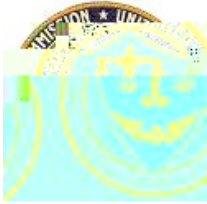


UNITED STATES OF AMERICA  
**FEDERAL TRADE COMMISSION**  
WASHINGTON, D.C. 20580



Division of Financial Practices

May 30, 2014

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You request this information for use in preparing the Consumer Financial Protection Bureau's (CFPB) 2013 Annual Report to Congress. Specifically, you ask for information concerning the

federal credit unions. In accordance with the memorandum of understanding that the Commission and the CFPB entered into in January 2012, and consistent with the Dodd-Frank Act, the Commission has been coordinating certain law enforcement, rulemaking, and other activities with the CFPB.<sup>3</sup> The Commission is committed to continuing its enforcement of Regulations E, M, and Z, and it intends to do the same with other rules the CFPB issues that apply to entities within the FTC's jurisdiction.<sup>4</sup>

## II. Regulation Z (TILA)

The FTC enforces TILA and its implementing Regulation Z with regard to most non-bank entities.<sup>5</sup> In 2013, the Commission engaged in law enforcement; rulemaking, research and policy development; and consumer and business education (all relating to the topics covered by Regulation Z, including the advertisement, extension, and certain other aspects of consumer credit).

### A. Truth in Lending: Enforcement Actions

#### 1. Non-Mortgage Credit

In 2013, the FTC's law enforcement efforts against those who

allegedly failed to disclose that its advertised discounts only applied to specific, and more expensive, models of the vehicles advertised.<sup>8</sup> The complaints charged that the dealers' representations are deceptive acts and practices, in violation of the FTC Act. Among other things, the proposed orders prohibit the dealers from advertising discounts or prices unless the ads clearly disclose any material qualifications or restrictions. The proposed orders also bar the dealers from misrepresenting any material fact about the price, sale, financing, or leasing of motor vehicles.

Additionally, the FTC obtained a significant victory in its efforts to combat deceptive tactics by payday lenders. A federal magistrate judge issued a report and recommendation in **AMG Services** finding, among other things, that the FTC could enforce the FTC Act and TILA against defendants regardless of tribal affiliation.<sup>9</sup> In that case, the Commission had alleged that the defendants, among other things, violated the FTC Act and TILA by providing inaccurate payday loan information to borrowers.<sup>10</sup>

dollars in up-front fees based on false promises that they could reduce consumers' monthly car loan payments and help avoid repossession of their vehicles. According to the complaints, consumers were instructed to pay fees to the companies, and, in many instances, to stop paying their auto lenders. In one of the cases, the stipulated order imposes a \$279,728 judgment, which represents the total amount of consumer injury, and the companies' assets are being turned over to the FTC.<sup>13</sup> In the other case, the FTC obtained a \$362,388 default judgment.<sup>14</sup> In both cases, the orders ban the defendants from providing any type of auto loan or other debt relief service and prohibit them from making misrepresentations about any other products or services.

## 2. Mortgage Lending Advertisements

also prohibits the company from misrepresenting its affiliation with any government entity or organization, including the VA.<sup>17</sup> In addition to this case, the FTC continues other law enforcement investigations of mortgage advertisers that may have violated federal law, including the MAP-Ad Rule and Regulation N, TILA, and Regulation Z.

### 3. Forensic Audit Scams

The FTC settled charges in two cases, and filed a complaint in a third case, involving mortgage relief scams that allegedly deceived consumers, including through claims regarding forensic loan audits. 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 TILA, Regulation Z, and other federal laws. The defendants 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 case, the FTC announced a settlement against three companies and an individual behind an operation that allegedly lured people into paying \$1,995 or more by making false promises that they could help homeowners avoid foreclosure and renegotiate their mortgages.<sup>18</sup> These defendants also deceptively claimed they could use the “forensic audits” to negotiate with lenders, and that if they failed to do as promised, they would provide a refund. Among other things, the complaint alleged that these practices violated the FTC Act. The settlement imposes a \$3.5 million judgment – partially suspended based on the defendants’ ability to pay — which reflects the full amount of consumer injury during the two years before the operation was shut down by the FTC.<sup>19</sup> The settlement prohibits the defendants from marketing any mortgage assistance relief or other debt relief products or services. It also prohibits them from making misleading claims about any financial product or service, or any other type of product or service.

