



Division of Financial Practices

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

May 24, 2023

David Uejio, Acting Associate Director  
Supervision, Enforcement, and Fair Lending  
Consumer Financial Protection Bureau  
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 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 2022. 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, the CLA, and the EFTA, and other consumer laws, such as giving the CFPB rulemaking and enforcement authority for the TILA, the CLA, and the 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

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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.

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 2022, 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 and related activity included actions involving automobile financing, payday loans, credit repair and debt relief, and other credit areas.

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

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

In 2022, the FTC and the State of Illinois brought an enforcement action against Napleton, a large, multistate auto dealer group based in Illinois, for, among other things, allegedly sneaking illegal junk fees onto consumers’ bills for unwanted “add-ons,” such as for

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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.

payment insurance and paint protection costing consumers hundreds or thousands of dollars.<sup>6</sup> Napleton allegedly often added the junk fees, despite consumers specifically declining the add-ons or having confirmed prices that did not include them; in other instances, the consumers were falsely told the add-ons were free or were a requirement to purchase or finance the vehicle.<sup>7</sup> The FTC complaint charged Napleton with unfair and deceptive practices, in violation of the FTC Act, for the unlawful add-on practices.<sup>8</sup> The complaint also charged Napleton with advertising “\$90 down” on mailers without disclosing, or clearly and conspicuously disclosing, the terms of repayment or annual percentage rate, in violation of the TILA and Regulation Z (credit).<sup>9</sup> The defendants agreed to pay \$10 million to settle all the charges for the lawsuit, a record-setting monetary judgment for an FTC auto financing case.<sup>10</sup> The settlement also requires the defendants to have express informed consent for all charges, prohibits the defendants from misrepresenting the cost or terms to buy, lease, or finance a car, or whether a fee or charge is optional, and prohibits violations of the TILA and Regulation Z.<sup>11</sup> In November, the FTC mailed 66,355 checks, averaging \$147 each and totaling \$9.8 million, to consumers who were harmed by Napleton’s scheme, including for the unlawful junk fees.<sup>12</sup> This settlement concluded litigation in this matter.

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<sup>6</sup> *FTC v. North Am. Auto Servs., Inc.*, No. 22-cv-01690 (N.D. Ill. filed Mar. 31, 2022), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/2023195-napleton-auto>. Chair Khan and Commissioner Slaughter issued a concurring statement. See *Joint Statement of Chair Lina M. Khan and Commissioner Rebecca Kelly Slaughter in the Matter of Napleton Automotive Group* (Mar. 31, 2022), available at <https://www.ftc.gov/news-events/news/speeches/joint-statement-chair-lina-m-khan-commissioner-rebecca-kelly-slaughter-matter-napleton-automotive>. See also FTC, Press Release, *FTC Takes Action Against Multistate Auto Dealer Napleton for Sneaking Illegal Junk Fees onto Bills and Discriminating Against Black Consumers* (Apr. 1, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/04/ftc-takes-action-against-multistate-auto-dealer-napleton-sneaking-illegal-junk-fees-bills>.

<sup>7</sup> See FTC, Press Release, *FTC Takes Action Against Multistate Auto Dealer Napleton for Sneaking Illegal Junk Fees onto Bills and Discriminating Against Black Consumers* (Apr. 1, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/04/ftc-takes-action-against-multistate-auto-dealer-napleton-sneaking-illegal-junk-fees-bills>.

<sup>8</sup> See *FTC v. North Am. Auto Servs., Inc.*, No. 22-cv-01690 (N.D. Ill. filed Mar. 31, 2022), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/2023195-napleton-auto>.

<sup>9</sup> See *id.*

<sup>10</sup> See *FTC v. North Am. Auto Servs., Inc.*, No. 22-cv-01690 (N.D. Ill. Mar. 31, 2022) (stipulated order for permanent injunction, monetary judgment, and other relief), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/2023195-napleton-auto>. See FTC, Press Release, *FTC Takes Action Against Multistate Auto Dealer Napleton for Sneaking Illegal Junk Fees onto Bills and Discriminating Against Black Consumers* (Apr. 1, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/04/ftc-takes-action-against-multistate-auto-dealer-napleton-sneaking-illegal-junk-fees-bills>.

<sup>11</sup> See *FTC v. North Am. Auto Servs., Inc.*, No. 22-cv-01690 (N.D. Ill. Mar. 31, 2022) (stipulated order for permanent injunction, monetary judgment, and other relief), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/2023195-napleton-auto>.

<sup>12</sup> See FTC, Press Release, *FTC Returns More Than \$9.8 Million To Consumers Harmed by Napleton Auto’s Junk Fees and Discriminatory Practices* (Nov. 14, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/11/ftc-returns-more-98-million-consumers-harmed-napleton-autos-junk-fees-discriminatory-practices>.

