

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



Office of the Secretary

January 21, 2010

Sandra F. Braunstein, Director
Division of Consumer and Community Affairs
Board of Governors of the Federal Reserve System
Washington, D.C. 20551

Dear Ms. Braunstein:

This letter responds to your request for information concerning the Federal Trade Commission's ("Commission" or "FTC") enforcement activities related to compliance with the Truth in Lending ("TILA"), Consumer Leasing ("CLA"), Equal Credit Opportunity ("ECOA"), and Electronic Fund Transfer Acts ("EFTA") (collectively "the Acts") for use in preparing the Federal Reserve Board's ("the Board") 2009 Annual Report to Congress. Specifically, you ask for information concerning the FTC's administration and enforcement of the Acts, as well as compliance with the Acts among entities within the FTC's jurisdiction.¹ You also ask whether the Commission has any suggestions or recommendations for changing the Acts and their implementing regulations. The FTC is pleased to provide you with the information in this report in response to your request.

In your letter, you note that the Board will work with the Commission in the future to analyze the data reporting requirements associated with section 502(e) of the Credit CARD Act of 2009, which requires provision of annual information to the Board about supervisory and enforcement activities related to credit card issuers' compliance with Federal consumer protection requirements.² You indicate that this new requirement may affect the type of data that the Commission collects from entities under its jurisdiction and that the FTC will be asked to provide

¹ The FTC enforces the Acts for most non-bank entities in the United States. The Commission does not collect data regarding the extent of compliance by the numerous non-bank entities within its jurisdiction. As a result, this letter does not provide information on that issue.

² See The Credit Card Accountability Responsibility and Disclosure Act of 2009 ("the Credit CARD Act"), Pub. L. No. 111-24, 123 Stat. 1734 (May 22, 2009).

this data next year in the annual report. The Commission looks forward to working with the Board in this regard.³

I. THE COMMISSION'S ENFORCEMENT AND ADMINISTRATIVE ACTIVITIES IN 2009 UNDER THE ACTS⁴

Truth in Lending Act⁵

The FTC enforces the TILA and Regulation Z with regard to entities within its jurisdiction. This includes most entities other than banks, thrifts, federal credit unions, and nonprofit organizations.⁶ In 2009, the Commission protected consumers of financial services through law enforcement, research and policy development activities, and consumer and business education.

A. TILA Enforcement Efforts

1. Mortgage Cases

In 2009, the FTC continued its crackdown on foreclosure rescue and mortgage modification scams, filing 23 new cases against companies and individuals who claim that they will obtain mortgage modifications or halt foreclosures for distressed homeowners.⁷ According

³ The Commission also notes that it is implementing certain requirements of the Credit CARD Act and is consulting with the Board on implementing other provisions of that Act, including those amending the TILA and the EFTA. The Commission's activities related to the Credit CARD Act that are relevant to this report are described below.

⁴ Information concerning the FTC's enforcement and other activities discussed in this report also is available on the Commission's website at <http://www.ftc.gov>.

⁵ During 2009, the Commission did not initiate any enforcement actions alleging violations of the CLA, which is part of the TILA.

⁶ See Section 5 of the FTC Act (15 U.S.C. 45(a)(2)). Bona fide nonprofit entities are exempt from the jurisdiction of the FTC Act. Pursuant to Sections 4 and 5 of the FTC Act, the Commission has jurisdiction only over persons, partnerships, or corporations organized to carry on business for their profit or that of their members. See 15 U.S.C. 44, 45(a)(2). The FTC has authority to enforce the TILA only as to entities for which enforcement has not been committed to some other government agency. 15 U.S.C. 1607(c).

⁷ The Commission filed five additional such cases in 2008 for a total of 28 of these cases to date. See FEDERAL TRADE COMM'N, FEDERAL AND STATE AGENCIES TARGET MORTGAGE RELIEF SCAMS; FTC LEADS "OPERATION STOLEN HOPE" TO STOP FRAUD AND HELP TROUBLED HOMEOWNERS (Nov. 24, 2009), available at <http://www2.ftc.gov/opa/2009/11/stolenhope.shtm>; see also FEDERAL TRADE COMM'N, FEDERAL AND STATE AGENCIES TARGET MORTGAGE FORECLOSURE RESCUE AND LOAN MODIFICATION SCAMS; FTC LEADS "OPERATION LOAN LIES" TO STOP FRAUD AND HELP DISTRESSED HOMEOWNERS (July 15, 2009), available at <http://www.ftc.gov/opa/2009/07/loanlies.shtm>; FEDERAL TRADE COMM'N, MORTGAGE FORECLOSURE 'RESCUE' DEFENDANTS SETTLE FTC CHARGES FOR DECEIVING HOMEOWNERS (May 4, 2009), available at

to the FTC's allegations, the defendants in these cases claimed that they would help distressed homeowners obtain affordable mortgage modifications or stop foreclosures. The Commission alleged that defendants, after collecting a hefty up-front fee, did little or nothing to help homeowners negotiate their mortgage loans or save their homes. These cases generally involve alleged violations of the FTC Act and other laws.

