



Division of Financial Practices

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

May 20, 2024

David Uejio, Acting Associate Director
Supervision, Enforcement, and Fair Lending
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Dear Mr. Uejio:

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 Consumer Financial Protection Bureau's (CFPB) 2022 Annual Report to Congress. Specifically, you ask for information concerning the FTC's activities with respect to the Regulations during 2023. 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, the CLA, and the EFTA, and other consumer laws, such as giving the CFPB rulemaking and enforcement authority for the TILA, the CLA, and the 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

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; 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 CFPB'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 CFPB'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.

the authority to enforce any CFPB rules applicable to entities within the FTC’s jurisdiction, which include most providers of financial services that are not banks, thrifts, or federal 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 2019, 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 (the TILA) and Regulation M (the CLA)

In 2023, 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

A. Truth in Lending and Consumer Leasing: Enforcement Actions

The Commission’s law enforcement efforts and related activity included actions involving automobile financing.

1. Automobiles (Credit)

The FTC continued its efforts to combat deceptive automobile dealer practices with litigation in a federal court action involving the TILA and Regulation Z, and redress in one additional matter.

In 2023, litigation continued at the appellate level against Traffic Jam Events, LLC (Traffic Jam Events) and its owner David J. Jeanson, II.⁶ This litigation involves the FTC’s

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. In 2019, the FTC and CFPB again reauthorized the MOU. See FTC, *Memorandum of Understanding between the Consumer Financial Protection Bureau and the Federal Trade Commission*, Feb. 25, 2019, available at https://www.ftc.gov/system/files/documents/cooperation_agreements/ftc-cfpb_mou_225_0.pdf. See also Dodd-Frank Act, § 1024.

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

⁶ *Traffic Jam Events v. FTC*, No. 21-60947 (5th Cir. Dec. 21, 2021) (appeal docketed).

administrative opinion and order in a 2021 ruling (previously reported) that Traffic Jam Events and its owner violated both the FTC Act and the TILA (credit), and banning them from the auto industry.⁷ Among other things, the Commission found that the respondents sent deceptive mailers to consumers to entice them to auto sale sites by falsely suggesting the company was affiliated with a government COVID-19 stimulus program; sent direct mail advertisements deceptively indicating consumers had won specific valuable prizes (such as \$2,500 or \$5,000 cash) that consumers learned they had not won when they attempted to claim the prizes; and sent mailers quoting monthly payments to purchase vehicles on credit that did not provide, or hid in small print, key financing terms required by law that consumers need to determine the true costs of the advertised financing.

In 2023, the FTC and the State of Illinois mailed a second round of checks totaling more than \$857,000 to 37,034 people who bought a car from Napleton and were harmed by their illegal practices.⁸ The FTC and the State of Illinois previously sued Napleton, a large, multistate auto dealer group based in Illinois, for violating the FTC Act by, among other things, allegedly sneaking illegal junk fees onto consumers' bills for unwanted "add-ons," such as for payment insurance and paint protection costing consumers hundreds or thousands of dollars.⁹ The FTC's previously filed complaint also charged Napleton with advertising "\$90 down" on mailers without disclosing, or clearly and conspicuously disclosing, the terms of repayment or annual percentage rate, in violation of the TILA and Regulation Z (credit).¹⁰ The FTC initially sent

⁷ *In the Matter of Traffic Jam Events, LLC*, FTC Dkt. No. 9395 (Oct. 25, 2021) (Opinion of the Commission; Final Order), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/x200041-202-3127-traffic-jam-events-llc-matter>. Among other things, the Commission's order prohibits misrepresentations regarding financial assistance from the government, prizes and sweepstakes, affiliation with the government, and other material restrictions regarding the purchase, receipt, or use of any product or service. The order also prohibits violations of the TILA and Regulation Z.

⁸ See FTC, Press Releases, *Ed Napleton Automotive Group Refunds* (Nov. 2023), and *FTC Returns Additional \$857,000 To Consumers Harmed by Napleton Auto's Junk Fees and Discriminatory Practices* (Nov. 20, 2023), available at <https://www.ftc.gov/enforcement/refunds/ed-napleton-automotive-group-refunds>, and <https://www.ftc.gov/news-events/news/press-releases/2023/11/ftc-returns-additional-857000-consumers-harmed-napleton-autos-junk-fees-discriminatory-practices>, respectively.

⁹ *FTC v. North Am. Auto Servs., Inc.*, No. 22-cv-01690 (N.D. Ill. filed Mar. 31, 2022), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/2023195-napleton-auto>. Chair Khan and Commissioner Slaughter issued a concurring statement. See *Joint Statement of Chair Lina M. Khan and Commissioner Rebecca Kelly Slaughter in the Matter of Napleton Automotive Group* (Mar. 31, 2022), available at <https://www.ftc.gov/news-events/news/speeches/joint-statement-chair-lina-m-khan-commissioner-rebecca-kelly-slaughter-matter-napleton-automotive>. See also FTC, Press Release, *FTC Takes Action Against Multistate Auto Dealer Napleton for Sneaking Illegal Junk Fees onto Bills and Discriminating Against Black Consumers* (Apr. 1, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/04/ftc-takes-action-against-multistate-auto-dealer-napleton-sneaking-illegal-junk-fees-bills>.

