

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



Division of Financial Practices

May 30, 2017

Paul Sanford, Assistant Director
Supervision Examinations
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Dear Mr. Sanford:

This letter responds to your request for information concerning the Federal Trade Commission's (Commission or FTC) enforcement activities related to compliance with Regulation Z (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) 2016 Annual Report to Congress. Specifically, you ask for information concerning the FTC's activities with respect to the Regulations during 2016. We are pleased to provide the requested information below.²

I. FTC Role in Administering and Enforcing the Regulations

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

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.

financial services that are not banks, thrifts, or federal credit unions.³ In accordance with the memorandum of understanding that the Commission and the CFPB entered into in 2012 and reauthorized in 2015, and consistent with the Dodd-Frank Act, the Commission has been coordinating certain law enforcement, rulemaking, and other activities with the CFPB.⁴

II. Regulation Z (the TILA)

In 2016, 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, including the advertisement, extension, and certain other aspects of consumer credit.⁵

A. Truth in Lending: Enforcement Actions

1. Non-Mortgage Credit

In 2016, 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. Automobile Purchases and Financing

In 2016, the FTC continued its efforts to combat deceptive automobile dealer practices, including by initiating two federal court actions involving the TILA and Regulation Z. In one action, the Commission obtained a stipulated final order with a civil penalty.⁶ According to the

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, Press Releases, *Federal Trade Commission, Consumer Financial Protection Bureau Pledge to Work Together to Protect Consumers*, Jan. 23, 2012, available at <http://www.ftc.gov/opa/2012/01/ftccfpb.shtm>; and *FTC, CFPB Reauthorize Memorandum of Understanding*, Mar. 12, 2015, available at <https://www.ftc.gov/news-events/press-releases/2015/03/ftc-cfpb-reauthorize-memorandum-understanding>; *see also* Dodd-Frank Act, § 1024.

In addition, the Commission and 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, Press Release, *FTC and Veterans Administration Sign Agreement Furthering Efforts To Protect Service Members Who Use Military Education Benefits*, Nov. 12, 2015, available at <https://www.ftc.gov/news-events/press-releases/2015/11/ftc-veterans-administration-sign-agreement-furthering-efforts>. 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.

⁶ *See* FTC, Press Release, *FTC Action: Texas Car Dealers to Pay \$85,000 Civil Penalty*, Aug. 18, 2016, available at <https://www.ftc.gov/news-events/press-releases/2016/08/ftc-action-texas-car-dealers-pay-85000-civil-penalty>.

FTC's complaint, three auto dealers collectively known as Southwest Kia violated a prior consent order with the FTC by concealing sale and lease terms that added significant costs or limited who could qualify for vehicles at advertised prices, including by offering cars for under \$170 per month, but in print too small to read without magnification, disclosing that \$1,999 would be due upfront, along with tax, title, and license fees, and that \$8,271 would be due at the end of a 38-month financing term.⁷ The complaint also charged the dealers with advertising credit terms without clearly and conspicuously disclosing information required by the TILA, and by failing to keep and produce records, in violation of the 2014 order. The stipulated order requires payment of an \$85,000 civil penalty, and prohibits the dealers, in any ad for buying, financing, or leasing vehicles, from misrepresenting the cost of purchase with financing, the cost of leasing, or any other material fact about price, sale, financing or leasing.⁸ It also prohibits the dealers from misrepresenting that anyone, including someone with poor credit, is likely to receive financing or leasing, including particular finance or lease terms, and bars the dealers from violating the TILA.

In the other federal court action, the FTC charged nine dealerships and owners (Sage Auto Group) with a wide range of deceptive and unfair sales and financing practices.⁹ According to the complaint, the defendants enticed consumers, particularly financially distressed and non-English speaking consumers, into their dealerships with print, internet, radio, and television ads that make an array of misleading claims, including that vehicles are generally available for the advertised terms and that consumers can buy vehicles for low prices, finance with low monthly payments, or make low down payments, when in fact they cannot and must pay additional or higher amounts.¹⁰ Other allegedly misleading claims in violation of the FTC Act included that consumers can finance the purchase of vehicles – when in fact they are lease offers – and that the defendants will pay off consumers' trade-in vehicles, despite the fact that consumers ultimately are responsible for paying off any amount owed on the trade-in. The FTC's complaint also charged the defendants with violating the TILA and Regulation Z for failing to clearly disclose required credit information in their advertising. Subsequently, the FTC and the defendants entered into a stipulated preliminary injunction, which preliminarily restrained misrepresentations of the cost of purchasing a vehicle with financing or leasing a vehicle; the existence or amount of discounts and rebates; that defendants will pay off any portion of the loan or whether the consumer will be responsible for paying it off; and restrictions applicable to financing or purchase vehicles.¹¹ It also required

⁷ *United States v. New World Auto Imports, Inc. dba Southwest Kia*, No. 3:16-cv-2401 (N.D. Tex. filed Aug. 18, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/132-3165/new-world-auto-imports-inc-dba-southwest-kia-et-al-matter>.

⁸ *Id.* (N.D. Tex. Aug. 22, 2016) (stipulated order for permanent injunction and civil penalty judgment), available at <https://www.ftc.gov/enforcement/cases-proceedings/132-3165/new-world-auto-imports-inc-dba-southwest-kia-et-al-matter>.

⁹ See FTC, Press Release, *FTC Charges Los Angeles-Based Sage Auto Group With Using Deceptive and Unfair Sales and Financing Tactics*, Sept. 29, 2016, available at <https://www.ftc.gov/news-events/press-releases/2016/09/ftc-charges-los-angeles-based-sage-auto-group-using-deceptive>. The Commission vote authorizing the filing of the complaint was 2-1, with then-Commissioner Ohlhausen dissenting.

¹⁰ *FTC v. Universal City Nissan, Inc.*, No. 2:16-cv-07329 (C.D. Cal. filed Sept. 29, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3008/universal-city-nissan-inc-et-al>.