Of these mortgage relief cases, one involved alleged violations of the TILA and the Home Ownership and Equity Protection Act ("HOEPA"), in addition to the FTC Act.⁸ It was settled in 2009. In that case, various business entities and individuals allegedly offered consumers high-cost, interest-only, short-term balloon loans that were secured by second mortgages on their homes. The consumers purportedly could stop foreclosure by using the proceeds from these loans to make payments on their first mortgages. The complaint, filed in 2008, alleged that various defendants violated the FTC Act by misrepresenting the APR for the loans and that the defendants who were creditors for the loans also violated the HOEPA by failing to make required disclosures, by making HOEPA loans without regard to the consumer's repayment ability, and by including prohibited balloon payment and negative amortization provisions in HOEPA loans.⁹ The complaint also alleged that the creditor defendants, as well as the defendants to whom the loans were assigned,¹⁰ violated the TILA and Regulation Z by failing to make required disclosures. Among other things, the stipulated final orders in this case¹¹ prohibit most defendants from misrepresenting the cost of credit or the APR; from misrepresenting any fact material to a consumer's decision to purchase or use any product, program, good or service; and

<http://www.ftc.gov/opa/2009/05/rescue.shtm>; and FEDERAL TRADE COMM'N, FEDERAL AND STATE AGENCIES CRACK DOWN ON MORTGAGE MODIFICATION AND FORECLOSURE RESCUE SCAMS; FTC, STATE ENFORCERS SUE SCAMMERS, WARN OTHERS; ANNOUNCE EDUCATION CAMPAIGN DESIGNED TO REACH BORROWERS DIRECTLY (Apr. 6, 2009), available at <http://www.ftc.gov/opa/2009/04/hud.shtm>. In connection with this law enforcement initiative and otherwise, state and local authorities have also brought hundreds of cases involving mortgage relief.

⁸ *FTC v. Safe Harbor Foundation of Florida, Inc.*, No 1:08-CV-01185 (N.D. Ill. Nov. 19, 2009 and Apr. 27, 2009) (stipulated orders entered), available at <http://www.ftc.gov/os/caselist/0823028/index.shtm>.

⁹ *Id.* (N.D. Ill. Feb. 27, 2008) (complaint filed), available at <http://www2.ftc.gov/opa/2008/02/rescue.shtm>. The case involved different types of defendants, including creditors and assignees of the mortgage loans.

¹⁰ According to the complaint, three defendants – Silverstone Lending, Silverstone Financial, and Keystone Financial – were creditors and two defendants – Southeast Advertising, Inc. and MT25 LLC – were assignees.

¹¹ This case was resolved as follows: Stipulated orders for permanent injunction and final judgment were entered as to defendants Peter J. Porcelli, II, Safe Harbor Foundation of Florida., Silverstone Lending, and Silverstone Financial, on Nov. 19, 2009; as to defendant Southeast Advertising, Inc., on Nov. 19, 2009; and as to defendants Christopher Tomasulo and Bonnie Werner, on Apr. 27, 2009; a voluntary dismissal was entered as to Keystone Financial on Apr. 27, 2009; a default judgment was entered as to defendant MT 25 LLC on Nov. 3, 2009. *See supra* note 8. The settlement also resolves a related contempt action against some defendants for violation of a prior FTC order. Among other things, the prior orders prohibit these defendants from marketing credit-related products to consumers. *See FTC v. Bay Area Business Council, Inc.*, No 02-CV-5762 (N.D. Ill. Apr. 27, 2009) (stipulated orders entered), available at <http://www.ftc.gov/opa/2009/05/rescue.shtm>.

from violating the TILA, Regulation Z, and the HOEPA.¹² The court's default judgment against defendant MT25 requires the payment of \$1.3 million in monetary relief.¹³

During the past year, the Commission also continued its enforcement program against deceptive advertising in mortgage lending. In February 2009, the Commission issued final consent orders against three mortgage advertisers,¹⁴ settling charges that the companies ran deceptive mortgage advertisements that, among other things, promoted low rates or low monthly payments but failed to disclose, or to disclose adequately, the short time period for these terms, in violation of the FTC Act and the TILA. The complaints also alleged that the companies' advertisements failed to disclose, or to disclose adequately, that the low monthly payment and/or low rate were less than what the consumer owed, with the difference added to the total amount due, causing "negative amortization." One of the companies also allegedly misrepresented that low "fixed" rates were for the full loan term, in violation of the FTC Act. Another of the companies allegedly violated the FTC Act by failing to disclose adequately that it, rather than the consumer's current lender, was making the offer. The final consent orders prohibit each company from engaging in the alleged deceptive practices and from advertising specific credit terms

¹² The assignee defendants are prohibited from accepting the assignment of any loan that includes any of the characteristics prohibited by any of the other provisions in the orders. Some individual defendants are barred from trying to collect payments from any consumers for any credit-related product sold by any of the defendants.