¹⁰ See *FTC v. North Am. Auto Servs., Inc.*, No. 22-cv-01690 (N.D. Ill. filed Mar. 31, 2022), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/2023195-napleton-auto>. Chair Khan and Commissioner Slaughter issued a concurring statement. See *Joint Statement of Chair Lina M. Khan and Commissioner Rebecca Kelly Slaughter in the Matter of Napleton Automotive Group* (Mar. 31, 2022), available at <https://www.ftc.gov/news-events/news/speeches/joint-statement-chair-lina-m-khan-commissioner-rebecca-kelly-slaughter-matter-napleton-automotive>.

refund checks in 2022, to consumers who were harmed by Napleton’s scheme and more than 88% of eligible consumers cashed their checks, with over \$8.8 million returned to consumers.¹¹ Because additional funds were still available, the FTC sent additional funds totaling \$857,000 to people who cashed their first check and paid more than \$1,662 in add-on fees.¹²

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

The Commission engaged in several activities in 2023 involving rulemaking, research, and policy development that relate to the TILA and the CLA.

1. The CARS Rule (Credit and Leasing)

In 2023, the FTC finalized a new rule pertaining to the sale, financing or leasing of motor vehicles, to fight two common types of illegal tactics consumers face when buying a car: bait-and-switch tactics and hidden fees.¹³ The Commission noted that, “[u]nscrupulous dealers are able to slip the often considerable additional costs for these items past consumers unnoticed and into purchase contracts through a variety of means, including by not mentioning them at all . . . or by focusing consumers’ attention on other aspects of the complex transaction, such as monthly payments”¹⁴ The new rule is expected to save consumers nationwide more than \$3.4 billion and an estimated 72 million hours each year shopping for vehicles.¹⁵ The Department of Defense (DoD) stated that, “For our service members and their families a car is an essential purchase, and this CARS Rule will help fight predatory practices that target our men and women in uniform. The Department is pleased to see the FTC issue the CARS Rule and believes it will contribute to service members’ overall economic security and readiness.”¹⁶

¹¹ See *supra* note 8.

¹² See *id.*

¹³ See FTC, Combating Auto Retail Scams Trade Regulation Rule (“CARS Rule,”) (Dec. 12, 2023) (to be codified at 16 C.F.R. pt. 463), available at https://www.ftc.gov/system/files/ftc_gov/pdf/p204800_cars_rule.pdf. See also FTC, Press Release, *FTC Announces CARS Rule to Fight Scams in Vehicle Shopping* (Dec. 12, 2023), available at <https://www.ftc.gov/news-events/news/press-releases/2023/12/ftc-announces-cars-rule-fight-scams-vehicle-shopping>.

¹⁴ See CARS Rule, *supra* note 13, at 21-22, available at https://www.ftc.gov/system/files/ftc_gov/pdf/p204800_cars_rule.pdf.

The supplementary information with the rule noted that under the Truth in Lending Act and Regulation Z, “required add-on products and services must be factored into the APR and the finance charge disclosed during the transaction . . . [and i]t is legally impermissible for dealers to include charges for such products in a consumer’s contract without disclosing them.” *Id.* at 22.

¹⁵ See FTC, Press Release, *FTC Announces CARS Rule to Fight Scams in Vehicle Shopping* (Dec. 12, 2023), available at <https://www.ftc.gov/news-events/news/press-releases/2023/12/ftc-announces-cars-rule-fight-scams-vehicle-shopping>.

¹⁶ See Statement of Ashish S. Vazirani, Acting DoD Under Secretary of Defense for Personnel and Readiness, FTC, Press Release, *FTC Announces CARS Rule to Fight Scams in Vehicle Shopping* (Dec. 12, 2023), available at

The CARS Rule: 1) prohibits dealers' misrepresentations about key information, like price and cost; 2) requires dealers to provide the offering price (the actual price any consumer can pay for the vehicle), tell consumers that optional add-ons are not required, and provide the total of payments information if dealers provide monthly payment information; 3) prohibits dealers from charging for add-ons that do not provide a benefit to consumers, such as service contracts for oil changes for electric vehicles; and 4) requires dealers to get consumers' express, informed consent for charges.¹⁷

The FTC received tens of thousands of comments from consumers, servicemembers, veterans, auto dealers and others about the proposed rule in response to its Notice of Proposed Rulemaking related to motor vehicle shopping issued in June 2022.¹⁸ The FTC carefully reviewed these comments and made substantial changes to the proposed rule to ensure that the rule is focused on protecting consumers from many of the most common scams that target people buying vehicles while also ensuring that auto dealers are able to compete on a level playing field.¹⁹