¹¹ *Id.* (C.D. Cal. Oct. 25, 2016) (stipulated preliminary injunction order), available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3008/universal-city-nissan-inc-et-al>.

compliance with the TILA, and preservation of records, among other requirements. Litigation in this matter was ongoing at the end of 2016.

b. Payday Lending

The FTC obtained a significant victory in 2016 in its efforts to combat deceptive business practices of payday lenders. At the request of the FTC, a federal court found that racecar driver Scott A. Tucker and several corporate defendants in a Kansas City-based payday lending scheme violated Section 5 of the FTC Act, ordering defendants to pay \$1.3 billion,¹² the largest litigated judgment ever obtained by the FTC.¹³ The defendants had falsely claimed they would charge borrowers the loan amount plus a one-time finance fee; instead, the defendants 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. In addition to the monetary relief, the 2016 order bans Tucker and his companies, including AMG Capital Management LLC, Level 5 Motorsports LLC, Black Creek Capital Corporation, and Broadmoor Capital Partners, from any aspect of consumer lending and prohibits them from misrepresenting material facts about any good or service, among other things.¹⁴ The judgment is on appeal, and a monitor is collecting and liquidating assets for redress if the FTC prevails on appeal.

c. Consumer Electronics Financing

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.¹⁵ 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. In 2016, 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.¹⁶ The court entered judgment against

¹² See FTC, Press Release, *U.S. Court Finds in FTC's Favor and Imposes Record \$1.3 Billion Judgment Against Defendants Behind AMG Payday Lending Scheme*, Oct. 4, 2016, available at <https://www.ftc.gov/news-events/press-releases/2016/10/us-court-finds-ftcs-favor-imposes-record-13-billion-judgment>.

¹³ *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).

¹⁴ The FTC reached various settlements with other defendants earlier. See FTC, Press Release, *FTC Secures \$4.4 Million From Online Payday Lenders to Settle Deception Charges; Lenders Will Waive \$68 Million in Inflated Fees Charged to Consumers Nationwide*, Jan. 5, 2016, available at <https://www.ftc.gov/news-events/press-releases/2016/01/ftc-secures-44-million-online-payday-lenders-settle-deception>.

¹⁵ *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).

¹⁶ See FTC, Press Release, *FTC Obtains \$13.4 Million Judgment Against Former BlueHippo Defendant*, May 2, 2016, available at <https://www.ftc.gov/news-events/press-releases/2016/05/ftc-obtains-134-million-judgment-against-former-bluehippo>.

BlueHippo and Rensin for \$13.4 million, the harm consumers suffered as a result of the scheme.¹⁷ The defendants appealed this judgment, and litigation in this matter was ongoing at the end of 2016.

2. Mortgage-Related Credit: Forensic Audit Scams

The FTC also continued litigation in two cases involving mortgage assistance relief services, both of which involved forensic audit scams. In these scams, mortgage assistance relief providers offer, for a substantial fee, to review or audit the mortgage documents of distressed homeowners to identify violations of 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 one matter, the court granted the FTC's motion for summary judgment against Lanier Law, its principals, and related companies for violations of the FTC Act and the Mortgage Assistance Relief Services Rule and issued related judgments in its favor.¹⁸ The FTC's complaint, previously filed, had 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. According to the complaint, the defendants deceptively claimed they would use "forensic audits" to negotiate with lenders, and that if they failed to do as promised, they would provide a refund. In 2016, the court granted summary judgment against some of the defendants and in favor of the FTC; the court also entered a final order as to these defendants, imposing a monetary judgment of \$13.5 million, banning them from selling secured and unsecured debt relief products or services, and prohibiting them from making misrepresentations regarding other financial products and services, and from violating other federal mandates.¹⁹ The remaining defendants agreed to similar injunctive relief and an \$8 million judgment,²⁰ which was suspended upon surrender of frozen assets.²¹

¹⁷ *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).

¹⁸ See FTC, Press Release, *FTC Action: Court Orders Ban Mortgage Relief Scammers from Mortgage Modification and Debt Relief Business*, Sept. 1, 2016, available at <https://www.ftc.gov/news-events/press-releases/2016/09/ftc-action-court-orders-ban-mortgage-relief-scammers-mortgage>.

¹⁹ *FTC v. Lanier Law LLC*, No. 3:14-cv-00786 (M.D. Fla. July 7, 2016) (order granting summary judgment to FTC), and (M.D. Fla. Aug. 12, 2016) (final order for permanent injunction and monetary judgment as to defendants Lanier Law LLC, Fortress Law Group LLC, Liberty & Trust Law Group of Florida LLC, Fortress Law Group PC, Michael W. Lanier, and Regelio Robles), available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3038-x140039/lanier-law-llc>.

²⁰ *Id.* (M.D. Fla. Aug. 12, 2016) (stipulated order for permanent injunction and monetary judgment as to defendants Surety Law Group LLP, Redstone Law Group LLC, and Edward William Rennick III), available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3038-x140039/lanier-law-llc>.

The defendants are jointly and severally liable; thus the amount paid by any defendant would offset the amount owed by the other defendants.

In the other forensic audit scam matter, the FTC previously obtained stipulated orders against A to Z Marketing and twenty-one other defendants who used a range of mortgage relief schemes such as forensic audit scams, charging consumers illegal up-front fees of \$2,000 to \$4,000 for the foreclosure rescue services, but providing little or no help, deepening their victims' financial distress. The FTC also obtained default judgments ordering two other defendants to pay nearly \$13.5 million. On appeal, in 2016, the circuit court affirmed the district court's decision not to set aside the default judgments.²²

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

The FTC does not have rulemaking authority under the TILA, but five of the agency's activities in 2016 pertained to rulemaking, research, and policy development that addressed issues related to the TILA.

1. Auto Survey

The agency issued a second Federal Register Notice (FRN) on a proposed qualitative survey of consumers to learn about their experiences in buying and financing automobiles at dealerships, and sought clearance from the Office of Management and Budget (OMB) to conduct the study.²³ The proposed consumer survey, which will include consumer interviews and review of consumers' purchase and finance documents, is designed to assist the FTC by providing useful insights into consumer understanding of the automobile purchasing and financing process at the dealership, and could help identify areas for future initiatives, such as business and consumer education or enforcement, as appropriate.

2. FinTech Workshop

In 2016, the FTC began a forum series exploring emerging financial technology and its implications for consumers. The first FinTech Forum, held in June 2016, addressed marketplace lending.²⁴ Marketplace lenders are typically nonbank financial platforms that leverage technology to reach potential borrowers, evaluate creditworthiness, and facilitate loans. One topic the panelists discussed was whether consumers applying for loans at marketplace lending sites receive Truth in Lending forms.²⁵ FTC staff also presented results of an informal staff survey of 15 websites,

²¹ The full judgment will become due if the defendants are found to have misrepresented their financial condition.

²² *FTC v. Business Team, LLC*, No. 14-56582 (9th Cir. June 9, 2016) (memorandum), available at <http://cdn.ca9.uscourts.gov/datastore/memoranda/2016/06/09/14-56582.pdf>.

²³ 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>.

²⁴ See *FinTech Series: Marketplace Lending* (June 9, 2016), available at <https://www.ftc.gov/news-events/events-calendar/2016/06/fintech-series-marketplace-lending>. A webcast and transcript are available at that site.

