

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



Division of Financial Practices

May 27, 2016

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) 2015 Annual Report to Congress. Specifically, you ask for information concerning the FTC's activities with respect to the Regulations during 2015. We are pleased to provide the requested information below.²

I. FTC Role in Administering and Enforcing the Regulations

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

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.

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

II. Regulation Z (TILA)

In 2015, the Commission engaged in law enforcement; rulemaking, research and policy development; and consumer and business education, all relating to the topics covered by TILA and Regulation Z, including the advertisement, extension, and certain other aspects of consumer credit.⁵

A. Truth in Lending: Enforcement Actions

1. Non-Mortgage Credit

In 2015, the Commission's law enforcement efforts against those who market or extend non-mortgage credit included actions involving automobile financing, car title loans, payday loans, and financing of consumer electronics.

a. Automobile Purchases and Financing

In 2015, the FTC continued its efforts to combat deceptive automobile dealer practices, including by pursuing one federal court action and five administrative court actions involving TILA and Regulation Z. In the federal court action, the agency obtained a stipulated final order for civil

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, *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>; and 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>; *see also* Dodd-Frank Act, § 1024.

In addition, the Commission and the Veterans Administration signed a memorandum of agreement to further their ongoing efforts to stop fraudulent and deceptive practices, including financing practices, targeted at U.S. service members, veterans, and dependents who use military education benefits. *See* FTC, Press Release, *FTC and Veterans Administration Sign Agreement Furthering Efforts To Protect Service Members Who Use Military Education Benefits*, Nov. 12, 2015, available at <https://www.ftc.gov/news-events/press-releases/2015/11/ftc-veterans-administration-sign-agreement-furthering-efforts>. The agreement is designed to enhance cooperation between the FTC and the VA in investigating and taking action against institutions that target service members with unfair or deceptive advertising or enrollment practices. It outlines terms under which the VA can refer potential violations to the FTC.

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.

penalties.⁶ Auto dealer Ramey Motors settled charges, previously filed, that it violated a 2012 consent order with the FTC by deceptively advertising the costs of financing a vehicle – including by concealing important terms of offers such as required down payments, by failing to make credit disclosures clearly and conspicuously as required by TILA, and by failing to retain and produce records. The defendant agreed to pay \$80,000 in civil penalties to resolve the action, and the settlement also prohibits the defendant from violating the 2012 order.⁷

The FTC’s auto enforcement initiatives involving TILA and Regulation Z also included five administrative consent orders. In two of the matters, the FTC filed administrative complaints and settled charges that the auto dealers used deceptive ads to promote the sale of their vehicles, including by advertising heavily discounted prices that were not generally available to consumers.⁸ The complaints also charged that these dealers – Planet Hyundai and Planet Nissan – violated the FTC Act by running ads that misrepresented the purchase price of their vehicles, including by advertising a price of “\$0 DOWN available” but noting only in fine print that consumers had to turn in a vehicle with a trade-in value of at least \$2,500 (Planet Hyundai), and by advertising prices that were not generally available to consumers (Planet Nissan).⁹ According to the complaints, the dealers’ ads also allegedly violated TILA and Regulation Z by failing to disclose or clearly and conspicuously disclose required credit information. In both cases, the final consent orders prohibit the dealerships from, among other things, misrepresenting any material fact about the price, sale, financing, or leasing of any vehicle; they are also required to clearly and conspicuously disclose required credit terms and comply with all requirements of TILA and Regulation Z.

In another administrative action, the Commission issued a final consent order settling charges that auto dealership Trophy Nissan deceptively advertised purchase and finance terms and made other misleading promotional offers.¹⁰ According to the complaint, among other things, the auto dealer deceptively represented that consumers could end their current auto financing

⁶ See FTC, Press Release, *FTC Action: Auto Dealership Will Pay \$80,000 Penalty for Violating 2012 Order Prohibiting Deceptive Advertising of Vehicle Costs*, Sept. 18, 2015, available at <https://www.ftc.gov/news-events/press-releases/2015/09/ftc-action-auto-dealership-will-pay-80000-penalty-violating-2012>.

⁷ *FTC v. Ramey Motors, Inc.*, No. 1:14-cv-29603 (S.D. W. Va. entered Sept. 9, 2015) (stipulated order for permanent injunction and civil penalty judgment), available at <https://www.ftc.gov/enforcement/cases-proceedings/c-4354-x150025/ramey-motors-inc-et-al>.

⁸ See FTC, Press Releases, *FTC Approves Final Consent Order Against Las Vegas Auto Dealers For Misleading Consumers About Cost of Cars*, Oct. 20, 2015, available at <https://www.ftc.gov/news-events/press-releases/2015/10/ftc-approves-final-consent-order-against-las-vegas-auto-dealers>, *Two Las Vegas Auto Dealers Settle FTC Charges They Deceptively Advertised the Cost of Their Cars*, June 29, 2015, available at <https://www.ftc.gov/news-events/press-releases/2015/06/two-las-vegas-auto-dealers-settle-ftc-charges-they-deceptively>.

⁹ *In the Matter of TC Dealership, L.P. dba Planet Hyundai*, Docket No. C-4536 (Aug. 13, 2015), available at <https://www.ftc.gov/enforcement/cases-proceedings/152-3096/tc-dealership-lp-planet-hyundai-matter>; *In the Matter of JS Autoworld, Inc., dba Planet Nissan*, Docket No. C-4535 (Aug. 13, 2015), available at <https://www.ftc.gov/enforcement/cases-proceedings/152-3069/js-autoworld-inc-planet-nissan-matter>.

¹⁰ See FTC, Press Release, *FTC Approves Final Order in Texas Auto Dealer Deceptive Ad Case*, Feb. 13, 2015, available at <https://www.ftc.gov/news-events/press-releases/2015/02/ftc-approves-final-order-texas-auto-dealer-deceptive-ad-case>.

agreements for only one dollar, when, in fact, the dealer would instead add any outstanding obligation to the balance of the new financing. The complaint also alleged that the dealership violated TILA and Regulation Z by failing to disclose or clearly and conspicuously disclose required credit terms. Under the order, the dealership is prohibited from misrepresenting in any advertisement the material terms of any promotion or other incentive, including that it will pay off a consumer's trade-in, and misrepresenting the cost of purchasing or leasing a vehicle.¹¹ The dealership is also prohibited from failing to clearly and conspicuously disclose material terms of its promotions or other incentives and also must comply with all requirements of TILA and Regulation Z.

