlement costs and other amounts.⁴⁴ The complaint also charged that the defendants’ ads offered low monthly payment amounts, but failed to disclose that to get the low payments, consumers would have to obtain financing through the United States Rural Development Loan Program that required them to meet specific credit and income criteria. In addition, the defendants allegedly failed to make adequate disclosures about the annual percentage rates and other credit

³⁹ *Id.* (S.D. Tex. May 14, 2014) (stipulated order for permanent injunction and civil penalty judgment).

⁴⁰ See FTC, Press Release, *Mortgage Lead Generator Will Pay \$50,000 to Settle FTC Charges That It Deceptively Advertised Mortgage Refinancing*, Sept. 12, 2014, available at <https://www.ftc.gov/news-events/press-releases/2014/09/mortgage-lead-generator-will-pay-500000-settle-ftc-charges-it>.

⁴¹ *United States v. Intermundo Media, LLC*, No. 1:14-cv-2529 (D. Colo. filed Sept. 12, 2014), available at <https://www.ftc.gov/enforcement/cases-proceedings/122-3225/intermundo-media-llc-delta-prime-refinance>.

⁴² *Id.* (D. Colo. Oct. 7, 2014) (stipulated order for permanent injunction and civil penalty judgment).

⁴³ See FTC, Press Release, *Pennsylvania Home Builder Settles FTC Charges of Deceptive Mortgage Advertising*, June 10, 2014, available at <https://www.ftc.gov/news-events/press-releases/2014/06/pennsylvania-home-builder-settles-ftc-charges-deceptive-mortgage>.

⁴⁴ *United States v. Heritage Homes Group, Inc.*, No. 2:14-cv-03173 (E.D. Pa. filed Jun. 4, 2014), available at <http://www.ftc.gov/enforcement/cases-proceedings/122-3234/heritage-homes-group-inc-et-al>.

terms consumers would pay for the mortgages, and failed to provide or clearly and conspicuously provide required credit terms for the offers, in violation of TILA and Regulation Z. The settlement imposes a \$650,000 civil penalty, which was suspended because of the operation's poor financial condition.⁴⁵ The settlement also prohibits all the defendants from misrepresenting the terms of any mortgage credit product or misrepresenting or assisting others to misrepresent any relevant facts concerning the sale of homes and related products and services. The settlement further prohibits the defendants from representing a periodic payment amount and failing to adequately disclose, when applicable, that: 1) the loan requires qualifying and financing through the USDA Rural Development Loan Program or another financing program with credit and income limits, 2) the loan requires a good faith deposit and guaranty fee; and 3) the amount or percentage of those fees. Finally, the stipulated order also prohibits the defendants from violations of Regulation N, TILA and Regulation Z.

3. Forensic Audit Scams

The FTC also brought cases involving mortgage assistance relief services, several of which involved forensic audit scams. 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, in violation of the FTC Act and other laws, 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. Some scams involve claims that forensic audits or loan reviews have qualified the consumers who are solicited, for a federal modification program, also in violation of the FTC Act and other laws.

The FTC obtained stipulated and other final orders in three cases, filed complaints in two other cases, and sent refund checks to consumers in two previously settled matters, involving such mortgage relief scams that allegedly deceived consumers including through claims regarding forensic loan audits.⁴⁶ In one matter, the FTC settled charges that the defendants, including FMC Counseling Services, deceived consumers by claiming that a forensic audit or loan review had qualified them for a federal modification program; the defendants falsely portrayed themselves as a government entity including by using the Federal Deposit Insurance Corporation's logo and also doing business as the "Federal Debt Commission."⁴⁷ According to the complaint, the defendants deceived consumers by stating that as a result of a forensic audit and/or financial hardship, the consumers had qualified for a federal loan program that would greatly reduce their mortgage

⁴⁵ *Id.* (E.D. Pa. June 6, 2014) (stipulated order for permanent injunction and civil penalty judgment), available at <https://www.ftc.gov/enforcement/cases-proceedings/122-3234/heritage-homes-group-inc-et-al>. If it is later determined that the financial information the covered defendants provided the FTC was false, the full amount of the judgment will become due.

⁴⁶ Several of these actions were part of Operation Mis-Modification, a national wide federal and state enforcement sweep targeting unlawful providers of mortgage assistance relief services. FTC, Press Release, *Federal and State Agencies Stop Phony Mortgage Relief Schemes*, July 23, 2014, available at <http://www.ftc.gov/news-events/press-releases/2014/07/federal-state-agencies-stop-phony-mortgage-relief-schemes>.

⁴⁷ See FTC, Press Release, *FTC Settlement Bans Florida Scammer from Mortgage Modification and Loan Business*, Dec. 15, 2014, available at http://www.ftc.gov/news-events/press-releases/2014/12/ftc-settlement-bans-florida-scammer-mortgage-modification-loan_counseling-services-inc.

payments and forgive any delinquent payments or late fees, and instructed them to turn over their mortgage payments to the defendants while refinancings were pending.⁴⁸ Instead, the defendants did nothing for consumers and failed to apply funds received to consumers' mortgages, causing them to lose their homes and mortgage payments. The settlement includes a monetary judgment of over \$815,000 and injunctive relief, including banning the defendants from marketing mortgage- and debt-relief services, and prohibiting the defendants from making misrepresentations about financial products and services and any other types of services.⁴⁹

In a matter that was previously filed, the FTC obtained final judgments against the defendants, including A to Z Marketing, who used a range of mortgage relief schemes such as forensic audits, charging consumers \$2,500 to \$3,500 for the foreclosure rescue services.⁵⁰ The complaint had alleged that defendants falsely claimed they would provide legal help, including forensic loan audits, to save consumers' home from foreclosure, lower their mortgage payments, and convert their adjustable interest rates to fixed rates, but in fact the defendants charged consumers upfront fees and provided little or no help, deepening their financial distress. The FTC obtained stipulated and other final orders against the twenty-two defendants, banning twenty-one defendants from advertising, promoting or selling unsecured debt relief products and services, misrepresenting material facts related to financial products or services and other types of services, and requiring the twenty-second defendant to turn over its proceeds from the activities.⁵¹ The orders also impose monetary judgments in varying amounts on the defendants to remedy the approximately \$51 million of consumer injury from the defendants' activities.