²⁵ See Remarks of Peter Renton, Publisher of Lend Academy Website and co-founder of Lendit, Transcript at 3-4, available at

including information provided about annual percentage rates and other loan terms, among other material.²⁶

3. Disclosures and Testing

In September, the FTC hosted a workshop to examine the testing and evaluation of disclosures that companies make to consumers about advertising claims, privacy practices, and other information.²⁷ The workshop explored how to test the effectiveness of disclosures to ensure consumers notice them, understand them, and use them in their decision-making. Among other topics discussed, one participant in that event discussed the CFPB's creation of the TILA's Loan Estimate and Loan Closing disclosures, as replacements for the Good Faith Estimate, and the TILA and HUD-1 forms.²⁸ Another participant discussed testing to overcome consumers' cognitive bias regarding payday loan disclosures, including those pertaining to the APR and the costs of payday loan fees.²⁹ A staff summary of the workshop was later released, providing an overview of information addressed during the forum.³⁰

https://www.ftc.gov/system/files/documents/public_events/944193/ftc_fintech_series_marketplace_lending_-_transcript.pdf.

²⁶ See Presentation of Phoebe Rouge, Technologist, FTC Office of Technology Research and Investigation, "A Survey of 15 Marketplace Lenders' Online Presence," Event Materials, available at <https://www.ftc.gov/news-events/audio-video/video/fintech-series-marketplace-lending>; see also Remarks of Phoebe Rouge, Transcript at 22-28, available at https://www.ftc.gov/system/files/documents/public_events/944193/ftc_fintech_series_marketplace_lending_-_transcript.pdf.

²⁷ See *Putting Disclosures to the Test: An FTC Workshop* (Sept. 15, 2016), available at <https://www.ftc.gov/news-events/events-calendar/2016/09/putting-disclosures-test>. A webcast and transcript are available at that site.

²⁸ See Presentation of Susan Kleimann, President, Kleimann Communication Group, "Going Beyond Words: Assessing Comprehension at a Deeper Level," *Putting Disclosures to the Test*, Event Materials, Slides – Part 2, available at https://www.ftc.gov/system/files/documents/public_events/950633/disclosures-part2.pdf; see also Remarks of Susan Kleimann, Transcript – Part 2, available at https://www.ftc.gov/system/files/documents/videos/putting-disclosures-test-part-2/ftc_putting_disclosures_to_the_test_workshop_-_transcript_segment_2.pdf. Among other points, Ms. Kleimann noted that "[c]omprehension is more than understanding words but rather understanding the implication and impact," and that "choice requires integrating information and keying in on what makes the most sense for you."

²⁹ See Presentation of Adair Morse, Finance Group, Haas School of Business, "Engagement with the Private Sector in Testing," *Putting Disclosures to the Test*, Event Materials, Slides – Part 3, available at https://www.ftc.gov/system/files/documents/public_events/950633/disclosures-part3.pdf; see also Remarks of Adair Morse, Transcript – Part 3, available at https://www.ftc.gov/system/files/documents/videos/putting-disclosures-test-part-3/ftc_putting_disclosures_to_the_test_workshop_-_transcript_segment_3.pdf.

³⁰ See *Putting Disclosures to the Test – Staff Summary* (Nov. 2016), available at <https://www.ftc.gov/system/files/documents/reports/putting-disclosures-test/disclosures-workshop-staff-summary-update.pdf>.

4. Common Ground

In October, the FTC hosted “Working Together to Protect Midwest Consumers: A Common Ground Conference” in Madison, Wisconsin.³¹ At the event, FTC staff, state and federal consumer protection officials, legal services attorneys, and consumer advocates discussed a variety of issues facing Midwest consumers. Among other topics, participants discussed payday loans and car title loans.

5. Military Lending

Also in 2016, FTC staff continued to participate in an interagency group that coordinates with the Department of Defense (DoD) (DoD interagency group) on amendments to its rule implementing the Military Lending Act (MLA).³² Many parts of the rule took effect in October 2016.³³ 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 TILA-related matters, the MLA, and the DoD military lending rule.

C. Truth in Lending: Consumer and Business Education

In 2016, the Commission continued its efforts to educate consumers and businesses about issues related to the consumer credit transactions to which Regulation Z applies.

1. Military Lending

The Commission released a new financial readiness website designed for mobile devices, to help members of the military community make personal financial decisions in view of the unique challenges they face, including frequent relocations and deployment.³⁴ The FTC created the new website, and worked with the DoD and other partners to help servicemembers and their families

³¹ See *Working Together to Protect Midwest Consumers: A Common Ground Conference* (Oct. 25, 2016), available at <https://www.ftc.gov/news-events/events-calendar/2016/10/working-together-protect-midwest-consumers-common-ground>.

³² 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.

³³ Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, Final Rule (DoD military lending rule), 80 Fed. Reg. 43560 (July 22, 2015), available at <https://www.gpo.gov/fdsys/pkg/FR-2015-07-22/pdf/2015-17480.pdf>. The FTC has enforcement authority for the rule for entities subject to its jurisdiction, in the manner specified in Section 108 of the TILA, 15 U.S.C. § 1607(c), or other applicable authority. See 80 Fed. Reg. at 43611; 32 C.F.R. § 232.10, Administrative Enforcement.

³⁴ See FTC, Press Release, *FTC Unveils Mobile-Friendly Financial Readiness Website for Military Members and Personal Financial Managers* (Nov. 15, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/11/ftc-unveils-mobile-friendly-financial-readiness-website-military>. See generally www.military.consumer.gov.

with personal finances including making credit decisions. Servicemembers can find mobile-friendly tips easily and quickly from their mobile phone to assist in areas such as buying cars, and managing money while on deployment. The Commission also released its new toolkit on the site, “Tools for Personal Financial Managers,” providing personal financial managers, counselors, and others in the military community with practical financial tips for servicemembers.³⁵ The Commission also issued a blog post announcing the new site, highlighting information available, including slides and talking points for financial readiness lessons and events.³⁶ All materials are free, without copyright, to facilitate use and copying.

In July 2016, the Commission also released a blog post on military consumer issues for Military Consumer Month. The blog post focused on activities the agency, together with DoD and other partners, were conducting during the month.³⁷ The Commission also participated in several live Twitter chats on military consumer finance issues during that month, for servicemembers, veterans, and their families.³⁸ One chat was jointly conducted with staff from the FTC and the National Credit Union Administration, discussing how servicemembers can protect themselves and their families on consumer lending issues, including in payday, auto, and student lending.³⁹

2. Auto Sales and Financing

The Commission issued a blog post on auto purchasing and financing to warn consumers about illegal tactics.⁴⁰ The blog post addressed a variety of practices and advised consumers to shop around and compare offers from different dealers to find the best deal. The FTC also issued a blog post to provide businesses with guidance on avoiding related practices.⁴¹

³⁵ See FTC, *The Military Consumer Toolkit for Personal Financial Managers and other counselors*, available at www.military.consumer.gov/toolkit.

