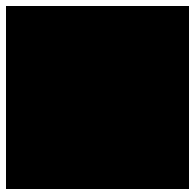


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580



Office of the Secretary

January 21, 2010

Sandra F Braunstein, Director
Division of Consumer and Community Affairs
Board of Governors of the Federal Reserve System
Washington, D.C. 20551

Dear Ms. Braunstein:

This letter responds to your request for information concerning the Federal Trade Commission's ("Commission" or "FTC") enforcement activities related to compliance with the Truth in Lending ("TILA"), Consumer Leasing ("CLA"), Equal Credit Opportunity ("ECOA"), and Electronic Fund Transfer Acts ("EFTA") (collectively "the Acts") for use in preparing the Federal Reserve Board's ("the Board") 2009 Annual Report to Congress. Specifically, you ask for information concerning the FTC's administration and enforcement of the Acts, as well as compliance work with the Commission in the future to

analyze the data reporting requirements associated with section 502(e) of the Credit CARD Act of 2009, which requires provision of annual information to the card about supervisory and enforcement activities related to credit card issuers' compliance with Federal consumer protection requirements.² You indicate that this new requirement may affect the type of data that the Commission collects from entities under its jurisdiction and that the FTC will be able to provide

¹ The FTC enforces the Acts for most non-bank entities in the United States. The Commission does not collect data regarding the extent of compliance by the numerous non-bank entities within its jurisdiction. As a result, this letter does not provide information on that issue.

² See The Credit Card Accountability Responsibility and Disclosure Act of 2009 ("the Credit CARD Act"), Pub. L. No. 111-24, 123 Stat 1734 (May 22, 2009).

³ The Commission also notes that it is implementing certain requirements of the Credit CARD Act and is consulting with the Board on implementing other provisions of that Act, including those amending the TILA and the EFTA. The Commission's activities related to the Credit CARD Act that are relevant to this report are described below.

⁴ Information concerning the FTC's enforcement and other activities discussed in this report also is available on the Commission's website at <http://www.ftc.gov>.

⁵ During 2009, the Commission did not initiate any enforcement actions alleging violations of the CLA, which is part of the TILA.

⁶ See Section 5 of the FTC Act (15 U.S.C. 45(a)(2)). Bona fide nonprofit entities are exempt from the jurisdiction of the FTC Act. Pursuant to Sections 4 and 5 of the FTC Act, the Commission has jurisdiction only over persons, partnerships, or corporations organized to carry on business for their profit or that of their members. See 15 U.S.C. 44, 45(a)(2). The FTC has authority to enforce the TILA only as to entities for which enforcement has not been committed to some other government agency. 15 U.S.C. 1607(c).

⁷ The Commission filed five additional such cases in 2008 for a total of 28 of these cases to date. See FEDERAL TRADE COMMISSION, FEDERAL AND STATE AGENCIES TARGET MORTGAGE RELIEF SCAMS; FTC LEADS "OPERATION STOLEN HOPE" TO STOP FRAUD AND HELP TROUBLED HOMEOWNERS (Nov. 24, 2009), available at [http://ftd\(4\)Tj5.04000.0000TT1a](http://ftd(4)Tj5.04000.0000TT1a)

<http://www.ftc.gov/opa/2009/05/rescue.shtm>; and FEDERAL T

¹² The assignee defendants are prohibited from accepting the assignment of any loan that includes any of the characteristics prohibited by any of the other provisions in the orders. Some individual defendants are barred from trying to collect payments from any consumers for any credit-related product sold by any of the defendants.

¹³ The stipulated final orders impose a \$279 million judgment against other defendants, which was suspended based on their inability to pay; however, the full judgment will become due immediately if those defendants are found to have misrepresented their financial condition.