The other two administrative enforcement actions involving TILA were part of Operation Ruse Control, a nationwide and cross-border crackdown to protect consumers when, among other things, purchasing a car, and which in total encompassed 252 enforcement actions, including six actions brought by the FTC and additional actions brought by 32 law enforcement partners.¹² Jim Burke Nissan, and Ross Nissan settled charges that they ran deceptive ads that violated the FTC Act by touting sales or financing options that were qualified by fine-print disclaimers.¹³ In other instances, the ads did not disclose relevant terms, such as required down payments. The dealers also settled charges that they violated TILA and Regulation Z by failing to disclose or clearly and conspicuously disclose required credit terms. The consent orders in these actions prohibit the dealerships from misrepresenting the purchase cost or any other material fact about the price, sale, financing, or leasing of a vehicle, and require these dealerships to comply with TILA and Regulation Z.

b. Car Title Loans

In 2015, the FTC took action for the first time against car title lenders, obtaining settlements against two companies that require them to stop their alleged use of deceptive advertising to market title loans, which are typically high cost, short-term loans secured with the consumer's car title.¹⁴

¹¹ *In the Matter of TXVT Limited Partnership dba Trophy Nissan*, Docket No. C-4508 (Feb. 12, 2015), available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3117/txvt-limited-partnership-matter>.

¹² See FTC, Press Release, *FTC, Multiple Law Enforcement Partners Announce Crackdown on Deception, Fraud in Auto Sales, Financing and Leasing*, Mar. 26, 2015, available at <https://www.ftc.gov/news-events/press-releases/2015/03/ftc-multiple-law-enforcement-partners-announce-crackdown>. The other four FTC actions that were part of Operation Ruse Control did not relate to TILA.

¹³ *In the Matter of Jim Burke Automobile, Inc., dba Jim Burke Nissan*, Docket No. C-4523 (May 4, 2015), available at <https://www.ftc.gov/enforcement/cases-proceedings/152-3036/jim-burke-automotive-inc-matter-jim-burke-nissan>; *In the Matter of City Nissan Inc., dba Ross Nissan of El Monte*, Docket No. C-4524 (May 4, 2015), available at <https://www.ftc.gov/enforcement/cases-proceedings/132-3114/city-nissan-inc-matter-ross-nissan-el-monte>. See also FTC, Press Release, *FTC Approves Final Consent Orders in Two Deceptive Auto Advertising Cases*, May 29, 2015, available at <https://www.ftc.gov/news-events/press-releases/2015/05/ftc-approves-final-consent-orders-two-deceptive-auto-advertising>.

¹⁴ See FTC, Press Releases, *FTC Approves Final Consent Orders with Two Car Title Lenders Charged with Deceptively Advertising Cost of Loans*, June 10, 2015, available at <https://www.ftc.gov/news-events/press-releases/2015/06/ftc-approves-final-consent-orders-two-car-title-lenders-charged>, *In First FTC Cases Against Car Title Lenders, Companies Settle Charges They Deceptively Advertised the Cost of Their Loans, Businesses Failed to Disclose Qualifications for*

In administrative complaints issued with the final consent orders, the FTC charged that First American Title Lending of Georgia and Finance Select advertised, both online and in print, zero-percent interest rates for a 30-day car title loan without disclosing important loan conditions or the increased finance charge that was imposed after the introductory period ended. Additionally, according to the complaint in First American Title Lending, the company's ads promoted a rate of finance charge but failed to state the rate as an annual percentage rate, or APR, in violation of TILA and Regulation Z. Among other things, the final consent orders in First American Title Lending and Finance Select prohibit these companies from: (1) failing to disclose all the qualifying terms associated with obtaining a loan at its advertised rate; (2) failing to disclose what the finance charge would be after an introductory period ends; and (3) misrepresenting any material terms of any loan agreements.¹⁵ The final order in First American Title Lending also requires the company to comply with all aspects of TILA and Regulation Z.

c. Payday Lending

The FTC obtained two significant victories in its efforts to combat deceptive business practices of payday lenders. In one case, two payday lending companies settled FTC charges that they violated the law by charging consumers undisclosed and inflated fees.¹⁶ Under the stipulated order, AMG Services and MNE Services paid \$21 million – the largest FTC recovery in a payday lending case – and waived another \$285 million in charges that were assessed but not collected.¹⁷ The FTC's complaint that was previously filed against AMG and MNE Services and several other co-defendants alleged that the defendants violated the FTC Act by misrepresenting to consumers how much the loans would cost, such as by stating in the contract that a \$300 loan would cost \$390 to repay but then charging \$975 to repay the loan. The complaint also charged the defendants with violating, among other things, TILA, by failing to accurately disclose the annual percentage rate and other loan terms. In addition to the monetary relief, the stipulated order bars the defendants from misrepresenting the terms of any loan product, including the loan's payment schedule, total amount the consumer will owe, interest rate, annual percentage rates or finance charges, and any other material facts. The order also prohibits the defendants from violating TILA.¹⁸ Litigation continues in this matter with other defendants.

"Zero Percent" Loan Offers, Jan. 30, 2015, available at <https://www.ftc.gov/news-events/press-releases/2015/01/first-ftc-cases-against-car-title-lenders-companies-settle>.

¹⁵ *In the Matter of First American Title Lending of Georgia, LLC*, Docket No. C-4529 (June 2, 2015), available at <https://www.ftc.gov/enforcement/cases-proceedings/132-3264/first-american-title-lending-georgia-llc-matter>; *In the Matter of Finance Select, Inc.*, Docket No. C-4528 (June 2, 2015), available at <https://www.ftc.gov/enforcement/cases-proceedings/132-3262/finance-select-inc-fast-cash-title-pawn-matter>. Finance Select does business as Fast Cash Title Pawn.

¹⁶ See FTC, Press Release, *Online Payday Lending Companies to Pay \$21 Million to Settle Federal Trade Commission Charges that They Deceived Consumers Nationwide*, Jan. 16, 2015, available at <https://www.ftc.gov/news-events/press-releases/2015/01/online-payday-lending-companies-pay-21-million-settle-federal>.

¹⁷ *FTC v. AMG Services, Inc.*, No. 2:12-cv-00536 (D. Nev. Jan. 23, 2015) (stipulated order for permanent injunction and judgment entered).