2. Junk Fees Rulemaking (Credit and Leasing)

In 2023, the FTC proposed a rule that would prohibit junk fees – hidden charges and bogus fees that cost consumers tens of billions of dollars each year and undercut honest businesses.²⁰ The Commission noted that by hiding the total price, these junk fees make it harder for consumers to comparison shop and punish businesses who are honest upfront.²¹ The

<https://www.ftc.gov/news-events/news/press-releases/2023/12/ftc-announces-cars-rule-fight-scams-vehicle-shopping>.

¹⁷ See FTC, Press Release, *FTC Announces CARS Rule to Fight Scams in Vehicle Shopping* (Dec. 12, 2023), available at <https://www.ftc.gov/news-events/news/press-releases/2023/12/ftc-announces-cars-rule-fight-scams-vehicle-shopping>.

¹⁸ See *id.*

¹⁹ See *supra* note 17. The rule was set to go into effect July 30, 2024, but in January 2024, the Commission issued an order postponing the effective date of the Rule. See *In the Matter of Combating Auto Retail Scams Trade Regulation Rule*, FTC Dkt. No. P204800 (Jan. 18, 2024) (Order Postponing Effective Date of Final Rule Pending Judicial Review), available at https://www.ftc.gov/system/files/ftc_gov/pdf/P204800CARSExtensionOrder.pdf. See also FTC, Press Release, *FTC Pauses CARS Rule Effective Date* (Jan. 18, 2024), available at <https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-pauses-cars-rule-effective-date>.

²⁰ See FTC, Trade Regulation Rule on Unfair or Deceptive Fees, 88 Fed. Reg. 77420 (proposed Nov. 9, 2023) (to be codified at 16 C.F.R. pt. 464), available at <https://www.govinfo.gov/content/pkg/FR-2023-11-09/pdf/2023-24234.pdf>. See also FTC, Press Release, *FTC Proposes Rule to Ban Junk Fees* (Oct. 11, 2023), available at <https://www.ftc.gov/news-events/news/press-releases/2023/10/ftc-proposes-rule-ban-junk-fees>. The Commission launched a proceeding in 2022 requesting public input on whether a rule would help to eliminate these unfair and deceptive charges, and after receiving more than 12,000 comments on how fees affect their personal spending or business, the FTC sought a new round of comments on a proposed junk fee rule. See *id.*

²¹ See FTC, Press Release, *FTC Proposes Rule to Ban Junk Fees* (Oct. 11, 2023), available at <https://www.ftc.gov/news-events/news/press-releases/2023/10/ftc-proposes-rule-ban-junk-fees>. The notice included

proposed rule would prohibit hidden and bogus fees, ensure consumers know how much they are paying and what they are getting, and help spur companies to compete.²² The notice included questions for comment on the proposed rule.²³

3. American Indian/Alaska Native Report (Credit)

In 2023, the FTC issued a report to Congress detailing the consumer issues that affect American Indian and Alaska Native (AI/AN) populations, as well as the FTC's enforcement, outreach and education work on these issues such as: auto purchasing and financing, predatory lending, impersonation scams, tech support scams and romance scams, among others.²⁴ The report summarizes the agency's efforts to hear directly from tribal leaders, community members, advocates, and others about issues affecting their communities, and provides analysis of the FTC's data from the Consumer Sentinel Network database.²⁵ The report also summarizes FTC law enforcement actions relating to the consumer abuses identified as impacting AI/AN communities. These include the cases against Tate's Auto, which, among other things, charged a group of dealerships located near the border of the Navajo Nation with targeting consumers with deceptive ads and unfair financing practices in violation of the FTC Act, and Napleton, which charged a multistate auto dealer group based in Illinois with sneaking illegal junk fees onto consumers' bills for unwanted "add-ons," in violation of the FTC Act, and advertising "\$90

various enforcement actions and other initiatives that the Commission (and others) have brought or engaged in to address unfair or deceptive fee practices, including those alleging businesses misrepresented the nature and purpose of fees, such as those pertaining to ancillary products. *See, e.g.,* FTC, Trade Regulation Rule on Unfair or Deceptive Fees, 88 Fed. Reg. 77435-36 and note 204, (referencing *FTC v. Stewart Fin. Co.*, No. 1:03-cv-02648 (N.D. Ga. filed Sept. 4, 2003) (alleging in part that defendants package undisclosed add-on products with consumer loans and in some cases describe these add-on products as mandatory)), available at <https://www.govinfo.gov/content/pkg/FR-2023-11-09/pdf/2023-24234.pdf>. The FTC charged the defendants with unfair or deceptive practices in violation of the FTC Act, and with violations of the TILA and Regulation Z, both related to the defendants' failure to disclose the costs and terms of ancillary credit products. *See* *Stewart Fin. Co. Holdings, Inc.*, No. 3-cv-2648 (N.D. Ga. filed Sept. 4, 2003), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/stewart-finance-company-holdings-inc-stewart-finance-company-inc-stewart-national-finance-company>.

