

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



Division of Financial Practices

May 17, 2018

Paul Sanford, Assistant Director
Supervision Examinations
Bureau of Consumer Financial Protection
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 (the Truth in Lending Act or TILA); Regulation M (the Consumer Leasing Act or CLA); and Regulation E (the Electronic Fund Transfer Act or EFTA) (collectively "the Regulations").¹ You request this information for use in preparing the Bureau of Consumer Financial Protection's (BCFP) 2017 Annual Report to Congress. Specifically, you ask for information concerning the FTC's activities with respect to the Regulations during 2017. 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

¹ The TILA is at 15 U.S.C. § 1601 *et seq.*; the BCFP's Regulation Z is at 12 C.F.R. Part 1026; and 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 BCFP's Regulation M is at 12 C.F.R. Part 1013; and 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 BCFP's Regulation E is at 12 C.F.R. Part 1005; and 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.

BCFP 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, the CLA and Regulation M, and the EFTA and Regulation E. In addition, the Act gave the Commission the authority to enforce any BCFP 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 BCFP 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 BCFP.⁴

II. Regulation Z (the TILA) and Regulation M (the CLA)

In 2017, the Commission engaged in law enforcement; rulemaking, research and policy development; and consumer and business education, all relating to the topics covered by the TILA and Regulation Z and the CLA and Regulation M, including the advertisement, extension, and certain other aspects of consumer credit and leasing.⁵

³ The FTC has authority to enforce the TILA and Regulation Z, the CLA and Regulation M, and the 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) (the TILA and Regulation Z, and the CLA and Regulation M) and 15 U.S.C. § 1693o (the EFTA and Regulation E).

⁴ See FTC, *Memorandum of Understanding between the Consumer Financial Protection Bureau and the Federal Trade Commission*, Jan. 20, 2012, available at <https://www.ftc.gov/system/files/120123ftc-cfpb-mou.pdf>; and FTC, *Memorandum of Understanding between the Consumer Financial Protection Bureau and the Federal Trade Commission*, Mar. 6, 2015, available at https://www.ftc.gov/system/files/documents/cooperation_agreements/150312ftc-cfpb-mou.pdf; see also Dodd-Frank Act, § 1024. In March 2018, the FTC and BCFP extended the current MOU until June 6, 2018, to facilitate completion of the reauthorization in progress. See *March 2018 - Extension of Memorandum of Understanding between the Federal Trade Commission and the Consumer Financial Protection Bureau*, available at <https://www.ftc.gov/policy/cooperation-agreements/ftc-cfpb-interagency-cooperation-agreement>.

In addition, the Commission and Veterans Administration coordinate efforts, through a memorandum of agreement, to stop fraudulent and deceptive practices, including financing practices, targeted at U.S. servicemembers, veterans, and dependents who use military education benefits. See FTC, *Memorandum of Agreement Between the Federal Trade Commission and the Department of Veterans Affairs*, Nov. 10, 2015, available at https://www.ftc.gov/system/files/documents/cooperation_agreements/151110ftc_va_mou.pdf. Among other things, the agreement 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.

A. Truth in Lending and Consumer Leasing: Enforcement Actions

1. Non-Mortgage Credit and Leasing

In 2017, the Commission's law enforcement efforts against those who market or extend non-mortgage credit included actions involving automobile financing, payday loans, and financing of consumer electronics.

a. Automobiles (Credit and Leasing)

In 2017, the FTC continued its efforts to combat deceptive automobile dealer practices, including by obtaining three settlements – two federal court actions and one administrative consent order – involving the TILA and Regulation Z (credit) and the CLA and Regulation M (leasing). In one federal court action, the FTC obtained a stipulated final order with a civil penalty.⁶ According to the FTC's complaint, a Southern California-based group of auto dealerships (collectively, Norm Reeves) violated a prior consent order with the FTC by misrepresenting the total cost of vehicle financing or leases to prospective buyers or misrepresenting the offer's availability to all consumers.⁷ The complaint also charged that defendants failed to disclose, or did not clearly and conspicuously disclose, credit and lease information required by the TILA and the CLA, and failed to maintain proper records, in violation of the prior order. The stipulated order requires payment of a \$1.4 million civil penalty, and prohibits the dealers in any ad for purchasing, financing, or leasing vehicles from misrepresenting the cost of leasing, the cost of purchasing with financing, or any other material fact about the price, sale, financing or leasing.⁸ It also requires compliance with the TILA and Regulation Z and the CLA and Regulation M. The order also contains strong compliance and reporting requirements to ensure compliance with the order's terms.

In the other federal court action, the FTC obtained a stipulated order with a monetary judgment.⁹ The order settled charges, previously filed, that nine dealerships and owners (collectively, Sage Auto Group) allegedly used deceptive and unfair sales and financing practices, deceptive advertising, and deceptive online reviews, and violated the TILA and Regulation Z (credit) and the CLA and Regulation M (leases) by failing to clearly and

⁶ See FTC, Press Release, *Southern California Auto Dealership Group to Pay \$1.4 Million for Violating FTC Order Requiring Clear Financing and Leasing Disclosures in Its Advertisements*, November 6, 2017, available at <https://www.ftc.gov/news-events/press-releases/2017/11/southern-california-auto-dealership-group-pay-14-million>.