¹³ The stipulated final orders impose a \$2.79 million judgment against other defendants, which was suspended based on their inability to pay; however, the full judgment will become due immediately if those defendants are found to have misrepresented their financial condition.

¹⁴ *In the Matter of Michael Gendrolis d/b/a Good Life Funding*, Docket No. C-4248 (Fed. Trade Comm'n Feb. 17, 2009) (decision and order), available at <http://www.ftc.gov/opa/2009/02/fyi0219.shtm>; *In the Matter of American Nationwide Mortgage Co.*, Docket No. C-4249 (Fed. Trade Comm'n Feb. 17, 2009) (decision and order), available at <http://www.ftc.gov/opa/2009/02/fyi0219.shtm>; *In the Matter of Shiva Venture Group, Inc. d/b/a Innova Financial Group*, Docket No. C-4250 (Fed. Trade Comm'n Feb. 17, 2009) (decision and order), available at <http://www.ftc.gov/opa/2009/02/fyi0219.shtm>.

without providing other key terms as required by the TILA and Regulation Z.¹⁵ The orders also prohibit the three companies from failing to comply with the TILA and Regulation Z.¹⁶

In addition to commencing new cases and settling ongoing litigation, the Commission distributed redress funds to consumers from prior settlements obtained in mortgage loan cases. In January 2009, the Commission announced the return of almost \$28 million to consumers as the result of the 2008 settlement with The Bear Stearns Companies LLC and EMC Mortgage Company, which resolved alleged mortgage servicing violations of the FTC Act, the TILA and Regulation Z, and other laws.¹⁷ In June 2009, the Commission announced the return of an additional \$8 million to consumers from the redress fund established by the First Alliance Mortgage Company (“First Alliance”) settlement.¹⁸ This settlement was reached in 2002 to resolve the Commission’s allegations that First Alliance had violated the FTC Act, the TILA, and Regulation Z in connection with making subprime home equity loans. Including the \$8 million

¹⁵ Each settlement prohibits each company from: (1) advertising a rate lower than the rate at which interest is accruing, regardless of whether the rate is referred to as an “effective rate,” a “payment rate,” a “qualifying rate,” or any other term; (2) advertising the amount of any payment, the number of payments or the period of repayment, or the amount of any finance charge, without disclosing, clearly and conspicuously, the terms required by the TILA and Regulation Z, including the terms of repayment, the APR, and, if the APR may be increased after consummation, that fact; and (3) stating a rate of finance charge without stating the rate as an APR, in violation of the TILA and Regulation Z. One company is barred, in connection with promoting any extension of closed-end credit, from misrepresenting: the nature and/or extent of variability of any loan rate or payment amount; whether the rate is fixed rather than adjustable or vice versa; and the duration of the fixed or variable interest rate or payment amount. Another company is barred, in connection with promoting any extension of consumer credit, from making representations about the consumer’s current lender or any entity other than itself, unless it clearly and conspicuously discloses the respondent’s name and identity as the entity promoting or offering the credit extension.

¹⁶ In addition, the Commission continues its litigation challenging advertising claims made by Chase Financial Funding, Inc., a mortgage broker. The FTC filed its action in 2004, and the ongoing litigation was mentioned in prior years’ letters. See *FTC v. Chase Financial Funding, Inc.*, No. 8:04-CV-00549 (C.D. Cal. May 12, 2004) (complaint filed), available at <http://www.ftc.gov/opa/2004/06/chasefinancial.shtm>.

¹⁷ See FEDERAL TRADE COMM’N, FTC LAUNCHES REDRESS PROGRAM FOR MORTGAGE LOAN VICTIMS; ALMOST \$28 MILLION RETURNED TO 86,000 CONSUMERS HARMED BY MORTGAGE SERVICING PRACTICES (Jan. 23, 2009), available at <http://www.ftc.gov/opa/2009/01/emc.shtm>. As reported last year, the settlement resolved charges that defendants violated various statutes, including the FTC Act, the TILA, and Regulation Z, in connection with defendants’ servicing of mortgage loans. The complaint alleged, among other things, that defendants charged borrowers a “loan modification fee” without authorization, and automatically included the fee (typically \$500) in the unpaid principal balance of the loan, causing borrowers’ loan balances to increase and creating new transactions, without providing disclosures required by the TILA and Regulation Z. The redress checks were sent to consumers who paid unauthorized fees to EMC and/or had a home foreclosed upon by EMC. See also *FTC v. EMC Mortgage Corp.*, No. 4:08-cv-338 (E.D. Tex. Sept. 9, 2008) (stipulated final judgment and order), available at <http://www2.ftc.gov/opa/2008/09/emc.shtm>.

