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

Division of Financial Practices

May 29, 2015

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 (Truth in Lending Act or TILA); Regulation M (Consumer Leasing Act or CLA); and Regulation E (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) Annual Report to Congress. Specifically, you ask for information concerning the FTC's administration and enforcement of the Regulations, as well as compliance with the Regulations among entities within the FTC's jurisdiction, during 2014. We are pleased to do so 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. Under the Act, the FTC retained its authority to enforce Regulations M, Z, and E. In addition, the Act gave the

[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.

deceptively advertised vehicle finance offers, in violation of the dealer's 2012 consent order with the FTC.[8] According to the complaint, the defendants disseminated advertisements that misrepresented the transaction by focusing only on a few attractive terms such as a low monthly payment or annual percentage rate, and concealing other material terms that limit who can qualify or add significant extra costs. The complaint also charged that the defendants violated the prior order by promoting consumer credit using prominent terms such as the monthly payment or number of payments but failing to make, or clearly and conspicuously make, disclosures required by the order, and by failing to retain and produce required records and submit reports. The stipulated final order in the civil penalty action requires the defendants to pay a civil penalty of $360,000 for all their violations, prohibits further violations of the FTC [(l3 Tw [(fuTc 0.v06 Tc 0.00]TJ -0.0010.003 Tc 02(i)-0

The other seven consent orders involving purchase and financing of motor vehicles were part of a nationwide law enforcement sweep, "Operation Steer Clear."[15] The FTC filed administrative complaints and settled charges that these auto dealers – Nissan oo

dealerships from misrepresenting, among other things,

prominently disclosed by loan agreements or amendments and not prohibited by law, and unilateral contract modifications; the order also requires compliance and reporting procedures.[27]

b. Payday Lending

The FTC obtained three significant victories in its efforts to combat deceptive business practices of payday lenders.

In one case, a federal district court judge held that the Commission has the authority to enforce the FTC Act and statutes of general applicability (such as TILA) against the defendants, including AMG Services, regardless of tribal affiliation.[28] The district court judge rejected the argument that tribal affiliation immunized the defendants from consumer protection laws, including the FTC Act and TILA, and ruled that the requirements extend to all business entities.[29] In another significant ruling for the FTC in the same matter, the district court affirmed a magistrate's finding that the defendants' loan documents were deceptive and that the loan note disclosure violated TILA.[30] Notably, the district court's opinion cited evidence that the defendants hid the true cost of the payday loans they offered to consumers by failing to disclose charges and fees and providing misleading repayment schedules.[31] Litigation continues in this matter.

The FTC also filed a complaint and secured a temporary restraining order to halt an unlawful online payday lending scheme.[32] The FTC's complaint alleged that the defendants, including CWB Services, violated the FTC Act and TILA by making unauthorized payday loans to consumers, by misrepresenting the terms, costs or repayment obligations of the purported loans, and by failing to disclose in writing before extending credit the terms of the legal obligation between the parties including the finance charge and annual percentage rate.[33] The temporary restraining order granted the FTC immediate access to the business premises; imposed a asset freeze; appointed a receiver to seize control of the business operations; and prohibi

[27] Id. (C.D. Cal. June 11, 2014) (stipulated order for permanent injunction and civil penalty judgment).

[28] See FTC, Press Release, U.S. District Judge Finds that FTC Can Deceptive Payday Loan Business Regardless of American Indian Tribal Loan Affiliation, Mar. 19, 2014, available at https://www.ftc.gov/news-events/press-releases/2014/03/u-district-judge-finds-ftc-can-sue-deceptive-payday-loan.

[29] FTC v. AMG Services, Inc., No. 2:12-cv-00536 (D. Nev. Mar. 7, 2014) (district court order accepting and adopti magistrate report and recommendation), available at http://www.ftc.gov/enforcement/cases-proceedings/112-3024/amg-services-inc.

[30] See FTC, Press Release, U.S. District Judge Finds that Payday Lender AMG Services Deceived Consumers by Imposing Undisclosed Charges and Inflated Fees, June 4, 2014, available at http://www.ftc.gov/news-events/press-releases/2014/06/u-district-judge-finds-payday-lender-amg-services-deceived

[31] See supra note 29 (D. Nev. May 28, 2014) (district court order accepting and adopting magistrate report and recommendation).