²² *See* FTC, Press Release, *FTC Proposes Rule to Ban Junk Fees* (Oct. 11, 2023), available at <https://www.ftc.gov/news-events/news/press-releases/2023/10/ftc-proposes-rule-ban-junk-fees>.

²³ *See* Trade Regulation Rule on Unfair or Deceptive Fees, 88 Fed. Reg. at 77480-83, available at <https://www.govinfo.gov/content/pkg/FR-2023-11-09/pdf/2023-24234.pdf>. The Commission extended the public comment period on the proposed rule until Feb. 7, 2024. *See* FTC, Press Release, *Federal Trade Commission Extends Public Comment Period on Proposed Rule Prohibiting Junk Fees for 30 Days, until February 7, 2024* (Dec. 20, 2023), available at <https://www.ftc.gov/news-events/news/press-releases/2023/12/federal-trade-commission-extends-public-comment-period-proposed-rule-prohibiting-junk-fees-30-days>.

²⁴ *See* CONSUMER ISSUES AFFECTING AMERICAN INDIAN AND ALASKA NATIVE COMMUNITIES: A REPORT TO CONGRESS (FTC AI/AN COMMUNITIES REPORT) (Mar. 15, 2023), available at <https://www.ftc.gov/reports/consumer-issues-affecting-american-indian-alaska-native-communities>. *See also* FTC, Press Release, *FTC Issues Report to Congress on American Indian and Alaska Native Consumer Issues* (Mar. 15, 2023), available at <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-issues-report-congress-american-indian-alaska-native-consumer-issues>.

²⁵ *See* FTC AI/AN COMMUNITIES REPORT, *supra* note 24, at 1.

down” without disclosing, or clearly and conspicuously disclosing, the terms of repayment or annual percentage rate, in violation of the TILA and Regulation Z.²⁶

4. Military (Credit and Leasing)

In 2023, the FTC’s Military Task Force, which includes a cross-section of agency representatives, continued work on military consumer protection issues. The Task Force represents part of the agency’s collaborative effort to provide resources for military consumers and is aimed at identifying their needs and formulating initiatives to empower servicemembers, veterans, and their families, including through law enforcement actions. Additional information concerning FTC initiatives in 2023 to assist military consumers is included below.

a. ABA Legal Assistance for Military Personnel

The FTC staff 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 Military Lending Act (MLA) and the Department of Defense (DoD) military lending rule, consumer credit and TILA-related matters, and consumer leasing and CLA-related matters.

b. Department of Defense Military Lending Task Force

The FTC staff also participated in an interagency group that coordinates with the DoD on issues pertaining to the MLA and DoD’s military lending rule implementing the MLA, which includes issues related to the TILA such as on current automobile financing and leasing issues, and the CARS Rule.²⁷

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

In 2023, the FTC engaged in efforts to provide education on issues pertaining to credit and lease transactions under or related to the TILA and Regulation Z and the CLA and Regulation M.

²⁶ See *id.* at 25-26. As previously reported, Tate’s also advertised credit and lease terms in advertisements without providing all required information, in violation of the TILA and the CLA, respectively. See FTC, Press Release, *FTC Obtains \$450,000 Settlement in Tate’s Auto Group Case* (July 29, 2021), available at <https://www.ftc.gov/news-events/news/press-releases/2021/07/ftc-obtains-450000-settlement-tates-auto-group-case>.

²⁷ The MLA requires the DoD to coordinate with several federal agencies, including the FTC, in prescribing regulations and not less often than once every two years thereafter. 10 U.S.C. § 987.

1. Automobile Sales and Financing (Credit and Leasing)

The Commission released information for consumers and businesses about its new CARS Rule, highlighting what the rule means for them.²⁸ Separately, the Commission released information for servicemembers about auto-related issues and the rule, noting that auto problems are in the top ten report categories for military consumers, who can be targets because of their steady income and younger personnel with minimal credit history means they qualify for less advantageous terms.²⁹

For dealers, the Commission issued a guide to the rule, explaining its basic principles.³⁰ The guidance also addresses questions dealers may have about the rule, and provides a glossary with clear definitions. The Commission also provided additional information to dealers, noting that the rule is the culmination of a years-long effort to ensure truth and transparency in the process of buying and leasing cars, and states clear rules of the road that apply across the board so consumers can face the shopping process confident that established standards that apply to other businesses also cover car dealers.³¹ It cautions that dealers who make deceptive claims about key parts of the transaction; hide the actual price through hidden fees, misleading add-ons or unclear payments; or charge consumers without their express, informed consent now could be subject to enforcement action for violating the rule. It advises that many dealers are already engaged in the long-standing truth and transparency principles of the rule as their business-as-usual but that those who cut corners, engage in bait and switch tactics, or conceal costs should be aware that the rule signals a new era of consumer protection.