¹⁸ See FEDERAL TRADE COMM’N, FTC RETURNS AN ADDITIONAL \$8 MILLION TO BORROWERS FROM FIRST ALLIANCE MORTGAGE COMPANY SETTLEMENT; TO DATE, FTC HAS REFUNDED MORE THAN \$74 MILLION TO NEARLY 23,000 CONSUMERS (June 8, 2009), available at <http://www.ftc.gov/opa/2009/07/famco.shtm>. See also *FTC v. First Alliance Mortgage Co.*, No. SACV 00-964 DOC (EEx) (C.D. Cal. Sept. 18, 2002) (final judgment and order), available at <http://www.ftc.gov/famco>.

distributed in 2009, the Commission has refunded more than \$74 million to consumers in connection with that case.

2. Other TILA Cases

The FTC and the State of Nevada settled charges with an Internet payday lending enterprise operating from the United Kingdom and targeting consumers in the United States.¹⁹ The complaint charged ten related Internet payday lenders and their principals with violations of federal and state laws.²⁰ The FTC's charges were filed under the FTC Act, the TILA, and Regulation Z. According to the complaint, defendants called applicants in the United States and told them they qualified for a loan, typically around \$200, that would have to be repaid by their next payday, for a fee ranging from \$35 - \$80. Defendants purportedly told consumers they would receive written disclosures about the loans after the call, but they did not receive them. In addition to allegations of violations of the FTC Act, the complaint alleged defendants violated the TILA and Regulation Z by failing to disclose in writing the key terms of the loans, including the APR, payment schedule, amount financed, and late payment fees. The settlement requires defendants to pay \$1 million to settle all the charges, with \$970,125 of that amount payable to the FTC for consumer redress, and the remainder payable to the State of Nevada. In addition to other relief prohibiting defendants' alleged unfair and deceptive practices, the stipulated final judgment and order prohibit defendants from failing to make required TILA disclosures.

In November 2009, the Commission filed a contempt motion against BlueHippo Funding, LLC ("BlueHippo"), a company that offers to finance the sale of personal computers to consumers with poor credit ratings, for violations of the 2008 court order settling FTC charges against that company.²¹ In this contempt action, the FTC charged, among other things, that the company continued to deceive consumers, aggressively marketing itself as a computer finance company, signing up consumers and taking their money, and collecting at least an additional \$15 million. The FTC alleged that the company not only failed to deliver the financing, but it did not order, much less ship, the computers as advertised. Following the FTC's November contempt

¹⁹ *FTC and State of Nevada v. Cash Today, Ltd.*, No. 3:08-cv-00590 (D. Nev. Oct. 27, 2009) (stipulated final judgment entered), available at <http://www.ftc.gov/opa/2009/09/cash.shtm>. The stipulated final judgment does not apply to defendant Jim Harris who was dismissed from the case pursuant to a stipulated dismissal. *See id.*

²⁰ *Id.* (D. Nev. Nov. 6, 2008) (complaint filed), available at <http://www1.ftc.gov/opa/2008/11/cashtoday.shtm>.

²¹ *FTC v. BlueHippo Funding, LLC*, No. 1:08-cv-1819 (S.D.N.Y. Nov. 12, 2009) (contempt motion filed), available at <http://www.ftc.gov/opa/2009/11/bluehippo.shtm>. Among other things, the 2008 order prohibited BlueHippo from violating the TILA and Regulation Z by failing to give required disclosures to consumers in writing before the first transaction is made and failing to provide an account statement for each billing cycle for which a finance charge is imposed. *See id.* (S.D.N.Y. Apr. 9, 2008) (stipulated permanent injunction entered). *See also* FEDERAL TRADE COMM'N, BLUEHIPPO DEFENDANTS WILL PAY UP TO \$5 MILLION TO SETTLE FTC CHARGES, available at <http://www2.ftc.gov/opa/2008/02/bluehippo.shtm>.

filing, the court issued an order for defendants to show cause why they should not be held in contempt for violating the stipulated final judgment and order.²² Litigation continues in this case.

B. Other Initiatives

The FTC initiated rulemaking proceedings regarding mortgage loans pursuant to Section 626 of the 2009 Omnibus Appropriations Act (“Omnibus Act”), as amended by Section 511 of the Credit CARD Act.²³ The Omnibus Act, signed by President Obama on March 11, 2009, directed the Commission to initiate, within 90 days of the date of enactment, a rulemaking proceeding with respect to mortgage loans. The Credit CARD Act, signed by President Obama on May 22, 2009, amended Section 626 of the Omnibus Act to clarify that the FTC's rulemaking must “relate to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive acts or practices involving loan modification and foreclosure rescue services.”²⁴ The Credit CARD Act also clarified that any such rules could cover only entities that are within the Commission's jurisdiction under the FTC Act. Thus, any rules adopted will apply to entities, other than banks, thrifts, federal credit unions, and nonprofits, that are engaged in unfair or deceptive acts or practices regarding mortgage loans.