³⁶ See Jessica Rich, *Military consumer, your tool for financial readiness*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Nov. 14, 2016), <https://www.consumer.ftc.gov/blog/military-consumer-your-tool-financial-readiness>. The FTC also released a video about its new website, see *Military Consumer: Your Tool for Financial Readiness* (Nov. 15, 2016), <https://www.consumer.ftc.gov/media/video-0138-military-consumer-your-tool-financial-readiness>, and a business blog post on this material. See Carol Kando-Pineda, *Military Consumer: Sound Off!* FTC BUSINESS CENTER BUSINESS BLOG (Nov. 15, 2016), <https://www.ftc.gov/news-events/blogs/business-blog/2016/11/military-consumer-sound>.

³⁷ See Jessica Rich, *Month of the Military Consumers*, FTC BUREAU OF CONSUMER PROTECTION BLOG (July 21, 2016), <https://www.consumer.ftc.gov/blog/month-military-consumer>.

³⁸ See Carol Kando-Pineda, *Twitter chats for the military community*, FTC BUREAU OF CONSUMER PROTECTION BLOG (July 11, 2016), <https://www.consumer.ftc.gov/blog/twitter-chats-military-community-0>.

³⁹ The FTC-NCUA Twitter chat was held on July 27, 2016.

⁴⁰ See Colleen Tressler, *FTC to auto dealers: don't toy with yo-yo financing*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Sept. 29, 2016), <https://www.consumer.ftc.gov/blog/ftc-auto-dealers-dont-toy-yo-yo-financing>.

⁴¹ See Lesley Fair, *Deal or no deal? FTC challenges yo-yo financing tactics*, FTC BUSINESS CENTER BUSINESS BLOG (Sept. 29, 2016), <https://www.ftc.gov/news-events/blogs/business-blog/2016/09/deal-or-no-deal-ftc-challenges-yo-yo-financing-tactics>.

The Commission also released a blog post that described allegedly deceptive and other illegal auto practices addressed by its settlement with Southwest Kia.⁴² The blog post recommends that consumers review free information about buying and owning a car before starting to shop, and report complaints about misleading and illegal advertising to the FTC. The FTC also issued a business blog with guidance to other dealers about Southwest Kia’s alleged failure to disclose TILA-required information clearly and conspicuously.⁴³

The Commission released four videos to assist consumers in buying and financing vehicles, with a blog post describing the information.⁴⁴ The videos provide tips to help consumers astutely shop (including comparing offers) to get a better deal. The Commission also released a video providing guidance to consumers to help them avoid yo-yo financing scams, including suggesting that consumers: (1) compare offers for financing before shopping for a car; (2) find out if the deal is final and getting that information in writing; and (3) learn who to alert (including state consumer protection agencies and the FTC), if problems arise.⁴⁵ The Commission also released a blog post in English and Spanish, in story format, explaining how consumers can avoid difficulties with car financing at dealerships, including taking appropriate steps if dealers indicate the terms have changed; focusing on the deal they negotiated with the dealer; or asking dealers to return their downpayment or trade-in.⁴⁶

⁴² See Amy Hebert, *Car ads broke the law – again*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Aug. 18, 2016), <https://www.consumer.ftc.gov/blog/car-ads-broke-law-again>.

⁴³ See Lesley Fair, *FTC says car dealer took consumers for a ride – again*, FTC BUSINESS CENTER BUSINESS BLOG (Aug. 18, 2016), <https://www.ftc.gov/news-events/blogs/business-blog/2016/08/ftc-says-car-dealer-took-consumers-ride-again>.

⁴⁴ See Amy Hebert, *Looking to buy a car? Watch these 4 videos first*, FTC BUREAU OF CONSUMER PROTECTION BLOG (July 8, 2016), <https://www.consumer.ftc.gov/blog/looking-buy-car-watch-these-4-videos-first>; *Spotting Deceptive Car Ads* (July 1, 2016), <https://www.consumer.ftc.gov/media/video-0130-spotting-deceptive-car-ads>; *Financing a Car* (July 1, 2016), <https://www.consumer.ftc.gov/media/video-0129-financing-car>; *Understanding Car Add-ons* (July 1, 2016), <https://www.consumer.ftc.gov/media/video-0131-understanding-car-add-ons>; *Buying a Used Car* (July 1, 2016), <https://www.consumer.ftc.gov/media/video-0128-buying-used-car>. A blog post with information to use in shopping for and buying a used car was also released. See Alvaro Puig, *Buying a Used Car*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Oct. 13, 2016), <https://www.consumer.ftc.gov/blog/buying-used-car>.

⁴⁵ *Avoiding a Yo-yo Financing Scam* (Dec. 13, 2016), <https://www.consumer.ftc.gov/media/video-0141-avoiding-yo-yo-financing-scam>.

⁴⁶ See FTC, Press Release, *FTC “Fotonovela” Tells Latino Community How to Avoid Car-Buying Problems*, Jan. 22, 2016, available at <https://www.ftc.gov/news-events/press-releases/2016/01/ftc-fotonovela-tells-latino-community-how-avoid-car-buying>; Alvaro Puig, *Manual avoids car-buying trouble [fotonovela]*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Jan. 22, 2016), <https://www.consumer.ftc.gov/blog/manuel-avoids-car-buying-trouble-fotonovela>.

3. Payday Lending

In 2016, the Commission issued additional guidance through its business blog on deceptive payday lending practices, with information from a recent FTC settlement on this topic.⁴⁷ The material addresses the deceptive and unfair payday lending and other practices challenged in the AMG case, discussed above, and the laws violated, including the TILA.

4. Other Credit

The Commission issued guidance through a business blog post on marketplace lending, in connection with its FinTech Forum, discussed above.⁴⁸ The blog post discussed the various laws that govern how marketplace lenders serve consumers, including the TILA.

The Commission also posted a business blog post, with guidance about a ruling in the consumer retail electronics case against BlueHippo, discussed above, and emphasizing the agency's focus on ensuring order compliance.⁴⁹

5. Disclosures and Testing

Additionally, in 2016, the Commission issued guidance for businesses through a technology blog post, related to the FTC's Disclosures Workshop, discussed above.⁵⁰ The blog post highlighted the panelists' discussions of metrics and thresholds for determining effective disclosures, and noted that, given that consumers are bombarded with disclosures, with limited time and attention, it may be preferable to focus disclosures on the most critical information for consumers. It also addressed improving disclosure design, such as highlighting the most salient information in long disclosures or information consumers are not familiar with and highlighting that material. It also noted the staff summary of the workshop, released with the blog post.

