

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 Transfer Act or EFTA) (collectively "the Regulations").<sup>1</sup> You request this information for use in preparing the Bureau of Consumer Financial Protection's (CFPB) 2021 Annual Report to Congress. Specifically, you ask for information concerning the FTC's activities with respect to the Regulations during 2021. We are pleased to provide the requested information below.<sup>2</sup>

## **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, such as giving the

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<sup>1</sup> 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.

<sup>2</sup> 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.

CFPB rulemaking and enforcement authority for the TILA, CLA, and EFTA. Under the Act, the FTC retained its authority to enforce the TILA and Regulation Z, the CLA and Regulation M, and the EFTA and Regulation E. In addition, the Act gave the Commission the authority to enforce any CFPB rules applicable to entities within the FTC's jurisdiction, which include most providers of financial services that are not banks, thrifts, or federal credit unions.<sup>3</sup> In accordance with the memorandum of understanding that the Commission and the CFPB entered into in 2012 and reauthorized in 2015 and 2019, and consistent with the Dodd-Frank Act, the Commission has been coordinating certain law enforcement, rulemaking, and other activities with the CFPB.<sup>4</sup>

## **II. Regulation Z (the TILA) and Regulation M (the CLA)**

In 2021, the Commission engaged in law enforcement; rulemaking, research and policy development; and consumer and business education, all relating to the topics covered by the TILA and Regulation Z and the CLA and Regulation M, including the advertisement, extension, and certain other aspects of consumer credit and leasing.<sup>5</sup>

### **A. Truth in Lending and Consumer Leasing: Enforcement Actions**

The Commission's law enforcement efforts against those who market or extend credit included actions involving automobile financing, payday loans, and credit repair and debt relief.

#### **1. Automobiles (Credit and Leasing)**

The FTC continued its efforts to combat deceptive automobile dealer practices with litigation in two enforcement actions involving the TILA and Regulation Z (credit) and the CLA and Regulation M (leasing).

In July 2021, the FTC announced a settlement with Richard Berry, the owner and manager of a group of four auto dealers that operated in Arizona and New Mexico, near the

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<sup>3</sup> The FTC has authority to enforce the TILA and Regulation Z, the CLA and Regulation M, and the EFTA and Regulation E, as to entities for which Congress has not committed enforcement to some other government agency. *See* 15 U.S.C. § 1607(c) (the TILA and Regulation Z, and the CLA and Regulation M) and 15 U.S.C. § 1693o (the EFTA and Regulation E).

<sup>4</sup> *See* FTC, *Memorandum of Understanding between the Consumer Financial Protection Bureau and the Federal Trade Commission*, Jan. 20, 2012, available at <https://www.ftc.gov/system/files/120123ftc-cfpb-mou.pdf>, and FTC, *Memorandum of Understanding between the Consumer Financial Protection Bureau and the Federal Trade Commission*, Mar. 6, 2015, available at [https://www.ftc.gov/system/files/documents/cooperation\\_agreements/150312ftc-cfpb-mou.pdf](https://www.ftc.gov/system/files/documents/cooperation_agreements/150312ftc-cfpb-mou.pdf). In 2019, the FTC and CFPB again reauthorized the MOU. *See* FTC, *Memorandum of Understanding between the Consumer Financial Protection Bureau and the Federal Trade Commission*, Feb. 25, 2019, available at [https://www.ftc.gov/system/files/documents/cooperation\\_agreements/ftc-cfpb\\_mou\\_225\\_0.pdf](https://www.ftc.gov/system/files/documents/cooperation_agreements/ftc-cfpb_mou_225_0.pdf). *See also* Dodd-Frank Act, § 1024.

<sup>5</sup> Your letter also asks for specific data regarding compliance examinations, including the extent of compliance, number of entities examined, and compliance challenges experienced by entities subject to the FTC's jurisdiction. The Commission does not conduct compliance examinations or collect compliance-related data concerning the non-bank entities within its jurisdiction. As a result, this letter does not provide this information.