¹⁸ Certain additional defendants settled charges in this matter. See *FTC v. AMG Services, Inc.* (D. Nev. Mar. 18, 2015) (stipulated order for permanent injunction and monetary judgment for \$25,000 as to Troy LittleAxe Jr. entered);

In the other action, the operators of a payday lending scheme that allegedly took millions of dollars from consumers by trapping them into loans they never authorized agreed to be banned from the consumer lending business under settlements with the FTC.¹⁹ The settlements stem from charges previously filed alleging that Timothy A. Coppinger, Frampton T. Rowland III, and their companies, including CWB Services, targeted online payday loan applicants and, using information from lead generators and data brokers, deposited money into those applicants' bank accounts without their permission, and told consumers they had agreed to, and were obligated to pay for, the unauthorized "loans." To support their claims, the defendants provided consumers with fake loan applications or other loan documents purportedly showing that the consumers had authorized the loans, which misstated the loans' finance charge, annual percentage rate, payment schedule, and total number of payments, while burying the loans' true costs in fine print. The complaint alleged that defendants violated the FTC Act and TILA, among other laws. Under the stipulated orders, among other things, the defendants are banned from any aspect of the consumer lending business, including collecting payments, communicating about loans, and selling debt.²⁰ They are also permanently prohibited from making material misrepresentations about any good or service. The orders impose consumer redress judgments of approximately \$32 million and \$22 million against Coppinger and his companies and Rowland and his companies, respectively; the judgments against Coppinger and Rowland were suspended because of their financial situation, upon surrender of certain assets.²¹

d. Consumer Electronics Financing

The Commission continued litigating an appeal in connection with a 2010 contempt order against BlueHippo Funding, a consumer electronics retailer, for violating a prior FTC consent order.²² 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. The appellate court remanded for

(D. Nev. Mar. 18, 2015) (stipulated order for permanent injunction and monetary judgment for \$71,677 as to Don Brady entered); (D. Nev. Mar. 18, 2015) (stipulated order for permanent injunction as to Robert D. Campbell entered); (D. Nev. Nov. 25, 2015) (stipulated order for permanent injunction and judgment for \$2.2 million as to Red Cedar Services, Inc. entered).

¹⁹ See FTC, Press Release, *FTC Action Stops Massive Payday Loan Fraud Scheme*, July 7, 2015, available at <https://www.ftc.gov/news-events/press-releases/2015/07/ftc-action-stops-massive-payday-loan-fraud-scheme>.

²⁰ *FTC v. CWB Services, LLC*, No. 4:14-cv-00783 (W.D. Mo. Aug. 26, 2015) (stipulated order for permanent injunction and monetary judgment against Timothy A Coppinger, CWB Services), *FTC v. CWB Services, LLC* (W.D. Mo. Oct. 14, 2015) (stipulated order for permanent injunction and monetary judgment against Frampton T. Rowland, III, Vandelier Group LLC); both orders are available at <https://www.ftc.gov/enforcement/cases-proceedings/132-3184-x140065/cwb-services-llc>.

²¹ *Id.* In each case, the full judgment will become due immediately if the defendants are found to have misrepresented their financial condition.

²² *FTC v. BlueHippo Funding, LLC*, No. 1:08-cv-1819 (S.D.N.Y. July 27, 2010) (content order entered), *appeal docketed*, No. 11-374 (2d Cir. Feb. 1, 2011); (2d Cir. Feb. 12, 2014) (appellate order vacating district court ruling and remanding case).

further proceedings relating to the monetary award (previously reported).²³ Upon remand, the district court rejected the defendants' arguments regarding the FTC's burden of proof with respect to estimating monetary injury. Litigation in the matter continued in 2015, with the Commission seeking over \$14 million to compensate consumers.

2. Mortgage-Related Credit: Forensic Audit Scams

The FTC also continued litigation in three 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.

In one matter, the FTC obtained a final judgment against Mortgage Relief Advocates, a case that had been filed as part of a 2014 Mortgage Assistance Relief Services (MARS) law enforcement sweep.²⁴ The judgment includes a permanent injunction and order requiring defendants to pay \$1.8 million in monetary relief. Previously in 2015, the court granted the FTC's motion for summary judgment, finding that four corporate defendants and two individual defendants were jointly and severally liable for violations of Section 5 of the FTC Act and the MARS Rule, Regulation O.²⁵ The FTC's complaint alleged that the defendants enticed consumers to purchase loan modification services by offering forensic audits of mortgage origination documents. The FTC also alleged that, in many instances, the defendants failed to provide the promised services or results.

In the second matter, Lanier Law, LLC, the court issued an order extending a preliminary injunction to two additional companies and two additional individuals.²⁶ The FTC's complaint alleged that the operation lured homeowners into paying \$1,000 to \$4,000 or more by making false promises that the homeowners would receive legal representation from foreclosure defense attorneys to help them avoid foreclosure and renegotiate their mortgages. 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 preliminary injunction required the defendants to stop making misrepresentations about loan modifications, and ordered an

²³ *FTC v. BlueHippo Funding, LLC*, No. 08-cv-1819 (S.D.N.Y. Nov. 6, 2015) (opinion and order).

²⁴ *FTC v. Mortgage Relief Advocates, LLC*, No. 2:14-cv-05434 (C.D. Cal. July 23, 2015) (final judgment). This case and the second case (discussed below) were part of Operation Mis-Modification, a nationwide federal and state enforcement sweep targeting unlawful providers of mortgage assistance relief services. *See also* 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>.

²⁵ *Id.* (C.D. Cal. July 1, 2015) (order granting plaintiff FTC's motion for summary judgment).

²⁶ *See FTC v. Lanier Law LLC*, No. 3:14-cv-00786, (M.D. Fla. Feb. 6, 2015) (preliminary injunction order with asset freeze and other equitable relief entered), available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3038-x140039/lanier-law-llc>.

asset freeze and other equitable relief. The FTC continues to seek redress and other relief in this continuing litigation.

In a third matter, two of the defendants in a mortgage relief scheme appealed to a federal circuit court after a district court entered default judgments against them, and in 2015, the FTC filed its answering brief.²⁷ As previously reported, the FTC had obtained stipulated orders against A to Z Marketing and twenty-one other defendants who used a range of mortgage relief schemes such as forensic audit scams, charging consumers illegal up-front fees \$2,500 to \$3,500 for the foreclosure rescue services, but providing little or no help, deepening their victims' financial distress. As noted above, the district court entered default judgments against two defendants, and the two defendants appealed those judgments.²⁸ Litigation continues in that appeal.

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

The FTC does not have rulemaking authority under the Truth in Lending Act, but three of its activities in 2015 pertained to rulemaking, research, and policy development that addressed issues related to the TILA.