III. Regulation M (the CLA)

In 2016, the Commission issued one final administrative consent order and filed two federal court actions involving the CLA and Regulation M. The Commission also engaged in research and policy development, and educational activities in this area.

⁴⁷ See Lesley Fair, *Record \$1.3 billion ruling against Scott Tucker and others behind AMG payday lending*, FTC BUSINESS CENTER BUSINESS BLOG (Oct. 14, 2016), <https://www.ftc.gov/news-events/blogs/business-blog/2015/01/turning-tables-deceptive-payday-lenders>.

⁴⁸ See Duane Pozza and Helen Wong, *FinTech Forum: A closer look at marketplace lending*, FTC BUSINESS CENTER BUSINESS BLOG (Aug. 3, 2016), <https://www.ftc.gov/news-events/blogs/business-blog/2016/08/fintech-forum-closer-look-marketplace-lending>.

⁴⁹ See Lesley Fair, *Judge orders \$13.4 million in contempt action challenging BlueHippo hype*, FTC BUSINESS CENTER BUSINESS BLOG (May 2, 2016), <https://www.ftc.gov/news-events/blogs/business-blog/2016/05/judge-orders-134-million-contempt-action-challenging>.

⁵⁰ See Lorrie Cranor, *Reflections on the FTC's Disclosure Evaluation Workshop*, FTC TECHNOLOGY BLOG (Nov. 30, 2016), <https://www.ftc.gov/news-events/blogs/techftc/2016/11/reflections-ftcs-disclosure-evaluation-workshop>.

A. Consumer Leasing: Enforcement Actions

The Commission issued a final consent order against Progressive Chevrolet Company and Progressive Motors Inc., which the FTC charged with deceiving consumers by using advertising that touted low monthly car lease payments and down payments, but failed to disclose other key terms of the offers.⁵¹ According to the complaint, the dealers touted low monthly car lease payments and down payments, but failed to disclose other key terms of the offer, and also failed to disclose or clearly and conspicuously disclose lease terms required by the CLA. The consent order prohibits the dealers from advertising the amount of any monthly payment, down payment, or other payment, unless they clearly and conspicuously disclose all qualifications or restrictions on a consumer's ability to obtain the advertised terms.⁵² If the ad states that consumers must meet a certain credit score to qualify for the offer, and a majority of consumers are not likely to meet the stated credit score, the ad must clearly and conspicuously disclose that fact. The dealers also are barred from misrepresenting the cost of buying or leasing a vehicle, or misrepresenting any other material fact about the price, sale, financing, or leasing of any vehicle. In addition, they are prohibited from advertising a payment amount, or that any or no initial payment is required at lease inception, without clearly and conspicuously disclosing other key terms, and must comply with all requirements of the CLA.

As discussed above, the Commission filed two federal court actions against dealers. The action against Southwest Kia resulted in the stipulated \$85,000 civil penalty and additional order provisions to settle charges that the dealers violated a 2014 FTC administrative order.⁵³ According to the FTC's complaint, among other things, the dealerships offered cars for under \$200 per month, but disclosed only in fine print that appeared for two seconds in television ads that the offer applied only to leases not sales, and required a \$1,999 payment at lease signing. The dealers also allegedly advertised lease terms without clearly and conspicuously disclosing information required by the CLA, and failed to keep and produce records as required by the 2014 order. In addition to the civil penalty, the stipulated order prohibits the dealers, in any ad for buying, financing, or leasing vehicles, from misrepresenting the cost of purchase with financing, the cost of leasing, or any other material fact about price, sale, financing, or leasing. The order also bars the defendants from violating the CLA.

The other federal court action was the case filed against Sage Auto Group, described above.⁵⁴ Among other things, the FTC's complaint alleged that defendants claimed that consumers could finance the purchase of vehicles – when in fact they were lease offers. For example, according to the complaint, defendants ran deceptive newspaper advertisements that offered motor

⁵¹ See FTC, Press Release, *FTC Approves Final Consent Order Against Ohio Auto Dealers Charged with Deceiving Consumers Regarding Key Lease Terms*, July 14, 2016, available at <https://www.ftc.gov/news-events/press-releases/2016/07/ftc-approves-final-consent-order-against-ohio-auto-dealers>.

⁵² *In the Matter of Progressive Chevrolet Co.*, Docket No. C-4578 (June 13, 2016) (decision and order), available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3133/progressive-chevrolet-company-progressive-motors-inc>.

⁵³ See *supra* note 7.

⁵⁴ See *supra* notes 9-11.

vehicles, in English and Spanish, for \$38 a month and \$38 down, but in fine print at the bottom of the ad listed numerous additional charges totaling \$2,695 at signing, stated that the \$38 payment is limited to the first 6 months, and that the offer is for the lease – not the purchase – of a motor vehicle. The complaint also charged that defendants violated the CLA by failing to clearly and conspicuously disclose required lease information in their advertising. Under the stipulated preliminary injunction the FTC obtained, in addition to prohibiting the misrepresentations above, the order also requires defendants to comply with the CLA. Litigation in this matter was ongoing at the end of 2016.

B. Consumer Leasing: Rulemaking, Research, and Policy Development

The FTC does not have rulemaking authority under the CLA but in 2016 engaged in research and policy work that addressed CLA-related issues.

In 2016, the Commission hosted a workshop to examine competition and consumer protection issues raised by consumers' growing use of rooftop solar panels to generate their own electric power.⁵⁵ Among other things, the workshop focused on how consumers get the information they need to decide whether to install rooftop solar panels. Panelists discussed a variety of topics, including: 1) consumers may use leases and other payment mechanisms for rooftop solar panels; 2) consumers have difficulty understanding the terms of the agreement, including the difference between a lease and power purchase agreement; and 3) the CLA and Regulation M currently have rules that apply to solar leases.⁵⁶ Another topic of discussion was federal and state agency coordination on solar leasing initiatives, including addressing inadequate communication and disclosure of contract terms, and consumer understanding of the lease (or financing) obligation.⁵⁷

In addition, in connection with the FTC's work with ABA LAMP discussed above, the FTC staff also worked with the ABA committee on consumer leasing issues and the CLA, including automobile leasing.

C. Consumer Leasing: Consumer and Business Education

In 2016, some of the Commission's blog posts on auto transactions, discussed above, also offered information on consumer leases, including the blog post on Southwest Kia.⁵⁸ It noted that

⁵⁵ See *Something New Under the Sun: Competition & Consumer Protection Issues in Solar Energy* (June 21, 2016), available at <https://www.ftc.gov/news-events/events-calendar/2016/06/something-new-under-sun-competition-consumer-protection-issues>. A webcast and transcript are available at that site.

