



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

¹ You request this information for use in preparing the Consumer Financial Protection Bureau's (CFPB) 2022 Annual Report to Congress. Specifically, you ask for information concerning the FTC's activities with respect to the Regulations during 2023. We are

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I. FTC Role in Administering and Enforcing the Regulations

¹ The TILA is at 15 U.S.C. § 1601 *et seq.*; the CFPB's Regulation Z is at 12 C.F.R. Part 1026; and the Federal Reserve Board's (Board's) Regulation Z is at 12 C.F.R. Part 226. The CLA is at 15 U.S.C. § 1667 *et seq.*; the CFPB's Regulation M is at 12 C.F.R. Part 1013; and the Board's Regulation M is at 12 C.F.R. Part 213. The EFTA is at 15 U.S.C. § 1693 *et seq.*; the CFPB's Regulation E is at 12 C.F.R. Part 1005; and the Board's Regulation E is at 12 C.F.R. Part 205. Our understanding is that your request encompasses the CLA, an amendment to the TILA.

² A copy of this letter is being provided to the Bureau's Division of Consumer Protection and Consumer Affairs, 1700 K Street, N.W., Washington, D.C. 20004, and the Bureau's Office of Public Affairs, 1700 K Street, N.W., Washington, D.C. 20004. See, e.g., Dodd-Frank Act, Pub. L. 111-203, 124 Stat. 1376 (July 21, 2010). *See, e.g.*, Dodd-Frank Act, § 1029 and Subtitle H.

administrative opinion and order in a 2021 ruling (previously reported) that Traffic Jam Events and its owner violated both the FTC Act and the TILA (credit), and banning them from the auto industry.⁷ Among other things, the Commission found that the respondents sent deceptive

refund checks in 2022, to consumers who were harmed by Napleton’s scheme and more than 88% of eligible consumers cashed their checks, with over \$8.8 million returned to consumers.¹¹ Because additional funds were still available, the FTC sent additional funds totaling \$857,000 to people who cashed their first check and paid more than \$1,662 in add-on fees.¹²

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

The Commission engaged in several activities in 2023 involving rulemaking, research, and policy development that relate to the TILA and the CLA.

1. The CARS Rule (Credit and Leasing)

In 2023, the FTC finalized a new rule pertaining to the sale, financing or leasing of motor vehicles, to fight two common types of illegal tactics consumers face when buying a car: bait-and-switch tactics and hidden fees.¹³ The Commission noted that, “[u]nscrupulous dealers are able to slip the often considerable additional costs for these items past consumers unnoticed and into purchase contracts through a variety of means, including by not mentioning them at all . . . or by focusing consumers’ attention on other aspects of the complex transaction, such as monthly payments”¹⁴ The new rule is expected to save consumers nationwide more than \$3.4 billion and an estimated 72 million hours each year shopping for vehicles.¹⁵ The Department of Defense (DoD) stated that, “For our service members and their families a car is an essential purchase, and this CARS Rule will help fight predatory practices that target our men and women in uniform. The Department is pleased to see the FTC issue the CARS Rule and believes it will contribute to service members’ overall economic security and readiness.”¹⁶

¹¹ See *supra* note 8.

¹² See *id.*

¹³ See FTC, Combating Auto Retail Scams Trade Regulation Rule (“CARS Rule,”) (Dec. 12, 2023) (to be codified at 16 C.F.R. pt. 463), available at https://www.ftc.gov/system/files/ftc_gov/pdf/p204800_cars_rule.pdf. See also FTC, Press Release, *FTC Announces CARS Rule to Fight Scams in Vehicle Shopping* (Dec. 12, 2023), available at <https://www.ftc.gov/news-events/news/press-releases/2023/12/ftc-announces-cars-rule-fight-scams-vehicle-shopping>.

¹⁴ See CARS Rule, *supra* note 13, at 21-22, available at https://www.ftc.gov/system/files/ftc_gov/pdf/p204800_cars_rule.pdf.