¹⁴ In the Matter of Michael Gendrolis d/b/a Good Life Funding, Docket No. C-4248 (Fed. Trade Comm'n Feb. 17, 2009) (decision and order), available at <http://www.ftc.gov/opa/2009/02/fyi0219.shtm>; In the Matter of American Nationwide Mortgage Co., Docket No. C-4249 (Fed Trade Comm'n Feb 17, 2009) (decision and order), available at <http://www.ftc.gov/opa/2009/02/fyi0219.shtm>; In the Matter of Shiva Venture Group, Inc. d/b/a Innova Financial Group, Docket No. C-4250 (Fed. Trade Comm'n Feb. 17, 2009) (decision and order), available at <http://www.ftc.gov/opa/2009/02/fyi0219.shtm>.

¹⁹ FTC and State of Nevada v. Cash Today, Ltd., No. 3:08-cv-00590 (D. Nev. Oct. 27, 2009) (stipulated final judgment entered), available at <http://www.ftc.gov/opa/2009/09/cash.shtm>. The stipulated final judgment

²² Id. (S.D.N.Y. Nov. 16, 2009) (show cause order issued).

²³ See Omnibus Appropriations Act of 2009 (“Omnibus Act”), Pub.L. No. 111-8, § 626, 123 Stat. 524 (Mar. 11, 2009), as amended by the Credit CARD Act, § 511, *supra* note 2.

²⁴ Credit CARD Act, *supra* note 2.

See FEDERAL TRADE COMMISSION, FTC BEGINS RULEMAKING TO ADDRESS UNFAIR AND

See FEDERAL TRADE COMM'N, FTC OFFERS PAY-OFF INFORMATION TO CONSUMERS WITH N

³¹ See FEDERAL TRADE COMM'N, A NOTE TO HOMEOWNERS, available at <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea16.shtm>; FEDERAL TRADE COMM'N, UN NOTA PARA LOS DUEÑOS DE CASA, available at <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/sra16.shtm>; FEDERAL TRADE COMM'N, A NOTE TO HOMEOWNERS bookmark, available at <http://www.ftc.gov/bcp/edu/pubs/consumer/bookmarks/bmk13.pdf>; and FEDERAL TRADE COMM'N, UN NOTA PARA LOS DUEÑOS DE CASA bookmark, available at <http://www.ftc.gov/bcp/edu/pubs/consumer/bookmarks/sbmk13.pdf>.

³² See FEDERAL TRADE COMM'N, MORTGAGE PAYMENTS SENDING YOU REELING? HERE'S WHAT TO DO, available at <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea04.shtm> and FEDERAL TRADE COMM'N, ¿LOS PAGOS DE SU HIPOTECA LO ESTÁN HACIENDO TAMBALEAR? ESTO ES LO QUE USTED PUEDE HACER, available at <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/sra04.shtm>.

³³ See FEDERAL TRADE COMM'N, REAL PEOPLE, REAL STORIES: AVOID FORECLOSURE RESCUE SCAMS, available at <http://www.ftc.gov/multimedia/video/credit/mortgage/hope-now.shtm>.

³⁴ See FEDERAL TRADE COMM'N, REVERSE MORTGAGES: GET THE FACTS BEFORE CASHING IN ON YOUR HOME'S EQUITY, available at <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea13.shtm>.

³⁵ See FEDERAL TRADE COMM'N, HOUSING COUNSELORS: HOW TO HELP PEOPLE AVOID REVERSE MORTGAGE MISSTEPS, available at <http://www.ftc.gov/bcp/edu/pubs/business/alerts/at158.shtm>.

See FEDERAL TRADE COMM'N, USING A 1 1.00002.8400 0.0002s 1.00000 0.00000 0.00000 1.00000 0.0000 0.0000 cr

³⁹ See FEDERAL TRADE COMMISSION, RECUPERO DE VEHÍCULOS: COMPRENDIENDO LAS REGLAS DEL CAMINO, available at <http://www.ftc.gov/bcp/edu/pubs/consumer/autos/sat14.shtm>.