In two additional matters, the FTC filed complaints seeking consumer redress and other relief. In one case, the FTC filed a complaint and obtained a temporary restraining order against four companies, including Lanier Law, LLC, and an individual, in an operation that allegedly lured people into paying \$1,000 to \$4000 or more by making false promises that they would receive legal representation from foreclosure defense attorneys to help homeowners avoid foreclosure and

⁴⁸ *FTC v. FMC Counseling Services, Inc.*, No. 0:14-cv-61545, (S.D. Fla. filed Jul. 7, 2014).

⁴⁹ *Id.* (S.D. Fla. Nov. 13, 2014) (stipulated final order for permanent injunction and monetary judgment), *available at* <https://www.ftc.gov/enforcement/cases-proceedings/142-3052/fmc-counseling-services-inc>.

⁵⁰ See FTC, Press Release, *FTC Shuttters Wide-Ranging Operation That Perpetrated Phony Mortgage Relief Scam*, Dec. 11, 2014, *available at* <https://www.ftc.gov/news-events/press-releases/2014/12/ftc-shuttters-wide-ranging-operation-perpetrated-phony-mortgage>.

⁵¹ *FTC v. A to Z Marketing, Inc.*, No. 13:cv-00919 (C.D. Cal. Sept. 2, 2014) (Final Order for Permanent Injunction Against Defendants William D. Goodrich *et al.*; Final Order for Permanent Injunction Against Defendant Evergreen Law Offices, PLLC; Final Order for Permanent Injunction Against Defendants Backend Services, Inc. *et al.* and Entry of Default Judgment and Final Order for Permanent Injunction Against Defendants Backend Services, Inc. *et al.*); (C.D. Cal. Sept. 15, 2014) (Stipulated Final Order for Permanent Injunction and Settlement of Claims as to Defendant Backend, Inc.; Stipulated Final Order for Permanent Injunction and Settlement of Claims as to Defendant Top Legal Advocates, P.C) (C.D. Cal. Oct. 16, 2014) (Final Order for Monetary Judgment as to Relief Defendant Business Team, LLC, *amended notice of appeal*, No. 14-56582 (9th Cir. Nov. 11, 2014), C.D. Cal. Oct. 16, 2014) (Entry of Default Judgment and Final Order for Permanent Injunction Against Defendant Amir Montazeran, *amended notice of appeal*, No. 14-56582 (9th Cir. Nov. 11, 2014)); (C.D. Cal. Nov. 13, 2014) (Stipulated Final Order for Permanent Injunction and Settlement of Claims as to A to Z Marketing, Inc. *et al.*).

renegotiate their mortgages.⁵² According to the complaint, the defendants deceptively claimed they would use “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 FTC also obtained a preliminary injunction ordering the defendants to stop making misrepresentations about loan modifications, and an asset freeze and other equitable relief; the FTC also filed an amended complaint adding defendants allegedly involved in the operation.⁵³ Litigation continues in this matter.

In the other case, the Commission filed a complaint alleging that four companies, including Mortgage Relief Advocates, and two individuals deceived consumers into believing that they could reduce their mortgage payments, as well as prevent, stop, or reverse foreclosure proceeding through forensic loan audits for which the defendants typically charged consumers between \$1000 and \$3,500.⁵⁴ The complaint alleged that the defendants violated the FTC Act, among other things, by promising to obtain substantially lower mortgage payments, and by promising to prevent, halt, or reverse foreclosures. Defendants allegedly claimed that they could achieve these results in four-to-six months but, according to the complaint, most consumers rarely obtained better mortgage terms as a result of the forensic loan audits. The FTC obtained a preliminary injunction against the defendants, which forced the shutdown of the defendants’ websites, and further prohibited the defendants from making any misrepresentations related to mortgage assistance relief services or collecting any advance fees for mortgage relief services.⁵⁵ Litigation is pending in this matter.

In addition, claims administrators working for the FTC distributed refund checks to consumers who were victims of mortgage relief scams in two matters involving forensic audits – Prime Legal and Precision Law Center - and in which the FTC previously obtained settlements for alleged violations of the FTC Act and other laws.⁵⁶ The claims administrators mailed refund checks totaling nearly \$4 million dollars to approximately 7,800 consumers in these prior settlements.

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

The FTC does not have rulemaking authority under the Truth in Lending Act but a number of its activities, in 2014, pertained to rulemaking, research, and policy development that addressed

⁵² See *FTC v. Lanier Law, LLC*, No. 3:14-cv-00786, (M.D. Fla. filed July 8, 2014), available at <http://www.ftc.gov/enforcement/cases-proceedings/142-3038/lanier-law-llc>.

⁵³ *Id.* (M.D. Fla. Aug. 1, 2014) (preliminary injunction with asset freeze and other equitable relief as to defendants Fortress Law Group, PC, Redstone law Group, LLC, Rogelio Robles, and Edward William Rennick, III), available at <http://www.ftc.gov/enforcement/cases-proceedings/142-3038/lanier-law-llc>; (M.D. Fla. Dec. 22, 2014) (amended complaint filed).

⁵⁴ *FTC v. Mortgage Relief Advocates, LLC, et al.*, No. 2:14-cv-5434 (C.D. Cal. filed July 14, 2014), available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3067/mortgage-relief-advocates-llc>.

⁵⁵ See *id.* (C. D. Cal. Aug. 22, 2014) (order for preliminary injunction).

⁵⁶ See FTC, Press Releases, *FTC Mails Refund Checks Totaling Nearly \$3 Million to Consumers Victimized by Alleged Mortgage Relief Scam*, May 28, 2014, available at <https://www.ftc.gov/news-events/press-releases/2014/05/ftc-mails-refund-checks-totaling-nearly-3-million-consumers>, *FTC Mails Refund Checks Totaling Approximately \$800,000 to Consumers Victimized by Alleged Mortgage Relief Scam*, Aug. 8, 2014), available at <https://www.ftc.gov/news-events/press-releases/2014/08/ftc-mails-refund-checks-totaling-approximately-800000-consumers>.

issues related to the TILA. The FTC conducts regular, systematic review of its rules and guides every ten years. In 2014, the Commission completed its review and issued final amendments to its prior Mail or Telephone Order Merchandise Rule, including changing the name to the Mail, Internet, or Telephone Order Merchandise Rule.⁵⁷ The amendments clarify that the Rule covers orders placed over the Internet, regardless of how consumers access the Internet. Additionally, the amendments permit sellers to provide refunds and refund notices to buyers by any means at least as fast and reliable as first-class mail, and clarify sellers' refund obligations where buyers use payment methods not specified in the Rule.⁵⁸ The amendments also require sellers to process third-party credit card refunds within seven working days after the buyer's right to a refund occurs; for credit sales where the seller is the creditor (including merchants using their own store charge cards), the refund timeframe would remain one billing cycle.⁵⁹ The amended rule became effective December 8, 2014.