The Commission announced that it was seeking public comment on a proposed qualitative survey of consumers to learn about their experiences in buying and financing automobiles at dealerships, and published a Federal Register Notice on the matter.²⁹ The comments – which the Commission posts on its website – will be considered before the FTC seeks clearance for the survey from the Office of Management and Budget, in compliance with the Paperwork Reduction Act. In its release, the Commission noted it had brought more than 25 cases in the auto purchase and financing area since 2011, including those in a federal-state effort that yielded more than 200 actions for fraud, deception, and other illegal practices. The survey will include consumer interviews on topics such as: the consumer's experience in shopping for and choosing an automobile; the process of agreeing to a price for the automobile; the process of trading in the consumer's old automobile; the consumer's experience in obtaining financing; additional products or services the dealer may have offered; contacts between the consumer and dealer after the purchase; and the consumer's overall perception of the purchase experience. The survey will involve review of the consumer's purchase and financing documents and exploration of their understanding of those documents. As explained in the information released, the FTC has broad authority over automobile dealers, including to enforce various statutes, such as the FTC Act and TILA. The survey is intended to provide useful insights about current consumer protection issues

²⁷ See *FTC v. Business Team, LLC, Amir Montazeran* (9th Cir. 2014) (Answering Brief of Appellee-FTC, May 8, 2015), available at <https://www.ftc.gov/enforcement/cases-proceedings/122-3074/z-marketing-inc-also-dba-client-services-apex-members-llc>.

²⁸ *FTC v. A to Z Marketing, Inc.*, No. 13:cv-00919 (C.D. Cal. Oct. 14, 2014) (Final Order for Monetary Judgment as to Relief Defendant Business Team, LLC), amended notice of appeal sub nom. *FTC v. Business Team, LLC*, No. 14-56582 (9th Cir. Nov. 3, 2014); *FTC v. A to Z Marketing, Inc.*, No. 13:cv-00919 (C.D. Cal. Oct. 14, 2014) (Entry of Default Judgment and Final Order for Permanent Injunction Against Defendant Amir Montazeran), amended notice of appeal sub nom. *FTC v. Business Team, LLC*, No. 14-56582 (9th Cir. Nov. 3, 2014).

²⁹ See FTC, Press Release, *FTC Seeks Public Comment on Proposed Survey of Consumers Regarding Their Experiences Buying and Financing Automobiles from Auto Dealers*, Dec. 29, 2015, available at <https://www.ftc.gov/news-events/press-releases/2015/12/ftc-seeks-public-comment-proposed-survey-consumers-regarding>.

that exist and could be addressed through FTC action, including enforcement initiatives, rulemaking, or education.

In 2015, the FTC and NAACP of Georgia hosted a conference on “Obstacles to Economic Opportunity,” examining the frauds affecting the African American community, which included issues related to TILA. The conference included legal service attorneys; community leaders; federal, local and state officials; and consumer advocates from Georgia, to build relations and explore manners in which the FTC and NAACP could better collaborate and share information and resources to best serve the African American community.³⁰ Participants discussed some key consumer issues affecting the African American community, including credit scams, short-term loan scams, and car buying.³¹

Also, in 2015, the FTC staff continued to participate in an interagency group that has been coordinating with the Department of Defense (DoD) on amendments to its rule implementing the Military Lending Act. DoD issued its amendments through a final rule in July 2015, which in many instances takes effect in October 2016.³²

C. Truth in Lending: Consumer and Business Education

In 2015, the Commission continued its efforts to educate consumers and businesses about issues related to the consumer credit transactions to which Regulation Z applies. The Commission released a revamped business website and Business Center blog – all to provide tools for businesses to use to facilitate understanding and compliance with the law. The material includes plain-language guidance articles, videos, blog posts, and legal resources.³³

1. Auto Sales and Financing

The Commission also issued a blog post on auto purchasing and financing warning consumers about dealerships using misleading advertisements involving unusually low prices, low or no up-front payments, low- or no-interest loans, or low monthly payments, or other terms that are qualified by fine-print disclaimers; the material recommends that consumers use free consumer

³⁰ See *Obstacles to Economic Opportunity: A Joint Conference of the FTC and the NAACP Examining Frauds that Affect the African American Community* (May 19, 2015), available at <https://www.ftc.gov/news-events/events-calendar/2015/05/obstacles-economic-opportunity-joint-conference-ftc-naacp>. The conference also invited consumers from communities to participate at an informal gathering in the evening. See *Scam Jam: An Evening to Empower Georgia Consumers* (May 19, 2015), available at <https://www.ftc.gov/news-events/events-calendar/2015/05/scam-jam-evening-empower-georgia-consumers>.

³¹ See *infra* note 37, Cindy Liebes, *The 411 on fraud in the 404*, FTC BUREAU OF CONSUMER PROTECTION BLOG (June 4, 2015), <https://www.consumer.ftc.gov/blog/411-fraud-404>.

³² Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, Final Rule, 80 Fed. Reg. 43560 (July 22, 2015), available at <https://www.gpo.gov/fdsys/pkg/FR-2015-07-22/pdf/2015-17480.pdf>. The FTC has enforcement authority for the rule for entities subject to its jurisdiction, in the manner specified in Section 108 of TILA, 15 U.S.C. § 1607(c), or other applicable authority. See *id.*, 32 CFR 232.10, Administrative Enforcement.

³³ See Alvaro Puig, *Business Center 2.0*, FTC BUSINESS CENTER BUSINESS BLOG (Jan. 8, 2015), <https://www.ftc.gov/news-events/blogs/business-blog/2015/01/business-center-2.0>.

information about buying and owning a car before starting to shop, and to report complaints about misleading advertising to the FTC.³⁴ The Commission also released blog posts on products that can be added on to auto financing contracts and that claim to save consumers on interest, and help pay off loans faster, but actually require consumers to pay more than they save; the blog recommends that if consumers want to pay off their loan early to save on interest payments, they may be able to do so for free, and provides additional information on how to do so.³⁵ The Commission also released business blog posts about deceptive auto ads with guidance on automobile advertising, sales, and financing issues, including from the FTC's recent enforcement actions.³⁶ The Commission issued a blog post related to the conference discussed above, jointly held with the NAACP on "Obstacles to Economic Opportunity," with information about the conference and issues discussed, such as car buying, among others.³⁷

2. Car Title Loans

To highlight the importance of consumers considering the costs and consequences of obtaining the loans, and offer some possible alternatives, the Commission released a blog post and a video about car title loans.³⁸ The new material also provided examples of car title loan advertising from recent FTC cases, and the terms and costs that the promotions did not explain, and offered guidance about making a budget and other steps consumers can take to help work out a debt repayment plan. The Commission also issued a new blog post for businesses with guidance on deceptive car title loans, with information related to the FTC's first enforcement actions on this topic.³⁹

³⁴ See Colleen Tressler, *Operation Ruse Control*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Jan. 9, 2014), <http://www.consumer.ftc.gov/blog/deceptive-car-ads-can-spin-your-wheels>; Colleen Tressler, *FTC curbs auto dealers' deceptive advertising*, FTC BUREAU OF CONSUMER PROTECTION BLOG (June 29, 2015), <https://www.consumer.ftc.gov/blog/ftc-curbs-auto-dealers-deceptive-advertising>.