In May 2009, the Commission commenced a rulemaking proceeding in two parts and released two advance notices of proposed rulemaking (“ANPR”).²⁵ The Mortgage Assistance Relief Services Rulemaking (“MARS”) ANPR addressed the practices of entities that consumers retain to work with their lenders or servicers to modify their mortgage loan or to avoid foreclosure. The Mortgage Acts and Practices Rulemaking (“MAP”) ANPR addressed activities that occur throughout the lifecycle of a mortgage loan, including mortgage advertising and servicing. The public comment periods for these ANPRs ended on July 15, 2009 and July 30, 2009, respectively. The Commission’s MARS and MAP rulemakings are continuing.

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 required that the Board and the Commission establish toll-free telephone numbers for consumers to call to receive estimated minimum payoff information about their credit card accounts.²⁶ A telephone system, operated by the Board on behalf of both the Board and the Commission, went live in April 2009. The two agencies also established calculators with instructions in English or Spanish to provide

²² *Id.* (S.D.N.Y. Nov. 16, 2009) (show cause order issued).

²³ See Omnibus Appropriations Act of 2009 (“Omnibus Act”), Pub. L. No. 111-8, § 626, 123 Stat. 524 (Mar. 11, 2009), as amended by the Credit CARD Act, § 511, *supra* note 2.

²⁴ Credit CARD Act, *supra* note 2.

²⁵ See FEDERAL TRADE COMM’N, FTC BEGINS RULEMAKING TO ADDRESS UNFAIR AND DECEPTIVE MORTGAGE PRACTICES (May 29, 2009), available at <http://www.ftc.gov/opa/2009/05/deceptmortgage.shtml>.

²⁶ See Pub. L. 109-8, 119 Stat. 23. See also the Board’s implementing amendments to Regulation Z, 74 Fed. Reg. 5244 (Jan. 29, 2009), codified at 12 C.F.R. Part 226.

an additional means to obtain estimated payoff information.²⁷ The Credit CARD Act includes an amendment to the TILA, effective February 22, 2010, which requires creditors to provide on the periodic billing statements they send to consumers: (1) more specific payoff disclosure information, and (2) a toll-free telephone number that consumers may call for information about credit counseling and debt management.²⁸ The Credit CARD Act replaces the Bankruptcy Act requirements that the Board and the Commission provide a toll-free telephone number with estimated minimum pay off information. As you know, the Board has issued final rules implementing these Credit CARD Act requirements, which replace its prior rules.²⁹ FTC staff is coordinating with the Board so that consumers will continue to be directed to the agencies' website calculators for payoff estimates until consumers have more specific payoff information available on their billing statements as of February 22, 2010.

Section 204 of the Credit CARD Act³⁰ amends the TILA to require creditors to post written credit card agreements online and provide them electronically to the Board. The Board must maintain a central repository of these agreements and make them available to the public. Section 504 also amends the TILA to establish new procedures for the timely settlement of estates of decedent obligors. Section 505 further requires the Board, in consultation with various other federal agencies including the FTC, to submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate, regarding various matters pertaining to the extent to which creditors have reduced credit limits or raised interest rates applicable to credit card accounts. These TILA amendments are effective February 22, 2010, and the Commission's Division of Financial Practices is consulting with the Board regarding these matters.

C. TILA Consumer and Business Education

The Commission's consumer and business education activities are vital tools in helping to protect consumers of financial goods and services. In 2009, the FTC released numerous consumer and business education pieces addressing consumer credit issues. To assist consumers who may be having difficulty with mortgage loans, the Commission released English and Spanish

²⁷ See FEDERAL TRADE COMM'N, FTC OFFERS PAY-OFF INFORMATION TO CONSUMERS WITH NON-BANK CREDIT CARDS (Apr. 16, 2009), available at <http://www.ftc.gov/opa/2009/04/nonbankcc.shtm>. The web calculators continued in use in 2009 to assist consumers. In Fall 2009, after months of nonuse, the agencies revised the toll-free telephone system to refer consumers to the agencies' website calculators.

²⁸ See Section 201, Credit CARD Act, *supra* note 2.

²⁹ See Board Press Release (Jan. 12, 2010), available at <http://www.federalreserve.gov/newsevents/press/bcreg/20100112a.htm>.