As part of its efforts to ensure that consumers are protected in the growing mobile marketplace, the FTC issued two staff reports focused on mobile cramming and mobile shopping applications (apps). The first staff report highlighted key issues relating to the unauthorized third-party charges on mobile phone bills, known as "mobile cramming," and how this practice impacts consumers.⁶⁰ The report summarized issues discussed in a workshop held by the Commission in 2013, including how cramming occurs and strategies that can be used to protect consumers from cramming. The report also identified the uses of third-party mobile carrier billing, and the various entities involved or affected by this practice, including content providers, billing aggregators, and mobile carriers. The report addressed the nature and prevalence of mobile cramming, offering specific insights into how communities such as the unbanked and underbanked, utilize third-party billing to access services through their mobile carrier. The report noted that no federal statutory protections have been applied to consumer disputes about unauthorized charges placed on mobile consumer accounts in contrast to such rights for unauthorized credit card charges under Regulation Z.⁶¹ Among other things, the report outlined several recommendations for best practices by

⁵⁷ See FTC, Press Release, *FTC Issues Final Amendments to Mail or Telephone Order Merchandise Rule*, Sept. 11, 2014, available at <http://www.ftc.gov/news-events/press-releases/2014/09/ftc-issues-final-amendments-mail-or-telephone-order-merchandise>. The Rule has required mail and phone-based sellers to have a reasonable basis to expect that they can ship within any advertised time frame, or within thirty days. It also requires the seller to obtain the buyer's consent to a shipping delay or to refund payment for unshipped merchandise, when the promised shipping time cannot be met.

⁵⁸ See Mail or Telephone Order Merchandise Rule, Final Rule, 79 Fed. Reg. 55615, 55616 (Sept. 17, 2014) (to be codified at 16 C.F.R. Part 435 (2014)) available at <http://www.ftc.gov/policy/federal-register-notices/16-cfr-part-435-mail-or-telephone-order-merchandise-rule-final-rul-0>.

⁵⁹ According to the Final Rule's Statement of Basis and Purpose, the change for third-party credit card refunds should not place additional burden on sellers, since they currently must meet Regulation Z requirements, 12 C.F.R. § 1026.12(e); credit card issuers then have three working days after receipt of the refund to credit account. See *id.*, 79 Fed. Reg. at 55617.

⁶⁰ See FTC, Press Release, *FTC Recommends Mobile Industry Changes to Combat Mobile Cramming*, July 28, 2014, available at <https://www.ftc.gov/news-events/press-releases/2014/07/ftc-recommends-mobile-industry-changes-combat-mobile-cramming>

⁶¹ See FTC, *Mobile Cramming, An FTC Staff Report* (July 2014), at 34, available at <https://www.ftc.gov/reports/mobile-cramming-federal-trade-commission-staff-report-july-2014>.

industry participants to protect consumers against unwanted charges, including: 1) that mobile carriers should give consumers the option to block all third-party charges on their phone accounts; 2) that consumers provide express, informed consent to charges before they are billed to a mobile account and that reliable records of the authorizations are maintained; 3) that all charges for third-party services should be clearly and conspicuously disclosed to consumers in a non-deceptive manner; and 4) that carriers should implement an effective dispute resolution process.

In the second report, the Commission continued its examination of emerging mobile products and services, with a focus on mobile shopping apps.⁶² The staff report summarized an FTC staff survey of more than one hundred shopping apps, which reviewed the pre-download information available to consumers to assess how various apps operated. The report noted that when a consumer makes a purchase using a physical payment card, including a credit card, the consumer's liability for unauthorized charges is limited and consumers also have dispute resolution procedures, under Regulation Z; consumers who make purchases through an app by placing a charge on the credit card, for example – a pass through model – have those protections as well; but consumers using mobile payment services that require a consumer to move money from the traditional funding source such as a credit card into a stored value account – a stored value payment model - may not have those same protections.⁶³ The study examined the disclosures of apps that allowed consumers to pass charges to prepaid and gift cards, as well as of apps that allowed consumers to use their credit cards to fund stored value accounts within the app to make subsequent purchases. Around half of the 30 in-store purchase apps did not disclose whether they had any dispute resolution or liability limits prior to download; of the 16 apps that provided pre-download information about dispute resolution procedures or liability limits, only nine had any written protections for their users and seven disclaimed all such liability.⁶⁴ In addition, according to the report, most of the apps also contained only vague language, creating obstacles for consumers to understand how the apps used consumer data or to compare different apps' data practices. Among other things, the report recommended that app developers should make clear consumers' rights and liability limits for unauthorized, fraudulent, or erroneous transactions, and clearly explain information important to consumers by providing clear dispute resolution and liability limit information.

Additionally, in 2014, the Commission hosted two public workshops that included issues related to TILA. In October 2014, the FTC held a workshop to examine how fraud affects every community.⁶⁵ Topics discussed included predatory lending practices related to payday lending, title

⁶² See FTC, Press Release, *Staff Report on Mobile Shopping Apps Found Disclosures to Consumers Are Lacking*, Aug. 1, 2014, available at <https://www.ftc.gov/news-events/press-releases/2014/08/staff-report-mobile-shopping-apps-found-disclosures-consumers-are>.

⁶³ See FTC, *What's The Deal? An FTC Study on Mobile Shopping Apps* (Aug. 2014), at 12, available at <https://www.ftc.gov/reports/whats-deal-federal-trade-commission-study-mobile-shopping-apps-august-2014>.

⁶⁴ See *id.* at 11.