The supplementary information with the rule noted that under the Truth in Lending Act and Regulation Z, “required add-on products and services must be factored into the APR and the finance charge disclosed during the transaction . . . [and i]t is legally impermissible for dealers to include charges for such products in a consumer’s contract without disclosing them.” *Id.* at 22.

¹⁵ See FTC, Press Release, *FTC Announces CARS Rule to Fight Scams in Vehicle Shopping* (Dec. 12, 2023), available at <https://www.ftc.gov/news-events/news/press-releases/2023/12/ftc-announces-cars-rule-fight-scams-vehicle-shopping>.

¹⁶ See Statement of Ashish S. Vazirani, Acting DoD Under Secretary of Defense for Personnel and Readiness, FTC, Press Release, *FTC Announces CARS Rule to Fight Scams in Vehicle Shopping* (Dec. 12, 2023), available at

The CARS Rule: 1) prohibits dealers' misrepresentations about key information, like price and cost; 2) requires dealers to provide the offering price (the actual price any consumer can pay for the vehicle), tell consumers that optional add-ons are not required, and provide the total of payments information if dealers provide monthly payment information; 3) prohibits dealers from charging for add-ons that do not provide a benefit to consumers, such as service contracts for oil changes for electric vehicles; and 4) requires dealers to get consumers' express, informed consent for charges.¹⁷

The FTC received tens of thousands of comments from consumers, servicemembers, veterans, auto dealers and others about the proposed rule in response to its Notice of Proposed Rulemaking related to motor vehicle shopping issued in June 2022.¹⁸ The FTC carefully reviewed these comments and made substantial changes to the proposed rule to ensure that the rule is focused on protecting consumers from many of the most common scams that target people buying vehicles.¹⁹

proposed rule would prohibit hidden and bogus fees, ensure consumers know how much they are paying and what they are getting, and help spur companies to compete.²² The notice included questions for comment on the proposed rule.²³

3. American Indian/Alaska Native Report (Credit)

In 2023, the FTC issued a report to Congress detailing the consumer issues that affect American Indian and Alaska Native (AI/AN) populations, as well as the FTC's enforcement, outreach and education work on these issues such as: auto purchasing and financing, predatory lending, impersonation scams, tech support scams and romance scams, among others.²⁴ The report summarizes the agency's efforts to hear directly from tribal leaders, community members, advocates, and others about issues affecting their communities, and provides analyP MCID 4 .002 a5mD2 (ha)4

down” without disclosing, or clearly and conspicuously disclosing, the terms of repayment or annual percentage rate, in violation of the TILA and Regulation Z.²⁶

4. Military (Credit and Leasing)

In 2023, the FTC’s Military Task Force, which includes a cross-section of agency representatives, continued work on military consumer protection issues. The Task Force represents part of the agency’s collaborative effort to provide resources for military consumers and is aimed at identifying their needs and formulating initiatives to empower servicemembers, veterans, and their families, including through law enforcement actions. Additional information concerning FTC initiatives in 2023 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 to servicemembers’ and veterans’ representatives in conjunction with the committee on consumer financial issues, including the Military Lending Act (MLA) and the Department of Defense (DoD) military lending rule, consumer credit and TILA-related matters, and consumer leasing and CLA-related matters.

b. Department of Defense Military Lending Task Force

The FTC staff also participated in an interagency group that coordinates with the DoD on

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1. Automobile Sales and Financing (Credit and Leasing)

The Commission released information for consumers and businesses about its new CARS Rule, highlighting what the rule means for them.²⁸ Separately, the Commission released information for servicemembers about auto-related issues and the rule, noting that auto problems are in the top ten report categories for military consumers, who can be targets because of their steady income and younger personnel with minimal credit history means they qualify for less advantageous terms.²⁹

For dealers, the Commission issued a guide to the rule, explaining its basic principles.³⁰ The guidance also addresses questions dealers may have about the rule, and provides a glossary with clear definitions. The Commission also provided additional information to dealerst

payment plans, highlighting how they work and the types of costs with these plans.³⁶ The article also addressed whether consumers might pay interest or fees with these different plans, and what happens if consumers need to return items or do not want to continue with a plan. In addition, the Commission released material for consumers discussing the Commission’s American Indian and Alaska Native communities report, including alerting consumers to issues the report addresses about auto purchasing and financing, such as deceptive advertising and the lack of clarity about fees.³⁷

III. Regulation E (the EFTA)

In 2023, the FTC issued refunds in one matter pertaining to the EFTA and Regulation E. The Commission also engaged in research and policy work and educational activities involving the EFTA and Regulation E.