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 contracts submitted to third-party financing companies, and misrepresenting important financial terms in vehicle advertisements, in violation of the FTC Act.<sup>6</sup> The complaint also charged Tate's Auto with violating the TILA and Regulation Z (credit) and the CLA and Regulation M (leases) by failing to disclose required terms in advertisements, including in online and social media; an earlier ruling found defendants violated TILA and CLA by failing to disclose such legally required information in their advertisements.<sup>7</sup> In addition to providing for a \$450,000 payment to the FTC for consumer redress, the settlement prohibits Berry from misrepresenting information in documents associated with a consumer's purchase, financing, or leasing of a motor vehicle, misrepresenting the costs or any other material fact related to vehicle financing, and from violating the TILA and Regulation Z, and the CLA and Regulation M.<sup>8</sup>

In October 2021, the Commission issued an administrative opinion and order ruling that Traffic Jam Events, LLC and its owner, David J. Jeanson II (respondents) violated both the FTC Act and the TILA (credit), and banning them from the auto industry.<sup>9</sup> Among other things, the Commission found that the respondents sent deceptive mailers to consumers to entice them to auto sale sites suggesting they were affiliated with a government COVID-19 stimulus program when the company was not; sent direct mail advertisements deceptively indicating consumers had won specific valuable prizes (such as \$2,500 or \$5,000 cash) that consumers learned they had not won when they appeared to claim the prizes; and sent mailers violating TILA, including by quoting monthly payments to purchase vehicles on credit that did not provide, or hid in small print, key financing terms required by law that consumers need to determine the true costs of the advertising financing.<sup>10</sup> The Commission's order also prohibits misrepresentations regarding financial assistance from the government, prizes and sweepstakes, affiliation with the

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<sup>6</sup> *FTC v. Tate's Auto Center of Winslow, Inc.*, No. 18-cv-08176 (D. Ariz. July 30, 2021) (stipulated order for permanent injunction and monetary relief as to individual defendant), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/162-3207-x180041-tates-auto-center>. Commissioner Rebecca Kelly Slaughter issued a concurring statement in this matter, available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/concurring-statement-commissioner-rebecca-kelly-slaughter-matter-tates-auto>. The settlement also included a stipulated dismissal of relief defendant Linda Tate. *FTC v. Tate's Auto Center of Winslow, Inc.*, No. 18-cv-08176 (D. Ariz. July 26, 2021) (order). See also FTC, Press Release, *FTC Obtains \$450,000 Settlement in Tate's Auto Group Case* (Jul. 29, 2021), available at <https://www.ftc.gov/news-events/press-releases/2021/07/ftc-obtains-450000-settlement-tates-auto-group-case>.

<sup>7</sup> See FTC, Press Release, *FTC Obtains \$450,000 Settlement in Tate's Auto Group Case* (Jul. 29, 2021), available at <https://www.ftc.gov/news-events/press-releases/2021/07/ftc-obtains-450000-settlement-tates-auto-group-case>.

<sup>8</sup> See *FTC v. Tate's Auto Center of Winslow, Inc.*, No. 18-cv-08176 (D. Ariz. July 30, 2021) (stipulated order for permanent injunction and monetary relief as to individual defendant), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/162-3207-x180041-tates-auto-center>.

<sup>9</sup> *In the Matter of Traffic Jam Events, LLC*, FTC Dkt. No. 9395 (Oct. 25, 2021) (Opinion of the Commission; Final Order), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/x200041-202-3127-traffic-jam-events-llc-matter>. Among other things, the order also prohibits violations of the TILA and Regulation Z. The Commission's order runs for twenty years.

<sup>10</sup> See *id.*

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 the 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.<sup>11</sup> Litigation continues in this matter at the appellate level.<sup>12</sup>

## 2. Payday Lending (Credit)

In 2021, the FTC settled charges with the owners and operators of a payday lending enterprise (Harvest Moon), which the FTC had alleged deceptively overcharged consumers millions of dollars and used deceptive tactics to convince consumers that their loans would be repaid in a fixed number of payments when, in many instances, the defendants had applied the payments to finance-charge only amounts, and also failed to make required loan disclosures.<sup>13</sup> The FTC charged the defendants with violating the FTC Act, the TILA and Regulation Z, and the Telemarketing Sales Rule (TSR).<sup>14</sup> Under the terms of the settlement, among other things, the owners and operators of the settling entities are permanently prohibited from making loans or extending credit of any kind, and nearly all outstanding debt (which is comprised entirely of illegal finance charges) held by the company will be deemed as paid in full.<sup>15</sup> The settlement includes a monetary judgment of \$114.3 million, which is partially suspended based on an inability to pay.<sup>16</sup> The defendants will be required to turn over all corporate assets and almost all domestic personal assets along with a number of vehicles to the receiver, which will wind down and liquidate the business and provide all proceeds to the FTC, to be used for equitable relief for