⁶⁵ See *Fraud Affects Every Community* (Oct. 29, 2014), available at <http://www.ftc.gov/news-events/events-calendar/2014/10/fraud-affects-every-community>. A webcast and transcript of the workshop are available at that site.

lending, and cash advances on tribal dividend payments.⁶⁶ The workshop was open to the public, and the panelists and the audience members engaged in question and answer sessions. In addition, the FTC hosted a workshop to examine the use of “big data” and its impact on American consumers.⁶⁷ Panelists included representatives from federal government agencies and organizations, academic researchers, trade associations, and industry. Among other things, the workshop included some panelists’ discussions of how big data impacts targeted advertisements for credit and lending products. Public participation was included in the workshop through question and answers.

Finally, the Commission staff submitted two advocacy filings in this area. First, FTC staff submitted an advocacy comment in response to the CFPB’s request for information regarding consumer protection issues in mobile financial services by consumers and their potential benefits for the financial lives of underserved consumers.⁶⁸ The staff comment highlighted several consumer protection issues posed by mobile financial services and steps the FTC has taken to address them. Among the issues addressed were: the potential liability for unauthorized charges using prepaid or stored value products, including the differences in consumer protections regarding federal liability limits and dispute resolution procedures with purchases using credit cards,⁶⁹ unfair billing practices on mobile carrier bills, and issues related to data systems. The comment also noted the FTC’s authority and activity in the mobile commerce area.

Second, the FTC’s staff of the Bureau of Consumer Protection and Bureau of Economics, as well as Commissioner Wright, filed separate comments, in response to a notice of proposed rulemaking (NPRM) that the Department of Defense (DoD) issued on proposed amendments to its regulation implementing the Military Lending Act (“MLA”).⁷⁰ The staff comment expressed support for the DoD’s efforts to implement strong consumer protections for servicemembers,⁷¹ and

⁶⁶ See, e.g., *Presentation of Charles R. Lowery, Jr., Director of Fair Lending and Inclusion, NAACP; Presentation of Sarah Dewees, Senior Director of Research, Policy, and Asset-Building Programs at First Nations Development Institute, id.*

⁶⁷ See *Big Data: A Tool for Inclusion or Exclusion?* (Sept. 15, 2014), available at <http://www.ftc.gov/news-events/events-calendar/2014/09/big-data-tool-inclusion-or-exclusion>. A webcast and transcript of the workshop are available at this site.

⁶⁸ See FTC, Press Release, *FTC Staff Provides Comment to CFPB on Mobile Financial Services*, Sept. 12, 2014, available at <https://www.ftc.gov/news-events/press-releases/2014/09/ftc-staff-provides-comment-cfpb-mobile-financial-services>.

⁶⁹ Among other things, the comment discussed the FTC staff report findings regarding the applications’ failure to provide consumer information, including about consumer protections regarding liability limits for unauthorized charges and dispute resolution procedures.

⁷⁰ John Warner National Defense Authorization Act for Fiscal Year 2007, Pub. L. 109-364, as amended by the National Defense Authorization Act for Fiscal Year 2013, Pub. L. 112-239, codified in 10 U.S.C. § 987. The existing DoD regulation is at 32 C.F.R. Part 232; the proposed amendments are at 79 Fed. Reg. 58602 (Sept. 29, 2014) (to be codified at 32 C.F.R. Part 232).

⁷¹ See *Comments of the Staff of the Bureau of Consumer Protection and Bureau of Economics re: In The Matter of Request for Comment on Proposed Revised Regulation Regarding Limitations on Terms of Consumer Credit Extended to Service members and Dependents*, Docket No. DOD-2013-OS-0133, (Dec. 22, 2014), available at

highlighted that the proposed database to verify covered borrowers would aid in accurate identification of consumers entitled to the MLA's protections and provide an efficient, cost-effective compliance mechanism for creditors. Regarding the NPRM's question of whether there should be an exemption for insured depository institutions or insured credit unions, the comment noted such an exemption could result in unintended consequences, including limiting the protections to service members under the MLA and placing covered entities that comply with the MLA at a competitive disadvantage. With respect to the proposal to expand regulatory coverage to a broader range of closed-end and open-end credit products, the comment noted that the FTC staff supports efforts to stop creditors that evade MLA coverage while offering a substantially similar product to those covered by the existing rule, as well as efforts to obtain data regarding consumer impact, the effect the proposed changes could have on credit availability, and the forms of alternative credit that may emerge. The comment noted it would be helpful to see more research on whether removing the existing disclosure requirement for the military annual percentage rate (MAPR) (and its total dollar amount), as proposed by the NPRM, could harm consumers by eliminating material information that allows service members to compare offers with different MAPRs, or would instead alleviate consumer confusion from disparate disclosures of two different annual percentage rates (the APR and the MAPR). Regarding the proposal to remove the requirement for clear and conspicuous disclosures, the comment noted that the Commission has long emphasized that if a disclosure is required, it should be made clearly and conspicuously, to avoid important information being buried in fine print, separated via multiple clicks online, or hidden among voluminous terms and conditions with unrelated information.⁷²

Commissioner Wright's comment supported the goals behind DoD's efforts to implement strong consumer protections for servicemembers, but noted that because the proposed changes are likely to have a significant impact on credit availability for servicemembers, it is important to fully consider the economic costs and benefits of such changes.⁷³ The comment observed that the economic consequences of regulation restricting access to consumer credit are well-documented, and much economic literature has focused on the economic consequences of usury laws and rate caps on consumer credit products. According to the comment, the Commissioner's view is the totality of the evidence strongly suggests that further restrictions may cause serious harm to servicemembers. The comment also noted that the most common restriction on access to consumer credit is a usury law, and that there is not evidence that these restrictions reduce the equilibrium price of consumer credit; they often merely redirect changes in prices to other contract terms, and restrict access to legal credit for consumers, especially higher-risk borrowers. According to the comment, restricting the supply of credit does not eliminate consumer demand for credit, and has been associated with a growth of illegal loan-sharking operations. The comment observed that restricting access to one form of credit, or rationing its use, predictably results in those consumers

<https://www.ftc.gov/policy/advocacy/advocacy-filings>. The letter expressed the views of the Commission's Bureau of Consumer Protection and Bureau of Economics, however, the Commission voted to authorize submission of the comments, with Commissioner Wright dissenting. *See id.* note 1.

⁷² The FTC staff also continues to participate in an interagency group that is coordinating with the Department of Defense regarding possible changes to DoD's military lending rule.