A. Electronic Fund Transfers: Enforcement Actions

1. Negative Option Cases

In connection with a negative option case previously settled, the FTC mailed a second round of checks totaling more than \$1.3 million to people who signed-up for “risk-free” trial offers from Triangle Media Corporation but were then charged full price and enrolled in continuity plans without their knowledge.³⁸ Triangle Media used deceptive trial offers to market and sell a variety of products online, including skin creams, electronic cigarettes, and dietary supplements. The FTC initially sent refund checks in June 2020, which resulted in \$7.3 million in refunds. Because there was still money remaining in the fund, the FTC sent a second round of checks totaling more than \$1.3 million to consumers.³⁹

³⁶ See *Buy Now, Pay Later, Rent-to-Own, Lease-to-Own, and Layaway* (Mar. 2023), <https://consumer.ftc.gov/articles/buy-now-pay-later-rent-own-lease-own-and-layaway>; *Planes compre ahora y pague después, alquiler con opción a compra, arrendamiento con opción a compra y compra en reserva* (Mar 2023), <https://consumidor.ftc.gov/articulos/planes-compre-ahora-y-pague-despues-alquiler-con-opcion-compra-arrendamiento-con-opcion-compra-y>.

³⁷ See Kira Krown, *Consumer issues affecting American Indian and Alaska Native communities*, FTC BUREAU OF CONSUMER PROTECTION ALERT (Mar. 15, 2023), <https://consumer.ftc.gov/consumer-alerts/2023/03/consumer-issues-affecting-american-indian-and-alaska-native-communities>; *Asuntos de consumidores que afectan a las comunidades de indígenas de las Américas y nativos de Alaska* (15 de Mar de 2023), <https://consumidor.ftc.gov/alertas-para-consumidores/2023/03/asuntos-de-consumidores-que-afectan-las-comunidades-de-indigenas-de-las-americas-y-nativos-de-alaska>.

³⁸ See *FTC asks - - s r*

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

1. Negative Option Rule

In 2023, as part of its ongoing review of its 1973 Negative Option Rule, the FTC proposed a “click to cancel” provision requiring sellers to make it as easy for consumers to cancel their enrollment as it was to sign up.⁴⁰ More specifically, the proposed changes to the rule require negative option sellers to provide a simple mechanism for a consumer to cancel the negative option and avoid being charged for the good or service, and immediately stop any recurring charges; the mechanism must be at least as easy to use as the method the consumer used to initiate the negative option feature.⁴¹ The proposed changes also require negative option sellers to obtain consumers’ express informed consent before charging them.⁴² As noted, the Rule is used to combat unfair or deceptive practices related to subscriptions, memberships, and other recurring-payment programs.⁴³ In response to comments received on the proposal, the FTC also scheduled a virtual informal hearing on the proposed amendments.⁴⁴

⁴⁰ See Negative Option Rule, 88 Fed. Reg. 24716 (Apr. 24, 2024), available at <https://www.govinfo.gov/content/pkg/FR-2023-04-24/pdf/2023-07035.pdf>. See also FTC, Press Release, *Federal Trade Commission Proposes Rule Provision Making it Easier for Consumers to “Click to Cancel” Recurring Subscriptions and Memberships* (Mar. 23, 2023), available at <https://www.ftc.gov/news-events/news/press-releases/2023/03/federal-trade-commission-proposes-rule-provision-making-it-easier-consumers-click-cancel-recurring>.

