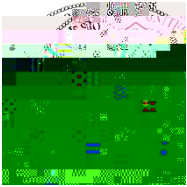


UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580



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<sup>1</sup> The Commission does not collect data regarding the extent of compliance by those numerous non-bank entities. As a result, this letter does not provide information on that issue.

<sup>2</sup> Information concerning the FTC's enforcement and other activities discussed in this report is also available at the Commission's Web site at <http://www.ftc.gov>.

<sup>3</sup> During 2008, the Commission did not initiate any enforcement actions alleging violations of the CLA, an amendment to the TILA.

<sup>4</sup> A few of the cases discussed below were finalized in January of 2009.

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<sup>5</sup> *FTC v. National Hometeam Solutions, LLC*, No. 4:08-cv-00067 (E.D. Tex. Feb. 26, 2008) (complaint filed), available at <http://www.ftc.gov/opa/2008/09/uhsnfs.shtm>; *FTC v. Mortgage Foreclosure Solutions, Inc.*, No. 8:08-cv-00388 (M.D. Fla. Jan. 5, 2009) (stipulated final judgment and permanent injunction entered), (M.D. Fla. Feb. 5, 2008) (complaint filed), available at <http://www.ftc.gov/opa/2009/01/mfs.shtm>

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*In the Matter of American Nationwide Mortgage Co.*, Docket No. C-3168 (Fed. Trade Comm'n J



law.<sup>16</sup> The FTC's charges were filed under the FTC Act, the TILA, and Regulation Z. The complaint alleged that the defendants called applicants in the United States and told them that they qualified for a loan, typically in an amount around \$200, that would have to be repaid by their next payday, with a fee ranging from \$35 to \$80. The defendants purportedly told consumers that they would receive written disclosures about the loans following the call, but consumers never received them. In addition to allegations that the defendants violated the FTC Act, the complaint alleged that they violated the TILA and Regulation Z by failing to disclose in writing to consumers key terms of their loans, including the APR, the payment schedule, the amount financed, the total number of payments, and any late payment fees. This litigation is ongoing.

In February 2008, the Commission settled charges that BlueHippo Funding, LLC violated, among other things, the FTC Act and the TILA in advertising and offering financing of high-end electronics to consumers with poor credit.<sup>17</sup> Consumers allegedly paid for the companies' goods by making a down payment and agreeing to allow the companies to deduct payments directly from their bank accounts.<sup>18</sup> The companies allegedly failed to deliver merchandise as promised, causing many consumers to cancel their contracts. The companies purportedly often failed to disclose to consumers until after they had debited one or more of the payments from consumers' bank accounts that, even if the consumers never received the merchandise, the companies would not refund the payments made. The complaint alleged that the companies violated the TILA and Regulation Z by failing to make required written disclosures.<sup>19</sup> To resolve the complaint allegations, the defendants entered into a settlement agreement which requires that they pay between \$3.5 million and \$5 million for consumer redress and bars them from: (1) making misrepresentations in marketing any consumer electronics product and any other product for which defendants require four or more periodic payments before shipping the product, and (2) failing to disclose material terms and conditions regarding refunds, cancellations, exchanges, or repurchases. The settlement also prohibits the defendants from violating the TILA and Regulation Z.

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<sup>16</sup> *FTC and State of Nevada v. Cash Today, Ltd.*, No. 3:08-cv-00590 (D. Nev. Nov. 6, 2008) (complaint filed), available at <http://www1.ftc.gov/opa/2008/11/cashtoday.shtm>.

<sup>17</sup> *FTC v. BlueHippo Funding, LLC*, No. 1:08-cv-1819 (S.D.N.Y. Apr. 10, 2008) (stipulated permanent injunction entered), available at <http://www2.ftc.gov/opa/2008/02/bluehippo.shtm>.

<sup>18</sup> *Id.*, No. 1:08-cv-1819 (S.D.N.Y. filed Feb. 22, 2008) (complaint filed).

<sup>19</sup> These disclosures include, but are not limited to, the conditions under which a finance charge may be imposed, methods for computing the finance charge, identification of other charges which may be imposed, and a statement of billing rights.

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<sup>20</sup> See FEDERAL TRADE COMM'N, CHOOSING A CREDIT CARD: THE DEAL IS IN THE DISCLOSURES, at <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre05.pdf>, FEDERAL TRADE COMM'N, HOW TO RECOGNIZE A FORECLOSURE RESCUE SCAM, at <http://www.ftc.gov/bcp/edu/pubs/articles/naps31.pdf>.