³⁵ See Colleen Tressler, "Add-on" auto finance plan gets a "D" for deception, FTC BUREAU OF CONSUMER PROTECTION BLOG (Mar. 26, 2015), <https://www.consumer.ftc.gov/blog/add-auto-finance-plan-gets-d-deception>.

³⁶ See Lesley Fair, *Operation Ruse Control: 6 tips if cars are up your alley*, FTC BUSINESS CENTER BUSINESS BLOG (Mar. 26, 2015), <https://www.ftc.gov/news-events/blogs/business-blog/2015/03/operation-ruse-control-6-tips-if-cars-are-your-alley>; Lesley Fair, *Vegas dealers called for deceptive claims*, FTC BUSINESS CENTER BUSINESS BLOG (June 29, 2015), <https://www.ftc.gov/news-events/blogs/business-blog/2015/06/vegas-dealers-called-deceptive-claims>.

³⁷ Cindy Liebes, *The 411 on fraud in the 404*, FTC BUREAU OF CONSUMER PROTECTION BLOG (June 4, 2015), <https://www.consumer.ftc.gov/blog/411-fraud-404>.

³⁸ See Colleen Tressler, *What's the true cost of a car title loan?* FTC BUREAU OF CONSUMER PROTECTION BLOG (Jan. 30, 2015), <https://www.consumer.ftc.gov/blog/whats-true-cost-car-title-loan>. See also CAR TITLE LOANS (video), <https://www.consumer.ftc.gov/media/video-0101-car-title-loans>.

³⁹ See 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>.

3. Payday Lending

In 2015, the Commission issued additional guidance to businesses through its business blog, on deceptive payday lending practices, with information from a recent FTC settlement on this topic.⁴⁰ The material addresses the laws allegedly violated in the action, including TILA, and the order provisions. The Commission’s blog post on the conference discussed above, jointly held with the NAACP on “Obstacles to Economic Opportunity,” also includes information about short-term loan scams.⁴¹

4. Military Lending

Additionally, in 2015, in connection with Military Consumer Protection Day on July 15, the Commission hosted a Twitter Town Hall chat, along with its law enforcement partners at DoD, CFPB, and Military Saves.⁴² Topics covered during the chat included credit issues, such as discussion of deceptive auto ads, and issues with short-term high interest rate loans.⁴³ The Commission also issued a blog post announcing the upcoming event, and encouraging military and veteran communities to visit the Military Consumer website, in which the FTC participates, for resources from more than 30 federal, state, and municipal agencies, and consumer advocacy and military support organizations, on topics related to education and recognizing and avoiding fraud.⁴⁴

5. Other Credit

Also in 2015, the Commission published an article, and issued a blog post, on solar power for homes, along with discussion of buying and financing a system or using power purchase agreements (among other options).⁴⁵ This information included tips on points to consider in deciding which option is best, issues related to the costs and terms that may be involved, and important guidance about reviewing and understanding the contract, before consumers select a company. The Commission also published a new article, and released a blog post, on rent-to-own

⁴⁰ See Lesley Fair, *Turning the tables on deceptive payday lenders*, FTC BUSINESS CENTER BUSINESS BLOG (Jan. 16, 2015), <https://www.ftc.gov/news-events/blogs/business-blog/2015/01/turning-tables-deceptive-payday-lenders>.

⁴¹ See *supra* note 37.

⁴² See FTC, Press Release, *Military Consumer Twitter Town Hall*, July 15, 2015, available at <https://www.ftc.gov/news-events/events-calendar/2015/07/military-consumer-twitter-town-hall>.

⁴³ See *Transcript of the Military Consumer Protection Day 2015 Twitter Chat*, available at https://www.ftc.gov/system/files/attachments/ftc-twitter-chats/ftc_military_consumer_protection_day_2015_twitter_chat_transcript_7-15-15.pdf.

⁴⁴ See Carol Kando-Pineda, *Empower military families*, FTC BUREAU OF CONSUMER PROTECTION BLOG (July 8, 2015), <https://www.consumer.ftc.gov/blog/empower-military-families>.

⁴⁵ See SOLAR POWER FOR YOUR HOME, available at <https://www.consumer.ftc.gov/articles/0532-solar-power-your-home>; see also Bridget Small, *Rays on the roof*, FTC BUREAU OF CONSUMER PROTECTION BLOG (July 6, 2015), <https://www.consumer.ftc.gov/blog/rays-roof>.

(RTO) agreements for consumer furniture, electronics, and tires and wheels.⁴⁶ The article explains how RTO plans work, that they are not covered by certain federal consumer protection laws, the types of fees that may be involved, questions to ask about the agreements, and possible alternatives to these plans. In addition, the Commission released blog posts about the new credit chip cards, introduced by major card issuers, that are designed to reduce fraud (including counterfeiting), as well as warnings about new chip card scams. The information explains how the new cards work, including how card readers will access information in the metallic chip – instead of the old magnetic stripe – to create a unique code for each purchase.⁴⁷ The guidance also offers tips for consumers on how to protect themselves from scammers who pose as their card issuer and try to access personal information.⁴⁸

III. Regulation M (CLA)

In 2015, the Commission issued one consent agreement for public comment and five final administrative consent orders that involved the CLA and Regulation M. The Commission also engaged in educational activities involving the CLA and Regulation M.

A. Consumer Leasing: Enforcement Actions

In 2015, the Commission issued a consent agreement for public comment, settling charges that two dealers deceived consumers with advertisements that touted low monthly car lease payments but failed to disclose key terms of the offers.⁴⁹ The FTC’s administrative complaint alleged that Progressive Chevrolet Company and Progressive Motors Inc. failed to properly disclose

⁴⁶ See RENT-TO-OWN: COSTLY CONVENIENCE, available at <https://www.consumer.ftc.gov/articles/0524-rent-own-costly-convenience>; see also Colleen Tressler, *Rent-to-Own: Consider your alternatives*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Mar. 23, 2015), <https://www.consumer.ftc.gov/blog/rent-own-consider-your-alternatives>. Rent-to-own transactions are self-renewing weekly or monthly contracts for rented merchandise, in which the consumer has no obligation to continue payments beyond the current week or month. The contract provides an option to buy the goods, either by the consumer continuing to pay for a certain period or by making early payment of the remaining payments. The consumer is responsible for each payment as it comes due, and can end the agreement by returning the merchandise to the store.