⁴¹ See Negative Option Rule, 88 Fed Reg. at 24728 and 24735, available at <https://www.govinfo.gov/content/pkg/FR-2023-04-24/pdf/2023-07035.pdf>. The supplementary information released with the proposed amendments notes that the EFTA – which the Commission enforces except to the extent enforcement is specifically committed to some other federal government agency – also contains provisions relevant to negative option marketing, and prohibits sellers from imposing recurring charges on a consumer’s debit cards or bank accounts without written authorization. See Negative Option Rule, 88 Fed. Reg at 24718, available at <https://www.govinfo.gov/content/pkg/FR-2023-04-24/pdf/2023-07035.pdf>.

⁴² See Negative Option Rule, 88 Fed Reg. at 24727 and 24735, available at <https://www.govinfo.gov/content/pkg/FR-2023-04-24/pdf/2023-07035.pdf>. Under the proposed amendments, except for transactions subject to the preauthorized transfer provisions of EFTA and Regulation E (to avoid potential conflicts because EFTA contains various prescriptive requirements, including written consumer signatures compliant with E-Sign, evidence of consumer identity and assent, inclusion of terms in the authorization, and provision of a copy of the authorization to the consumer), sellers may obtain express informed consent through a check box, signature, or other substantially similar method,

2. Older Americans Report

In 2023, the FTC released its latest report to Congress on protecting older adults, highlighting key trends based on fraud reports by older adults and the FTC's multi-pronged efforts to combat the problem through law enforcement, rulemaking, and outreach and education.⁴⁵ The report notes that older adults reported losing more than \$1.6 billion to fraud during the year.⁴⁶ It also notes that, although adults aged 60 and over were substantially less likely to report losing money to fraud than adults aged 18-59, when they did report losing money, they tended to report losing substantially more than younger adults.⁴⁷ Among other things, the report addressed numerous enforcement actions and highlights, including cases with charges under the EFTA such as Triangle Media, which defendants settled and resulted in more than \$8 million in refunds to consumers – with more than \$1.3 million of that amount returned in 2023.⁴⁸

3. ABA Legal Assistance for Military Personnel

The FTC worked with the DoD interagency group and with ABA LAMP as discussed above, on electronic fund transfer issues. Among other things, the FTC staff coordinated with the DoD interagency group on issues related to preauthorized electronic fund transfers in the military lending rule and in connection with the EFTA issues referenced in the Commission's Negative Option Rule, discussed above. The FTC also provided input and presentations to ABA LAMP on EFTs and FTC initiatives in this area, including on diverse forms of electronic payments and how these relate to the EFTA requirements.

C. Electronic Fund Transfers: Consumer and Business Education

The Commission released two items cautioning consumers about issues with certain types of payment mechanisms. One article described how payment apps such as Venmo, CashApp, and Zelle, may link to your debit card or bank account and make it easy to send money fast to friends or family.⁴⁹ The article cautioned that the apps also can be used by scammers,

⁴⁵ See PROTECTING OLDER CONSUMERS 2022-2023: A REPORT OF THE FEDERAL TRADE COMMISSION (PROTECTING OLDER CONSUMERS REPORT) (Oct. 2023), available at <https://www.ftc.gov/reports/protecting-older-consumers-2022-2023-report-federal-trade-commission>. See also

including those who pretend to be loved ones in trouble seeking money to deal with an emergency, saying consumers have won prizes or sweepstakes and need to pay fees to collect it, or posing as the consumer's bank and claiming consumers must transfer their funds to protect their money to new accounts – which really belong to the scammer. The article noted that sending money through payment apps is like sending cash – making it hard to get back – and included tips for safer approaches, such as being sure consumers know whom they are sending money to when using a payment app, and if they are uncertain, contacting the person, bank or business at a phone number they know to be real and inquiring whether they sent the request for

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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.⁵⁴ Should you need additional assistance, please contact me at (202) 326-2972, or Carole Reynolds at (202) 326-3230.

Sincerely,

/s/ Malini Mithal

Malini Mithal
Associate Director
Division of Financial Practices

⁵⁴ Your letter also requests information regarding compliance by credit card issuers with the FTC Act. The Commission does not have jurisdiction over banks or federal credit unions, and in 2023, 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.