⁷ *FTC v. Norm Reeves, Inc.*, No. 8:17-cv-01942-JLS-DFM (C.D. Cal. filed Nov. 3, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/c-4436/norm-reeves>.

⁸ *Id.* (C.D. Cal. Nov. 3, 2017) (stipulated settlement and consent order), available at <https://www.ftc.gov/enforcement/cases-proceedings/c-4436/norm-reeves>.

⁹ See FTC, Press Release, *Los Angeles-Based Sage Auto Group Will Pay \$3.6 Million to Settle FTC Charges*, March 14, 2017, available at <https://www.ftc.gov/news-events/press-releases/2017/03/los-angeles-based-sage-auto-group-will-pay-36-million-settle-ftc>. The Commission vote approving the stipulated final order was 2-1, with then-Acting Chairman Maureen K. Ohlhausen dissenting.

conspicuously disclose required information in their advertising. The stipulated order with nine auto dealerships, their holding and management companies, and two individuals requires payment of \$3.6 million, and also prohibits the defendants from making misrepresentations relating to their advertising, add-on products, financing, and endorsements or testimonials.¹⁰ It bars the defendants from engaging in other unlawful conduct when a sale is cancelled, such as failing to return any downpayment or trade-in or seeking legal action, arrest, repossession or debt collection unless the action is lawful and the defendants intend to take such action. The order also prohibits the defendants from violating the TILA and Regulation Z, and the CLA and Regulation M.

In the administrative action, the Commission issued an administrative complaint and settled charges that auto dealer Cowboy Toyota deceptively advertised credit and leasing terms in ads placed in a regional Spanish-language newspaper.¹¹ According to the complaint, Cowboy Toyota ran full-page Spanish-language ads claiming that consumers could buy or lease a vehicle at certain favorable terms that were prominently stated in Spanish in the ads, with material limitations to those terms provided only in fine-print English at the bottom of the ads.¹² The complaint alleges the dealerships violated the FTC Act by misrepresenting many claims, including that: no down payment was required; the advertised low monthly payments were available to consumers who financed their purchases; the advertised rates, monthly payments, and other terms were available to consumers with bad credit; and certain new 2016 Toyotas were available for purchase at the time of the ads in 2017. According to the FTC's complaint, Cowboy Toyota's misrepresentation of the cost of purchasing or leasing cars, qualifications or restrictions for financing or leasing cars, and the availability of cars violated the FTC Act. The complaint also charged that the dealership failed to clearly and conspicuously disclose credit or lease information required by the TILA and Regulation Z (credit) or the CLA and Regulation M (leases) when the ads promoted certain terms, such as the monthly payment.

The final consent order prohibits the dealership from misrepresenting the cost of financing, buying or leasing a vehicle, and requires the dealership to accurately represent any qualifications or restrictions on a consumer's ability to obtain offered financing or lease terms, including restrictions based on their credit score or credit history. The order also requires the dealership to clearly and conspicuously disclose all financing and lease terms required in its ads. In addition, if most consumers likely will not meet a stated credit score or credit history requirement for the terms offered, the order requires the dealership to clearly and conspicuously

¹⁰ *FTC v. Universal City Nissan, Inc.*, No. 2:16-cv-07329 (C.D. Cal. Mar. 22, 2017) (stipulated order for permanent injunction and monetary judgment as to settling defendants), available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3008/universal-city-nissan-inc-et-al>.

¹¹ See FTC, Press Releases, *FTC Approves Final Consent Order in Cowboy Toyota Deceptive Advertising Case*, Jan. 24, 2018, available at <https://www.ftc.gov/news-events/press-releases/2018/01/ftc-approves-final-consent-order-cowboy-toyota-deceptive>, *Dallas Auto Dealer Settles Charges It Deceptively Advertised Sale and Lease Terms*, Dec. 1, 2017, available at <https://www.ftc.gov/news-events/press-releases/2017/12/dallas-auto-dealer-settles-charges-it-deceptively-advertised-sale>.

¹² *In the Matter of Cowboy AG LLC*, Docket No. C-4639 (Jan. 4, 2018), available at <https://www.ftc.gov/enforcement/cases-proceedings/172-3009/cowboy-ag-llc-matter>.

disclose that fact. In addition, if a representation is made in one language, the order also requires that any material limitations must be stated in the same language. The final order also prohibits Cowboy Toyota from misrepresenting the number of vehicles, makes, or models that are available for purchase or lease, and bars them from violating the TILA and Regulation Z and the CLA and Regulation M.

b. Payday Lending (Credit)

The FTC filed its reply brief in the defendants' appeal of the FTC's significant victory in its efforts to combat deceptive business practices of payday lenders in which a federal district court had found that racecar driver Scott A. Tucker and several corporate defendants in a payday lending scheme violated Section 5 of the FTC Act and the TILA, ordering defendants to pay \$1.3 billion, the largest litigated judgment ever obtained by the FTC.¹³ Litigation continues in this matter, and a monitor continues collecting and liquidating assets for redress if the FTC prevails on appeal.