⁴⁷ See Colleen Tressler, *What to know about the new credit and debit chip cards*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Oct. 5, 2015), <https://www.consumer.ftc.gov/blog/what-know-about-new-credit-and-debit-chip-cards>; see also Colleen Tressler, *Scam du jour: Chip card scams*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Oct. 19, 2015), <https://www.consumer.ftc.gov/blog/scam-du-jour-chip-card-scams>.

⁴⁸ The Commission also issued updates to two additional publications. In one publication, the Commission provided new guidance on the types of reverse mortgages, the current features of these plans, and issues for consumers to consider, along with federal consumer protections and points to keep in mind when shopping for the loans. See REVERSE MORTGAGES, available at <https://www.consumer.ftc.gov/articles/0192-reverse-mortgages>. In the other publication, the Commission updated guidance on how consumers can dispute charges that appear on their card statements (including credit cards), for merchandise they never received. See BILLED FOR MERCHANDISE YOU NEVER RECEIVED, available at <https://www.consumer.ftc.gov/articles/0221-billed-merchandise-you-never-received>.

⁴⁹ See FTC, Press Release, *Ohio Auto Dealers Settle FTC Charges That They Deceived Consumers By Failing to Disclose Key Lease Terms*, Nov. 24, 2015, available at <https://www.ftc.gov/news-events/press-releases/2015/11/ohio-auto-dealers-settle-ftc-charges-they-deceived-consumers>; *In the Matter of Progressive Chevrolet Company*, FTC File No. 142 3133 (Nov. 24, 2015).

terms such as the total amount due at signing, whether a security deposit was required, and credit score requirements. According to the complaint, only in fine print at the bottom of the promotion did the advertisement disclose that the offer required an 800 Beacon score or higher with approved credit. The complaint alleged that fewer than 20% of consumers have such a credit score, and typical consumers could not qualify for the advertised terms. The companies were charged with running deceptive advertisements in violation of the FTC Act, and with violating the CLA and Regulation M by failing to disclose or clearly and conspicuously disclose required lease terms. The proposed settlement order, which would remain in effect for 20 years, prohibits the companies from advertising misleading lease or financing terms. It also would require them to clearly and conspicuously disclose all qualifications or restrictions on a consumer's ability to obtain the advertised terms. If the ad states that consumers must meet a certain credit score to qualify for the offer and a majority of consumers are not likely to meet the stated score, the ad must clearly and conspicuously disclose that fact. Respondents also would be required to clearly and conspicuously disclose all required lease terms and comply with all requirements of the CLA and Regulation M.

As discussed above, the FTC announced six actions as part of the nationwide Operation Ruse Control sweep; two of the six actions alleged that the dealers – Cory Fairbanks Mazda and Ross Nissan – ran deceptive lease ads that violated the FTC Act and CLA.⁵⁰ According to the FTC complaints, these ads touted sales or lease options that were qualified by fine-print disclaimers. In other instances, the disclaimers allegedly failed to disclose relevant terms, such as required down payments. For example, according to the complaint in Cory Fairbanks, the ads offered \$0 down and \$0 payments, but in fact, the vehicles required a substantial down payment or equivalent in trade-in equity, such as \$3,000 down, and also routinely required monthly payments. The Ross Nissan complaint alleged that the company deceptively claimed that consumers could pay \$0 at lease inception – when, in fact, consumers could not do so. Both complaints also alleged that these dealers failed to disclose or disclose clearly and conspicuously required lease terms, in violation of the CLA and Regulation M. The final consent orders in these two actions prohibit the companies, among other things, from misrepresenting the purchase cost or any other material fact about the price, sale, financing, or leasing of a vehicle. The orders also require the companies to clearly and conspicuously disclose required lease terms and comply with all requirements of the CLA and Regulation M.

As also discussed above, Planet Hyundai and Planet Nissan settled FTC charges that they used deceptive ads to promote the leasing of their vehicles, including advertising heavily discounted prices that were not generally available to consumers.⁵¹ Among other things, the FTC's complaint in Planet Hyundai alleged that the advertisements misled consumers by prominently advertising a vehicle for "\$36/mo," but in fine print noting that the offer was for a lease; in other instances, the ads offered \$0 at signing to obtain the vehicle when, the complaint charged, consumers actually had

⁵⁰ See *In the Matter of TT of Longwood, Inc. dba Cory Fairbanks Mazda*, Docket No. C-4531 (July 2, 2015), available at <https://www.ftc.gov/enforcement/cases-proceedings/152-3047/tt-longwood-inc-matter-cory-fairbanks-mazda>, and FTC, Press Release, *Auto Loan Relief Scam Banned from Telemarketing, Debt Relief Services Under FTC Settlement, Commission Also Approves Final Consent Orders in Two Deceptive Auto Dealership Cases* (July 10, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/07/auto-loan-relief-scammer-banned-telemarketing-debt-relief>; see also *supra* note 13.

⁵¹ See *supra* note 9.

to turn in a vehicle whose trade-in value is at least \$2,500 to lease the vehicle. According to the FTC's complaint in Planet Nissan, the advertisements prominently offered, "PURCHASE! NOT A LEASE!" when, in fact, many of the offers were for leases. The complaints also charged both companies with failing to disclose or clearly and conspicuously disclose required lease terms. As part of the consent orders, the dealerships are prohibited from misrepresenting the cost to purchase or lease a vehicle, and are required to clearly and conspicuously disclose required lease terms and comply with all requirements of the CLA and Regulation M.

As also described above, the Commission in 2015 issued a final consent order involving deceptive advertising charges against Trophy Nissan.⁵² According to the complaint, in certain advertisements, the dealer represented that consumers could end their current auto lease agreements for only one dollar, but, in fact, consumers could not end the agreement for that amount, because the dealer would instead add any outstanding obligation to the balance of the 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. The ads also allegedly violated the CLA, by offering certain lease terms and failing to disclose or disclose clearly and conspicuously additional required lease terms. Under the final order, Trophy is prohibited from misrepresenting in any advertisement the material terms of any promotion or other incentive, including that it will pay off a consumer's trade-in or the cost of leasing or purchasing a vehicle. Trophy is also prohibited from failing to clearly and conspicuously disclose material terms of its promotions or other incentives and must comply with all requirements of CLA and Regulation M.