³⁰ *Supra* note 2.

versions of “A Note to Homeowners” in both flyer and bookmark form³¹ and “Mortgage Payments Sending You Reeling? Here’s What to Do.”³² In addition, the FTC produced a video, “Real People, Real Stories: Avoid Foreclosure Rescue Scams.”³³ The Commission addressed reverse mortgage loans in its consumer publication “Reverse Mortgages: Get the Facts Before Cashing in on Your Home’s Equity”³⁴ as well as in its business alert “Housing Counselors: How to Help People Avoid Reverse Mortgage Missteps.”³⁵ Information about credit cards is provided in the FTC’s consumer alert “Using a Credit Card: Your Rights and Responsibilities.”³⁶ On automobile sales and financing, the Commission released both English and Spanish versions of “Buying a Used Car”³⁷ and the Spanish-language publications “Cómo Comprar un Auto Nuevo” (Buying a New Car)³⁸ and “Recupero de Vehículos: Comprendiendo las Reglas del Camino”

³¹ See FEDERAL TRADE COMM’N, A NOTE TO HOMEOWNERS, *available at* <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea16.shtm>; FEDERAL TRADE COMM’N, UN NOTA PARA LOS DUEÑOS DE CASA, *available at* <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/srea16.shtm>; FEDERAL TRADE COMM’N, A NOTE TO HOMEOWNERS bookmark, *available at* <http://www.ftc.gov/bcp/edu/pubs/consumer/bookmarks/bmk13.pdf>; and FEDERAL TRADE COMM’N, UN NOTA PARA LOS DUEÑOS DE CASA bookmark, *available at* <http://www.ftc.gov/bcp/edu/pubs/consumer/bookmarks/sbmk13.pdf>.

³² See FEDERAL TRADE COMM’N, MORTGAGE PAYMENTS SENDING YOU REELING? HERE’S WHAT TO DO, *available at* <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea04.shtm> and FEDERAL TRADE COMM’N, ¿LOS PAGOS DE SU HIPOTECA LO ESTÁN HACIENDO TAMBALEAR? ESTO ES LO QUE USTED PUEDE HACER, *available at* <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/srea04.shtm>.

³³ See FEDERAL TRADE COMM’N, REAL PEOPLE, REAL STORIES: AVOID FORECLOSURE RESCUE SCAMS, *available at* <http://www.ftc.gov/multimedia/video/credit/mortgage/hope-now.shtm>.

³⁴ See FEDERAL TRADE COMM’N, REVERSE MORTGAGES: GET THE FACTS BEFORE CASHING IN ON YOUR HOME’S EQUITY, *available at* <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea13.shtm>.

³⁵ See FEDERAL TRADE COMM’N, HOUSING COUNSELORS: HOW TO HELP PEOPLE AVOID REVERSE MORTGAGE MISSTEPS, *available at* <http://www.ftc.gov/bcp/edu/pubs/business/alerts/alt158.shtm>.

³⁶ See FEDERAL TRADE COMM’N, USING A CREDIT CARD: YOUR RIGHTS AND RESPONSIBILITIES, *available at* <http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt137.shtm>.

³⁷ See FEDERAL TRADE COMM’N, BUYING A USED CAR, *available at* <http://www.ftc.gov/bcp/edu/pubs/consumer/autos/aut03.shtm> and FEDERAL TRADE COMM’N, CÓMO COMPRAR UN AUTO USADO, *available at* <http://www.ftc.gov/bcp/edu/pubs/consumer/autos/saut03.shtm>.

³⁸ See FEDERAL TRADE COMM’N, CÓMO COMPRAR UN AUTO NUEVO, *available at* <http://www.ftc.gov/bcp/edu/pubs/consumer/autos/saut11.shtm>.

(Vehicle Repossession: Understanding the Rules of the Road).³⁹ All of the Commission's consumer and business education materials are available on the FTC's website.⁴⁰

Equal Credit Opportunity Act

The FTC enforces the ECOA and Regulation B as to most entities other than banks, thrifts, federal credit unions, and nonprofits. In 2009, the Commission filed one ECOA enforcement action, closed one ECOA investigation, and engaged in several ongoing non-public fair lending investigations.

In May 2009, the Commission filed a complaint against a mortgage lender, alleging that the lender, Golden Empire Mortgage, Inc. ("GEM"), violated the ECOA, Regulation B, and the FTC Act, by charging Hispanic consumers higher prices than non-Hispanic white consumers for mortgage loans.⁴¹ According to the FTC's complaint, GEM gave its loan officers and branch managers wide discretion to charge loan applicants, in addition to risk-based prices, overages in the form of higher interest rates, higher up-front fees, or both. The complaint alleges that under this discretionary pricing policy, GEM paid loan officers a portion of the overages charged to loan applicants and permitted GEM branch managers to keep the branch's net profits as compensation, net profits that were inflated by the overages charged to loan applicants. The complaint further alleges that GEM did not monitor the overages or other aspects of loan pricing to ensure that Hispanic applicants were not unjustifiably charged higher prices for mortgage loans than non-Hispanic white applicants. GEM's discretionary pricing policy, the complaint alleges, resulted in Hispanic loan applicants being charged higher prices because of their national origin, pricing disparities that were substantial, statistically significant, and could not be explained by any legitimate underwriting risk factors or by the loan applicants' credit characteristics. The complaint seeks a permanent injunction to prevent further violations of the ECOA, Regulation B, and the FTC Act, as well as consumer redress. Litigation continues in this case.