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<sup>11</sup> See *In the Matter of Traffic Jam Events, LLC*, FTC Dkt. No. 9395 (filed Aug. 7, 2020), available at <https://www.ftc.gov/enforcement/cases-proceedings/x200041-2023127/traffic-jam-events-llc-matter>; see also FTC, Press Release, *FTC Adds Charges Against Auto Marketer For Deceptive “Prize” Mailers* (Aug. 13, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/08/ftc-adds-charges-against-auto-marketer-deceptive-prize-mailers>.

<sup>12</sup> *Traffic Jam Events, LLC and David J. Jeanson II*, individually and as an officer of the company, appealed the FTC order and opinion. *Traffic Jam Events v. FTC*, No. 21-60947 (5th Cir. Dec. 21, 2021) (appeal docketed).

<sup>13</sup> See FTC, Press Release, *FTC Acts to Ban Payday Lender From Industry, Forgive Illegal Debt* (Feb 11, 2021), available at <https://www.ftc.gov/news-events/press-releases/2021/02/ftc-acts-ban-payday-lender-industry-forgive-illegal-debt>.

<sup>14</sup> *FTC v. Lead Express, Inc.*, No. 20-cv-00840 (D. Nev. filed May 11, 2020), available at <https://www.ftc.gov/enforcement/cases-proceedings/192-3208/lead-express-inc-harvest-moon-financial>.

<sup>15</sup> *FTC v. Lead Express, Inc.*, No. 20-cv-00840 (D. Nev. Apr. 1, 2021) (stipulated order for permanent injunction and monetary judgment as to defendants Lead Express Inc., Camel Coins, Inc., Sea Mirror, Inc., Naito Corp., Kotobuki Marketing, Inc., Ebisu Marketing, Inc., Hotel Marketing, Inc., Daikoku Marketing, Inc., Takehisa Naito, and Keishi Ikeda). See also FTC, Press Release, *FTC Acts to Ban Payday Lender From Industry, Forgive Illegal Debt* (Feb 11, 2021), available at <https://www.ftc.gov/news-events/press-releases/2021/02/ftc-acts-ban-payday-lender-industry-forgive-illegal-debt>.

<sup>16</sup> See *id.* The full judgment will become due if the defendants are found to have misrepresented their financial condition.

consumers, including redress and its administration. The court also issued a default judgment against defendant La Posta Tribal Lending Enterprise on all FTC claims, including that it violated the FTC Act by misrepresenting the payment terms of its payday loans and the TILA and Regulation Z by failing to make accurate disclosures, and permanently enjoining the defendant from, among other things, misrepresenting the payment schedule and total amount a consumer will owe, and from violating the TILA and Regulation Z, and awarding total disgorgement in an amount exceeding \$5 million.<sup>17</sup>

In April 2021, the U.S. Supreme Court issued a decision in *AMG Capital Management, LLC v. FTC* resolving the challenge brought by Scott Tucker and several of the corporate defendants, overturning the lower court decision and remanding the case back for review; litigation continues in this appellate matter.<sup>18</sup> The case involved violations of the FTC Act, the TILA and Regulation Z, and other laws.<sup>19</sup> The Court found that the FTC did not have the authority under Section 13(b) of the FTC Act to seek equitable monetary relief. In view of its loss of an important consumer protection tool with this decision, the Commission has asked Congress to amend the FTC Act to enable the Commission to obtain monetary relief for injured consumers under Section 13(b).<sup>20</sup>

### 3. Credit Repair and Debt Relief (Credit)

In 2021, the operators of a student loan debt relief scheme agreed to settle Federal Trade Commission charges that they collected illegal upfront fees and falsely promised to lower or even eliminate consumers' loan payments or balances.<sup>21</sup> Among other things, the settlement bans the defendants from providing debt relief services, prohibits them from violating the Telemarketing Sales Rule (TSR), and includes a monetary judgment against certain defendants

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<sup>17</sup> *FTC v. Lead Express, Inc.*, No. 20-cv-00840 (D. Nev. Sept. 13, 2021 (order granting motion for default judgment, directing final judgment against La Posta Tribal Lending Enterprise), (D. Nev. Sept. 14, 2021) (default judgment entered).