B. Consumer Leasing: Consumer and Business Education

In 2015, the Commission released blog posts about auto lease ads for consumers and businesses, with guidance about misleading promotions, such as ads that prominently offered ZERO DOWN with low monthly payments and important terms that only appeared in fine print at the bottom of the page, if at all.⁵³ The blog posts also noted that only the fine print information stated that the offers were subject to an 800 Beacon credit score or higher. The guidance emphasized that if a majority of consumers are not likely to meet the minimum credit score, the ad must clearly and conspicuously disclose that fact.

Also, the FTC's consumer and business blog posts on auto advertisements, discussed above, included tips on what to watch out for in leasing promotions, as well as information about the FTC's recent enforcement actions involving leasing promotions.⁵⁴ In addition, the Commission's blog posts to consumers and businesses on solar power plans also included guidance on lease

⁵² See *supra* note 11.

⁵³ See Colleen Tressler, *Deceptive car ads give consumers a bum steer*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Nov. 24, 2015), <https://www.consumer.ftc.gov/blog/deceptive-car-ads-give-consumers-bum-steer>; see also Lesley Fair, *Shining a light on misleading claims in auto ads*, FTC BUSINESS CENTER BUSINESS BLOG (Nov. 24, 2015), <https://www.ftc.gov/news-events/blogs/business-blog/2015/11/shining-light-misleading-claims-auto-ads>.

⁵⁴ See *supra* notes 34 and 36.

agreements and lease costs and terms, and encourage comparison of these agreements with other alternatives.⁵⁵ Also, the Commission’s publication and blog post on RTO transactions and issues include information about the fact that these plans are generally not covered by certain federal consumer protection laws, although it is possible that some lease-purchase plans could be covered, depending on the arrangement.⁵⁶

IV. Regulation E (EFTA)

In 2015, the agency had seven 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

1. Negative Option Cases

Four of the Commission’s cases alleging violations of EFTA and Regulation E arose in the context of “negative option” plans.⁵⁷ 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 consumer’s debit or credit card number. If the consumer does not cancel before the end of the trial period, the shipments of goods or provision of services continue, and the consumer incurs recurring charges. 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 FTC sued a group of marketers for using allegedly bogus “risk-free trial” offers to sell skincare products online in federal court, and obtained a temporary restraining order halting the defendants’ deceptive marketing practices, freezing their assets, and appointing a receiver over their business.⁵⁸ The FTC’s complaint charges the individual and corporate defendants that sell AuraVie, Dellure, LéOR Skincare, and Miracle Face Kit brand products with using deceptive offers to trick consumers into providing their credit or debit card information, and automatically enrolling them in a buying program with recurring fees (such as a monthly charge of \$97.88). According to the

⁵⁵ See *supra* note 45.

⁵⁶ See *supra* note 46.

⁵⁷ 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.

⁵⁸ See FTC, Press Release, *At FTC’s Request, Court Temporarily Stops Online Skincare Marketers Who Deceive Consumers with Bogus “Risk Free Trial” Offers and Recurring Fees*, June 25, 2015, available at <https://www.ftc.gov/news-events/press-releases/2015/06/ftcs-request-court-temporarily-stops-online-skincare-marketers>. *FTC v. Bunzai Media Group, Inc.*, No. CV 15-4527 (C.D. Cal. filed June 16, 2015) (complaint and ex parte temporary restraining order with asset freeze, appointment of temporary receiver, and other equitable relief), available at <https://www.ftc.gov/enforcement/cases-proceedings/152-3067/bunzai-media-group-inc-auravie>.

complaint, the defendants also make it difficult for consumers to cancel the memberships, stop or avoid the charges, or obtain a refund. They allegedly debited consumers' bank accounts on a recurring basis without obtaining a written authorization from, or providing a copy of the authorization to, consumers for the preauthorized electronic fund transfers, in violation of EFTA and Regulation E. The FTC also charged defendants with unfair and deceptive practices, including for deceptive representations to consumers and unauthorized charging of consumers' accounts, in violation of the FTC Act, and with violations of the Restore Online Shoppers' Confidence Act. The court later also issued preliminary injunctions (some stipulated) as to several defendants.⁵⁹ Litigation continues in the matter.

In a second case, which was previously filed, the court granted partial summary judgment in favor of the FTC.⁶⁰ The court ruled, among other things, that the 61 corporate defendants, including I Works, had operated as a common enterprise and that Johnson – the corporate defendants' CEO, owner, or co-owner – is personally liable for the corporations' violations. In addition to violations of the FTC Act, the FTC's complaint alleges that the defendants violated EFTA and Regulation E by debiting consumers' bank accounts without their signed written authorization and without providing consumers with a copy of their written authorization. Litigation continues in the matter.

In the third case, the FTC obtained a preliminary injunction against a marketer of diet supplements, Health Formulas, for deceptive advertising and recurring unauthorized withdrawals, in violation of the FTC Act and EFTA.⁶¹ The Commission later obtained a stipulated order with certain defendants, providing for a \$105 million judgment (with part of the judgment suspended upon payment of specified funds in view of defendants' financial condition), banning negative option sales in most instances, and banning sales of dietary supplements, among other relief.⁶² Litigation continues in that matter. In a fourth case, the FTC mailed 23,406 checks totaling more than \$3.7 million to consumers, as a result of a prior settlement of a complaint including FTC Act and EFTA violations.⁶³

⁵⁹ *Id.* (C.D. Cal. July 23, 2015) (order on stipulation to enter preliminary injunction with asset freeze, appointment of permanent receiver, and other equitable relief as to Alon Nottea and Roi Reuveni); (C.D. Cal. July 23, 2015) (amended order on stipulation to enter preliminary injunction with asset freeze, appointment of permanent receiver, and other equitable relief as to Oz Mizrahi); (C.D. Cal. July 24, 2015) (order on stipulation to enter preliminary injunction with asset freeze, appointment of permanent receiver, and other equitable relief as to Doron Nottea and Motti Nottea); (C.D. Cal. Sept. 9, 2015) (preliminary injunction order with asset freeze, appointment of permanent receiver, and other equitable relief as to defendants Igor Latsanovski and Calenergy, Inc.).

⁶⁰ *FTC v. Johnson*, No. 2:10-cv-02203 (D. Nev. Dec. 31, 2015) (order granting partial summary judgment).

⁶¹ *FTC v. Health Formulas, LLC*, No. 2:14-cv-01649 (D. Nev. filed May 6, 2015) (preliminary injunction order).

⁶² *Id.* (D. Nev. Dec. 22, 2015) (stipulated order for permanent injunction and monetary judgment regarding defendants Chapnick, Smukler & Capnick, Inc., Brandon Chapnick, and Keith Smukler). The full judgment will become due immediately if the defendants are found to have misrepresented their financial condition.