c. Consumer Electronics Financing (Credit)

The Commission continued litigating in connection with a 2010 contempt order against BlueHippo Funding LLC, a consumer electronics retailer, for violating a prior FTC consent order.¹⁴ The consent order settled charges that the company had, among other things, violated the 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 advertised financing for computer purchases and did not order or ship the computers to purchasers in the promised timeframe. The district court found BlueHippo Funding LLC, BlueHippo Capital LLC, and Joseph Rensin, BlueHippo's CEO, in contempt for operating a deceptive computer financing scheme in violation of the consent order, and entered judgment against BlueHippo and Rensin for \$13.4 million (the harm consumers suffered as a result of the scheme),¹⁵ and the defendants appealed this judgment. In 2017, the appellate court rejected

¹³ *FTC v. AMG Capital Management, LLC*, No. 16-17197 (9th Cir. Dec. 12, 2017) (reply brief filed). According to the underlying matter, among other things, the defendants had falsely claimed they would charge borrowers the loan amount plus a one-time finance fee but instead made multiple withdrawals from consumers' bank accounts and assessed a new finance fee each time, without disclosing the true terms of the loan, in violation of Section 5 of the FTC Act and the TILA. See *FTC v. AMG Services, Inc.*, No. 2:12-cv-00536 (D. Nev. Sept. 30, 2016 (order granting summary judgment to FTC), *appeal docketed*, No. 16-17197 (9th Cir. Nov. 30, 2016). See also *FTC v. AMG Services, Inc.*, No. 2:12-cv-00536 (D. Nev. May 1, 2017) (amended order denying summary judgment to defendants, and making technical corrections to prior summary judgment order to FTC).

¹⁴ *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); (2d Cir. Feb. 12, 2014) (appellate order vacating district court ruling and remanding case).

¹⁵ *FTC v. BlueHippo Funding, LLC*, No. 08-cv-1819 (S.D.N.Y. Apr. 19, 2016) (final judgment imposing compensatory contempt sanctions), available at <https://www.ftc.gov/enforcement/cases-proceedings/052-3092/bluehippo-funding-llc-bluehippo-capital-llc>; and (opinion and order), available at <https://www.ftc.gov/enforcement/cases-proceedings/052-3092/bluehippo-funding-llc-bluehippo-capital-llc>; *appeal docketed*, No. 16-1599 (2d Cir. May 19, 2016).

defendants' arguments and affirmed the district court ruling for the FTC.¹⁶ Other litigation in this matter continues.

2. Mortgage-Related Credit: Forensic Audit Scams

The FTC also continued litigation in a case involving mortgage assistance relief services, which involved a forensic audit scam. 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 the 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 2017, the court ruled in the FTC's favor against the defendants that appealed the district's court summary judgment order against Lanier Law, its principals, and related companies for violations of the FTC Act, the Mortgage Assistance Relief Services Rule, and prior related judgments.¹⁷ The original complaint in this matter alleged that Lanier Law 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, 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. The appellate court affirmed the district court's 2016 final order, reported on last year, which had imposed a monetary judgment of \$13.5 million, banned these defendants from secured and unsecured debt relief products or services, and prohibited them from making misrepresentations regarding other financial products and services, and from violating other federal mandates.

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

1. Automobiles (Credit)

In 2017, following clearance from the Office of Management and Budget, the FTC commenced work on a qualitative study of consumers' experiences related to buying and financing automobiles at dealerships.¹⁸ The auto study includes in-depth consumer interviews

¹⁶ *FTC v. Rensin*, No. 16-1599 (2d Cir. Apr. 12, 2017) (judgment), (2d Cir. June 5, 2017) (mandate).

¹⁷ *See FTC v. Lanier Law, LLC*, No. 16-16524 (11th Cir. Nov. 2, 2017) (judgment), (11th Cir. Dec. 26, 2017) (mandate).

¹⁸ For more information about the study, *see* FTC, Press Release, *FTC Announces Second Federal Register Notice on Proposed Study of Consumers' Experiences Buying and Financing Automobiles from Auto Dealers*, Sept. 13, 2016, available at <https://www.ftc.gov/news-events/press-releases/2016/09/ftc-announces-second-federal-register-notice-proposed-study>, reported on last year. In that 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.

and review of consumers' purchase and finance documents.¹⁹ Assessment and review of information pertaining to the study is currently continuing. While the results will not be generalizable to the U.S. population, the FTC believes that the study will offer meaningful information about the consumers' experience, and inform FTC initiatives in this area, including consumer education about the purchase and finance process and business education to foster compliance with the laws the FTC enforces, such as the FTC Act, TILA, and CLA.