<sup>18</sup> *FTC v. AMG Capital Management, LLC*, 141 S. Ct. 1341, 593 US \_\_ (2021), available at [https://www.supremecourt.gov/opinions/20pdf/19-508\\_l6gn.pdf](https://www.supremecourt.gov/opinions/20pdf/19-508_l6gn.pdf).

<sup>19</sup> The Ninth Circuit had affirmed the district court judgment and order the FTC obtained against Tucker and several corporate defendants for violation of the FTC Act and the TILA, among other things, for deceiving consumers and illegally charging them undisclosed and inflated fees. *FTC v. AMG Capital Mgmt., LLC*, 910 F.3d 417 (9<sup>th</sup> Cir. 2018).

<sup>20</sup> See Testimony, Prepared Statement of the Federal Commission: The Urgent Need to Fix Section 13(b) of the FTC Act (Apr. 27, 2021), <https://www.ftc.gov/legal-library/browse/prepared-statement-federal-trade-commission-urgent-need-fix-section-13b-ftc-act>.

<sup>21</sup> *FTC v. Student Advocates Team, LLC*, No. 8:19-cv-1728 (C.D. Cal. May 17, 2021) (stipulation as to entry of order for permanent injunction, monetary relief and final judgment as to Defendants Student Advocates Team LLC; Progress Advocates Group, LLC; Student Advocates Group, LLC; Assurance Solution Services, LLC; and Bradley Jason Hunt) (C.D. Cal. May 17, 2021), (stipulation as to entry of order for permanent injunction and final judgment as to Defendant Sean Quincy Lucero) (C.D. Cal. May 17, 2021), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/172-3036-student-advocates-team-llc-et-al>. The full judgment will become due if the defendants are found to have misrepresented their financial condition.

of more than \$24.5 million, which is partially suspended due to an inability to pay.<sup>22</sup> The defendants are prohibited from collecting any further payments from the consumers who purchased their debt relief services, and also are required to pay \$11,500, to be used for consumer redress.<sup>23</sup> The complaint filed in 2019 alleged that defendants charged illegal upfront fees that they led consumers to believe went towards consumers' student loans, falsely promised that their services would permanently lower or even eliminate consumers' loan payments or balances, and signed customers up for high-interest loans to pay the fees without making required disclosures, in violation of the FTC Act, the TSR and the TILA.<sup>24</sup>

#### **4. Other Cases (Credit)**

In 2021, the FTC mailed 4,505 refund checks to people who lost money in a financing scheme that targeted customers shopping for computers and related electronic devices.<sup>25</sup> In a case previously reported on, the FTC alleged that BlueHippo Funding, LLC and affiliate BlueHippo Capital, LLC, among other things, violated the TILA and engaged in deceptive practices in violation of the FTC Act, and promised to finance new computers, collected money from customers, and then failed to provide them with computers.<sup>26</sup> The Commission also alleged that the two companies failed to disclose key terms of BlueHippo's refund policy to customers prior to their making payments.<sup>27</sup> The FTC won a lengthy court battle and now is using the funds it recovered to provide more than \$103,000 in refunds to consumers.

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

#### **1. Military (Credit and Leasing)**

In 2021, 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,

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<sup>22</sup> See FTC, Press Release, *Operators of Student Loan Debt Relief Scheme Banned From Providing Debt Relief Services as Part of Settlement with FTC* (May 17, 2021), available at <https://www.ftc.gov/news-events/press-releases/2021/05/operators-student-loan-debt-relief-scheme-banned-providing-debt>.

