

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



Division of Financial Practices

May 26, 2022

David Uejio, Acting Associate Director
Supervision, Enforcement, and Fair Lending
Bureau of Consumer Financial Protection
1700 G Street, N.W.
Washington, D.C. 20552

Dear Mr. Uejio:

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 Transfers Act or EFTA) Part 205, and the Board's Regulation 12 C.F.R. Part 205. Our understanding is that your request encompasses the CLA, an amendment to the

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border of the Navajo Nation, and allegedly engaged in a range of illegal activities including falsifying consumers' income and down payment information on vehicle financing applications and

government, and other material restrictions regarding the purchase, receipt or use of any product or service. In addition, it prohibits respondents from violations of the TILA and Regulation Z. The administrative complaint the FTC filed in 2020 against respondents alleged multiple counts of deceptive conduct in connection with deceptive mailers to consumers in violation of the FTC Act and charged respondents with violating the TILA and Regulation Z by failing to clearly disclose required credit information in their advertising.¹¹ Litigation continues in this

veterans, and their families, including through law enforcement actions. Additional information concerning FTC initiatives in 2021 to assist military consumers is included below.

a. ABA Legal Assistance for Military Personnel

The FTC staff 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 and services to help military and veteran consumers. (BPCr)(3 (3)(e)(A), 1a(a)(4)(s))3 (y

options, and shopping carefully for the best deal. It also notes differences between leasing and buying, and advises consumers to review the terms before signing the documents and to get a copy of the contract before leaving the dealership.

The FTC also released an update about car dealer ads and promotions, emphasizing the importance of asking the dealer to confirm if the vehicle is actually on the lot, noting that advertised prices might not include all fees and charges and that dealers may try to add-ons to increase cost, and recommending that consumers get approved for financing before working with the dealer's financing office. The publication provides examples of deceptive car ads, including those offering very low prices or discounts or monthly payments, and offers such as "\$0 due at lease signing," and advises consumers to confirm terms before visiting the dealership. Another publication focuses on auto trade-ins and negative equity, explaining how negative

worksheet to facilitate comparing costs and other terms of mortgage offers. Another publication on avoiding home improvement scams focused on signs of a scam, including scammer pressure consumers for an immediate decision or suggest you borrow money from a lender they know, and ways to avoid the scam.³⁵ It also advises consumers only to consider contractors who are licensed and insured, to check with consumer protection officials for complaints about a contractor and get multiple estimates, to never agree to a loan without understanding the terms and knowing whether one can make the payments, and to avoid transferring a deed to anyone without consulting an attorney, knowledgeable family member, or someone else you trust.

3. Other Education (Credit)

The Commission updated a publication on payday and car title loans, explain how they work and the high costs of these short-term loans, to highlight what to look for with these products and to provide possible alternatives, such as asking creditors for more time to repay existing loans, getting loans from a credit union or community bank, and getting help managing debt.³⁶ It also provides information on the Military Lending Act (MLA), which applies to various types of credit including payday loans, car title loans, spot loans and credit cards. The article notes some of the MLA's special protections for military consumers, including its limit on financing costs to 36%, and requirement that lenders provide military consumers with disclosures about your rights and financing cost.

The FTC also issued a publication providing information to help consumers compare payments cards, including credit, charge, and secured credit cards with other cards.³⁷ The article describes the different types of cards, notes that they have different characteristics even those they may look similar, and offers tips on what to look for with each card.

III. Regulation E (the EFTA)

In 2021, the FTC had two ongoing cases pertaining to the TEF and Regulation E. The Commission also engaged in research and policy work and educational activities involving the EFTA and Regulation E.

³⁵ See How To Avoid a Home Improvement Scam (May 2021) <https://consumer.ftc.gov/articles/how-avoid-home-improvement-scam>, Como evitar una estafa de mejoras del hogar (May 2021), <https://consumidor.ftc.gov/articulos/como-avoidar-una-estafa-de-mejoras-del-hogar>

³⁶ See What To Know About Payday and Car Title Loans (May 2021) <https://consumer.ftc.gov/articles/what-to-know-about-payday-car-title-loans>, Lo que hay que saber sobre los prestamos de dia de pago y los prestamos con titulo de propiedad de un carro (May 2021), <https://consumidor.ftc.gov/articulos/lo-que-hay-que-saber-sobre-los-prestamos-de-dia-de-pago-y-los-prestamos-con-titulo-de-propiedad-de>

³⁷ See Comparing Credit, Charge, Secured Credit, Debit, or Prepaid Cards (May 2021), <https://consumer.ftc.gov/articles/comparing-credit-charge-secured-credit-debit-or-prepaid-cards>

copy of the written authorization, and from violating the EFTA or Regulation E.⁴² In addition, the default judgment against La Posta Tribal Lending Enterprise also permanently enjoined the defendant from, among other things, misrepresenting the number of payments, total payments or amount of interest and principal payments that will be withdrawn from any consumer's bank accounts, and from violating the EFTA or Regulation E.⁴³

As described above, the FTC filed ~~lead~~ 4,505 refund checks to distribute more than \$103,000 to people who lost money in a financing scheme that targeted customers shopping for computers and related electronic devices.⁴⁴ The FTC's case against BlueHippo Funding, LLC and affiliate BlueHippo Capital, LLC, previously reported, also alleged violations of EFTA, and of the FTC Act related to its promises to finance new computers, ~~collect~~ money from customers, and ~~fail~~ to provide consumers with computers.⁴⁵

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

The FTC does not have rulemaking authority under the EFTA but in 2021 engaged in research and policy work that addressed EFTA-related issues.

In 2021, the FTC issued an enforcement policy statement on negative options, warning companies against deploying illegal practices that trick or trap consumers into subscription services and emphasizing it is ramping up enforcement in response to a rising number of complaints about financial harms caused by deceptive sign up tactics, including unauthorized charges or ongoing billing that is impossible to cancel.⁴⁶ The statement notes that consumer suffer costs when marketers fail to make adequate disclosures, bill consumers without their consent or make cancellation, and that over the years, unfair or deceptive negative option practices have remained a persistent source of consumer harms, saddling shoppers with recurring payment for products and service they did not intend to purchase and not want to continue to

⁴² See *FTC v. Lead Express, Inc.*, No. 20-00840 (D.Nev. Apr. 1, 2021) (stipulated order for permanent injunction) 79d.21 -14.

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purchase.⁴⁷ It addresses statutes and regulations applicable to negative option programs on which the FTC's enforcement actions against these programs primarily rely, including EFTA's prohibition on the imposing of recurring charges on a consumer's debit card or bank account without written authorization.⁴⁸ It also puts companies on notice that they will face legal action if their sign-up process fails to provide clear, upfront information, obtain consumer's informed consent, and make cancellation easy.

The FTC also worked with the DoD interagency group and with ABA LAMP as discussed above, on electronic funds transfer issues. Among other things, the FTC staff coordinated with the DoD interagency group on issues relating to preauthorized electronic fund transfers in the military lending rule. The FTC also provided input to ABA LAMP, and conducted trainings for judge advocates general and others in conjunction with ABA LAMP trainings, on EFTs, FTC cases in this area, and the EFTA requirements.

C.

We hope that the information discussed above responds to your inquiry and will be useful in preparing the CFPB Annual Report to Congress⁵¹. Should you need additional assistance, please contact me at (202) 325-7272, or Carole Reynolds at (202) 325-7230.

Sincerely,

Malini Mithal
Associate Director
Division of Financial Practices

⁵¹ 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 2021, 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.