The Commission also provided information to consumers on additional auto topics. One article addressed auto trade-ins and negative equity, explaining what happens when consumers' cars decline in value and consumers owe more than the vehicle is worth.³² The article notes that some dealers may claim consumers won't be responsible for the remaining balance on their car loan at trade in, but might just roll over that balance into the consumer's new loan. The article

²⁸ See Alvaro Puig, *The new CARS Rule: What you need to know*, FTC BUREAU OF CONSUMER PROTECTION ALERT (Dec. 12, 2023), <https://consumer.ftc.gov/consumer-alerts/2023/12/new-cars-rule-what-you-need-know>; *La nueva Regla CARS: Lo que necesitas saber* (12 de Dic de 2023), <https://consumidor.ftc.gov/alertas-para-consumidores/2023/12/la-nueva-regla-cars-lo-que-necesitas-saber>.

²⁹ See Carol Kando-Pineda, *Servicemembers: Combating Auto Retail Scams*, FTC MILITARY CONSUMER BLOG (Dec. 12, 2023), <https://www.militaryconsumer.gov/blog/servicemembers-combating-auto-retail-scams>.

³⁰ See *FTC CARS Rule: Combating Auto Retail Scams – A Dealers Guide* (Dec. 2023), <https://www.ftc.gov/business-guidance/resources/ftc-cars-rule-combating-auto-retail-scams-dealers-guide>.

³¹ See Lesley Fair, *FTC's CARS Rule: Why a new rule to combat auto retail scams is great news for consumers and honest dealers*, FTC BUSINESS BLOG (Dec. 12, 2023), <https://www.ftc.gov/business-guidance/blog/2023/12/ftcs-cars-rule-why-new-rule-combat-auto-retail-scams-great-news-consumers-honest-dealers>.

³² See *Auto Trade-Ins and Negative Equity: When You Owe More than Your Car is Worth* (Sept. 2023), <https://consumer.ftc.gov/articles/auto-trade-ins-and-negative-equity-when-you-owe-more-your-car-worth>; *Canje de carros y valor neto negativo: Cuando debe mas de lo que vale su carro* (Sept. 2023), <https://consumidor.ftc.gov/articulos/canje-de-carros-y-valor-neto-negativo-cuando-debe-mas-de-lo-que-vale-su-carro>.

offers tips if a consumer's trade-in has negative equity, such as waiting to buy a car until having positive equity, selling the car oneself, and making sure any oral promises are included in the contract. Another article explained auto refinancing scams aimed at consumers having trouble paying their car loans.³³ The article offered cautionary tips on promises the scammers might make, such as claiming they have special relationships with lenders, and provided guidance on what to do if consumers can't afford their payments, including contacting their lender promptly and inquiring about options. It also provided information about repossessions, and steps to avoid scammers, including researching the company online and, talking only with those consumers trust.

2. Mortgages (Credit)

In addition, the Commission released an article to assist consumers struggling to make mortgage payments or who may be in default.³⁴ The article explained what steps the servicer or lender may take if consumers miss mortgage payments and their loan is declared in default, including owing additional money, damaged credit, and possibly legal action by servicers or lenders such as foreclosure. The article focuses on steps consumers could take, such as contacting free housing counselors, discussing options with the servicer or lender, and keeping notes of all communications with and documents sent to the servicer or lender. It also discusses the possibility of avoiding foreclosure through a short sale or using a deed in lieu of foreclosure with the servicer or lender, the impact on consumers' credit reports, seeking other sources of help, such as legitimate housing counseling agencies through the Department of Housing and Urban Development, and researching state and federal housing programs through the Department of the Treasury, the Federal Housing Administration or the Department of Veterans Affairs. The article also warns against mortgage relief scams that charge upfront fees or guarantee loan modifications – but instead take consumers' money and only make phony promises.

3. Other Areas (Credit and Leasing)

The FTC also released an article providing tips for consumers about payday and car title loans, including how these loans work and their high costs, how the costs increase with rollovers, alternatives to these loans, and special protections for military servicemembers under the Military Lending Act.³⁵ Another article focused on buy now, pay later, rent-to-own, and other

³³ See *Auto Loan Refinancing Scams* (Aug. 2023), <https://consumer.ftc.gov/articles/auto-loan-refinancing-scams>; *Estafas de refinanciación de préstamos para carros* (Ago. 2023), <https://consumidor.ftc.gov/articulos/estafas-de-refinanciacion-de-prestamos-para-carros>.