The FTC hosted a workshop, in cooperation with the Texas Attorney General's Office and U.S. Attorney's Office for the Northern District of Texas, on "Working Together to Protect Texas Consumers: A Common Ground Conference" in Dallas, Texas.²⁰ The workshop included many state and federal agencies and considered how civil, criminal, and regulatory enforcement agencies in Texas can better protect consumers and build better partnerships. At the event, FTC staff and the diverse law enforcement partners discussed a variety of issues facing Texas consumers, including auto sales and finance issues.

2. Military (Credit and Leasing)

In July, the FTC hosted a military consumer financial workshop, "Protecting Those Who Protect Our Nation" in San Antonio, Texas.²¹ The workshop examined financial issues and scams that can affect military consumers, including active duty servicemembers in all branches and veterans, and discussed various federal financial consumer protection laws, including the TILA, CLA, and Military Lending Act (MLA), and FTC resources available to military consumer advocates and representatives on financial readiness and fraud prevention. The workshop brought together diverse military consumer advocates, consumer advocates and groups, government representatives (local, state, and federal), military legal services and legal clinics (including at universities), and industry representatives.

In September, the FTC and state and local partners hosted another conference focused on military issues, "Protecting Military Consumers, A Common Ground Conference" in Los Angeles, California.²² The conference brought together and trained military attorneys and finance advisors, law enforcement, prosecution agencies, and consumer protection officials to identify, prevent, and respond to consumer fraud and other issues affecting servicemembers and

¹⁹ Interview participants and their personal identifying information, including credit scores, are anonymized in the information received by the FTC, and protected by the study firm.

²⁰ See *infra* note 33, Dama J. Brown, *Working Together to Protect Texas Consumers*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Aug. 18, 2017), <https://www.consumer.ftc.gov/blog/2017/08/working-together-protect-texas-consumers>.

²¹ See *Military Consumer Financial Workshop, Protecting Those Who Protect Our Nation* (July 19, 2017), available at <https://www.ftc.gov/news-events/events-calendar/military-consumer-workshop>. A webcast is available at that site.

²² See *Protecting Military Consumers, A Common Ground Conference* (Sept. 7, 2017), available at <https://www.ftc.gov/news-events/events-calendar/2017/09/protecting-military-consumers-common-ground-conference>.

their families. At the event, military attorneys, law enforcement personnel, and consumer protection officials discussed ways to identify, prevent, and address consumer fraud and issues affecting military servicemembers and their families, including federal laws such as the TILA and the MLA, state consumer protection laws, and counseling, dispute resolution and legal resources.

Also in 2017, the FTC launched its new Military Task Force and related web page. The task force is comprised of a cross-section of agency representatives, and is part of the FTC's ongoing and collaborative effort to provide resources for the military community.²³ The related web page is designed to highlight the work of the taskforce and make readily available the agency's military consumer resources.

In addition, the FTC staff continued to participate in an interagency group that coordinates with the Department of Defense (DoD) on amendments to its rule implementing the MLA, which includes issues related to the TILA and other credit matters.²⁴ The staff also worked with the American Bar Association's Standing Committee on Legal Assistance for Military Personnel ("ABA LAMP" or "committee"). The FTC serves as a liaison to ABA LAMP, and staff coordinates on FTC initiatives to assist military consumers, and provides training to servicemembers' and veterans' representatives in conjunction with the committee on consumer financial issues, including the MLA and the DoD military lending rule, consumer credit and TILA-related matters, and consumer leasing and CLA-related matters.

C. Truth in Lending and Consumer Leasing: Consumer and Business Education

1. Military (Credit)

The Commission released several blog posts, and information about Twitter chats, about military consumers and financial issues. One blog post by then-Acting Director of the FTC Bureau of Consumer Protection noted that the month of July is Military Consumer month, and referenced a new video of then-Acting FTC Chairman Ohlhausen with two FTC colleagues who are veterans.²⁵ Two blog posts noted that servicemembers and veterans face unique challenges dealing with financial issues, including frequent relocations and regular shopping for housing and buying or selling a car, and referenced the FTC's workshop on topics such as auto financing,

²³ See FTC, Press Release, *FTC Launches Website Dedicated to New Military Task Force*, Sept. 25, 2017, available at <https://www.ftc.gov/news-events/press-releases/2017/09/ftc-launches-website-dedicated-new-military-task-force>, and *Military Task Force, Resources for Servicemembers and Veterans*, available at <https://www.ftc.gov/policy/advocacy/military-task-force>.

²⁴ The MLA requires the DoD to coordinate with several federal agencies, including the FTC, in prescribing regulations and not less than every two years thereafter. 10 U.S.C. § 987.