<sup>23</sup> See *id.*

<sup>24</sup> *FTC v. Student Advocates Team, LLC*, No. 8:19-cv-1728 (C.D. Cal. filed Sept. 11, 2019), available at <https://www.ftc.gov/enforcement/cases-proceedings/172-3036/student-advocates-team-llc-et-al>.

<sup>25</sup> See FTC, Press Release, *FTC Sends Refund Checks to People Targeted in Computer Financing Scheme* (Aug. 31, 2021), available at <https://www.ftc.gov/news-events/press-releases/2021/08/ftc-sends-refund-checks-people-targeted-computer-financing-scheme>.

<sup>26</sup> See *id.*

<sup>27</sup> See *supra* note 25.

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 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 issues pertaining to the MLA and DoD’s military lending rule implementing the MLA, which includes issues related to the TILA and other credit matters.<sup>28</sup>

### **C. Truth in Lending and Consumer Leasing: Consumer and Business Education**

In 2021, the FTC continued its efforts to educate consumers about issues related to consumer credit and lease transactions covered by, or closely related to, Regulation Z and Regulation M. The articles described below are all available in both English and Spanish.

#### **1. Automobiles Sales and Financing (Credit and Leasing)**

The Commission updated a publication to provide guidance to consumers considering the purchase of a used car from a dealer.<sup>29</sup> The publication provides a variety of tips, including about add-ons – optional products and services that can cost thousands of extra dollars and are often only mentioned at the end of a time-consuming day at the dealership; obtaining an independent vehicle inspection and considering the FTC’s Buyer’s Guide, which must be displayed on every used car offered for sale and also given to buyers after the sale; and considering payment options. The FTC also updated its publication on financing and leasing vehicles, providing guidance on what to consider before buying or leasing a car – including getting the “out-the-door” price of the car in writing before visiting the dealer’s lot and before discussing financing with the dealer, checking trade-in values, considering various financing

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<sup>28</sup> The MLA requires the DoD to coordinate with several federal agencies, including the FTC, in prescribing regulations and not less than every two years thereafter. 10 U.S.C. § 987.

<sup>29</sup> See *Buying a Used Car From a Dealer* (May 2021), <https://consumer.ftc.gov/articles/buying-used-car-dealer>; *Como comprarle un carro usado a un concesionario* (May 2021), <https://consumidor.ftc.gov/articulos/como-comprarle-un-carro-usado-un-concesionario>.

options, and shopping carefully for the best deal.<sup>30</sup> 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 tack on add-ons to increase cost, and recommending that consumers get pre-approved for financing before working with the dealer's financing office.<sup>31</sup> The publication provides examples of deceptive car ads, including those offering very low prices, 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 focused on auto trade-ins and negative equity, explaining how negative equity can affect car values and how to effectively deal with this issue, including consulting independent publications on vehicle values, and considering options before purchasing, such as deferring a purchase until you have positive equity in the vehicle you are selling, or selling your current car yourself to obtain a higher price.<sup>32</sup> The FTC also released an updated publication alerting consumers that for new or used cars, salespersons might try to sell an auto service contract to help protect against unexpected or costly repairs, but it could duplicate coverage you have through your manufacturer's warranty; it also provides additional information regarding add-ons, including about how auto warranties differ from auto service contracts.<sup>33</sup>

## 2. Mortgages (Credit)

The Commission updated a mortgage article with tips on shopping for a mortgage, ways to prepare for getting a mortgage including getting quotes from several lenders or brokers, and information on what to expect after you apply for the loan.<sup>34</sup> It includes a mortgage shopping

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<sup>30</sup> See *Financing or Leasing a Car* (May 2021), <https://consumer.ftc.gov/articles/financing-or-leasing-car>; *Como financiar un carro o adquirirlo en la modalidad de leasing* (May 2021), <https://consumidor.ftc.gov/articulos/como-financiar-un-carro-o-adquirirlo-en-la-modalidad-de-leasing>.