³⁴ See *Trouble Paying Your Mortgage or Facing Foreclosure?* (Sept. 2023), <https://consumer.ftc.gov/articles/trouble-paying-your-mortgage-or-facing-foreclosure>; *¿Tiene problemas para pagar su hipoteca o está enfrentando una ejecución hipotecaria?* (Sept. 2023), <https://consumidor.ftc.gov/articulos/tiene-problemas-para-pagar-su-hipoteca-o-esta-enfrentando-una-ejecucion-hipotecaria>.

³⁵ See *What To Know About Payday and Car Title Loans* (July 2023), <https://consumer.ftc.gov/articles/what-know-about-payday-and-car-title-loans>; *Qué saber sobre los préstamos de día de pago y con título de propiedad de un carro* (Jul 2023), <https://consumidor.ftc.gov/articulos/que-saber-sobre-los-prestamos-de-dia-de-pago-y-con-titulo-de-propiedad-de-un-carro>.

payment plans, highlighting how they work and the types of costs with these plans.³⁶ The article also addressed whether consumers might pay interest or fees with these different plans, and what happens if consumers need to return items or do not want to continue with a plan. In addition, the Commission released material for consumers discussing the Commission’s American Indian and Alaska Native communities report, including alerting consumers to issues the report addresses about auto purchasing and financing, such as deceptive advertising and the lack of clarity about fees.³⁷

III. Regulation E (the EFTA)

In 2023, the FTC issued refunds in one matter 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

In connection with a negative option case previously settled, the FTC mailed a second round of checks totaling more than \$1.3 million to people who signed-up for “risk-free” trial offers from Triangle Media Corporation but were then charged full price and enrolled in continuity plans without their knowledge.³⁸ Triangle Media used deceptive trial offers to market and sell a variety of products online, including skin creams, electronic cigarettes, and dietary supplements. The FTC initially sent refund checks in June 2020, which resulted in \$7.3 million in refunds. Because there was still money remaining in the fund, the FTC sent a second round of checks totaling more than \$1.3 million to consumers.³⁹

³⁶ See *Buy Now, Pay Later, Rent-to-Own, Lease-to-Own, and Layaway* (Mar. 2023), <https://consumer.ftc.gov/articles/buy-now-pay-later-rent-own-lease-own-and-layaway>; *Planes compre ahora y pague después, alquiler con opción a compra, arrendamiento con opción a compra y compra en reserva* (Mar 2023), <https://consumidor.ftc.gov/articulos/planes-compre-ahora-y-pague-despues-alquiler-con-opcion-compra-arrendamiento-con-opcion-compra-y>.

³⁷ See Kira Krown, *Consumer issues affecting American Indian and Alaska Native communities*, FTC BUREAU OF CONSUMER PROTECTION ALERT (Mar. 15, 2023), <https://consumer.ftc.gov/consumer-alerts/2023/03/consumer-issues-affecting-american-indian-and-alaska-native-communities>; *Asuntos de consumidores que afectan a las comunidades de indígenas de las Américas y nativos de Alaska* (15 de Mar de 2023), <https://consumidor.ftc.gov/alertas-para-consumidores/2023/03/asuntos-de-consumidores-que-afectan-las-comunidades-de-indigenas-de-las-americas-y-nativos-de-alaska>.

³⁸ See FTC, *Triangle Media Corp.*, <https://www.ftc.gov/legal-library/browse/cases-proceedings/172-3108-triangle-media-corporation>, and FTC, *Refunds to Consumers, Triangle Media*, https://public.tableau.com/app/profile/federal.trade.commission/viz/Refunds_15797958402020/RefundsbyCase.

³⁹ See *id.*

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

1. Negative Option Rule

In 2023, as part of its ongoing review of its 1973 Negative Option Rule, the FTC proposed a “click to cancel” provision requiring sellers to make it as easy for consumers to cancel their enrollment as it was to sign up.⁴⁰ More specifically, the proposed changes to the rule require negative option sellers to provide a simple mechanism for a consumer to cancel the negative option and avoid being charged for the good or service, and immediately stop any recurring charges; the mechanism must be at least as easy to use as the method the consumer used to initiate the negative option feature.⁴¹ The proposed changes also require negative option sellers to obtain consumers’ express informed consent before charging them.⁴² As noted, the Rule is used to combat unfair or deceptive practices related to subscriptions, memberships, and other recurring-payment programs.⁴³ In response to comments received on the proposal, the FTC also scheduled a virtual informal hearing on the proposed amendments.⁴⁴

⁴⁰ See Negative Option Rule, 88 Fed. Reg. 24716 (Apr. 24, 2024), available at <https://www.govinfo.gov/content/pkg/FR-2023-04-24/pdf/2023-07035.pdf>. See also FTC, Press Release, *Federal Trade Commission Proposes Rule Provision Making it Easier for Consumers to “Click to Cancel” Recurring Subscriptions and Memberships* (Mar. 23, 2023), available at <https://www.ftc.gov/news-events/news/press-releases/2023/03/federal-trade-commission-proposes-rule-provision-making-it-easier-consumers-click-cancel-recurring>.