²⁵ See Tom Pahl, then-Acting Dir., FTC Bur. of Consumer Protection, *Month of the Military Consumer*, FTC BUREAU OF CONSUMER PROTECTION BLOG (June 30, 2017), <https://www.consumer.ftc.gov/blog/2017/06/month-military-consumer>. The video of the then-Acting Chairman and FTC colleagues is at <https://www.ftc.gov/news-events/audio-video/video/july-month-military-consumer>. The blog post also referenced the FTC's Facebook page on military consumers at <https://www.facebook.com/MilitaryConsumer>.

student lending, information security, avoiding scams, and FTC resources.²⁶ Another blog post reviewed the discussions at the workshop, including that servicemembers and veterans can be targets of scams, that there are strong consumer protections in place for military consumers, and that many resources exist to assist servicemembers and veterans to deal with financial and life planning issues, including through DoD and legal service offices.²⁷ An additional blog post recounted issues that servicemembers may find on leaving the military, including for wounded warriors recovering from serious injuries, and the importance of having guides and resources to navigate their financial future – such as how financial counseling can set a path during military service for a successful post-service financial future.²⁸ The FTC also hosted, and released information about, live Twitter chats on military consumer finance issues for servicemembers, veterans, and their families, including information about credit and other payment cards in a Twitter chat with the National Credit Union Administration, Military Saves, and the National Military Family Association.²⁹

In addition, the Commission issued guidance for business in the military area on financial issues. One blog post addressed how businesses can honor Military Consumer month, and resources the FTC provides.³⁰ Another blog post referenced collaborative projects of the Office of the Texas Attorney General and the FTC to fight fraud and deception in the marketplace, including the Attorney General’s Office participation at the FTC’s Military Consumer Financial Workshop in San Antonio, and to examine finance issues and scams affecting servicemembers, veterans and their families.³¹

2. Automobiles (Credit)

The Commission issued a blog post on auto buying and financing, to help consumers keep in mind things to consider when reviewing or hearing car ads. Among the guidance, the

²⁶ See Cristina Miranda, *FTC to host workshop protecting military consumers*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Apr. 12, 2017), <https://www.consumer.ftc.gov/blog/2017/04/ftc-host-workshop-protecting-military-consumers>; *FTC Consumer Financial Workshop is July 19th*, FTC BUREAU OF CONSUMER PROTECTION BLOG (June 29, 2017), <https://www.consumer.ftc.gov/blog/2017/06/military-consumer-financial-workshop-july-19th>.

²⁷ See Nat Wood, *What we heard: military consumer financial issues*, FTC BUREAU OF CONSUMER PROTECTION BLOG (July 25, 2017), <https://www.consumer.ftc.gov/blog/2017/07/what-we-heard-military-consumer-financial-issues>.

²⁸ See Carol Kando-Pineda, *Helping wounded warriors*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Sept. 5, 2017), <https://www.consumer.ftc.gov/blog/2017/09/helping-wounded-warriors>.

²⁹ See, e.g., Carol Kando-Pineda, *July 26: Military Consumer on Twitter and Facebook*, FTC BUREAU OF CONSUMER PROTECTION BLOG (July 24, 2017), <https://www.consumer.ftc.gov/blog/2017/07/july-26-military-consumer-twitter-and-facebook>.

³⁰ See Lesley Fair, *How is your business honoring Month of the Military Consumer?* FTC BUSINESS CENTER BUSINESS BLOG (July 13, 2017), <https://www.ftc.gov/news-events/blogs/business-blog/2017/07/how-your-business-honoring-month-military-consumer>.

³¹ See Lesley Fair, *Lone Star, but united partners*, FTC BUSINESS CENTER BUSINESS BLOG (Oct. 18, 2017), <https://www.ftc.gov/news-events/blogs/business-blog/2017/10/lone-star-united-partners>.

blog urged consumers to: 1) review the fine print - which should not contradict the larger print; 2) compare offers from multiple dealers and shop around; 3) get all information in the same language to ensure you understand the full offer (and be skeptical if the ad is in one language, such as Spanish, but parts of it are in English); and 4) ask questions, to be clear on the terms before signing anything.³² The Commission also released a blog post, discussing the joint FTC and other civil, criminal and regulatory enforcement agencies conference in Texas, which included diverse state and federal agencies and discussed local and national issues of interest to consumers. The topics included fighting unfair lending and deceptive advertising in car sales.³³

3. Other (Leasing)

The Commission also issued a blog post to alert consumers to a practice with which they may be unfamiliar: pet leasing. The blog post noted that consumers are remitting payments – sometimes a few thousand dollars – to stores that offer payment plans where you sign an agreement to make payments for what you believe to be is ownership; instead, you may unintentionally sign up for costly, extended lease-to-own payments in which you may pay for years yet the company still owns the pet. If something happens to the pet, you may still owe the payments, and might not be able to obtain a refund; if you miss a payment, the company may have the right to repossess your pet. The blog post encouraged consumers to learn more about how these plans work and be sure to understand the terms – and notify the FTC if the terms were not clear or were undisclosed.³⁴

III. Regulation E (the EFTA)

In 2017, the FTC had six new or ongoing cases pertaining to the EFTA and Regulation E. The Commission also engaged in research and policy work and educational activities involving the EFTA and Regulation E.

A. Electronic Fund Transfers: Enforcement Actions

1. Negative Option Cases

Five of the Commission’s cases alleging violations of the EFTA and Regulation E arose in the context of “negative option” plans.³⁵ Under these plans, a consumer typically agrees to

³² See Rosario Mendez, *Looking to buy a car? Four things to keep in mind*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Dec. 1, 2017), <https://www.consumer.ftc.gov/blog/2017/12/looking-buy-car-four-things-keep-mind>.