In 2022, litigation continued at the appellate level against Traffic Jam Events, LLC (Traffic Jam Events) and its owner David J. Jeansonne, II.<sup>13</sup> This litigation involves the FTC’s 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.<sup>14</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, 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 advertised financing.

In 2022, the FTC mailed a second round of checks to 3,376 people who bought a car from Bronx Honda and were affected by the company’s allegedly unlawful lending and sales practices.<sup>15</sup> The FTC previously sued Bronx Honda and its general manager, for, among other things, allegedly failing to honor advertised sale prices, changing the sales prices on paperwork without telling the customer, and double-charging fees, in violation of the FTC Act.<sup>16</sup> The complaint also charged the defendants with advertising numerous terms, such as monthly payment amounts, without disclosing other key terms required by law, including the terms of repayment and APR, and with stating a rate of finance charge but failing to disclose the rate as an “annual percentage rate,” in violation of the TILA and Regulation Z (credit).<sup>17</sup> The FTC initially sent checks in November 2020, which resulted in \$1.2 million in refunds, in connection with the previously entered settlement orders. Because additional funds were still available, the FTC sent the follow-up checks, totaling nearly \$200,000 to people who cashed their first check.<sup>18</sup>

In 2022, the FTC also mailed payments, related to a settlement order previously filed, that totaled more than \$415,000 to 3,508 consumers who financed a car or truck at a Tate’s Auto

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<sup>13</sup> *Traffic Jam Events v. FTC*, No. 21-60947 (5th Cir. Dec. 21, 2021) (appeal docketed).

<sup>14</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 Commission’s order prohibits misrepresentations regarding financial assistance from the government, prizes and sweepstakes, affiliation with the government, and other material restrictions regarding the purchase, receipt, or use of any product or service. The order also prohibits violations of the TILA and Regulation Z.

<sup>15</sup> See FTC, Press Release, *FTC Sends Refunds to Victims of Bronx Honda’s Illegal Lending and Sales Practices* (Mar. 2022), available at <https://www.ftc.gov/enforcement/refunds/bronx-honda-refunds>.

<sup>16</sup> See *FTC v. Liberty Chevrolet, Inc.*, No. 20-cv-3945 (S.D.N.Y. filed May 21, 2020), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/162-3238-bronx-honda>.

<sup>17</sup> See *id.*

<sup>18</sup> See *supra* note 15.

dealership after January 1, 2013, and later had the vehicle repossessed.<sup>19</sup> The FTC's complaint charged Tate's Auto with allegedly deceiving consumers about payment information and falsifying information on consumers' financing applications, in violation of the FTC Act.<sup>20</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 online and social media.<sup>21</sup>

## 2. Payday Lending (Credit)

In 2022, the FTC mailed 26,698 checks totaling more than \$970,000 to people who were harmed by an allegedly deceptive payday lending scheme that operated under the names Harvest Moon Financial, Gentle Breeze Online, and Green Stream Lending, relating to orders previously filed.<sup>22</sup> The FTC had previously charged that the defendants, among other things, 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, in violation of the FTC Act, and the TILA and Regulation Z.<sup>23</sup>

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

In 2022, the FTC mailed 14,521 checks totaling more than \$822,000 to borrowers who paid Student Advocates and Equitable Acceptance Corporation for student debt relief.<sup>24</sup> The operators of an alleged student loan debt relief scheme previously settled FTC charges that they collected illegal upfront fees and falsely promised to lower or even eliminate consumers' loan payments or balances. Among other things, the order banned the defendants from providing debt relief services, prohibited them from violating the Telemarketing Sales Rule (TSR) and from

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<sup>19</sup> See FTC, Press Release, *Federal Trade Commission Returns More Than \$415,000 To Consumers Harmed by Deceptive Car Dealer Tate's Auto* (Sept. 15, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/09/federal-trade-commission-returns-more-415000-consumers-harmed-deceptive-car-dealer-tates-auto>.

<sup>20</sup> See *FTC v. Tate's Auto Ctr. of Winslow, Inc.*, No. 18-cv-08176 (D. Ariz. filed July 31, 2018), available at <https://www.ftc.gov/enforcement/cases-proceedings/162-3207/tates-auto-center>.

<sup>21</sup> See *id.*

<sup>22</sup> See FTC, Press Release, *Federal Trade Commission Returns More Than \$970,000 to Consumers Harmed by Deceptive Payday Lending Operation* (June 14, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/06/federal-trade-commission-returns-more-970000-consumers-harmed-deceptive-payday-lending-operation>.