<sup>21</sup> See FEDERAL TRADE COMM'N, FORECLOSURE RESCUE SCAMS: ANOTHER POTENTIAL STRESS FOR HOMEOWNERS IN DISTRESS, at <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre42.pdf>, FEDERAL TRADE COMM'N, PAYDAY LOANS EQUAL VERY COSTLY CASH: CONSUMERS URGED TO CONSIDER THE ALTERNATIVES, at <http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt060.pdf>, FEDERAL TRADE COMM'N, MORTGAGE SERV.

TILA and HOEPA.<sup>24</sup> The FTC staff comment concluded that, while the Board's proposed restrictions on a new category of higher-cost loans appeared to strike a reasonable balance between consumer protection and the needs of lenders, the Board's proposed restrictions on a new category of higher-cost loans appeared to strike a reasonable balance between consumer protection and the needs of lenders.

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<sup>24</sup> See FEDERAL TRADE COMM'N, IN THE MATTER OF REQUEST FOR COMMENTS ON TRUTH IN LENDING, PROPOSED RULE, DOCKET NO. R-1305, COMMENTS OF THE STAFF OF THE BUREAU OF CONSUMER PROTECTION, THE BUREAU OF ECONOMICS, AND THE OFFICE OF POLICY PLANNING OF THE FEDERAL TRADE COMMISSION, at <http://www.ftc.gov/os/2008/04/V080008frb.pdf>.

<sup>25</sup> Truth in Lending; Final Rule, 73 Fed. Reg. 44,522 (July 30, 2008), available at [http://www.federalreserve.gov/reportforms/formsreview/RegC\\_20081024\\_ffr.pdf](http://www.federalreserve.gov/reportforms/formsreview/RegC_20081024_ffr.pdf).

<sup>26</sup> See IN THE MATTER OF REQUEST FOR COMMENT ON PROPOSED AMENDMENTS TO THE REGULATIONS IMPLEMENTING THE REAL ESTATE SETTLEMENT PROCEDURES ACT, DOCKET NO. FR-5180-P-01, COMMENTS OF THE STAFF OF THE BUREAU OF CONSUMER PROTECTION, THE BUREAU OF ECONOMICS, AND THE OFFICE OF POLICY PLANNING OF THE FEDERAL TRADE COMMISSION, at <http://www.ftc.gov/os/2008/06/V080012respa.pdf>.

<sup>27</sup> The FTC staff comment stated that HUD should: (1) re-evaluate its proposal to improve and standardize the GFE form; (2) clarify or modify several aspects of the revised HUD-1 form, Closing Script, and Comparison chart of GFE and HUD-1 terms; (3) re-evaluate its proposed broker compensation disclosures; (4) assess whether pricing restrictions on the resale of settlement service components and prohibitions on referral fees may inadvertently decrease competition and efficiency in the settlement services market; (5) re-assess the proposed expansion of the definition of "required use" of affiliated business services; and (6) continue its commendable use of consumer testing to minimize consumer misunderstanding. *Id.*

a comprehensive effort to reform federal mortgage disclosures under RESPA and the TILA. In November 2008, HUD announced its amended regulations to implement RESPA.<sup>28</sup>

In addition to filing comments with other policymakers related to the TILA, the FTC's Bureau of Economics, in May 2008, hosted a conference to analyze mortgage market product developments, market outcomes, and the role of information (especially disclosures) in consumer choice and on consumer welfare.<sup>29</sup> The conference gathered experts from many relevant specialities to examine these topics. Commission economists and other experts presented and discussed research results, including evaluating how current mortgage disclosures could be improved to assist consumers in making better-informed decisions.

### **Equal Credit Opportunity Act**

The FTC enforces the ECOA and Regulation B against entities within its jurisdiction that, among other things, unlawfully discriminate against members of protected classes in connection with extending credit. The Commission has a strong commitment to enforcing fair lending laws and will pursue vigorously violations revealed by its investigations. The Commission filed one ECOA enforcement action in 2008 and continues to investigate mortgage lenders for possible discrimination in both the pricing and approval of loans.

In December 2008, the Commission announced the complaint and settlement in a fair lending matter involving both prime and subprime home mortgage loans. The FTC resolved allegations that Gateway Funding Diversified Mortgage Services, L.P., and its general partner Gateway Funding Inc. (collectively "Gateway"), charged African-American and Hispanic consumers higher prices than non-Hispanic white consumers for purchase and refinance mortgage loans in violation of the ECOA, Regulation B, and the FTC Act.<sup>30</sup> The Commission's complaint alleged that the defendants gave their loan officers nearly complete discretion to charge, in addition to the risk-based price, overages that included higher interest rates and higher up-front charges. The Commission alleged that Gateway paid loan officers a percentage of these overages and failed to monitor whether African-American and Hispanic consumers were paying higher overages than non-Hispanic white consumers. According to the complaint, the exercise of discretion by loan officers resulted in African-American and Hispanic applicants being charged higher prices because of their race or ethnicity -- price disparities that were substantial, statistically significant, and could not be explained by factors related to underwriting risk or credit characteristics of the applicants. The settlement bars the defendants from discriminatory lending practices and requires them to implement fair lending training and monitoring programs

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<sup>28</sup> Real Estate Settlement Procedures Act (RESPA): Rule To Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs; Final Rule, 73 Fed. Reg. 68,204 (Nov. 17, 2008), available at <http://www.hud.gov/offices/hsg/sfh/res/finalrule.pdf>.