⁷³ *See Comments of Commissioner Joshua D. Wright re: In The Matter of Request for Comment on Proposed Revised Regulation Regarding Limitations on Terms of Consumer Credit Extended to Service members and Dependents*, Docket No. DOD-2013-OS-0133, (Dec. 22, 2014), available at <https://www.ftc.gov/about-ftc/biographies/joshua-d-wright/speeches-articles-testimonies>.

turning to other, perhaps higher risk, forms of credit. The comment also noted that economic research has concluded that usury ceilings tend to harm those intended to be helped, and some consumers will face adverse consequences if products that help consumers smooth negative expenditure shocks and avoid more onerous forms of credit, are restricted.

C. Truth in Lending: Consumer and Business Education

In 2014, 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 updated its financial education site, with additional information on diverse credit topics of particular interest to those engaged in educating consumers.⁷⁴

1. Auto Sales and Financing

The Commission issued a new publication for consumers, offering guidance on deceptive auto sales and financing promotions, and including questions to ask about discounts and special offers.⁷⁵ The Commission issued blog posts on autos and financing that highlight the importance of consumers reviewing information about auto dealers and financing options, with tips to avoid unscrupulous finance dealers, and additional information on what to consider about prepayment when financing a car.⁷⁶ The Commission revised its publication focusing on used cars (in English and Spanish), to add more information about cost issues and legal requirements, as well as guidance about safety recalls with a link to the Department of Transportation's website.⁷⁷ The Commission issued blog posts to consumers and businesses with guidance on automobile advertising, sales, and financing issues, including from the FTC's recent enforcement actions.⁷⁸ The Commission published a new article on auto title loans (in English and Spanish), and also released a business blog post on deceptive car title loans.⁷⁹ Additionally,

⁷⁴ See JUST FOR YOU: FINANCIAL EDUCATORS, <http://www.consumer.ftc.gov/features/feature-0022-financial-educators>.

⁷⁵ See ARE CAR ADS TAKING YOU FOR A RIDE, available at <http://www.consumer.ftc.gov/articles/0143-are-car-ads-taking-you-ride>.

⁷⁶ See Colleen Tressler, *Deceptive car ads can spin your wheels*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Jan. 9, 2014), <http://www.consumer.ftc.gov/blog/deceptive-car-ads-can-spin-your-wheels>, Colleen Tressler, *Check out the Auto Dealer and Financing – Before You Sign*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Oct. 31, 2014), <http://www.consumer.ftc.gov/blog/check-out-auto-dealer-and-financing-you-sign>; Nicole Vincent Fleming, *Financing a Car? Ask about Pre-payment Penalties*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Apr. 4, 2014), <http://www.consumer.ftc.gov/blog/financing-car-ask-about-pre-payment-penalties>.

⁷⁷ See BUYING A USED CAR, available at <https://www.consumer.ftc.gov/articles/0055-buying-used-car>; COMPRAR UN CARRO USADO, available at <https://www.consumidor.ftc.gov/articulos/s0055-comprar-un-carro-usado>.

⁷⁸ See Lesley Fair, *Advertise Auto Promotions Car-Fully*, FTC BUSINESS CENTER BUSINESS BLOG (Dec. 23, 2014), <http://www.ftc.gov/news-events/blogs/business-blog/2014/12/advertise-auto-promotions-car-fully>; see also Colleen Tressler, *FTC Puts the Brakes on National Subprime Auto Lender*, FTC BUREAU OF CONSUMER PROTECTION BLOG (May 29, 2014), <http://www.consumer.ftc.gov/blog/ftc-puts-brakes-national-subprime-auto-lender>, and *Auto Dealers Pay for Violating FTC Order*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Dec. 12, 2014), <http://www.consumer.ftc.gov/blog/auto-dealers-pay-violating-ftc-order>.

⁷⁹ See CAUTION: CAR TITLE LOANS CAN LEAVE YOU STRANDED, available at <http://www.consumer.ftc.gov/articles/0514-caution-car-title-loans-can-leave-you-stranded>; ADVERTENCIA: LOS PRESTAMOS SOBRE EL TITULO DE PROPIEDAD DE UN CARRO PUEDEN DEJARLO BOTADO, available at

the Commission, in cooperation with the American Financial Services Association Education Foundation and the National Automobile Dealers Association, updated its brochure offering consumer education on auto financing issues.⁸⁰

2. Mortgage Advertising and Mortgage Relief

In 2014, the Commission revised its Business Center information on real estate and mortgages, to make the guidance easier to access for businesses.⁸¹ The FTC released two blog posts for businesses, one with guidance on avoiding deceptive mortgage advertisements⁸² and another related to mortgage relief scams (including forensic loan audits).⁸³ The Commission also released a consumer blog post offering tips to avoid mortgage relief schemes (including forensic loan audits).⁸⁴

3. Military Lending

Additionally, in 2014, the Commission along with its law enforcement partners, published articles and blog posts related to its Second Annual Military Consumer Protection Day.⁸⁵ The materials included a tool kit, providing servicemembers with a single resource for consumer guidance, news, and other resources. The Commission also hosted a Twitter chat, involving staff from the FTC, DoD's Military One Source, and Military Saves, and issued a blog post, on topics related to credit issues.⁸⁶

<http://www.consumidor.ftc.gov/articulos/s0514-advertencia-los-prestamos-sobre-el-titulo-de-propiedad-de-un-carro-pueden-dejarlo>; Lesley Fair, *Pink slip slip-up: First FTC cases challenging deceptive car title loans*, FTC BUSINESS CENTER BUSINESS BLOG (Jan. 30, 2015), <https://www.ftc.gov/news-events/blogs/business-blog/2015/01/pink-slip-slip-first-ftc-cases-challenging-deceptive-car>.

⁸⁰ See UNDERSTANDING VEHICLE FINANCING, available at <http://www.consumer.ftc.gov/articles/0056-understanding-vehicle-financing>.

⁸¹ See MORTGAGES, available at <http://www.ftc.gov/tips-advice/business-center/credit-and-finance/mortgages>.

⁸² Lesley Fair, *Deceptive Mortgage Ads Hit Close to Home*, FTC BUSINESS CENTER BLOG (Jun. 12, 2014), <http://www.ftc.gov/news-events/blogs/business-blog/2014/06/deceptive-mortgage-ads-hit-close-home>.