⁴¹ See Negative Option Rule, 88 Fed. Reg. at 24728 and 24735, available at <https://www.govinfo.gov/content/pkg/FR-2023-04-24/pdf/2023-07035.pdf>. The supplementary information released with the proposed amendments notes that the EFTA – which the Commission enforces except to the extent enforcement is specifically committed to some other federal government agency – also contains provisions relevant to negative option marketing, and prohibits sellers from imposing recurring charges on a consumer’s debit cards or bank accounts without written authorization. See Negative Option Rule, 88 Fed. Reg. at 24718, available at <https://www.govinfo.gov/content/pkg/FR-2023-04-24/pdf/2023-07035.pdf>.

⁴² See Negative Option Rule, 88 Fed. Reg. at 24727 and 24735, available at <https://www.govinfo.gov/content/pkg/FR-2023-04-24/pdf/2023-07035.pdf>. Under the proposed amendments, except for transactions subject to the preauthorized transfer provisions of EFTA and Regulation E (to avoid potential conflicts because EFTA contains various prescriptive requirements, including written consumer signatures compliant with E-Sign, evidence of consumer identity and assent, inclusion of terms in the authorization, and provision of a copy of the authorization to the consumer), sellers may obtain express informed consent through a check box, signature, or other substantially similar method, which the consumer must affirmatively select or sign to accept the negative option feature and no other portion of the offer. See Negative Option Rule, 88 Fed. Reg. at 24728 and 24735, available at <https://www.govinfo.gov/content/pkg/FR-2023-04-24/pdf/2023-07035.pdf>.

⁴³ See FTC, Press Release, *Federal Trade Commission Proposes Rule Provision Making it Easier for Consumers to “Click to Cancel” Recurring Subscriptions and Memberships* (Mar. 23, 2023), available at <https://www.ftc.gov/news-events/news/press-releases/2023/03/federal-trade-commission-proposes-rule-provision-making-it-easier-consumers-click-cancel-recurring>.

⁴⁴ See FTC, Press Release, *FTC to Hold Virtual Informal Hearing in January 2024 as Part of its Review of the Proposed “Click to Cancel” Rulemaking* (Dec. 4, 2023), available at <https://www.ftc.gov/news-events/news/press-releases/2023/12/ftc-hold-virtual-informal-hearing-january-2024-part-its-review-proposed-click-cancel-rulemaking>.

2. Older Americans Report

In 2023, the FTC released its latest report to Congress on protecting older adults, highlighting key trends based on fraud reports by older adults and the FTC's multi-pronged efforts to combat the problem through law enforcement, rulemaking, and outreach and education.⁴⁵ The report notes that older adults reported losing more than \$1.6 billion to fraud during the year.⁴⁶ It also notes that, although adults aged 60 and over were substantially less likely to report losing money to fraud than adults aged 18-59, when they did report losing money, they tended to report losing substantially more than younger adults.⁴⁷ Among other things, the report addressed numerous enforcement actions and highlights, including cases with charges under the EFTA such as Triangle Media, which defendants settled and resulted in more than \$8 million in refunds to consumers – with more than \$1.3 million of that amount returned in 2023.⁴⁸

3. ABA Legal Assistance for Military Personnel

The FTC worked with the DoD interagency group and with ABA LAMP as discussed above, on electronic fund transfer issues. Among other things, the FTC staff coordinated with the DoD interagency group on issues related to preauthorized electronic fund transfers in the military lending rule and in connection with the EFTA issues referenced in the Commission's Negative Option Rule, discussed above. The FTC also provided input and presentations to ABA LAMP on EFTs and FTC initiatives in this area, including on diverse forms of electronic payments and how these relate to the EFTA requirements.

C. Electronic Fund Transfers: Consumer and Business Education

The Commission released two items cautioning consumers about issues with certain types of payment mechanisms. One article described how payment apps such as Venmo, CashApp, and Zelle, may link to your debit card or bank account and make it easy to send money fast to friends or family.⁴⁹ The article cautioned that the apps also can be used by scammers,

⁴⁵ See PROTECTING OLDER CONSUMERS 2022-2023: A REPORT OF THE FEDERAL TRADE COMMISSION (PROTECTING OLDER CONSUMERS REPORT) (Oct. 2023), available at <https://www.ftc.gov/reports/protecting-older-consumers-2022-2023-report-federal-trade-commission>. See also FTC, Press Release, *FTC Issues Annual Report to Congress on Agency's Actions to Protect Older Adults* (Oct. 18, 2023), available at <https://www.ftc.gov/news-events/news/press-releases/2023/10/ftc-issues-annual-report-congress-agencys-actions-protect-older-adults>.