⁶³ See FTC, Press Release, *FTC Returns Money to Consumers Who Bought Allegedly Bogus Weight-Loss Products*, Oct. 1, 2015, available at <https://www.ftc.gov/news-events/press-releases/2015/10/ftc-returns-money-consumers-who-bought-allegedly-bogus-weight>. The FTC and the State of Connecticut had sued the marketers of LeanSpa, charging that they used fake websites to promote acai berry and "colon cleanse" weight-loss products, and falsely told consumers they could receive free trials by paying a nominal shipping and handling cost. In reality, consumers ended up paying \$79.95 for the trial and for recurring monthly shipments of the product that were hard to cancel, and, among other

2. Other Cases

Also in 2015, the Commission engaged in litigation in three other cases, two involving payday lending and one involving consumer electronics financing.

In one of the payday lending cases, described above, AMG Services and MNE Services, and others, agreed to settle charges in a lawsuit the FTC had previously filed.⁶⁴ The FTC's complaint alleged, among other things, that defendants made preauthorized debits from consumers' bank accounts as a condition of the loans, in violation of EFTA. The settlement order prohibits the defendants from conditioning the extension of credit on preauthorized electronic fund transfers, among other things. Litigation continues in the matter with other defendants. In the other payday lending case, also discussed above, among other things, the operators of CWB Services agreed to be banned from the consumer lending business under the settlements with the FTC; the order also prohibits defendants from causing debits to consumers' bank or other financial accounts without the consumers' express, informed consent. The order also bans defendants from causing debits to natural persons' accounts without obtaining a written authorization, in advance, for recurring electronic fund transfers and providing a copy of the authorization to such persons.⁶⁵ The Commission's complaint had alleged, among other things, that the defendants conditioned the extension of credit for payday loans to consumers on recurrent electronic fund transfers, and also debited consumers' bank accounts on a recurrent basis without providing a written authorization or providing to consumers a copy of that authorization, in violation of EFTA.

As also noted above, the district court ruled in the FTC's favor in the consumer electronics financing case against BlueHippo Funding, with respect to calculating a monetary award.⁶⁶ The FTC's underlying complaint against BlueHippo included allegations that the defendants conditioned the extension of credit on mandatory preauthorized transfers, in violation of EFTA. Litigation in the matter continued in 2015.

things, for which authorization for recurrent charges to bank accounts was not obtained, in violation of EFTA and Regulation E.

In additional litigation in this matter, the court granted summary judgment to the FTC, ruling that LeadClick Media, an affiliate marketing network, and its parent company, CoreLogic, Inc., must turn over \$11.9 million in ill-gotten gains received from the deceptive marketing scheme that sold the purported weight-loss products; the defendants are appealing the decision. *FTC v. LeanSpa*, No. 3:11-01715 (D. Conn. Mar. 6, 2015) (granting summary judgment to the FTC), *appeal docketed sub nom. FTC v. LeadClick Media, Inc.*, No. 15-1009 (2d Cir. Apr. 2, 2015); *see also* FTC, Press Release, *Federal Court Rules Affiliate Marketing Network and its Parent Company Must Turn Over \$16 Million They Received From Deceptive Marketing Scheme*, Apr. 6, 2015, available at <https://www.ftc.gov/news-events/press-releases/2015/04/federal-court-rules-affiliate-marketing-network-its-parent>.

⁶⁴ *See supra* notes 17 & 18.

⁶⁵ *See supra* note 20.

⁶⁶ *See supra* note 23.

B. Electronic Fund Transfers: Rulemaking

The FTC does not have rulemaking authority under the EFTA, but in 2015 the Commission amended the Telemarketing Sales Rule, which addresses issues related to EFTA.⁶⁷ Among other things, the amended rule, for telemarketing transactions, bans the use of four payment methods that are favored by con artists and scammers and that provide little or no systematic monitoring to detect fraud.⁶⁸ The rule's supplementary information notes that, unlike conventional payment methods, the four prohibited payment methods do not have the consumer protections afforded under other federal laws such as the EFTA and Regulation E.⁶⁹

C. Electronic Fund Transfers: Consumer and Business Education

In 2015, the FTC issued blog posts for consumers and business with guidance about negative option plans, explaining certain EFTA and Regulation E violations, and providing tips to consumers on how to avoid unauthorized charges.⁷⁰ The FTC's business blog post on deceptive payday lending also included warnings about violations of EFTA.⁷¹ In addition, the FTC's blog posts on chip cards included warnings about how chip card scams can affect debit cards.⁷² Further, the revised publication about disputing bills for merchandise consumers never received, discussed above, includes tips for dealing with debit card charges, and notes that debit card protections are different from those for credit cards.⁷³

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⁶⁷ See FTC, Press Release, *FTC Amends Telemarketing Rule to Ban Payment Methods Used by Scammers*, Nov. 18, 2015, available at <https://www.ftc.gov/news-events/press-releases/2015/11/ftc-amends-telemarketing-rule-ban-payment-methods-used-scammers>. The Commission vote approving the final rule was 3-1, with Commissioner Maureen Ohlhausen voting no and issuing a separate statement, dissenting in part. Commissioner Ohlhausen's statement is available at https://www.ftc.gov/system/files/documents/public_statements/881203/151118tsrmkospeech.pdf.

⁶⁸ See 16 CFR 310, Telemarketing Sales Rule, Final Rule, 80 Fed. Reg. 77520 (Dec. 14, 2015), available at <https://www.ftc.gov/policy/federal-register-notices/16-cfr-part-310-telemarketing-sales-rule-final-rule-amendments>.

⁶⁹ See, e.g., 80 Fed. Reg. at 77533-35.

⁷⁰ See Aditi Jhaveri, *Strings attached to some "risk-free" trial offers*, FTC BUREAU OF CONSUMER PROTECTION BLOG (June 25, 2015), <https://www.consumer.ftc.gov/blog/strings-attached-some-risk-free-trial-offers>; see also Lesley Fair, *Running the risk*, FTC BUSINESS CENTER BUSINESS BLOG (June 25, 2015), <https://www.ftc.gov/news-events/blogs/business-blog/2015/06/running-risk>.

⁷¹ See *supra* note 40.

⁷² See *supra* note 47.

⁷³ See *supra* note 48.

We hope that the information discussed above responds to your inquiry and will be useful in preparing the CFPB's Annual Report to Congress.⁷⁴ Should you need additional assistance, please contact me at (202) 326-2972, or Carole Reynolds at (202) 326-3230.

Sincerely,

Malini Mithal
Acting Associate Director
Division of Financial Practices

⁷⁴ 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 2015, 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.