<sup>23</sup> See *id.*; see also *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>24</sup> See FTC, Press Release, *Federal Trade Commission Sends More Than \$822,000 to Students Deceived by Student Advocates' Debt Relief Scam* (Aug. 18, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/08/federal-trade-commission-sends-more-822000-students-deceived-student-advocates-debt-relief-scam>.

collecting further payments from consumers who purchased their debt relief services, and required them to pay monetary relief.<sup>25</sup> The previously-filed complaint also alleged that various defendants signed customers up for high-interest loans to pay the fees without making required disclosures, in violation of the FTC Act, and the TILA; none of the money collected by the defendants was paid toward consumers' student loans.<sup>26</sup>

#### 4. Other Cases (Credit)

In 2022, the FTC and a group of 18 states sued national jewelry retailer Harris Jewelry to stop the company from allegedly cheating military families with illegal financing and sales practices.<sup>27</sup> According to the complaint, among other things, the jewelry company deceptively claimed that financing jewelry purchases through Harris would raise servicemembers' credit scores, misrepresented that its protection plans were not optional or were required, and added the plans to purchases without consumers' consent, in violation of the FTC Act.<sup>28</sup> The defendants also were charged with failing to disclose or clearly and conspicuously disclose certain required written disclosures, including the payment schedule, in their retail installment contracts; and with advertising "\$50 per payday" in print and electronic advertisements, without disclosing or clearly and conspicuously disclosing, required credit terms, including the downpayment, full terms of repayment, and APR; and with advertising a rate of finance charge without stating the rate as an APR, in violation of the TILA and Regulation Z.<sup>29</sup> The complaint also charged that

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<sup>25</sup> See *id.*; see also *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>. A separate order with other defendants in the alleged scheme banned the company from assisting debt relief services and violating the TSR, prohibited it from collecting any further payments from consumers who purchased these services, required it to provide monetary relief, and required it to provide clear and conspicuous disclosures in writing of financing terms before consumers sign installment credit agreements, as required by the TILA. See *FTC v. Student Advocates Team, LLC*, No. 8:19-cv-1728 (C.D. Cal. Sept. 12, 2019) (stipulated order for permanent injunction, monetary relief and final judgment as to Equitable Acceptance Corp.), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/172-3036-student-advocates-team-llc-et-al>.

<sup>26</sup> See *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>; see also *supra* note 24.

<sup>27</sup> See FTC, Press Release, *FTC and 18 States Sue to Stop Harris Jewelry from Cheating Military Families with Illegal Financing and Sales Tactics* (July 20, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/07/ftc-18-states-sue-stop-harris-jewelry-cheating-military-families-illegal-financing-sales-tactics>.

<sup>28</sup> See *id.*; see also *FTC v. Harris Originals of NY, Inc.*, No. 2:22-cv-04260 (E.D.N.Y. filed July 20, 2022), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/1723162-harris-jewelry>.

<sup>29</sup> See *FTC v. Harris Originals of NY, Inc.*, No. 2:22-cv-04260 (E.D.N.Y. filed July 20, 2022), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/1723162-harris-jewelry>; see also FTC, Press Release, *FTC and 18 States Sue to Stop Harris Jewelry from Cheating Military Families with Illegal Financing and Sales Tactics* (July 20, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/07/ftc-18-states-sue-stop-harris-jewelry-cheating-military-families-illegal-financing-sales-tactics>.

the jewelry company violated the Military Lending Act (MLA), the FTC's first action under this Act, by failing to provide a clear description of the payment obligation, and the disclosures required by Regulation Z, and that it also violated numerous other federal and state laws.<sup>30</sup> Under the stipulated order with the FTC and multistate group, among other things, the company must stop collection of millions of dollars in debt, provide approximately \$10.9 million in refunds for purchased protection plans, provide refunds for overpayments, and assist with the deletion of any negative credit entries pertaining to debt in consumers' credit reporting file.<sup>31</sup> The company also must comply with the TILA and the MLA, and must complete its shutdown of operations and dissolve pursuant to applicable state laws, once it meets the obligations of the order.<sup>32</sup>

In 2022, the FTC mailed a second round of refund checks to people deceived by a computer financing scheme that targeted customers shopping for computers and related electronic devices.<sup>33</sup> In a case previously reported, the FTC alleged that BlueHippo Funding, LLC and affiliate BlueHippo Capital, LLC, among other things, violated the TILA (failing to provide written disclosures) and engaged in deceptive practices in violation of the FTC Act, including promising to finance new computers, collecting money from customers and then failing to provide them with computers, and failing to disclose key terms of its refund policy.<sup>34</sup> Even after agreeing to a court settlement, the company continued its deceptive practices; the FTC sued the company again, won a lengthy court battle, and now is using the funds it recovered to provide refunds to consumers.

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<sup>30</sup> See *FTC v. Harris Originals of NY, Inc.*, No. 2:22-cv-04260 (E.D.N.Y. filed July 20, 2022), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/1723162-harris-jewelry>; see also FTC, Press Release, *FTC and 18 States Sue to Stop Harris Jewelry from Cheating Military Families with Illegal Financing and Sales Tactics* (July 20, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/07/ftc-18-states-sue-stop-harris-jewelry-cheating-military-families-illegal-financing-sales-tactics>.