<sup>31</sup> See *Know Before You Go: Car Dealer Ads and Promotions* (May 2021), <https://consumer.ftc.gov/articles/know-you-go-car-dealer-ads-promotions>; *Lo que tiene que saber sobre los anuncios y promociones de carros antes de ir al concesionario* (May 2021), <https://consumidor.ftc.gov/articulos/lo-que-tiene-que-saber-sobre-los-anuncios-y-promociones-de-carros-antes-de-ir-al-concesionario>.

<sup>32</sup> See *Auto Trade-Ins and Negative Equity: When You Owe More than Your Car is Worth* (May 2021), <https://consumer.ftc.gov/articles/auto-trade-ins-negative-equity-when-you-owe-more-your-car-worth>; *Canje de carros y valor neto negativo: Cuando debe mas de lo que vale su carro* (May 2021), <https://consumidor.ftc.gov/articulos/canje-de-carros-y-valor-neto-negativo-cuando-debe-mas-de-lo-que-vale-su-carro>.

<sup>33</sup> See *Auto Warranties and Service Contracts* (May 2021), <https://consumer.ftc.gov/articles/auto-warranties-service-contracts>; *Garantías y contratos de servicio para carros* (May 2021), <https://consumidor.ftc.gov/articulos/garantias-y-contratos-de-servicio-para-carros>.

<sup>34</sup> See *Shopping for a Mortgage FAQs* (May 2021), <https://consumer.ftc.gov/articles/shopping-mortgage-faqs>; *Preguntas frecuentes sobre como buscar, comparar y elegir una hipoteca* (May 2021), <https://consumidor.ftc.gov/articulos/preguntas-frecuentes-sobre-como-buscar-comparar-y-elegir-una-hipoteca>.



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 scammers who pressure consumers for an immediate decision or suggest you borrow money from a lender they know, and ways to avoid the scams.<sup>35</sup> 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, to 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.<sup>36</sup> It also provides information on the Military Lending Act (MLA), which applies to various types of credit including payday loans, car title loans, personal 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 costs.

The FTC also issued a publication providing information to help consumers compare payments cards, including credit, charge, and secured credit cards with other cards.<sup>37</sup> 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 EFTA and Regulation E. The Commission also engaged in research and policy work and educational activities involving the EFTA and Regulation E.

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<sup>35</sup> 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-evitar-una-estafa-de-mejoras-del-hogar>.

<sup>36</sup> See *What To Know About Payday and Car Title Loans* (May 2021), <https://consumer.ftc.gov/articles/what-know-about-payday-car-title-loans>; *Lo que hay que saber sobre los prestamos de día 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>.

<sup>37</sup> 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>.

## A. Electronic Fund Transfers: Enforcement Actions

### 1. Negative Option Cases

One of the Commission's cases alleging violations of the EFTA and Regulation E arose in the context of "negative option" plans.<sup>38</sup> In 2021, the FTC continued litigation against the remaining defendants in an action that was previously reported on against Redwood Scientific, in which the FTC alleged that defendants engaged in a scheme that used illegal robocalls to deceptively market dissolvable oral film strips as effective smoking cessation, weight-loss, and sexual-performance aids, and enrolled consumers in auto-ship continuity plans without their consent, in violation of the FTC Act, the EFTA, and the TSR, among other statutes.<sup>39</sup> Litigation continued in this matter in 2021.

### 2. Other Cases

As also described above, the FTC settled with owners and operators of a payday lending enterprise (Harvest Moon), resolving allegations that Harvest Moon deceptively overcharged consumers millions of dollars and used deceptive tactics.<sup>40</sup> Among other things, the FTC had charged that the defendants continued to draw millions of dollars in payments from consumers' bank accounts long after the loans' original principal amount and stated repayment cost had been repaid, and until consumers completely closed their bank accounts or found some other way to cut off payments, violating the FTC Act and the EFTA and Regulation E, and other requirements.<sup>41</sup> In addition to the settlement terms described above, the settlement prohibits the defendants from making electronic fund transfers from a consumer's bank account on a recurring basis without obtaining a written authorization signed or similarly authenticated from the consumer for preauthorized electronic fund transfers, from failing to provide the consumer with a

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<sup>38</sup> Negative option plans can involve the use of debit cards, credit cards, or both. The EFTA and Regulation E apply to debit cards; the TILA and Regulation Z apply to credit cards. These can include plans where a consumer agrees to receive various goods or services from a company, often for a trial period at no charge or at a reduced price. The company also obtains, sometimes through misrepresentations, the consumer's 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. The 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.