³³ See Dama J. Brown, Dir., Southwest Region, FTC, *Working together to protect Texas consumers*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Aug. 18, 2017), <https://www.consumer.ftc.gov/blog/2017/08/working-together-protect-texas-consumers>.

³⁴ See Lisa Lake, *Are you buying or leasing your pet? (Not joking.)*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Nov. 7, 2017), <https://www.consumer.ftc.gov/blog/2017/11/are-you-buying-or-leasing-your-pet-not-joking>.

³⁵ Negative option plans can involve the use of debit cards, credit cards, or both. The EFTA and Regulation E apply to debit cards; the TILA and Regulation Z apply to credit cards.

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. The 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 2017, the FTC and the State of Maine filed a complaint and obtained stipulated final orders with all nine defendants that advertised dietary supplements purporting to improve memory and to reduce back and joint pain.³⁶ According to the complaint, defendants failed to disclose that consumers would have to enroll in an auto-ship continuity plan to qualify for the "risk-free" trial offer, and would have 14 days or less to try the products.³⁷ The complaint also alleged that defendants failed to make important disclosures when they "up-sold" consumers negative option buying clubs and discount medical programs with ongoing fees, charging many consumers for poorly disclosed auto-ship continuity plans they did not want. The complaint charged the defendants with various law violations, including violations of the FTC Act and the EFTA and Regulation E, for debiting consumers' bank accounts on a recurring basis without obtaining a written authorization signed or similarly authenticated from consumers for preauthorized electronic fund transfers from their accounts, and with failing to provide consumers with a copy of the authorization. Each final order bans the defendants from making deceptive claims similar to those charged in the complaint, and prohibits them from engaging in a wide range of marketing practices that have caused serious financial injury to consumers;³⁸ the orders against six defendants include monetary judgments of more than \$6.57 million – as to five defendants with all but \$556,000 suspended and as to the sixth defendant a full suspension –

³⁶ See FTC, Press Release, *FTC, Maine Attorney General Shut Down Web of Deceptive Supplement Sellers*, February 22, 2017, available at <https://www.ftc.gov/news-events/press-releases/2017/02/ftc-maine-attorney-general-shut-down-web-deceptive-supplement>, and FTC, Press Release, *Three Dietary Supplement Marketers Settle FTC, Maine AG Charges*, August 23, 2017, available at <https://www.ftc.gov/news-events/press-releases/2017/08/three-dietary-supplement-marketers-settle-ftc-maine-ag-charges>.

³⁷ *FTC and State of Maine v. XXL Impressions LLC*, No. 17-cv-00067 (D. Me. filed Feb. 22, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/152-3024-162-3033-162-3036/xxl-impressions-llc-j2-response-llp>.

³⁸ *FTC and State of Maine v. XXL Impressions LLC*, No. 17-cv-00067 (D. Me. Mar. 10, 2017) (stipulated final judgment and order for permanent injunction and other equitable relief as to defendants J2 Response L.L.P., Justin Bumann, and Justin Steinle) (J2Response, Bumann, and Steinle order), (D. Me. Mar. 10, 2017) (stipulated final judgment and order for permanent injunction and other equitable relief as to defendants XXL Impressions LLC., and Jeffrey R. Powlowsky) (XXL Impressions and Powlowsky order), (D. Me. Mar. 10, 2017) (stipulated final judgment and order for permanent injunction and other equitable relief as to defendant Brazos Minshew); (D. Me. Sept. 13, 2017) (stipulated final judgment and order as to defendants Synergixx, LLC, and Charlie R. Fusco) (Synergixx and Fusco order), (D. Me. Sept. 13, 2017) (stipulated final order for permanent injunction and other equitable relief as to defendant Ronald Jahner).

based upon the defendants' abilities to pay.³⁹ The orders together resolve the claims against all of the defendants in this matter.

In a second negative option case involving the EFTA, the FTC filed a complaint and obtained a stipulated order with a network of online marketers and three individuals that allegedly used deceptive offers of “free” and “risk-free” trials, and automatically enrolled consumers without their consent in negative option auto-ship programs with additional monthly charges for weight-loss, muscle-building, and wrinkle-reduction products.⁴⁰ The Commission charged defendants with violating the FTC Act, the Restore Online Shoppers' Confidence Act (ROSCA), and the EFTA, including by debiting consumers' bank accounts on a recurring basis without obtaining a written authorization signed or similarly authenticated from consumers for preauthorized electronic fund transfers from their accounts, and for failing to provide consumers with a copy of the authorization.⁴¹ The court order settling the FTC's charges imposes a judgment of \$179 million – the amount that the FTC alleges consumers nationwide paid the defendants over a period of more than five years – which will be suspended after the defendants pay approximately \$6.4 million to the Commission.⁴² The order also prohibits the defendants from using the deceptive marketing tactics that they had allegedly used to promote their products and bans them in part from future negative option sales.