<sup>29</sup> See CONSUMER INFORMATION AND THE MORTGAGE MARKET, at <http://www.ftc.gov/be/workshops/mortgage/index.shtml>.

<sup>30</sup> *FTC v. Gateway Funding Diversified Mortgage Services, L.P.*, No. 2:08-05805 (E.D. Pa. Dec. 17, 2008) (stipulated permanent injunction entered), available at <http://www1.ftc.gov/opa/2008/12/gateway.shtm>.



and a comprehensive data integrity program. The settlement imposes a judgment of \$2.9 million, all but \$200,000 of which is suspended based on the defendants' inability to pay.

### **Electronic Fund Transfer Act**

The Commission enforces EFTA and Regulation E with regard to most non-bank entities in the United States. EFTA and Regulation E provide a framework of rights, liabilities, and responsibilities of participants in electronic fund transfer systems. For example, the

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<sup>31</sup> EFTA and Regulation E apply to debit cards; TILA and Regulation Z apply to credit cards.

<sup>32</sup> *FTC v. JAB Ventures, LLC*, No. 2:08-cv-04648 (C.D. Cal. Jul. 16, 2008) (complaint filed).

<sup>33</sup> *Id.*, No. 2:08-cv-04648 (C.D. Cal. Aug. 20, 2008) (stipulated permanent injunction entered).

Second, in *Complete Weightloss Center, Inc.*, defendants offered on their website “free” samples of their dietary supplements, requiring consumers to provide their debit or credit card numbers.<sup>34</sup> The defendants allegedly failed to adequately disclose that the consumers would be automatically enrolled in a negative option program, and that credit and debit card accounts would be debited approximately \$30 on a recurring basis.<sup>35</sup> The complaint also alleged that defendants debited consumers’ bank accounts without obtaining written authorization for preauthorized electronic fund transfers, as require

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<sup>34</sup> *FTC v. Complete Weightloss Center, Inc.*, No. 1:08-cv-00053 (D. N.D., May 13, 2008) (complaint filed).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*, No. 1:08-cv-00053 (D.N.D. May 14, 2008) (stipulated permanent injunction entered).

<sup>37</sup> *FTC v. Ultralife Fitness, Inc.*, No. 2:08-cv-07655 (C.D. Cal. Nov. 20, 2008) (complaint filed), available at <http://www1.ftc.gov/opa/2008/12/ultralife.shtm>.

<sup>38</sup> One continuity program was for periodic shipments of the dietary supplement (at a cost of approximately \$50 a month) and another for fitness instruction (at a cost of approximately \$30 a month).

<sup>39</sup> *Id.*, No. 2:08-cv-07655 (C.D. Cal. Dec. 1, 2008) (stipulated permanent injunction entered).

In addition to the three settlements, the FTC brought a fourth case involving a negative option plan used to sell dietary supplements. In this case, NextClick Media advertised “free” samples of herbal products, allegedly claiming consumers would only pay for shipping and handling. It allegedly sent consumers a 30

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<sup>40</sup> *FTC v. NextClick Media, LLC*, No. 3:08-cv-01718 (N.D. Cal. Mar. 31, 2008) (complaint filed), available at <http://www2.ftc.gov/opa/2008/05/nextclick3.shtm>.

<sup>41</sup> *Id.*, No. 3:08-cv-01718 (N.D. Cal. Apr. 23, 2008) (preliminary injunction entered).

<sup>42</sup> *FTC v. Warshak*, No. 1:06-cv-00051 (S.D. Ohio Jan. 30, 2006) (complaint filed), available at <http://www.ftc.gov/opa/2006/02/avlimil.shtm>.

<sup>43</sup> *Id.*, No. 1:06-cv-00051 (S.D. Ohio Mar. 5, 2008) (court order lifting stay entered).

<sup>44</sup> See *supra* at 5, *FTC v. BlueHippo Funding, LLC*.

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

The Commission has no suggestions for changes in 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 Peggy Twohig, Associate Director, Division of Financial Practices, at (202) 326-3224.

By direction of the Commission.

Donald S. Clark  
Secretary