<sup>39</sup> See generally FTC, Enforcement, Cases and Proceedings, *FTC v. Jason Cardiff (Redwood Scientific Technologies, Inc.)*, available at <https://www.ftc.gov/enforcement/cases-proceedings/172-3117-x190001/jason-cardiff-redwood-scientific-technologies-inc>.

<sup>40</sup> See FTC, Press Release, *FTC Acts to Ban Payday Lender From Industry, Forgive Illegal Debt* (Feb. 11, 2021), available at <https://www.ftc.gov/news-events/press-releases/2021/02/ftc-acts-ban-payday-lender-industry-forgive-illegal-debt>.

<sup>41</sup> See *id.*

copy of the written authorization, and from violating the EFTA or Regulation E.<sup>42</sup> 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.<sup>43</sup>

As described above, the FTC filed mailed 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.<sup>44</sup> 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, collection of money from customers, and failure to provide consumers with computers.<sup>45</sup>

## **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.<sup>46</sup> 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 or did not want to continue to

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<sup>42</sup> See *FTC v. Lead Express, Inc.*, No. 20-cv-00840 (D. Nev. Apr. 1, 2021) (stipulated order for permanent injunction and monetary judgment as to defendants Lead Express Inc., Camel Coins, Inc., Sea Mirror, Inc., Naito Corp., Kotobuki Marketing, Inc., Ebisu Marketing, Inc., Hotel Marketing, Inc., Daikoku Marketing, Inc., Takehisa Naito, and Keishi Ikeda).

<sup>43</sup> See *supra* note 17.

<sup>44</sup> See generally *supra* note 25.

<sup>45</sup> See generally *supra* note 25.

<sup>46</sup> See FTC, Press Release, *FTC to Ramp up Enforcement against Illegal Dark Patterns that Trick or Trap Consumers into Subscriptions* (Oct. 28, 2021), available at <https://www.ftc.gov/news-events/press-releases/2021/10/ftc-ramp-enforcement-against-illegal-dark-patterns-trick-or-trap>.

In 2021, the FTC held a forum on digital “dark patterns,” a term used to describe a range of potentially manipulative user interface designs used on websites and mobile apps. See *Bringing Dark Patterns to Light: An FTC Workshop* (Apr. 29, 2021), available at <https://www.ftc.gov/news-events/events/2021/04/bringing-dark-patterns-light-ftc-workshop>. A webcast and event materials are available at that site.

purchase.<sup>47</sup> 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.<sup>48</sup> It also puts companies on notice that they will face legal action if their sign-up process fails to provide clear, up-front information, obtain consumer's informed consent, and make cancellation easy.<sup>49</sup>

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 related 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. Electronic Fund Transfers: Consumer and Business Education**

The FTC's article on payment cards, described above, also provides information about debit and prepaid cards. It includes guidance on how these cards differ from other cards such as credit, charge or secured credit cards and important considerations for each type of card.<sup>50</sup>

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<sup>47</sup> See FTC, Enforcement Policy Statement Regarding Negative Option Marketing (Enforcement Policy Statement), 86 Fed. Reg. 60822 (Nov. 4, 2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-11-04/pdf/2021-24094.pdf>. Commissioner Phillips issued a concurring statement, and Commissioner Wilson issued a dissenting statement, in this matter. See *Concurring Statement of Noah Joshua Phillips*, 86 Fed. Reg. at 60826, and *Dissenting Statement of Christine S. Wilson*, 86 Fed. Reg. at 60826-27, both available at <https://www.govinfo.gov/content/pkg/FR-2021-11-04/pdf/2021-24094.pdf>, respectively.

<sup>48</sup> *Id.*

<sup>49</sup> See *supra* note 47.

<sup>50</sup> See *supra* note 37.

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>51</sup> Should you need additional assistance, please contact me at (202) 326-2972, or Carole Reynolds at (202) 326-3230.

Sincerely,

Malini Mithal  
Associate Director  
Division of Financial Practices

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<sup>51</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 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.