<sup>31</sup> See *FTC v. Harris Originals of NY, Inc.*, No. 2:22-cv-04260 (E.D.N.Y. July 20, 2022) (stipulated order for permanent injunction, monetary judgment, and other relief), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/1723162-harris-jewelry>; see also FTC, Press Release, *FTC and 18 States Sue to Stop Harris Jewelry from Cheating Military Families with Illegal Financing and Sales Tactics* (July 20, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/07/ftc-18-states-sue-stop-harris-jewelry-cheating-military-families-illegal-financing-sales-tactics>.

<sup>32</sup> See *FTC v. Harris Originals of NY, Inc.*, No. 2:22-cv-04260 (E.D.N.Y. July 20, 2022) (stipulated order for permanent injunction, monetary judgment, and other relief), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/1723162-harris-jewelry>; see also FTC, Press Release, *FTC and 18 States Sue to Stop Harris Jewelry from Cheating Military Families with Illegal Financing and Sales Tactics* (July 20, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/07/ftc-18-states-sue-stop-harris-jewelry-cheating-military-families-illegal-financing-sales-tactics>.

<sup>33</sup> See FTC, Press Release, *FTC sends checks to people deceived by computer financing scheme* (Dec. 2022), available at <https://www.ftc.gov/enforcement/refunds/bluehippo-refunds>. The prior checks resulted in more than \$51,000 in refunds to consumers. Because money remained in the fund, the FTC sent a second round of checks. *Id.*

<sup>34</sup> See *id.*

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

### **1. Auto Rulemaking (Credit and Leasing)**

In 2022, the FTC proposed a rule to ban junk fees and bait-and-switch advertising tactics that can plague consumers throughout the car-buying experience.<sup>35</sup> The Commission noted that, as auto prices surge, it is seeking to eliminate the tricks and traps that make it hard or impossible to comparison shop or that leave consumers saddled with thousands of dollars in unwanted junk charges.<sup>36</sup> The Commission also emphasized that the proposed rule would protect consumers and honest dealers by making the car-buying process more clear and competitive, and would allow the Commission to recover money when consumers are misled or charged without their consent.<sup>37</sup> The notice included questions for public comment to inform the Commission's decision-making on the proposal.<sup>38</sup>

### **2. Junk Fees Rulemaking (Credit and Leasing)**

The Commission released an advance notice of proposed rulemaking exploring a rule to crack down on junk fees proliferating throughout the economy.<sup>39</sup> The Commission noted that

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<sup>35</sup> See Motor Vehicle Dealers Trade Regulation Rule, 87 Fed. Reg. 42012 (proposed July 13, 2022) (to be codified at 16 C.F.R. pt. 463), available at <https://www.govinfo.gov/content/pkg/FR-2022-07-13/pdf/2022-14214.pdf>. Chair Khan, and Commissioners Phillips, Slaughter, and Bedoya issued a joint statement, and Commissioner Christine Wilson issued a dissenting statement. See *Joint Statement of Chair Lina M. Khan and Commissioners Noah Joshua Phillips, Rebecca Kelly Slaughter, and Alvaro M. Bedoya Regarding the Notice of Proposed Rulemaking on a Motor Vehicle Dealers Trade Regulation Rule* (June 23, 2022), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/joint-statement-chair-lina-m-khan-commissioners-noah-joshua-phillips-rebecca-kelly-slaughter-alvaro>, and *Dissenting Statement of Commissioner Christine S. Wilson Regarding the Motor Vehicle Dealers Trade Regulation Rule* (June 23, 2022), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/dissenting-statement-commissioner-christine-s-wilson-regarding-motor-vehicle-dealers-trade>, respectively. See also FTC, Press Release, *FTC Proposes Rule to Ban Junk Fees, Bait-and-Switch Tactics Plaguing Car Buyers* (June 23, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-proposes-rule-ban-junk-fees-bait-switch-tactics-plaguing-car-buyers>.

<sup>36</sup> See *id.*

<sup>37</sup> See FTC, Press Release, *FTC Proposes Rule to Ban Junk Fees, Bait-and-Switch Tactics Plaguing Car Buyers* (June 23, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-proposes-rule-ban-junk-fees-bait-switch-tactics-plaguing-car-buyers>. The supplementary information with the proposed rule noted, among other things, that “[u]nscrupulous dealers are able to slip these [add-on] additional costs past consumers unnoticed and into purchase contracts through a variety of means” and that under the TILA 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 into a consumer’s contract without disclosing them under TILA.” See Motor Vehicle Dealers Trade Regulation Rule, 87 Fed. Reg. at 42016, available at <https://www.govinfo.gov/content/pkg/FR-2022-07-13/pdf/2022-14214.pdf>.