⁵⁶ See Remarks of Vikram Aggarwal, Founder & CEO, EnergySage; Shannon Baker-Branstetter, Policy Counsel, Energy and Environment, Consumers Union; and Thomas P. Kimbis, Interim President, Solar Energy Industries Association, Transcript at 32-34, 159-60, and 163-64, respectively, available at https://www.ftc.gov/system/files/documents/public_events/943943/solar_workshop_transcript.pdf.

⁵⁷ See Remarks of The Honorable Ann Rendahl, Commissioner, Washington State Utilities and Transportation Commission, Transcript at 112, 115, and Shennan Kavanagh, Deputy Chief, Consumer Protection Division, Office of the Attorney General of Massachusetts, Transcript at 167, 180-82, available at https://www.ftc.gov/system/files/documents/public_events/943943/solar_workshop_transcript.pdf.

⁵⁸ See *supra* note 42.

dealers' ads, by law, must clearly and conspicuously disclose any "catches," including if the low monthly payment requires money to be paid up-front. The Commission's blog post for business on this topic also emphasized that the dealer allegedly violated an order by running ads that were deceptive and that failed to include, among other things, the required CLA disclosures in a clear and conspicuous fashion.⁵⁹ Additionally, the Commission's business blog post, discussed above, regarding the complaint issued against Sage Auto Group, included guidance on consumer leasing requirements.⁶⁰

Also, the FTC issued a blog post for businesses on solar power, discussing the Commission's workshop on rooftop solar panels.⁶¹ The blog post noted that as rooftop solar is increasingly used as a source of electricity, the Commission's workshop would examine the disclosures solar installers are making, whether consumers understand them, and what information consumers need to make an informed decision about solar.

IV. Regulation E (the EFTA)

In 2016, the agency had six new or ongoing cases involving the EFTA and Regulation E issues. 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

Four of the Commission's cases alleging violations of the EFTA and Regulation E arose in the context of "negative option" plans.⁶² Under these plans, a consumer agrees to receive various goods or services from a company for a trial period at no charge or at a reduced price. The company also obtains, sometimes through misrepresentations, the consumer's debit or credit card number. If the consumer does not cancel before the end of the trial period, the shipments of goods or provision of services continue, and the consumer incurs recurring charges. 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.

⁵⁹ See *supra* note 43.

⁶⁰ See *supra* note 41.

⁶¹ See John Seesel and Derek Moore, *Shining a light on solar power*, FTC BUREAU OF COMPETITION BLOG (May 3, 2016), <https://www.ftc.gov/news-events/blogs/competition-matters/2016/05/shining-light-solar-power>.

⁶² 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.

In 2016, 29 defendants who sold AuraVie, Dellure, LéOR Skincare, and Miracle Face Kit-branded skincare products settled FTC charges or had default orders entered against them.⁶³ The agency’s complaint, previously filed, charged the companies with selling their skincare products through false advertisements for “risk-free trials.” According to the FTC, the defendants convinced consumers to provide their credit or debit card information, purportedly to pay nominal shipping fees. However, the defendants allegedly used consumers’ information to impose unauthorized recurring monthly charges of up to \$97.88 per month to their credit card or through debits to their bank accounts for unordered products. The Commission charged the defendants with violating the FTC Act, the Restore Online Shoppers’ Confidence Act, and the EFTA. Each final order bans the defendants from selling products through a negative option plan, bars them from future deception and card laundering, and bans them from failing to obtain a written authorization signed or similarly authenticated from consumers for preauthorized electronic fund transfers from the consumer’s account and from failing to provide a copy of the authorization to consumers – as required by the EFTA.⁶⁴ The orders also include monetary judgments of more than \$72.7 million, suspended upon the defendants’ surrender of virtually all assets, totaling more than \$2.7 million. The judgments are partially suspended based upon the defendants’ abilities to pay.⁶⁵ A default judgment was entered against 19 corporate defendants, with similar provisions to the stipulated orders, but without suspension of the monetary judgment.⁶⁶ The orders together resolve the claims against all but four of the AuraVie defendants. Litigation continues in this matter.

In a second negative option case involving the EFTA, the ringleader and two other defendants in the IWorks, Inc. online billing scheme agreed to settle FTC charges that they took more than \$280 million from consumers through deceptive “trial” memberships for bogus government-grant and money-making products.⁶⁷ In the complaint previously filed, the FTC sued Jeremy Johnson, Ryan Riddle, other individuals, and dozens of corporate defendants, including IWorks. The complaint alleged that IWorks 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. In 2016, Johnson, IWorks, and 26 corporate defendants

⁶³ See FTC, Press Release, *FTC Obtains Court Orders Barring Skincare Marketers From Deceptive Marketing and Billing Practices*, Oct. 13, 2016, available at <https://www.ftc.gov/news-events/press-releases/2016/10/ftc-obtains-court-orders-barring-skincare-marketers-deceptive>.

⁶⁴ *FTC v. Bunzai Media Group, Inc.*, No. 15-cv-4527 (C.D. Cal. May 17, 2016) (stipulated order for permanent injunction and monetary judgment as to stipulating defendant Motti Nottea), (stipulated order for permanent injunction and monetary judgment as to stipulating defendant Paul Medina), (stipulated order for permanent injunction and monetary judgment as to defendants Adageo *et al.*); (C.D. Cal. July 19, 2016) (stipulated order for permanent injunction and monetary judgment as to defendant Roi Reuveni).

⁶⁵ The full judgment will become due if the defendants are found to have misrepresented their financial condition.

⁶⁶ *FTC v. Bunzai Media Group, Inc.*, No. 15-cv-4527 (C.D. Cal. Aug. 22, 2016) (default judgment and order for permanent injunction and other equitable relief).

⁶⁷ See FTC, Press Release, *IWorks Billing Scheme Ringleader Agrees to Settle FTC Charges*, Aug. 29, 2016, available at <https://www.ftc.gov/news-events/press-releases/2016/08/iworks-billing-scheme-ringleader-agrees-settle-ftc-charges>.

agreed to an order imposing a \$280.9 million judgment.⁶⁸ The judgment provided for partial suspension, upon transfer to the FTC of all of Johnson's frozen assets, including millions of dollars in bank accounts, stock, real estate and jewelry, and any interest he had in assets held by the receiver.⁶⁹ The stipulated orders against Johnson and Riddle ban them from selling grant products, investment opportunities, continuity programs, and forced upsells (add-on products bundled with the offered product), and from using negative option features. Johnson and Riddle are also banned from violating the EFTA, from debiting consumers' bank accounts without first obtaining their express verifiable authorization, and from misrepresenting material facts about any product, including the total cost or any associated risks. Litigation continues against three remaining individual defendants and four companies they own.