The Commission also investigated Homecomings Financial, LLC ("Homecomings"), a wholly-owned subsidiary of Residential Funding Company, LLC, and an indirect wholly-owned subsidiary of Residential Capital, LLC and GMAC LLC. Homecomings conducted the vast majority of its mortgage lending business through independent mortgage brokers. The FTC staff's analysis of Homecomings's Home Mortgage Disclosure Act (HMDA) pricing data indicated that Homecomings charged African-American and Hispanic borrowers substantially more for mortgage loans than similarly situated non-Hispanic white borrowers. The FTC staff believed that this pricing disparity was statistically significant and was not explained by any legitimate underwriting or credit characteristics. The FTC staff believed that the pricing disparity

³⁹ See FEDERAL TRADE COMM'N, RECUPERO DE VEHÍCULOS: COMPRENDIENDO LAS REGLAS DEL CAMINO, available at <http://www.ftc.gov/bcp/edu/pubs/consumer/autos/saut14.shtm>.

⁴⁰ See <http://www.ftc.gov/bcp/consumer.shtm>.

⁴¹ *FTC v. Golden Empire Mortgage, Inc.*, No. CV09-03227 (Shx) (C.D. Cal. May 7, 2009) (complaint filed), available at <http://www.ftc.gov/opa/2009/05/gem.shtm>.

revealed in the HMDA data was the result of the broad latitude Homecomings gave its brokers in determining discretionary fees and increased interest rates charged to borrowers. The FTC closed its investigation in early 2009 because Homecomings ceased originating mortgage loans and stated that it had no intention of resuming mortgage lending.⁴²

The Commission also continued its efforts to educate consumers concerning their rights under the fair lending laws. In 2009, the FTC released the brochures, “Mortgage Discrimination: A Guide to Understanding Your Rights & Taking Action” and “Equal Credit Opportunity: Understanding Your Rights Under the Law” in both English and Spanish.⁴³ As noted above, the Commission makes these and other consumer education materials available to the public through the FTC’s website.⁴⁴

⁴² The FTC staff’s closing letter in the Homecomings investigation is *available at* <http://www.ftc.gov/os/closings/090122homecomingfinancialclosingletter.pdf>.

⁴³ See FEDERAL TRADE COMM’N, MORTGAGE DISCRIMINATION: A GUIDE TO UNDERSTANDING YOUR RIGHTS & TAKING ACTION, *available at* <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea08.shtm>; FEDERAL TRADE COMM’N, DISCRIMINACIÓN CONTRA LOS SOLICITANTES DE HIPOTECAS: UNA GUÍA PARA COMPRENDER SUS DERECHOS Y TOMAR ACCIÓN, *available at* <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/srea08.shtm>; FEDERAL TRADE COMM’N, EQUAL CREDIT OPPORTUNITY: UNDERSTANDING YOUR RIGHTS UNDER THE LAW, *available at* <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre15.shtm>; and FEDERAL TRADE COMM’N, IGUALDAD DE OPORTUNIDAD DE CRÉDITO: COMPRENDA LOS DERECHOS QUE LE OTORGA LA LEY, *available at* <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/scre15.shtm>.

⁴⁴ *Supra* note 40.

Electronic Fund Transfer Act

The FTC enforces the EFTA and Regulation E with regard to most non-bank entities in the United States. In 2009, the Commission was active in six cases regarding the EFTA and Regulation E, and participated in other EFTA and Regulation E initiatives. Five cases involved negative option plans and the failure to obtain the consumer's written authorization for preauthorized electronic fund transfers. One case involved a contempt action for violation of a prior FTC order. The Commission also engaged in other initiatives involving the EFTA and Regulation E.

A. Negative Option Cases Alleging EFTA Violations

In 2009, the Commission filed three new actions alleging EFTA violations against companies that allegedly sought to victimize vulnerable consumers who have been hard-hit by the current economic downturn. The Commission also settled two cases filed in previous years. All these cases involved negative option plans and alleged violations of the FTC Act, as well as of the EFTA and Regulation E. Generally, in negative option plans, a consumer agrees to receive products or services from a company for a trial period at no charge or at a reduced price. The company obtains the consumer's credit card or debit card number,⁴⁵ sometimes by falsely stating it will be used only to pay for shipping and handling. If the consumer does not cancel before the end of the trial period, the product shipments or the services continue, with the consumer incurring recurring charges.

Two of the new actions the Commission filed concerned the sale of products that purportedly permitted consumers to obtain money from government grants.⁴⁶ In both cases, the FTC's complaints allege that defendants falsely represented that consumers who purchased their grant-related information products were likely to receive a government grant. According to the complaints, defendants offered to sell the grant products to consumers for a very low cost, which would be charged to the consumer's credit or debit card. However, defendants allegedly failed to disclose, or to disclose adequately, that the consumer had entered into one or more membership programs and that, unless the consumer canceled each membership within a short trial period, recurring monthly charges would be placed on the consumer's credit or debit account.