⁴⁶ See PROTECTING OLDER CONSUMERS REPORT at 25.

⁴⁷ See PROTECTING OLDER CONSUMERS REPORT at 28-29.

⁴⁸ See PROTECTING OLDER CONSUMERS REPORT at 13, available at <https://www.ftc.gov/reports/protecting-older-consumers-2022-2023-report-federal-trade-commission>.

⁴⁹ See Amy Hebert, *Do you use payment apps like Venmo, CashApp, or Zelle? Read this*, FTC CONSUMER PROTECTION ALERT (Aug. 14, 2023), <https://consumer.ftc.gov/consumer-alerts/2023/08/do-you-use-payment-apps-venmo-cashapp-or-zelle-read>; ¿Usas aplicaciones de pago como Venmo, CashApp o Zelle? Lee esto (14 de Ago de 2023), <https://consumidor.ftc.gov/alertas-para-consumidores/2023/08/usas-aplicaciones-de-pago-como-venmo-cashapp-o-zelle-lee-esto>.

including those who pretend to be loved ones in trouble seeking money to deal with an emergency, saying consumers have won prizes or sweepstakes and need to pay fees to collect it, or posing as the consumer's bank and claiming consumers must transfer their funds to protect their money to new accounts – which really belong to the scammer. The article noted that sending money through payment apps is like sending cash – making it hard to get back – and included tips for safer approaches, such as being sure consumers know whom they are sending money to when using a payment app, and if they are uncertain, contacting the person, bank or business at a phone number they know to be real and inquiring whether they sent the request for money. It also warns consumers against paying anyone who insists they pay only with a gift card, cryptocurrency, or payment app.

Another article alerted consumers that scammers pressure them to wire money because it is easy to take the money and disappear, and that using services like MoneyGram, Ria, and Western Union is like sending cash – once consumers send it, they usually cannot get it back.⁵⁰ The article included tips for avoiding money wiring scams, including never wiring money through such companies to anyone consumers have not met in person or to anyone who pressures consumers to pay immediately or to pay only by wire transfer. It also provides examples of common wiring scams, and what consumers can do if they wired money to a scammer, including contacting the wire transfer company immediately, explaining it was a fraudulent transfer, and asking them to reverse it and return the money, and advises that if anyone demanded that consumers wire money, report it to the FTC.

The FTC also provided information to help consumers understand the proposed changes to the Negative Option Rule, discussed above.⁵¹ The Commission also provided information to businesses, alerting them that these marketing methods can be convenient for consumers, but that decades of FTC law enforcement make clear that when negative options are tainted with untruths, half-truths, and hidden strings, the impact on consumers can be negative.⁵² The business guidance includes a fact sheet highlighting proposed changes to the rule and explaining what the proposal would do – such as set clear, enforceable, performance-based requirements.⁵³

⁵⁰ See *What To Know Before You Wire Money* (Dec. 2023), <https://consumer.ftc.gov/articles/what-know-you-wire-money>; *Lo que hay que saber antes de hacer una transferencia de dinero* (Dic 2023), <https://consumidor.ftc.gov/articulos/lo-que-hay-que-saber-antes-de-hacer-una-transferencia-de-dinero>.

⁵¹ See Samuel Levine, Director, Bureau of Consumer Protection, *The pros and cons of free trials, auto-renewals, and subscriptions*, FTC BUREAU OF CONSUMER PROTECTION ALERT (Mar. 23, 2023), <https://consumer.ftc.gov/consumer-alerts/2023/03/pros-and-cons-free-trials-auto-renewals-and-subscriptions>; *Los pros y los contras de las pruebas gratuitas, las renovaciones automaticas y las suscripciones* (23 de Mar de 2023), <https://consumidor.ftc.gov/alertas-para-consumidores/2023/03/los-pros-y-los-contras-de-las-pruebas-gratuitas-las-renovaciones-automaticas-y-las-suscripciones>.

⁵² See Lesley Fair, *Negative reinforcement? FTC proposes amending Negative Option Rule to include click-to-cancel and other protections*, FTC BUSINESS BLOG (Mar. 23, 2023), <https://www.ftc.gov/business-guidance/blog/2023/03/negative-reinforcement-ftc-proposes-amending-negative-option-rule-include-click-cancel-other>.

⁵³ *Id.*

* * * *

We hope that the information discussed above responds to your inquiry and will be useful in preparing the CFPB's Annual Report to Congress.⁵⁴ Should you need additional assistance, please contact me at (202) 326-2972, or Carole Reynolds at (202) 326-3230.

Sincerely,

/s/ Malini Mithal

Malini Mithal
Associate Director
Division of Financial Practices

⁵⁴ Your letter also requests information regarding compliance by credit card issuers with the FTC Act. The Commission does not have jurisdiction over banks or federal credit unions, and in 2023, 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.