In the third negative option case, the FTC obtained a stipulated final order with a marketer of dietary supplements, Health Formulas, its related entities, and principals, banning the defendants from advertising or selling weight-loss supplements and negative option programs, making unsupported health claims for other products, and debiting consumers' bank accounts without their consent.⁷⁰ The previously filed complaint alleged that the defendants deceptively pitched a variety of dietary supplements and other weight-loss, virility, 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. They allegedly debited consumers' bank accounts on a recurring basis without obtaining a written authorization from, or providing a copy of the authorization to, consumers, 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. The FTC charged the defendants with unfair and deceptive practices, in violation of the FTC Act, and with violations of the Restore Online Shoppers' Confidence Act. The stipulated final order also imposed a \$105 million judgment and barred the defendants from the telemarketing conduct alleged in the complaint.⁷¹ Based on the defendants' inability to pay, the remainder of the \$105 million

⁶⁸ *FTC v. Johnson*, No. 2:10-cv-02203 (D. Nev. Aug. 26, 2016) (stipulated final order for permanent injunction and monetary judgment as to defendants Jeremy Johnson *et al.*), (stipulated final order for disgorgement as to relief defendants Sharla Johnson *et al.*), (stipulated final order for disgorgement as to relief defendants Kerry Johnson *et al.*), available at <https://www.ftc.gov/enforcement/cases-proceedings/102-3015/i-works-inc-et-al>. An additional stipulated order was entered thereafter: *Id.* (C.D. Nev. Oct. 19, 2016) (stipulated final order for permanent injunction and monetary judgment as to defendant Scott Leavitt *et al.*). An earlier order was also entered: *Id.* (C.D. Nev. Feb. 22, 2016) (stipulated final order for permanent injunction and monetary judgment as to defendant Lloyd Johnston), available at <https://www.ftc.gov/enforcement/cases-proceedings/102-3015/i-works-inc-et-al>.

⁶⁹ The full judgment will become due if the defendants are found to have misrepresented their financial condition.

⁷⁰ See FTC, Press Release, *Marketers of Simple Pure Supplements Settle FTC Court Action*, May 3, 2016, available at <https://www.ftc.gov/news-events/press-releases/2016/05/marketers-simple-pure-supplements-settle-ftc-court-action>.

⁷¹ *FTC v. Chapnick, Smukler & Chapnick, Inc.*, No. 2:14-cv-01649 (D. Nev. Feb. 16, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/132-3159-x150015/health-formulas-llc-doing-business-simple-pure>; *FTC v. Jason Miller*, No. 2:14-cv-01649 (D. Nev. Apr. 26, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/132-3159-x150015/health-formulas-llc-doing-business-simple-pure>. A subsequent order against various defendants, with similar relief, was also entered. *FTC v. Health Formulas*, No. 2:14-cv-01649 (D. Nev. July 12, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/132-3159-x150015/health-formulas-llc-doing-business-simple-pure>.

judgment was suspended after the defendants surrendered over \$9 million in personal and business assets.⁷²

In the fourth negative option case, the FTC and the Maine Office of the Attorney General jointly filed a complaint and obtained a stipulated final order with two individuals and their companies, Direct Alternatives and Original Organics, in connection with their alleged deceptive promotion and sale of weight loss supplements.⁷³ The complaint alleged that the defendants falsely claimed users would quickly and easily lose significant weight and reduce their waist size by taking AF Plus and Final Trim and that the results were “proven” by scientific studies. According to the complaint, the defendants sold the products by pitching a “risk-free trial” offer that was not free of risk.⁷⁴ Among other things, the complaint alleged that many consumers were enrolled in a poorly disclosed monthly continuity plan resulting in additional charges to their credit or debit card accounts, and that consumers who failed to cancel trial memberships in two buying clubs were automatically billed \$24.95 per month for each club if they failed to cancel within thirty days; the defendants allegedly also made obtaining refunds difficult.⁷⁵ The complaint charged the defendants with various law violations, including violations of the EFTA, for debiting consumers’ bank accounts on a recurring basis without obtaining the consumers’ written authorization signed or similarly authenticated for preauthorized electronic fund transfers, and for failing to provide consumers with a copy of the authorization.

Among other things, the stipulated federal court order settling the agencies’ charges prohibits defendants from misrepresenting any material fact in connection with the sale of any product or service including claims related to return and cancellation policies, in addition to requiring disclosures about negative option features and “free” or trial offers. The order requires the defendants to obtain a written authorization for preauthorized electronic fund transfers, and to maintain procedures reasonably adapted to avoid unintentional failures to obtain written authorization, as required by the EFTA. The order imposes a \$16.4 million judgment that was suspended after the defendants sold or liquidated a substantial portion of their assets, including real estate, furniture, appliances, timeshares, a boat, snowmobiles, IRAs, jewelry, artwork, numerous investment accounts, and business investments.⁷⁶

⁷² The full judgment will become due if the defendants are found to have misrepresented their financial condition.

⁷³ See FTC, Press Release, *Portland, Maine Weight-Loss Supplement Sellers to Stop Deceptive Advertising, Illegal Billing Practices Following Joint FTC and Maine Attorney General Action*, Feb. 5, 2016, available at <https://www.ftc.gov/news-events/press-releases/2016/02/portland-maine-weight-loss-supplement-sellers-stop-deceptive>.

⁷⁴ *FTC and State of Maine v. Anthony Dill*, No. 2:16-cv-00023 (D. Me. Jan. 19, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3186/anthony-dill-staci-dill-direct-alternatives-original-organics>.

⁷⁵ A continuity plan is another term for a negative option plan.

⁷⁶ The full judgment will become due if the defendants are found to have misrepresented their financial condition. In a fifth negative-option case, a federal circuit court upheld a lower court ruling in favor of the FTC and Connecticut, requiring the operator of an affiliate marketing group to pay \$11.9 million for its part in helping to promote LeanSpa, a deceptively marketed weight-loss supplement. See FTC, Press Release, *U.S. Circuit Court Finds Operator of Affiliate Marketing Network Responsible for Deceptive Third-Party Claims Made for LeanSpa Weight-loss Supplement*, Oct. 4, 2016, available at <https://www.ftc.gov/news-events/press-releases/2016/10/us-circuit-court-finds-operator-affiliate-marketing-network>. The FTC and Connecticut first sued LeanSpa and its principal Boris Mizhen in 2011, charging

2. Other Cases

Also in 2016, the Commission continued litigating two other EFTA-related cases, one involving payday lending and the other involving consumer electronics financing.