The third new action involved the sale of work-at-home business opportunity kits.⁴⁷ According to the Commission's complaint, defendants required consumers who wished to receive a kit to provide credit or debit card account information to cover a small shipping and handling

⁴⁵ EFTA and Regulation E apply to debit cards; TILA and Regulation Z apply to credit cards.

⁴⁶ *FTC v. In Deep Services, Inc.*, No. 09-CV-01193 (C.D. Cal. June 23, 2009) (complaint filed), available at <http://www.ftc.gov/opa/2009/07/shortchange.shtm>; *FTC v. Grant Connect, LLC*, No. 2:09-CV-01349 (D. Nev. July 27, 2009) (complaint filed), available at <http://www.ftc.gov/opa/2009/08/grantconnect.shtm>.

⁴⁷ *FTC v. Infusion Media, Inc.*, No. 2:09-CV-01112 (D. Nev. June 22, 2009) (complaint filed), available at <http://www.ftc.gov/opa/2009/07/shortchange.shtm>.

fee. However, defendants allegedly failed to disclose adequately that the consumers were enrolled automatically in a membership program and that, unless they canceled the membership within seven days, a monthly membership fee would be charged to their credit card or bank account.

In all three of these new cases, the complaints allege that defendants violated the EFTA and Regulation E by debiting consumers' credit card or 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 such written authorization. Litigation continues in all three cases.

The two settlements resolved cases brought in prior years involving the sale of dietary supplements.⁴⁸ In both cases, the FTC alleged that defendants offered consumers "free" samples of dietary supplements for which a small shipping and handling fee would be charged to the consumer's credit or debit card. Defendants allegedly automatically enrolled consumers in a continuity plan for which their credit or debit card was debited each month. Among other things, the Commission charged that defendants violated the EFTA and Regulation E by debiting the consumers' accounts on a recurring basis without obtaining the consumers' written authorization for preauthorized electronic fund transfers from the account. Stipulated final orders were entered in both cases. Among other things, the orders enjoin defendants from: (1) failing to obtain written authorization for preauthorized electronic fund transfers from consumers' accounts before initiating such a transfer; (2) failing to maintain procedures reasonably adapted to avoid an unintentional failure to obtain the required written authorization; and (3) violating any provision of the EFTA or Regulation E. In *NextClick Media*, the order also imposes a \$3.4 million judgment to resolve all issues, suspended upon payment of \$315,000 based on defendants' inability to pay.⁴⁹

B. Contempt Action

As noted above, the Commission filed a contempt motion in the *BlueHippo* case.⁵⁰ The complaint in this case alleged that BlueHippo also violated the EFTA and Regulation E in connection with defendants' financing of personal computers to consumers with poor credit ratings. The April 9, 2008 settlement prohibited BlueHippo from conditioning the extension of credit on mandatory preauthorized electronic fund transfers, which violates the EFTA and Regulation E. The contempt motion charges BlueHippo with continuing to condition offers of credit on mandatory preauthorized electronic fund transfers. This litigation is ongoing.

⁴⁸ *FTC v. Warshak*, No. 1:06-cv-00051 (S.D. Ohio July 22, 2009) (stipulated final orders entered), available at <http://www.ftc.gov/os/caselist/berkeley/berkeley.shtm>; *FTC v. NextClick Media, LLC*, No. C08-1718 (N.D. Cal. Nov. 3, 2009) (stipulated final order entered), available at <http://www.ftc.gov/opa/2009/11/nextclick.shtm>.

⁴⁹ The full judgment will become due immediately if defendants are found to have misrepresented their financial condition.

⁵⁰ *Supra* note 21.

C. Other Initiatives

Title IV of the Credit CARD Act amends the EFTA, effective August 2011, to make it applicable to general-use prepaid cards, gift certificates, and store gift cards.⁵¹ As you know, the Board, in consultation with the FTC, is to implement rules concerning these EFTA amendments by February 2010. The Commission's Division of Financial Practices and Division of Advertising Practices are consulting with the Board regarding these rules.

Section 508 of the Credit CARD Act requires the FTC to conduct a study regarding the cost-effectiveness of making emergency automated teller machine ("ATM") technology available to permit ATM users under duress to electronically alert a local law enforcement agency that an incident is taking place at the ATM. The Commission's Bureau of Economics is conducting this study and drafting a report to Congress.

II. SUGGESTIONS FOR CHANGES IN THE ACTS OR THEIR IMPLEMENTING REGULATIONS

The Commission has no suggestions for changes to the Acts or their implementing regulations at this time beyond the staff comments referenced above.

The FTC hopes that the information contained in this letter responds to your inquiry and will assist in preparation of the Board's Annual Report to Congress. If any other information would be useful or if you wish to request additional assistance, please contact Joel Winston, Associate Director, Division of Financial Practices, at (202) 326-3153.

By direction of the Commission.

Donald S. Clark
Secretary

⁵¹ Credit CARD Act, *supra* note 2.