[32] See FTC, Press Release, FTC Action Halts Payday Loan Scheme That Bilked Tens of Millions From Consumers By Trapping Them Into Supposed "Loans" They Never Authorized, Sept. 17, 2014, available at http://www.ftc.gov/news-events/press-releases/2014/09/ftc-action-halts-payday-loan-scheme-bilked-tens-millions.

[33] FTC v. CWB Services, Inc., No. 4:14-cv-00783 (W.D. Mo. filed Sep. 5, 2014), available at http://www.ftc.gov/enforcement/cases-proceedings/132-3184/cwb-services-llc.

misrepresentations and unfair billing practices related to payday lending.[34] Litigation continues in this matter.

Also, the Commission continued litigating an appeal in connection with a 2010 contempt order against BlueHippo Funding, a consumer electronics retailer, for violating a consent order.[35] The consent order had settled charges that the company had, among other things, violated 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 the financing and did not order or ship the computers as advertised. In 2014, the appellate court held that the FTC is entitled, when the proper showing has been made, to presume consumer reliance, and where the presumption applies, the baseline for assessing contempt damages is the defendants' gross sales receipts, after that, the defendants may present evidence that they may be entitled to any offset against the amount of sanctions.[36] The Commission seeks over $14 million to compensate andenm-4

violation of TILA and Regulation ZIn addition to the civil penalty, the stipulated order prohibits the

renegotiate their mortgages.[52] 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. Among other things, the complaint alleged that these practices violated the FTC Act. The FTC also obtained a preliminary injunction ordering the defendants to stop making misrepresentations about loan modifications, and an asset freeze and other equitable relief.[53] The FTC also filed an amended complaint adding defendants allegedly involved in the operation. Litigation continues in this matter.

In the other case, the Commission filed a complaint alleging that four companies, including Mortgage Relief Advocates, and two individuals deceived consumers into believing that they could reduce their mortgage payments, as well as prevent, stop, or reverse foreclosure proceedings through forensic loan audits for which the defendants typically charged consumers between $1000 and $3,500.[54] The complaint alleged that the defendants violated the FTC Act, among other things, by promising to obtain substantially lower mortgage payments, and by promising to prevent, halt, or reverse foreclosures. Defendants allegedly claimed that they could achieve these results in four to six months but, according to the complaint, most consumers rarely obtained better mortgage terms as a result of the forensic loan audits. The FTC obtained a preliminary injunction against the defendants, which forced the shutdown of the defendants' websites, and further prohibited the defendants from making any misrepresentations related to mortgage assistance relief services or collecting any advance fees for mortgage relief services.[55] Litigation is pending in this matter.

In addition, claims administrators working for the FTC distributed refund checks to consumers who were victims of mortgage relief scams in two matters involving forensic audits – Prime Legal and Precision Law Center – and in which the FTC previously obtained settlements for alleged violations of the FTC Act and other laws.[56] The claims administrators mailed refund checks totaling nearly $4 million dollars to approximately 7,700 consumers in these prior settlements.

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

The FTC does not have rulemaking authority under the Truth in Lending Act but a number of its activities, in 2014, pertained to rulemaking, research, and policy development that addressed

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[52] See FTC v. Lanier Law, LLC, No. 3:14-cv-00786, (M.D. Fla. filed July 8, 2014), available at http://www.ftc.gov/enforcement/cases-proceedings/142-3038/lanier-law-llc.

[53] Id. (M.D. Fla. Aug. 1, 2014) (preliminary injunction with asset freeze and other equitable relief as to defendants Fortress Law Group, PC, Redstone law Group, LLC, Rogelio Sosa, and Edward William Rennick, III), available at http://www.ftc.gov/enforcement/cases-proceedings/142-3038/lanier-law-llc

issues related to the TILA. The FTC conducts regular, systematic review of its rules and guides every ten years. In 2014, the Commission completed its review and issued final amendments to its prior Mail or Telephone Order Merchandise Rule, including changing the name to the Mail, Internet, or Telephone Order Merchandise Rule.[57] The amendments clarify that the Rule covers orders placed over the Internet, regardless of how consumers access the Internet. Additionally, the amendments permit sellers to provide

lending and cash advances on tribal dividend payments.[66] The workshop was open to the public, and the panelists and the audience members engaged in question and answer sessions. In addition, the FTC hosted a workshop to examine the use of "big data" and its impact on American consumers.[67] Panelists included representatives from federal government agencies and organizations, academic researchers, trade associations, and industry. Among other things, the workshop included some panelists' discussions of how big data impacts targeted advertisements for credit and lending products. Public participation was included in the workshop through question and answers.