⁸³ Lesley Fair, *MARS Attacks!*, FTC BUSINESS CENTER BLOG (Jul. 23, 2014), <http://www.ftc.gov/news-events/blogs/business-blog/2014/07/mars-attacks>.

⁸⁴ Nicole Vincent Fleming, *Six Things You Can Do To Avoid A Mortgage Mis-Modification*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Jul. 23, 2014), <http://www.consumer.ftc.gov/blog/six-things-you-can-do-avoid-mortgage-mis-modification>.

⁸⁵ See FTC, Press Release, *FTC, Partners To Recognize Second Annual Military Consumer Protection Day July 16*, Jul. 9, 2014, available at <http://www.ftc.gov/news-events/press-releases/2014/07/ftc-partners-recognize-second-annual-military-consumer-protection>; Lesley Fair, *This Time It's Personal*, FTC BUSINESS CENTER BLOG (Jul. 16, 2014), <http://www.ftc.gov/news-events/blogs/business-blog/2014/07/time-its-personal>; Jessica Rich, Director, Bureau of Consumer Protection, *Military Consumers: Salutes To You!*, FTC CONSUMER PROTECTION BLOG (Jul. 8, 2014), <http://www.military.ncpw.gov/blog/military-consumers-salutes-you>.

⁸⁶ Transcript of the Second Annual Military Consumer Protection Day Twitter chat, available at http://www.ftc.gov/system/files/attachments/ftc-twitter-chats/ftc_mcpd_2014_twitter_chat_transcript_7-16-14.pdf.

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.⁸⁷

A. Consumer Leasing: Enforcement Actions

As noted above, in 2014, an auto dealer, Billion Auto, and its affiliated advertising company entered into a stipulated final order settling charges that included deceptive vehicle lease offers, in violation of the dealer's 2012 consent order with the FTC.⁸⁸ According to the complaint, the dealership group violated the prior order by disseminating advertisements that misrepresented the transaction by focusing only on a few attractive terms, such as a low monthly payment, while concealing other material terms, such as that the transaction involved a lease, or those that limit who can qualify or that add significant extra costs, including downpayments and other upfront amounts. The complaint also charged that the defendants violated the prior order by promoting consumer leases using prominent terms such as the monthly payment, but failing to provide disclosures – or provide them clearly and conspicuously - and by failing to retain and produce required records and submit reports. The stipulated final order in the civil penalty action requires the defendants to pay a civil penalty of \$360,000 for all their violations; prohibits the defendants' violations of the FTC consent order; and requires the defendants' compliance reporting and recordkeeping for (20) twenty years.

As discussed above, the FTC issued final consent orders against ten automobile dealers, settling charges that the dealers made deceptive claims in advertisements. Five of the complaints alleged that the dealers - Courtesy Auto Group, Honda of Hollywood, Infinity of Clarendon Hills, Norm Reeves, and Southwest Kia - deceptively represented that consumers could lease an advertised vehicle for \$0 or low upfront amounts and/or low monthly payments, when in fact they would have to pay substantial amounts prior to lease inception, in violation of the FTC Act, and failed to disclose or to clearly and conspicuously disclose required lease terms, in violation of the CLA and Regulation M.⁸⁹ In all ten of the matters, the final consent orders bar misrepresentations regarding material facts about the price, sale, financing, or leasing of motor vehicles.⁹⁰ In addition, the five cases alleging violations of the CLA and Regulation M also require clear and conspicuous

⁸⁷ 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).

⁸⁸ *See supra* notes 8 & 9.

⁸⁹ *See In the Matter of Courtesy Auto Group, Inc.*, Docket No. 9359 (Jan. 7, 2014), available at <http://www.ftc.gov/enforcement/cases-proceedings/132-3171/courtesy-auto-group-inc-matter>; *In the Matter of Bill Robertson & Sons, Inc., d/b/a Honda of Hollywood*, Docket No. C-4451, available at <http://www.ftc.gov/enforcement/cases-proceedings/132-3142/bill-robertson-sons-inc-dba-honda-hollywood-matter>; *In the Matter of Infiniti of Clarendon Hills, Inc.*, Docket No. C-4438, available at <http://www.ftc.gov/enforcement/cases-proceedings/132-3188/infiniti-clarendon-hills-inc-matter>; and *In the Matter of Norm Reeves, Inc.* Docket No. C-4436, available at <http://www.ftc.gov/enforcement/cases-proceedings/132-3151/norm-reeves-inc-dba-norm-reeves-honda-superstore-matter>; and *In the Matter of New World Auto Imports, Inc., d/b/a Southwest Kia (Southwest Kia)*, Docket No. C-4437 (Feb. 20, 2014), available at <http://www.ftc.gov/enforcement/cases-proceedings/132-3165/new-world-auto-imports-inc-dba-southwest-kia-et-al-matter>.

⁹⁰ *See id.* and *supra* note 16.

disclosures mandated by those requirements, and compliance with other aspects of the CLA and Regulation M.⁹¹

As also noted above, the Commission issued a consent agreement for public comment, settling charges that the auto dealer, Trophy Nissan, among other things, made deceptive claims in lease promotions.⁹² According to the complaint, in certain advertisements, the dealer represented that consumers could end their current auto lease agreements for only one dollar. The claims were alleged as deceptive because the consumer could not in fact end an agreement for that amount; the dealer instead would add any outstanding obligation to the balance of a new transaction. In addition, the complaint alleged that the dealer prominently offered a car for low monthly payments, but failed to disclose or disclose adequately the total amount due at lease signing, which was thousands of dollars. According to the complaint, the ads also violated the CLA and Regulation M, by offering certain lease terms and failing to disclose or disclose clearly and conspicuously additional required terms. The proposed consent order prohibits misrepresentations, including regarding the leasing of a vehicle, requires compliance with CLA and Regulation M, and imposes other compliance and reporting obligations.

B. Consumer Leasing: Consumer and Business Education

In 2014, as discussed above, the FTC's new publication on auto advertisements, included tips on what to watch out for in leasing promotions.⁹³ In addition, the Commission's blog posts to consumers and businesses with guidance on automobile advertising, included information on leasing issues, as well as information regarding the FTC's recent enforcement actions involving leasing promotions.⁹⁴ The updated publication by the Commission, in cooperation with the American Financial Services Association Education Foundation and the National Automobile Dealers Association, also included information for consumers on leasing motor vehicles.⁹⁵

IV. Regulation E (EFTA)

The FTC enforces EFTA and its implementing Regulation E with regard to most nonbank entities.⁹⁶ In 2014, the agency had nine new or ongoing cases involving EFTA and Regulation E

⁹¹ See *supra* note 89.