In another case, the Commission settled charges that two individuals and seven companies deceived consumers into believing that they could hold onto their homes and reduce their mortgage payments, including through forensic loan audits for which the defendants

alleged that consumers rarely if ever obtained better mortgage terms as a result of the forensic loan audits. The settlement includes a judgment exceeding \$4.75 million partially suspended based on an individual defendant's ability to pay.<sup>21</sup> All of the defendants must surrender their assets and are prohibited from making deceptive claims about any product or service, and all but one are banned from marketing mortgage-and debt-relief services.

In a third case, the FTC filed suit to halt a mortgage relief scheme that allegedly deceived and preyed on distressed homeowners by charging them \$2,000 to \$4,000 for purported foreclosure rescue services. The defendants allegedly falsely claimed that they would provide legal help, through a range of services including forensic loan audits, to save consumers' homes



The Commission released new videos warning consumers about issues in the areas of payday lending and making minimum payments on credit cards (in English and Spanish).<sup>30</sup> The Commission also released a new article for Spanish language consumers, alerting the public about credit card blocking, which occurs when companies place a temporary hold for certain estimated amounts on a credit card until the total charge is processed.<sup>31</sup>

Additionally in 2013, the Commission released a blog post about purchasing new cars.<sup>32</sup> It also conducted an hour-long Twitter chat, with staff from the FTC, DoD's Military One Source, and Military Saves, on topics related to new and used cars and other vehicle issues, including monthly payment amounts.<sup>33</sup> The Twitter chat was designed to start addressing issues that were more fully discussed in the FTC's first Military Consumer Protection Day, which was held in July 2013, along with the CPF and Military Saves.<sup>34</sup>

The Commission also updated existing publications to provide additional information to consumers on the topics of high rate, high fee loans (in English and Spanish), payday loans, and

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PROTECTION BLOG (Aug. 20, 2013), <http://www.consumer.ftc.gov/blog/ftc-launches-its-new-financial-educators-siteeducatlrwxpro> 0.00.o5



buying a used car.<sup>35</sup> The agency also provided updated information on how to dispute credit card charges, and on consumer rights in credit transactions.<sup>36</sup>

## B. Consumer Leasing: Consumer and Business Education

In 2013, as discussed above, the FTC released a new business publication on vehicle advertisements involving pricing and discounts, which offers guidance on disclosures that is also useful for lease promotions.<sup>41</sup> In addition, the FTC's updated business guidance on making clear and conspicuous disclosures applies to lease promotions to consumers as well.<sup>42</sup>

## IV. Regulation E (EFTA)

The FTC enforces EFTA and its implementing Regulation E with regard to most nonbank entities.<sup>43</sup> In 2013, the agency had six new or ongoing cases involving EFTA and Regulation E issues. The Commission also engaged in research and policy work and educational activities involving EFTA and Regulation E.

### A. Electronic Fund Transfers: Enforcement Actions

Three of the Commission's cases alleging violations of EFTA and Regulation E arose in the context of "negative option" plans.<sup>44</sup> 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 consumers' 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. 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.

The three negative option cases were all ongoing matters. In one case, the FTC obtained settlements with two defendants resulting in monetary judgments of more than \$289 million and \$7.5 million;<sup>45</sup> litigation continues with the other parties.<sup>46</sup> In another case, the FTC filed a joint

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<sup>41</sup> See *supra* note 37.

<sup>42</sup> See *supra* note 38.

<sup>43</sup> The FTC has authority to enforce EFTA and Regulation E as to entities for which Congress has not assigned enforcement responsibility to some other government agency. See 15 U.S.C. § 1693o(c).

<sup>44</sup> Negative option plans can involve the use of debit cards, credit cards, or both. EFTA and Regulation E apply to debit cards; the TILA and Regulation Z apply to credit cards.

<sup>45</sup> The judgments are suspended based on the defendants' ability to pay.