Finally, the Commission staff submitted two advocacy filings in this area. First, FTC staff submitted an advocacy comment in response to the CFPB's request for information regarding consumer protection issues in mobile financial services by consumers and their potential benefits for the financial lives of underserved consumers.[68] The staff comment highlighted several consumer protection issues posed by mobile financial services and steps the FTC has taken to address them. Among the issues addressed were: the potential liability for unauthorized charges using prepaid or stored value products, including the differences in consumer protections regarding federal liability limits and dispute resolution procedures with purchases using credit cards;[69] and their billing practices on mobile carrier bills, and issues related to data systems. The comment also noted the FTC's authority and activity in the mobile commerce area.

Second, the FTC's staff of the Bureau of Consumer Protection and Bureau of Economics, as well as Commissioner Wright, filed separate comments, in response to a notice of proposed

highlighted that the proposed database to verify covered borrowers would aid in accurate identification of consumers entitled to the MLA's protections and provide an efficient, cost-effective compliance mechanism for creditors. Regarding the NPRM's question of whether there should be an exemption for insured depository institutions or insured credit unions, the comment noted such an exemption could result in unintended consequences, including limiting the protections to service members under the MLA and placing covered entities that comply with the MLA at a competitive disadvantage. With respect to the proposal to expand regulatory coverage to a broader range of closed-end and open-end credit products, the comment noted that the FTC staff supports efforts to stop creditors that evade MLA coverage while offering a substantially similar product to those covered by the existing rule, as well as efforts to obtain data regarding consumer impact, the effect the proposed changes could have on credit availability, and the forms of alternative credit that may emerge. The comment noted it would be helpful to see more research on whether removing the existing disclosure requirement Tc 0.003 TwTc 0.004 Tw -33.55 -1.15 Td [()-6(i)-

turning to other, perhaps higher risk, forms of credit. The comment also noted that ic
research has concluded that usury ceilings tend to harm those intended to be helpa, and some
consumers will face adverse consequences if products that help consumers smooth negative
expenditure shocks and avoid more onerous forms of credit, are restrict.

C. Truth in Lending: Consumer and Business Education

In 2014, the Commission continued its efforts to educate consumers and businesses about issues related to the consumer credit transactions to which Regulation Z applies. The Commission updated its financial education site, with additional information on diverse credit topics of particular interest to those engaged in educating consumers.[74]

1. Auto Sales and Financing

The Commission issued a new publication for consumers7a

the Commission, in cooperation with the American Financial Services Association Education Foundation and the National Automobile Dealers Association, updated its brochure offering consumer oundaia.93(

III. Regulation M (CLA)

The FTC enforces CLA and its implementing Regulation M as to most entities other than banks, thrifts, and federal credit unions.[87]

A. Consumer Leasing: Enforcement Actions

As noted above, in 2014, an auto dealership group, Billion Auto, and its affiliated advertising company entered into a stipulated final order settling charges that included deceptive vehicle lease offers, in violation of the dealer's 2012 consent order with the FTC.[88] According to the complaint, the dealership group violated the prior order by disseminating advertisements that misrepresented the transaction by focusing only on a few attractive terms, such as a low monthly payment, while concealing other material terms, such as that the transaction involved a lease, or those that limit who can qualify or that add significant extra costs, including downpayments and other upfront amounts. The complaint also charged that the defendants violated the prior order by promoting consumer leases using prominent terms such as the monthly payment, but failing to provide disclosures – or provide them 2(ol)-2(a)4(t(g)12(to5)n77 0 TBDC -22.14 luT)Tj EMC /o luTmenttraudi.93romin2ymhly(g

issues. The Commission also engaged in research and policy work and educational activities involving EFTA and Regulation E.

A. Electronic Fund Transfers: Enforcement Actions

1. Negative Option Cases

Five of the Commission's cases alleging violations of EFTA and Regulation E arose in the context of "negative option" plans.[97] 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 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.