⁴⁰ See

⁴² The FTC staff's closing letter in the Homecomings investigation is available at <http://www.ftc.gov/os/dosings/090122homecomingfinancialclosingletter.pdf>.

See FEDERAL TRADE COMM'N, MORTGAGE DISCRIMINATION: A GUIDE TO UNDE

⁴⁵ EFTA and Regulation E apply to debit cards; TILA and Regulation Z apply to credit cards.

⁴⁶ FTC v. In Deep Services, Inc., No. 09-CV-01193 (C.D. Cal. June 23, 2009) (complaint filed), available at <http://www.ftc.gov/opa/2009/07/shortchange.shtm>;

fee. However, defendants allegedly failed to disclose adequately that the consumers were enrolled automatically in a membership program and that, unless they canceled the membership within seven days, a monthly membership fee would be charged to their credit card or bank account.

In all three of these cases, the complaints allege that defendants violated the EFTA and Regulation E by debiting consumers' credit card or 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 such written authorization. Litigation continues in all three cases.

The two settlements solved cases brought in prior years involving the sale of dietary supplements.⁴⁸ In both cases, the FTC alleged that defendants offered consumers "free" samples of dietary supplements for which a small shipping and handling fee would be charged to the consumers' credit or debit card. Defendants allegedly automatically enrolled consumers in a continuity plan for which their credit or debit card was debited each month. Among other things, the Commission charged that defendants violated the EFTA and Regulation E by debiting the consumers' accounts on a recurring basis without obtaining the consumers' written authorization for preauthorized electronic fund transfers from the account. Stipulated final orders were entered in both cases. Among other things, the orders enjoin defendants from: (1) failing to obtain written authorization for preauthorized electronic fund transfers from consumers' accounts before initiating such transfers; (2) failing to maintain procedures reasonably adapted to avoid an unintentional failure to obtain the required written authorization; and (3) violating any provision of the EFTA or Regulation E. In NextClick Media, the order also imposes a \$3.4 million judgment to resolve all issues, suspended upon payment of \$315,000 based on defendants' inability to pay.^{49, 1 y.}

⁴⁸ FTC v. Warshak, No. 1:06-cv-00051 (S.D. Ohio July 22, 2009) (stipulated final orders entered), available at <http://www.ftc.gov/os/caselist/berkeley/berkeley.shtm>; FTC v. NextClick Media, LLC, No. C08-1718 (N.D. Cal. Nov. 3, 2009) (stipulated final order entered), available at <http://www.ftc.gov/opa/2009/11/nextclick.shtm>.

⁴⁹ The full judgment will become due immediately if defendants are found to have misrepresented their financial condition.

⁵⁰ Supra note 21.

C. Other Initiatives

Title IV of the Credit CARD Act amends the EFTA, effective August 2011, to make it applicable to general-use prepaid cards, gift certificates, and store gift cards.⁵¹ As you know, the Board, in consultation with the FTC, is to implement rules concerning these EFTA amendments by February 2010. The Commission's Division of Financial Practices and Division of Advertising Practices are consulting with the Board regarding these rules.

Section 508 of the Credit CARD Act requires the FTC to conduct a study regarding the cost-effectiveness of making emergency automated teller machine ("ATM") technology available to permit ATM users under duress to electronically alert a local law enforcement agency that an incident is taking place at the ATM. The Commission's Bureau of Economics is conducting this study and drafting a report to Congress.

II. SUGGESTIONS FOR CHANGES IN THE ACTS OR THEIR IMPLEMENTING REGULATIONS

The Commission has no suggestions for changes to the Acts or their implementing regulations at this time beyond the staff comments referenced above.

The FTC hopes that the information contained in this letter responds to your inquiry and will assist in preparation of the Board's Annual Report to Congress. If any other information would be useful or if you wish to request additional assistance, please contact Joel Winston, Associate Director, Division of Financial Practices, at (202) 326-1153.

By direction of the Commission.

Donald S. Clark
Secretary

⁵¹ Credit CARD Act, *supra* note 2.