<sup>46</sup> *FTC v. Johnson*, No. 2:10-cv-02293 (D. Nev. Oct. 21, 2013) (orders granting stipulated permanent injunction and monetary judgments as to defendants Bryce Payne and Kevin Pilon), available at <http://www.ftc.gov/enforcement/cases-and-proceedings/cases/2013/11/i-works-inc-et-al>. See FTC, Press Release, *Two I Works Billing Scheme Marketers Agree to Settle FTC Charges*, 26, 2013, available at <http://www.ftc.gov/news-events/press-releases/2013/11/two-i-works-billing-scheme-marketers-agree-settle-ftc-charges>. If the defendants misrepresented their financial condition, the full judgments will become immediately due. Previously, with the court's permission, the Commission filed an amended complaint adding three persons and

motion for a stipulated settlement that would require the principal and three companies he controls to surrender their assets totaling approximately \$7 million and, among other things, ban violations of the EFTA.<sup>47</sup> In a third case, the FTC provided \$1.7 million in refunds to consumers, in connection with a prior settlement.<sup>48</sup>

In 2013, the FTC settled a case previously filed in which an individual and four companies allegedly defrauded consumers with false promises of debt relief and charged them without their consent.<sup>49</sup> The FTC alleged that these practices violated federal law, including the FTC Act and EFTA. The settlement includes a monetary judgment of more than \$4.6 million against the defendants, suspended against the individual defendant based on ability to pay and upon surrender to the FTC of all assets previously frozen by the court.<sup>50</sup> The defendants also are banned from selling debt-relief services and misrepresenting material facts about any products or services. The settlement also prohibits them from making electronic fund transfers from consumers' accounts on a recurring basis without obtaining their written authorization, and without providing consumers with a copy of the authorization, among other things.

Also in 2013, the Commission continued its litigation in three other cases previously filed. In one case, the FTC reached a settlement with the principal defendants regarding charges that their payday lending contracts violated EFTA by requiring consumers to preauthorize electronic withdrawals from their bank accounts as a condition of obtaining credit. The partial settlement bars the settling defendants from requiring borrowers to agree in advance to electronic withdrawals from their bank accounts as a condition of obtaining credit, along with other relief.<sup>51</sup>

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five companies they control as relief defendants. *Id.* (D. Nev. Feb. 25, 2013) (amended complaint entered). See FTC, Press Release, *FTC Seeks \$22 Million from Wife and Parents of Ringleader Behind Alleged Global Internet Billing Scheme* (Jan. 23, 2013), avail ( 2(o)2(m th,0)12N(w )20)123:l11w (-)Tj 0.006 Tc -0.006 Tw 9.96 C 6 72

Additionally in that case, the magistrate judge issued a report and recommendation finding, among other things, that the FTC could enforce EFTA against the defendants regardless of their tribal affiliation.<sup>52</sup> The report and recommendation also found that EFTA applies regardless of the defendants' disputed for-profit status. Litigation in this matter continues.

In another case, the FTC obtained a partial summary judgment of charges that a payday lender violated several laws, including EFTA and Regulation E, by requiring consumers' authorization for recurring electronic payments from their bank accounts as a condition of obtaining payday loans.<sup>53</sup> The court ruled that certain of the defendants had violated EFTA and Regulation E. Thereafter, the court entered a stipulated order that, among other things, prohibits these defendants from conditioning the extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers in violation of EFTA and Regulation E.<sup>54</sup>

In a third case, the Commission continued litigation in connection with a 2010 contempt order against Blue Hippo Funding, a consumer electronics retailer. The contempt order had been issued for the defendants' violations of a consent order settling charges that the company had, among other things, violated EFTA and Regulation E by extending credit to consumers and conditioning that credit on mandatory preauthorized transfers.<sup>55</sup> The appellate court has heard oral argument in the Commission's appeal of the damage award in the 2010 contempt order, which seeks over \$14 million to compensate consumers. The decision is pending.

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

To protect consumers from deceptive telemarketing, the Commission issued a notice of proposed rulemaking regarding proposed amendments to the FTC's Telemarketing Sales Rule.<sup>56</sup>

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<sup>52</sup> See *supra* note 9.

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The proposal would curtail the use of four payment methods favored by scams. Specifically, the proposal would stop telemarketers from dipping into consumer bank accounts using unsigned

the Commission's revised publication about credit and consumer rights (discussed above) also contains information about protections available under the EFTA.<sup>61</sup>

\* \* \* \*

We hope that the information discussed above responds to your inquiry and will be useful in preparing the CFPB's Annual Report to Congress.<sup>62</sup> Should you need additional assistance, please contact me at (202) 326-3292, or Carole Reynolds at (202) 326-3230.

Sincerely,

James Reilly Dolan  
Associate Director  
Division of Financial Practices

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ANPR, 77 Fed. Reg. 30923 (May 24, 2012). We previously reported on the FTC staff comment submitted in that matter.

<sup>61</sup> See *supra* note 36.

<sup>62</sup> 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 2013, the Commission did not have enforcement or other activity regarding compliance with the FTC Act by