<sup>38</sup> See Motor Vehicle Dealers Trade Regulation Rule, 87 Fed. Reg. at 42028-31, available at <https://www.govinfo.gov/content/pkg/FR-2022-07-13/pdf/2022-14214.pdf>.

<sup>39</sup> See Unfair or Deceptive Trade Fees Trade Regulation Rule, 87 Fed. Reg. 67413 (Nov. 8, 2022) (to be codified at 16 C.F.R. pt. 464), available at <https://www.govinfo.gov/content/pkg/FR-2022-11-08/pdf/2022-24326.pdf>. Chair



companies charge junk fees in a wide range of contexts, including cramming in hidden fees to which consumers did not consent, misrepresenting optional services or upgrades as mandatory, and charging for products or services with little or no value.<sup>40</sup> According to the Commission, frequently, these unfair or deceptive fees are “bundled as ‘ancillary products’ in conjunction with loans, auto financing, or some other complicated or expensive transaction . . . .”<sup>41</sup> The notice included questions for comment on the proposed rulemaking.<sup>42</sup>

### 3. Dark Patterns Staff Report (Credit)

In 2022, the FTC issued a report showing how companies are increasingly using sophisticated design practices known as “dark patterns” that, among other things, can trick or manipulate consumers into buying products or services.<sup>43</sup> The report discusses diverse practices, such as burying key terms or charging junk fees when marketing a range of products, including credit products, and using pre-checked boxes and hard-to-find-and-read disclosures; highlights the FTC’s efforts to combat the use of dark patterns in the marketplace; and emphasizes the

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Khan issued a statement, and Commissioner Christine Wilson issued a dissenting statement. *See Statement of Chair Lina M. Khan Regarding the Advanced Notice of Proposed Rulemaking on Unfair or Deceptive “Junk” Fees* (Oct. 20, 2022), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/statement-chair-lina-m-khan-regarding-advanced-notice-proposed-rulemaking-unfair-or-deceptive-junk>, and *Dissenting Statement of Commissioner Christine S. Wilson Regarding the Advance Notice of Proposed Rulemaking on Junk Fees* (Oct. 20, 2022), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/dissenting-statement-commissioner-christine-s-wilson-regarding-advance-notice-proposed-rulemaking>, respectively.

<sup>40</sup> *See* FTC, Press Release, *Federal Trade Commission Explores Rule Cracking Down on Junk Fees* (Oct. 20, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/10/federal-trade-commission-explores-rule-cracking-down-junk-fees>.

<sup>41</sup> *See* Unfair or Deceptive Fees Trade Regulation Rule, 87 Fed. Reg. at 67413-14 (Nov. 8, 2022), available at <https://www.govinfo.gov/content/pkg/FR-2022-11-08/pdf/2022-24326.pdf>. The notice includes various FTC cases that address, among other things, poorly disclosed ancillary products, such as those involving credit insurance. *See, e.g.*, Unfair or Deceptive Fees Trade Regulation Rule, 87 Fed. Reg. at 67515, and note 33 (referencing *FTC v. Stewart Fin. Co. Holdings, Inc.*, No. 3-cv-2648 (N.D. Ga. filed Sept. 4, 2003)). *Stewart* charged the defendants with unfair or deceptive practices in violation of the FTC Act, and with violations of the TILA and Regulation Z, both related to the defendants’ failure to disclose the costs and terms of ancillary credit products. *See Stewart Fin. Co. Holdings, Inc.*, No. 3-cv-2648 (N.D. Ga. filed Sept. 4, 2003), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/stewart-finance-company-holdings-inc-stewart-finance-company-inc-stewart-national-finance-company>.

<sup>42</sup> *See* Unfair or Deceptive Fees Trade Regulation Rule, 87 Fed. Reg. at 67420-21, available at <https://www.govinfo.gov/content/pkg/FR-2022-11-08/pdf/2022-24326.pdf>.

<sup>43</sup> *See* FTC STAFF REPORT, BRINGING DARK PATTERNS TO LIGHT (Sept. 2022) (DARK PATTERNS REPORT), available at <https://www.ftc.gov/reports/bringing-dark-patterns-light>. Commissioner Slaughter issued a statement. *See Statement of Commissioner Rebecca Kelly Slaughter Regarding Bureau of Commission Staff Report: “Bringing Dark Patterns to Light”* (Sept. 15, 2022), available at <https://www.ftc.gov/news-events/news/speeches/statement-commissioner-rebecca-kelly-slaughter-regarding-bureau-consumer-protection-staff-report>. *See also* FTC, Press Release, *FTC Report Shows Rise in Sophisticated Dark Patterns Designed to Trick and Trap Consumers* (Sept. 15, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-report-shows-rise-sophisticated-dark-patterns-designed-trick-trap-consumers>.