In the payday lending case, described above, a federal court ordered Scott Tucker and several corporate defendants to pay \$1.3 billion for violations of Section 5 of the FTC Act, the EFTA, and other laws.⁷⁷ The FTC's previously filed complaint alleged that defendants violated the EFTA by making preauthorized debits from consumers' bank accounts as a condition of obtaining payday loans. The court's 2016 order prohibits Tucker and the corporate defendants from conditioning the extension of credit on preauthorized electronic fund transfers – as prohibited by the EFTA – among other things. As noted above, the judgment is under appeal.

As described above, a federal district court found BlueHippo Funding in contempt for operating a deceptive computer financing scheme in violation of a prior FTC consent order and entered judgment against the CEO for \$13.4 million.⁷⁸ 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.

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

The FTC does not have rulemaking authority under the EFTA but in 2016 engaged in research and policy work that addressed EFTA-related issues.

The FTC worked with the DoD interagency group and with ABA LAMP discussed above, on electronic funds issues. Among other things, the FTC staff coordinated with the DoD interagency group on issues related to preauthorized electronic fund transfers (EFTs), including in connection with DoD's interpretative rule released in 2016 for its military lending rule under the MLA.⁷⁹ The FTC also provided input to ABA LAMP, and conducted trainings for judge advocates

them with using fake news websites to promote their products, making deceptive weight-loss claims, and telling consumers they could receive free trials of acai berry and “colon cleanse” products, while only paying the nominal cost of shipping and handling. The complaint alleged that many consumers ended up paying \$79.99 for the “free” trial, and for recurring monthly shipments of products that were hard to cancel. The FTC and Connecticut subsequently settled with LeanSpa and Mizhen, who agreed to stop their deceptive practices and surrender assets for redress to consumers. The FTC later returned more than \$3.7 million to consumers who bought the deceptively advertised product. In 2016, the appeals court determined that the prior summary judgment ruling in favor of the FTC and Connecticut would stand. *FTC v. LeadClick Media*, No. 15-1009 (2d Cir. Sept. 23, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/1123135-x120003/leanspa-llc-et-al>.

⁷⁷ See *supra* note 13.

⁷⁸ See *supra* note 17.

⁷⁹ See Military Lending Act Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, Interpretative Rule, 81 Fed. Reg. 58840 (Aug. 26, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-08-26/pdf/2016-20486.pdf>.

general and others in conjunction with ABA LAMP trainings, on EFTs, FTC cases in this area, and the EFTA requirements.

The FTC also hosted two conferences in the FTC's FinTech Forum series that also addressed EFT issues. The first of these on marketplace lending was described above.⁸⁰ The forum included discussion of whether marketplace lending sites use automatic debits as the required payment mechanism in contravention of the EFTA's ban on compulsory use of EFTs – or offer this as an optional payment mechanism (with alternatives provided).⁸¹ The FTC held the second conference in October, which considered crowdfunding and peer-to-peer payments.⁸² At that event, participants discussed the legal framework that applies to peer-to-peer payments, including the EFTA and Regulation E. The discussion included consideration of different types of payment protections that may apply, depending on the type of payment mechanism used, including ACHs, and debit, credit, or prepaid cards. Participants also discussed the fact that different disclosures and liability protections apply under the EFTA and Regulation E for debit card payments than for other payments.⁸³

C. Electronic Fund Transfers: Consumer and Business Education

In 2015, the FTC issued blog posts for consumers and businesses providing guidance about negative option plans and recent cases on these issues, explaining certain EFTA and Regulation E violations, and providing tips to consumers on how to avoid unauthorized charges.⁸⁴ The FTC also released a blog post for businesses, with guidance on deceptive “free” trial offers and bogus weight loss claims. The blog post discussed the complaint in the Anthony Dill matter, discussed above, included allegations that defendants made unauthorized withdrawals from consumers' bank accounts and violated the EFTA and Regulation E, among other federal laws.⁸⁵ The blog post

⁸⁰ See supra note 24.

⁸¹ See *Remarks of Peter Renton and Remarks of Lauren Saunders*, Assoc. Dir., National Consumer Law Center, Transcript at 17-18, and 42-43, respectively, available at https://www.ftc.gov/system/files/documents/public_events/944193/ftc_fintech_series_marketplace_lending_-_transcript.pdf.

⁸² See *FinTech Series: Crowdfunding & Peer-to-Peer Payments* (Oct. 26, 2016), available at <https://www.ftc.gov/news-events/events-calendar/2016/10/fintech-series-crowdfunding-peer-peer-payments>. A webcast and transcript are available at that site.

⁸³ See *Remarks of Christina Tetreault, Staff Attorney, Consumers Union, and Brian Peters, Exec. Dir., Financial Innovation Now*, Transcript - Part 1, at 10-13, available at https://www.ftc.gov/system/files/documents/videos/fintech-series-crowdfunding-peer-peer-payments-part-1/ftc_fintech_series_crowdfunding_p2p_-_transcript_segment_1.pdf.

⁸⁴ See Pablo Zylberglait, *The land of the free trials*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Mar. 2, 2016), <https://www.consumer.ftc.gov/blog/land-free-trials>; see also Bridget Small, “Free trial” scammers settle, surrender millions, FTC BUREAU OF CONSUMER PROTECTION BLOG (Aug. 25, 2016), <https://www.consumer.ftc.gov/blog/free-trial-scammers-settle-surrender-millions>, and Lesley Fair, *Running the risk*, FTC BUSINESS CENTER BUSINESS BLOG (June 25, 2015), <https://www.ftc.gov/news-events/blogs/business-blog/2015/06/running-risk>.

⁸⁵ See Lesley Fair, *The gift that keeps on taking*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Feb. 8, 2016), <https://www.ftc.gov/es/node/913113>.

provided compliance tips, including advising companies that they should not bill consumers or make withdrawals from their bank accounts without express informed consent.

The FTC’s blog posts for businesses on payday lending, discussed above, also included warnings about violations of the EFTA. The posts noted that the judgment in AMG prohibits the defendants from conditioning credit on preauthorized electronic fund transfers.⁸⁶ The Commission’s business blog post on retail electronics, discussed above, also noted that businesses cannot illegally condition the extension of credit on consumers’ “agreement” to repay by preauthorized electronic debit.⁸⁷

The FTC’s blog post for business, as discussed above, on its FinTech forum on marketplace lending, also noted that marketplace lending is subject to the EFTA.⁸⁸ More specifically, it reminded lenders that the EFTA prohibits requiring consumers to repay by preauthorized EFT as a condition of extending credit, and provided information on FTC actions to enforce this prohibition.

* * * *

We hope that the information discussed above responds to your inquiry and will be useful in preparing the CFPB’s Annual Report to Congress.⁸⁹ 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

⁸⁶ See *supra* note 47.

⁸⁷ See *supra* note 49.

⁸⁸ See *supra* note 48.

⁸⁹ 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 2016, 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.