In one case, the FTC obtained settlements with an individual and other defendants, including Jeremy Johnson, resulting in, among other things a ban on violations of EFTA and Regulation E, and a monetary judgments totaling over $2.5 million for all the violations,[98] litigation continues with the other parties.[99] In another case, a district court entered a stipulated order requiring three individual defendants and the companies they control, including Leanspa, to surrender their assets exceeding $7 million and, among other things, banning violations of EFTA, a

[97] 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.

[98] The monetary judgments are suspended based on the defendants' ability to pay.

[99] FTC v. Johnson, No. 2:10-cv-02203 (D. Nev. Apr. 11, 2014) (orders granting stipulated permanent injunction and monetary judgments as to defendant Scott Muir and his affiliated corporate entities), available at http://www.ftc.gov/enforcement/cases-proceedings/102-3015/i-works-inc-et-al. See FTC, Press Release, Apr. 11, 2014, I Works Billing Scheme Defendant Agrees to Settle FTC Charges, available at http://www.ftc.gov/news-events/press-releases/2014/04/i-works-billing-scheme-defendant-agrees-settle-ftc-charges. If the defendants misrepresented their financial condition, the full judgments will become immediately due.

The FTC also filed a complaint in a related matter. See FTC, Press Release, Aug. 1, 2014, FTC Charges Payment Processors Involved in I Works Scheme, available at http://www.ftc.gov/news-events/press-releases/2014/08/ftc-charges-payment-processors-involved-i-works-scheme. The complaint charged the payment processors with unfair acts or practices in violation of the FTC Act, in processing or arranging for processing of charges on merchant accounts involving over $26 million, including on consumers' debit cards, in the scheme; the court entered a stipulated final order with three defendants, who operated as payment processors in the scheme. FTC v. CardFlex, Inc., No. 3:14-cv-00397 (D. Nev. filed July 30, 2014) (stipulated permanent injunction and final order entered as to defendants Blaze Processing, LLC, Mach 1 Merchanting, LLC, and Shane Fisher on Oct. 27, 2014), available at https://www.ftc.gov/enforcement/cases-proceedings/122-3003/cardflex-payment-solutions.

separate stipulated order in this case as to another defendant required payment of $270,000.[100] In another case, the Ninth Circuit primarily uphe

amendments to the FTC's Telemarketing Sales Rule.[112] Among other things, the proposal would, for telemarketing transactions, ban the use of four payment methods that provide little or no systematic monitoring to detect fraud.[113]

C. Electronic Fund Transfers: Consumer and Business Education

In 2014, the FTC issued blog posts with guidance for consumers and business regarding unauthorized withdrawals from consumers' accounts, including in payday lending,[114] and providing warnings about limited consumer protections when using gift cards online.[115]

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We hope that the information discussed above responds to your inquiry and will be useful in preparing the CFPB's Annual Report to Congress.[116] Should you need additional assistance, please contact me at (202) 326-3292, or Carole Reynolds at (202) 326-3330.

Sincerely,

James Reilly Dolan
Associate Director
Division of Financial Practices

[112] See FTC, Press Release, FTC Extends Deadline for Submitting Public Comments on Review of the Telemarketing Sales Rule Through November 13, 2014, Oct. 7, 2014, available at http://www.ftc.gov/news-events/press-releases/2014/10/ftc-extends-deadline-submitting-public-comments-review. The FTC's Telemarketing Sales Rule is at 16 C.F.R. Part 310. The proposed rule and public comments that were submitted are under consideration in this matter.

[113] See Telemarketing Sales Rule, NPRM, 78 Fed. Reg. 41200, 41201 (July 9, 2013), available at http://www.ftc.gov/policy/federal-register-notices/16-cfr-part-310-telemarketing-sales-rule-federal-register-notice.

[114] Bridget Small, FTC Sues Scammer's Little Helper, FTC BUREAU OF CONSUMER PROTECTION BLOG (Aug. 1, 2014), http://www.consumer.ftc.gov/blog/ftc-sues-scammers-little-helper; Lesley Fair, A Loan Again?, FTC BUREAU OF CONSUMER PROTECTION BUSINESS CENTER BLOG (Sept. 17, 2014), http://www.ftc.gov/news