agency’s commitment to curbing tactics that trick or trap consumers.<sup>44</sup> The report discusses the 2021 public workshop on digital dark patterns, including the rise of dark patterns in the digital marketplace, and provides information on common dark patterns, with consumer protection concerns and recommendations for companies.<sup>45</sup> The report notes that one dark pattern tactic involves hiding or obscuring material information from consumers, such as burying key limitations of the product or service in dense terms of service documents that consumers do not see before purchase, and burying junk fees; companies sometimes only advertise part of a product’s total price to lure consumers in, using “drip pricing,” and do not mention mandatory charges until late in the buying process.<sup>46</sup> The report also notes that companies may not mislead consumers to believe that fees are mandatory when they are not.<sup>47</sup>

#### 4. Military (Credit and Leasing)

In 2022, 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 2022 to assist military consumers is included below.

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<sup>44</sup> See FTC DARK PATTERNS REPORT, available at <https://www.ftc.gov/reports/bringing-dark-patterns-light>. See also FTC, Press Release, *FTC Report Shows Rise in Sophisticated Dark Patterns Designed to Trick and Trap Consumers* (Sept. 15, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-report-shows-rise-sophisticated-dark-patterns-designed-trick-trap-consumers>.

<sup>45</sup> See FTC, Press Release, *FTC Report Shows Rise in Sophisticated Dark Patterns Designed to Trick and Trap Consumers* (Sept. 15, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-report-shows-rise-sophisticated-dark-patterns-designed-trick-trap-consumers>.

<sup>46</sup> See generally DARK PATTERNS REPORT at 7-9, 22-23. The report notes the FTC’s case, *In the Matter of Nat’l Payment Network, Inc.*, Docket No. 132 3285, that charged National Payment Network (NPN) with deceptively pitching consumers an auto payment program it claimed would save consumers money but failed to disclose that the significant fees it charged for the service often cancelled out any savings. The report also notes NPN’s related press release involving the FTC sweep cracking down on deception and fraud in auto sales, financing, and leasing, previously reported. See FTC, Press Release, *FTC Multiple Law Enforcement Partners Announce Crackdown on Deception, Fraud in Auto Sales, Financing and Leasing* (Mar. 26, 2015), available at <https://www.ftc.gov/news-events/news/press-releases/2015/03/ftc-multiple-law-enforcement-partners-announce-crackdown-deception-fraud-auto-sales-financing>. See DARK PATTERNS REPORT, note 52 at 40.

<sup>47</sup> See DARK PATTERNS REPORT at 9. The report also references the FTC’s case, previously reported, *FTC v. Universal City Nissan (C.D. Cal.)* – and its related press release, see FTC, Press Release, *Los Angeles-Based Sage Auto Group Will Pay \$3.6 Million to Settle FTC Charges* (Mar. 14, 2017), available at <https://www.ftc.gov/news-events/news/press-releases/2017/03/los-angeles-based-sage-auto-group-will-pay-36-million-settle-ftc-charges> – that charged Sage Auto Group with using deceptive and unfair sales and financing practices, and prohibited them from making numerous misrepresentations such as those related to their auto sales, advertising and financing and from violating the TILA, among other things. See DARK PATTERNS REPORT, note 64 at 41.

### **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 including matters addressed in the Harris Jewelry case, and other credit matters.<sup>48</sup>

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

In 2022, the FTC engaged in efforts to provide education on issues pertaining to credit and lease transactions under or related to the TILA and Regulation Z and the CLA and Regulation M.

### **1. Automobile Sales and Financing (Credit)**

The Commission released guidance for consumers with tips to avoid being targets of fraudulent car dealers and points on which to focus when buying cars and trucks – including for servicemembers and their families who often can be lured by dealers claiming to be “military friendly.”<sup>49</sup> The guidance includes that consumers should shop for financing, including getting pre-approved, before shopping for a car; get the “out-the-door” price for the car in writing, before a dealer visit; and keep in mind that add-on products come with a cost and you can decline their purchase.

### **2. Mortgages (Credit)**

The Commission also updated a publication providing an overview of significant information to understand about mortgages, such as what to consider in searching for a mortgage

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<sup>48</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>49</sup> See Jim Kreidler, *Buying a car or truck?* FTC BUREAU OF CONSUMER PROTECTION ALERT (July 18, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/07/buying-car-or-truck-0>.

and understanding how mortgage brokers work.<sup>50</sup> The article also notes tips for detecting deceptive mortgage ads and offers; provides guidance on how to address various problems in getting a mortgage; explains prescreened mortgage mailers; discusses disclosures consumers receive after filing a mortgage application, including as estimates and at closing; and includes a mortgage worksheet to help compare costs and terms from different lenders. The Commission issued another article focusing on reverse mortgages for older homeowners, and explaining how they work (including highlighting differences between regular (forward) mortgages and reverse mortgages).<sup>51</sup> It also summarizes issues to consider before getting a reverse mortgage, tips for shopping (including considering the types of reverse mortgages, and meeting with a housing counselor), and resources for further information.