⁹² See *supra* notes 23 & 24.

⁹³ See *supra* note 75.

⁹⁴ See Lesley Fair, *Advertise Auto Promotions Car-Fully*, FTC BUSINESS CENTER BUSINESS BLOG (Dec. 23, 2014), <http://www.ftc.gov/news-events/blogs/business-blog/2014/12/advertise-auto-promotions-car-fully>; Colleen Tressler, *See Colleen Tressler, Deceptive car ads can spin your wheels*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Jan. 9, 2014), <http://www.consumer.ftc.gov/blog/deceptive-car-ads-can-spin-your-wheels>; see also Colleen Tressler, *Auto Dealers Pay for Violating FTC Order*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Dec. 12, 2014), <http://www.consumer.ftc.gov/blog/auto-dealers-pay-violating-ftc-order>.

⁹⁵ See *supra* note 80.

⁹⁶ 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).

issues. The Commission also engaged in research and policy work and educational activities involving EFTA and Regulation E.

A. Electronic Fund Transfers: Enforcement Actions

1. Negative Option Cases

Five of the Commission's cases alleging violations of EFTA and Regulation E arose in the context of "negative option" plans.⁹⁷ 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.

In one case, the FTC obtained settlements with an individual and twelve other defendants, including Jeremy Johnson, resulting in among other things a ban on violations of EFTA and Regulation E, and a monetary judgments totaling over \$2.5 million for all the violations;⁹⁸ litigation continues with the other parties.⁹⁹ In another case, a district court entered a stipulated order requiring three individual defendants and the companies they control, including Leanspa, to surrender their assets exceeding \$7 million and, among other things, banning violations of EFTA; a

⁹⁷ 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.

⁹⁸ The monetary judgments are suspended based on the defendants' ability to pay.

⁹⁹ *FTC v. Johnson*, No. 2:10-cv-02293 (D. Nev. Apr. 11, 2014) (orders granting stipulated permanent injunction and monetary judgments as to defendant Scott Muir and his affiliated corporate entities), *available at* <http://www.ftc.gov/enforcement/cases-proceedings/102-3015/i-works-inc-et-al>. See FTC, Press Release, Apr. 11, 2014, *I Works Billing Scheme Defendant Agrees to Settle FTC Charges*, *available at* <http://www.ftc.gov/news-events/press-releases/2014/04/i-works-billing-scheme-defendant-agrees-settle-ftc-charges>. If the defendants misrepresented their financial condition, the full judgments will become immediately due.

The FTC also filed a complaint in a related matter. See FTC, Press Release, Aug. 1, 2014, *FTC Charges Payment Processors Involved in I Works Scheme*, *available at* <http://www.ftc.gov/news-events/press-releases/2014/08/ftc-charges-payment-processors-involved-i-works-scheme>. The complaint charged the payment processors with unfair acts or practices in violation of the FTC Act, in processing or arranging for processing of charges via merchant accounts involving over \$26 million, including on consumers' debit cards, in the scheme; the court entered a stipulated final order with three defendants, who operated as payment processors in the operation. *FTC v. CardFlex, Inc.* No. 3:14-cv-00397 (D. Nev. filed July 30, 2014) (stipulated permanent injunction and final order entered as to defendants Blaze Processing, LLC, Mach 1 Merchanting, LLC, and Shane Fisher on Oct. 27, 2014), *available at* <https://www.ftc.gov/enforcement/cases-proceedings/122-3003/cardflex-payment-solutions>. The settlement bans the defendants from payment processing and orders a monetary judgment of nearly \$1 million. The defendants were ordered to surrender approximately \$330,000, while the remainder of the monetary judgment was suspended based on the defendants' ability to pay. Litigation continues against the remaining defendants.

separate stipulated order in this case as to another defendant required payment of \$270,000.¹⁰⁰ In another case, the Ninth Circuit primarily upheld the District Court's injunction and monetary relief against the individual appellant, Kyle Komoto, for violations of EFTA and the FTC Act related to unauthorized recurring debits, among other things.¹⁰¹ Finally, the FTC filed a complaint and obtained a temporary restraining order against a marketer of diet supplements, Health Formulas, for deceptive advertising and recurrent unauthorized withdrawals, in violation of the FTC Act and EFTA; litigation continues in that matter.¹⁰²

2. Other Cases

Also in 2014, the Commission engaged in litigation in four other cases: three cases involved payday lending cases and one involved retail financing.

The FTC obtained a settlement in a case previously-filed involving a payday lender, Payday Financial, charged with violating 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.¹⁰³ The settlement imposed a monetary judgment of nearly \$1 million for all the violations, and prohibited the defendants, among other things, from conditioning the extension of credit to consumers on repayment by preauthorized electronic fund transfers, and from other violations of EFTA and Regulation E.¹⁰⁴

¹⁰⁰ *FTC v. Leanspa, LLC*, No. 3:11-cv-01715 ((D. Conn. Jan. 9, 2014) (stipulated order for permanent injunction and monetary judgment entered as to Boris Mizhen, Leanspa, LLC, NutraSlim, LLC, NutraSlim U.K. Ltd, and Angelina Strana – with Commissioners Ohlhausen and Wright voting for issuance of the consent agreement and issuing separate statements) (stipulated order as to Eric Chiang entered Feb. 28, 2014), respectively. 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. The Commission also mailed out 400,000 claim forms to the consumer victims to begin the redress process. See FTC, Press Release, Sept. 19, 2014, *FTC Mails More Than 400,000 Claim Forms to Possible Victims of Alleged LeanSpa Scam*, available at <http://www.ftc.gov/news-events/press-releases/2014/09/ftc-mails-more-400000-claim-forms-possible-victims-alleged>.

¹⁰¹ 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); *FTC v. Grant Connect, LLC*, No. 11-18023 (9th Cir. Aug. 15, 2014) (affirming district court grant of injunction and monetary judgment as to individual appellant Kimoto for all aspects of the scheme except for Acai Total Burn, vacating the district court order in part, and remanding to the district court).