In a third negative option case, which was previously filed, the FTC mailed 227,000 refund checks totaling more than \$9.8 million, with an average refund of \$43, to people who bought “fat burning” and “weight loss” products and other dietary supplements, DVDs, or skin creams, including Pure Green Coffee Bean Plus and RKG Extreme, from Health Formulas LLC and related companies.⁴³ The court entered stipulated final orders with all remaining individual and corporate defendants in this matter.⁴⁴ The previously filed complaint alleged that the defendants deceptively pitched a variety of dietary supplements and other weight-loss, virility,

³⁹ *FTC and State of Maine v. XXL Impressions LLC.*, No. 17-cv-00067 (D. Me. Mar. 10, 2017) (J2 Response, Buman, and Steinle order) and (*XXL Impressions and Powlowsky order*) (all but \$556,000 suspended); (D. Me. Sept. 13, 2017) (*Synergixx and Fusco order*) (all suspended). The full judgment will become due if the defendants are found to have misrepresented their financial condition.

⁴⁰ See FTC, Press Release, *Internet Marketers of Dietary Supplement and Skincare Products Banned from Deceptive Advertising and Billing Practices*, Nov. 15, 2017, available at <https://www.ftc.gov/news-events/press-releases/2017/11/internet-marketers-dietary-supplement-skincare-products-banned>.

⁴¹ *FTC v. Tarr Inc.*, No. 17-cv-2024 (S.D. Cal. Nov. 3, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3236-x180001/tarr-inc>. The court subsequently entered an amended order correcting clerical omission of an appendix. *Id.* (S.D. Cal. Nov. 27, 2017 (order granting joint motion to amend order on motion for settlement by Federal Trade Commission)).

⁴² The full judgment will become due if the defendants are found to have misrepresented their financial condition.

⁴³ See FTC, Press Release, *FTC Sending Refund Checks Totaling More Than \$9.8 Million to People Who Were Charged for “Free Trials” for Health Products*, Oct. 10, 2017, available at <https://www.ftc.gov/news-events/press-releases/2017/10/ftc-sending-refund-checks-totaling-more-98-million-people-who>.

⁴⁴ *FTC v. Jason Miller*, No. 14-01649 (D. Nev. Feb. 22, 2017).

muscle-building, and skin cream products. The FTC alleged that the defendants tricked consumers into disclosing their personal financial information through the use of a “free trial” or discount program with undisclosed costs, and then enrolled them, often without their authorization, in a negative option program, and allegedly debited consumers’ bank accounts on a recurring basis without obtaining a written authorization from, or providing a copy of the authorization to, consumers, in violation of the EFTA. The complaint also alleged that the defendants failed to provide a way for consumers to stop the automatic charges, and failed to disclose material facts about their refund and cancellation policy, and charged the defendants with unfair and deceptive practices, in violation of the FTC Act, and with violations of the ROSCA. The stipulated final order imposed a \$105 million judgment and barred the defendants from the conduct alleged in the complaint. Based on the defendants’ inability to pay, the remainder of the \$105 million judgment was suspended after the defendants surrendered various personal and business assets.⁴⁵

In a fourth negative option case, which was previously filed, following a trial, the court held remaining defendants Terrason Spinks and his company, Jet Processing Inc., liable for \$280 million in consumer harm caused by the IWorks scheme.⁴⁶ According to the previously filed complaint, IWorks’ online marketing campaigns had falsely claimed that federal grants for personal needs were generally available to consumers, and that people who used its money-making product were likely to earn substantial income. The complaint also alleged that IWorks campaigns enticed consumers to sign up for purportedly “free” or “risk free” trials, but then charged them recurring monthly fees they never agreed to pay, in violation of the FTC Act and the EFTA. Among other things, the court found that Spinks participated in creating IWorks’ money-making product, and that he and Jet Processing obtained merchant accounts that allowed IWorks to continue bilking consumers when payment processors were closing IWorks’ accounts due to high chargeback rates – reversals of charges to consumers’ credit cards. The court’s final order bans Spinks and Jet Processing from selling grant and money-making products, and imposes a \$280 million judgment against them. It also bans the defendants from violating the EFTA.⁴⁷

In 2017, in a fifth negative option case, which was previously filed, a default judgment was entered against one defendant in this matter, the owner of BunZai Media Group, that trained customer-service representatives on responding to consumer complaints pertaining to the corporate defendants, harming consumers nationwide with his unfair and deceptive business practices. Among other things, the court found that the defaulting defendant failed to disclose or disclose adequately material terms and conditions of defendants’ online sales of skincare

⁴⁵ The full judgment will become due if the defendants are found to have misrepresented their financial condition.

⁴⁶ See FTC, Press Release, *Court Holds Terrason Spinks and Jet Processing Inc. Liable for \$280 Million in Consumer Harm Caused by the IWorks Scheme*, Aug. 29, 2017, available at <https://www.ftc.gov/news-events/press-releases/2017/08/court-holds-terrason-spinks-jet-processing-inc-liable-280-million>.