### 3. Credit Cards (Credit)

In addition, the Commission released articles to assist consumers on issues regarding the use of credit (and other payment) cards. One article explained best approaches for use of credit cards, and various rights consumers have under federal law, including the timing for crediting payments, the timing for sending your credit card statement, and prompt crediting rules for refunds.<sup>52</sup> It also discussed consumers' billing error rights under the Fair Credit Billing Act (an amendment to the TILA), how to dispute billing errors, and the procedures for the investigation of errors. It also explained how to address issues that relate to the quality of items purchased, noting that this is a different type of issue, and how to address these problems effectively. Another article discussed how consumers can address lost or stolen credit cards, federal protections that limit consumers' liability for losses, and steps to take to enhance protection of account information.<sup>53</sup> A third article guided consumers on steps to take when their credit card has been declined.<sup>54</sup> The article explained the reasons why a card might be declined, the steps consumers can take to reduce that occurrence, how to avoid "blocking" of the card, and steps to take when hotels, rental car companies, and other companies use that procedure.

### 4. Other Education (Credit)

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<sup>50</sup> See *Shopping for a Mortgage FAQs* (Aug. 2022), <https://consumer.ftc.gov/articles/shopping-mortgage-faqs>; *Preguntas frecuentes sobre como buscar, comparar y elegir una hipoteca* (Ago 2022), <https://consumidor.ftc.gov/articulos/preguntas-frecuentes-sobre-como-buscar-comparar-y-elegir-una-hipoteca>.

<sup>51</sup> See *Reverse Mortgages* (Aug. 2022), <https://consumer.ftc.gov/articles/reverse-mortgages>; *Hipotecas inversas* (Ago 2022), <https://consumidor.ftc.gov/articulos/hipotecas-inversas> (Ago 2022).

<sup>52</sup> See *Using Credit Cards and Disputing Charges* (May 2022), <https://consumer.ftc.gov/articles/using-credit-cards-and-disputing-charges>; *Como usar las tarjetas de credito y como disputar cargos* (Mayo 2022), <https://consumidor.ftc.gov/articulos/como-usar-las-tarjetas-de-credito-y-como-disputar-cargos>.

<sup>53</sup> See *Lost or Stolen Credit, ATM, and Debit Cards* (Jan. 2022), <https://consumer.ftc.gov/articles/lost-or-stolen-credit-atm-debit-cards>; *Perdida o robo de tarjetas de credito y de debito* (Ene 2022), <https://consumidor.ftc.gov/articulos/perdida-o-robo-de-tarjetas-de-credito-y-de-debito>.

<sup>54</sup> See *When a Company Declines Your Credit or Debit Card* (Aug. 2022), <https://consumer.ftc.gov/articles/when-company-declines-your-credit-or-debit-card>; *Cuando una compania rechaza su tarjeta de credito o debito* (Ago 2022), <https://consumidor.ftc.gov/articulos/cuando-una-compania-rechaza-su-tarjeta-de-credito-o-debito>.

The Commission also issued alerts for consumers, and information for businesses, about the cases and rulemaking discussed above. For the Napleton case, the Commission provided highlights to consumers about the defendants' alleged illegal practices concerning junk fees, including for extended warranties and service plans.<sup>55</sup> The FTC also provided businesses with guidance on the settlement, including recounting the need for truth and transparency in the car buying process and focal points for compliance with Federal law.<sup>56</sup> For the Harris case, the guidance noted how the defendants' allegedly deceptive sales of jewelry and military-themed items included a wide array of shady practices affecting servicemembers, including violating numerous federal and state consumer protection laws.<sup>57</sup> The Commission emphasized to businesses that the Harris defendants tailored their sales pitches to young recruits at the lowest pay grade, including those still in basic training, and pushed the concept that buying on credit from the company would, regardless of the servicemember's credit history or payment record, improve their credit scores, and they added costly protection plans without express informed consent.<sup>58</sup> The guidance noted the defendants' failure to include certain written disclosures in their retail installment contracts, and to include required disclosures in its online and print ads, in violation of the TILA, and spotlighted the need for compliance with numerous federal financial laws, and the importance of avoiding deceptive and unfair practices and other illegal sales practices that can lead to heightened law enforcement scrutiny.