¹⁰² *FTC v. Health Formulas, LLC*, No. 2:14-cv-01649 (D. Nev. filed Oct. 7, 2014) (*ex parte temporary restraining order* entered Oct. 9, 2014). See FTC, Press Release, Oct. 20, 2014, *At FTC's Request, Court Stops Supplement Marketers from Deceptive Advertising and Illegally Debiting Consumers' Accounts*, available at <http://www.ftc.gov/news-events/press-releases/2014/10/ftcs-request-court-stops-supplement-marketers-deceptive>. Among other things, this is also the first FTC action alleging violations of the Restore Online Shoppers' Confidence Act, which prohibits marketers from charging consumers in an Internet transaction, unless the marketer has clearly disclosed all material terms of the transaction and obtained the consumer's express informed consent.

¹⁰³ See FTC, Press Release, *Payday Lenders That Used Tribal Affiliation to Illegally Garnish Wages Settle with FTC*, Apr. 11, 2014, available at <http://www.ftc.gov/news-events/press-releases/2014/04/payday-lenders-used-tribal-affiliation-illegally-garnish-wage>.

¹⁰⁴ See *FTC v. Payday Financial, LLC*, No. 11-3017 (D.S.D. Apr. 4, 2014) (stipulated order for permanent injunction and civil penalties), available at <https://www.ftc.gov/enforcement/cases-proceedings/112-3023/payday-financial-llc>.

In another case, a district court held that the defendants' (including AMG Services') payday lending contracts violated EFTA by requiring consumers to preauthorize electronic withdrawals from their bank accounts as a condition of obtaining credit; and that the FTC could enforce EFTA against the defendants regardless of their tribal affiliation.¹⁰⁵

In a third case, the FTC filed a complaint and obtained a temporary restraining order against an online payday lender, CWB Services, charging among other things that the defendants made unauthorized recurring withdrawals, in violation of EFTA.¹⁰⁶ In a fourth case, involving consumer electronics retailer BlueHippo Funding, the appellate court issued a decision overturning a damage award in a 2010 contempt order, noting that consumer reliance is presumed in such actions; the case was remanded to the district court for further proceedings, including to assess full damages.¹⁰⁷

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

The FTC does not have rulemaking authority under the Electronic Fund Transfer Act, but a number of its activities, in 2014, pertained to rulemaking, research, and policy development that addressed issues related to the EFTA. As noted above, the FTC issued staff reports pertaining to mobile cramming and mobile commerce.¹⁰⁸ The reports included discussion of the absence of consumer protections in these mobile services areas, in contrast to protections for payments involving debit cards and electronic fund transfers under EFTA.¹⁰⁹ The FTC staff comments submitted on mobile financial services, discussed above, also highlighted several consumer protection issues and steps that the FTC has taken to address them.¹¹⁰ Among the issues addressed were: the potential liability for unauthorized charges using prepaid or stored value products, including the differences in consumer protections regarding federal liability limits and dispute resolution procedures with purchases using debit cards.

The Commission's final amendments to its Mail or Telephone Order Merchandise Rule, discussed above, also included clarifying the seller's refund obligations where buyers use payment methods not specified in the Rule such as debit card orders and prepaid gift cards.¹¹¹ In addition, the Commission extended the comment period for a proposed rulemaking regarding possible

¹⁰⁵ *FTC v. AMG Services, Inc.*, *supra* note 29.

¹⁰⁶ *FTC v. CWB Services, Inc.*, *supra* note 33. Defendants allegedly obtained consumers bank account numbers through online lead generators or data brokers, used the data to make unauthorized payday loans to consumers, and then withdraw from consumers' bank accounts bi-weekly recurring "finance charges" without any of the payments going toward reducing the loan's principal, and without obtaining consumers' written authorization signed or similarly authenticated or providing a copy of that authorization, in violation of EFTA and Regulation E.

¹⁰⁷ *FTC v Blue Hippo*, *supra* notes 35 & 36.

¹⁰⁸ *See supra* notes 61 & 63.

¹⁰⁹ *See supra* note 61, at 34, and note 63, at 11-12.

¹¹⁰ *See supra* note 68.

¹¹¹ *See supra* note 58; 79 Fed. Reg. at 55618.

amendments to the FTC's Telemarketing Sales Rule.¹¹² Among other things, the proposal would, for telemarketing transactions, ban the use of four payment methods that provide little or no systematic monitoring to detect fraud.¹¹³

C. Electronic Fund Transfers: Consumer and Business Education

In 2014, the FTC issued blog posts with guidance for consumers and business regarding unauthorized withdrawals from consumers accounts, including in payday lending,¹¹⁴ and providing warnings about limited consumer protections when using gift cards online.¹¹⁵

* * * *

We hope that the information discussed above responds to your inquiry and will be useful in preparing the CFPB's Annual Report to Congress.¹¹⁶ 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

¹¹² See FTC, Press Release, *FTC Extends Deadline for Submitting Public Comments on Review of the Telemarketing Sales Rule Through November 13, 2014*, Oct. 7, 2014, available at <http://www.ftc.gov/news-events/press-releases/2014/10/ftc-extends-deadline-submitting-public-comments-review>. The FTC's Telemarketing Sales Rule is at 16 C.F.R. Part 310. The proposed rule and public comments that were submitted are under consideration in this matter.

¹¹³ 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>.

¹¹⁴ Bridget Small, *FTC Sues Scammer's Little Helper*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Aug. 1, 2014), <http://www.consumer.ftc.gov/blog/ftc-sues-scammers-little-helper>; Lesley Fair, *A Loan Again?*, FTC BUREAU OF CONSUMER PROTECTION BUSINESS CENTER BLOG (Sept. 17, 2014), <http://www.ftc.gov/news-events/blogs/business-blog/2014/09/loan-again>; Colleen Tressler, *Payday Lender Get's What's Due . . . From the FTC*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Sept. 17, 2014), <http://www.consumer.ftc.gov/blog/payday-lender-gets-whats-due-ftc>.

¹¹⁵ Nicole Vincent Fleming, *How NOT to Use a Gift Card*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Dec. 19, 2014), <http://www.consumer.ftc.gov/blog/how-not-use-gift-card>.

¹¹⁶ 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 2014, 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.