⁴⁷ *FTC v. Johnson*, No. 2:10-cv-02203 (D. Nev. Aug. 24, 2017) (order for permanent injunction and monetary judgment as to defendants Terrason Spinks and Jet Processing, Inc.), available at <https://www.ftc.gov/enforcement/cases-proceedings/102-3015/i-works-inc-et-al>.

products relating to its negative option continuity plans.⁴⁸ The court found that the defaulting defendant violated the EFTA and Regulation E by debiting consumers' bank accounts on a recurring basis without obtaining a written authorization signed or similarly authenticated from consumers for preauthorized electronic fund transfers from their accounts and debiting their bank accounts on a recurring basis without providing a copy of the authorization to the consumers. The court awarded judgment to the FTC of over \$45 million against the defaulting defendant (as individual and as manager of the defendant company), banned him from negative option sales, prohibited various conduct, including failing to obtain written authorization signed or similarly authenticated from consumers for preauthorized electronic fund transfers from the consumers' accounts, or failing to provide a copy of the authorization to the consumers. Litigation in this matter was ongoing at the end of 2017.

2. Other Cases

As described above, the Commission continued litigating in connection with a 2010 contempt order against BlueHippo Funding LLC.⁴⁹ The FTC's underlying complaint against BlueHippo included allegations that the defendants conditioned the extension of credit on mandatory preauthorized transfers in violation of the EFTA, and the 2008 order had prohibited the defendants from violating the EFTA and Regulation E. As noted above, in 2017, the appellate court rejected defendants' arguments and affirmed the district court ruling for the FTC. Other litigation in this matter continues.

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

The FTC does not have rulemaking authority under the EFTA but in 2017 engaged in research and policy work that addressed EFTA-related issues.

The FTC worked with the DoD interagency group and with ABA LAMP as discussed above, on electronic funds transfer issues. Among other things, the FTC staff coordinated with the DoD interagency group on issues related to preauthorized electronic fund transfers (EFTs) in the military lending rule. The FTC also provided input to ABA LAMP, and conducted trainings for judge advocates general and others in conjunction with ABA LAMP trainings, on EFTs, FTC cases in this area, and the EFTA requirements.

As also discussed above, the FTC also hosted a "Military Consumer Financial Workshop: Protecting Those Who Protect Our Nation" in San Antonio, Texas, which included issues pertaining to electronic funds transfers in discussion of legal rights and remedies for military consumers.⁵⁰

⁴⁸ *FTC v. Bunzai Media Group, Inc.*, No. 15-cv-04527 (C.D. Cal. July 26, 2017).

⁴⁹ *See supra* notes 14-16.

⁵⁰ *See supra* note 21.

C. Electronic Fund Transfers: Consumer and Business Education

In 2017, the Commission issued blog posts for consumers and businesses providing guidance about negative option plans and recent cases on these issues, addressing certain EFTA and Regulation E violations and providing tips to consumers to avoid automatic debits to their accounts and other practices challenged in these matters.⁵¹

In addition, the FTC released a blog post discussing its second FinTech Forum – reported on last year – that brought together government and industry participants, consumer advocates, and other stakeholders, to discuss two evolving types of financial technology, including peer-to-peer payment systems and crowdfunding.⁵² The blog post described how peer-to-peer payment systems (often mobile apps and other online services) allow consumers to exchange money electronically, and crowdfunding provides a platform for charities and individuals to raise funds quickly in times of need and for small companies and entrepreneurs to raise money, gain exposure, and build a product market. The blog post noted that panelists on both panels observed that existing consumer protection laws can apply in these areas, including regarding dispute resolution issues. For example, the blog noted that panelists in the peer-to-peer area considered that the protections a consumer may have from unintended or unauthorized charges depend on the payment source, such as a credit or debit account or linked bank account, and that clear policies are important regarding unauthorized payments, especially up front, so that consumers understand what to expect in a dispute.

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⁵¹ See Lisa Lake, *Know what lies beneath product promises and offers*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Nov. 15, 2017), <https://www.consumer.ftc.gov/blog/2017/11/know-what-lies-beneath-product-promises-and-offers>, Lesley Fair, *Trial and Error*, FTC BUSINESS CENTER BUSINESS BLOG (Feb. 22, 2017), <https://www.ftc.gov/news-events/blogs/business-blog/2017/02/trial-error>, and Lesley Fair, *Fauxmats, false claims, phony celebrity endorsements, and unauthorized charges*, FTC BUSINESS CENTER BUSINESS BLOG (Nov. 16, 2017), <https://www.ftc.gov/news-events/blogs/business-blog/2017/11/fauxmats-false-claims-phony-celebrity-endorsements>.

⁵² See Stephanie Cox, *FinTech Forum: A closer look at peer-to-peer payment systems and crowdfunding platforms*, FTC BUSINESS CENTER BUSINESS BLOG (Mar. 7, 2017), <https://www.ftc.gov/news-events/blogs/business-blog/2017/03/fintech-forum-closer-look-peer-peer-payment-systems>. Further information about the forum was reported on last year.

We hope that the information discussed above responds to your inquiry and will be useful in preparing the BCFP's Annual Report to Congress.⁵³ 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

⁵³ 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 2017, 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.