The FTC also asked consumers to share their experiences in connection with its proposed motor vehicle rulemaking, discussed above.<sup>59</sup> It emphasized that the FTC has brought more than 50 auto-related law enforcement actions, but that deceptive advertising and unlawful add-on sales continue and cause people to spend thousands of dollars beyond what is already among the most expensive purchases of a lifetime. The FTC also asked businesses to submit their views on the proposed rules designed to fight deceptive advertising, bait-and-switch marketing, and hidden add-on charges when consumers shop for cars, and noted that questions to encourage

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<sup>55</sup> See Seena Gressin, *Auto dealers to pay \$10 million for discriminatory lending and sneaking in junk add-on fees*, FTC BUREAU OF CONSUMER PROTECTION ALERT (Apr. 1, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/04/auto-dealers-pay-10-million-discriminatory-lending-and-sneaking-junk-add-fees#:~:text=Napleton%20will%20pay%20%2410%20million,long%2C%20grueling%20hours%20of%20negotiations>.

<sup>56</sup> See Lesley Fair, *Record-setting \$10 million FTC-Illinois settlement takes on car dealers' unauthorized add-ons and discriminatory lending practices*, FTC BUSINESS BLOG (Apr. 4, 2022), <https://www.ftc.gov/business-guidance/blog/2022/04/record-setting-10-million-ftc-illinois-settlement-takes-car-dealers-unauthorized-add-ons-and>.

<sup>57</sup> See Carol Kando-Pineda, *Jeweler's deceptive and empty promises took advantage of servicemembers*, FTC BUREAU OF CONSUMER PROTECTION ALERT (July 20, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/07/jewelers-deceptive-and-empty-promises-took-advantage-servicemembers>.

<sup>58</sup> See Lesley Fair, *FTC and 18 states join forces to protect military consumers from jewelry retailer's illegal practices*, FTC BUSINESS BLOG (July 20, 2022), <https://www.ftc.gov/business-guidance/blog/2022/07/ftc-and-18-states-join-forces-protect-military-consumers-jewelry-retailers-illegal-practices>.

<sup>59</sup> See Colleen Tressler, *Share your experiences to help the FTC address deceptive car pricing and sales*, FTC BUREAU OF CONSUMER PROTECTION ALERT (June 23, 2023), <https://consumer.ftc.gov/consumer-alerts/2022/06/share-your-experiences-help-ftc-address-deceptive-car-pricing-and-sales>.

input were included with the rulemaking notice.<sup>60</sup> It emphasized the recurring theme in consumer complaints and law enforcement actions of striking discrepancies between what consumers are promised in car ads and on the showroom floor versus what they ultimately end up paying. It also highlighted key aspects of the proposed rule, including key disclosures, such as the true “offering price,” and the need for dealers to obtain from consumers their clear, written consent before charging them for add-ons.

### **III. Regulation E (the EFTA)**

In 2022, the FTC had two ongoing or new matters 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**

One of the Commission’s cases alleging violations of the EFTA and Regulation E arose in the context of “negative option” plans.<sup>61</sup> In 2022, 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 the 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>62</sup> The federal district court in California issued a final order finding that the FTC had prevailed on all 16 counts in its complaint against the defendants, including that they violated the EFTA and Regulation E, by debiting consumers’ bank accounts without first obtaining written authorizations signed or similarly authorized by those consumers for preauthorized electronic fund transfers from their accounts, or providing those consumers a copy of a written authorization signed or similarly authenticated by them.<sup>63</sup> The court’s permanent injunction, among other things, bans the Cardiffs and their companies from: (1) failing to obtain written authorization signed or similarly authenticated by the consumer for any preauthorized electronic fund transfer from a consumer’s account before initiating any preauthorized electronic fund

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<sup>60</sup> See Lesley Fair, *Proposed FTC rule looks under the hood at the car buying process*, FTC BUSINESS BLOG (June 23, 2022), <https://www.ftc.gov/business-guidance/blog/2022/06/proposed-ftc-rule-looks-under-hood-car-buying-process>.

<sup>61</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.

<sup>62</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>63</sup> See *FTC v. Jason Cardiff*, No. 18-cv-02104 (C.D. Cal. Mar. 1, 2022) (final judgment including permanent injunction as to defendants Jason Cardiff and Eunjung Cardiff), available at <https://www.ftc.gov/enforcement/cases-proceedings/172-3117-x190001/jason-cardiff-redwood-scientific-technologies-inc>.

transfer, and from failing to provide to the consumer a copy of a valid written authorization signed or similarly authenticated by the consumer for any preauthorized electronic fund transfer from a consumer's account, (2) selling dissolvable oral film strips directly to consumers, (3) multi-level marketing, (4) robocalls, and (5) negative-option marketing. In addition, it imposes severe restrictions on their future conduct related to false advertising, fake testimonials, and unauthorized billing.<sup>64</sup> The court also entered a default judgment against seven corporate defendants that acted together as a common enterprise that the Cardiffs owned and operated, imposing the same conduct provisions the court imposed in its order against the Cardiff defendants (including as to the EFTA and Regulation E).<sup>65</sup>

In connection with another negative option case previously settled, the FTC mailed 176,028 checks, totaling more than \$5.4 million, to consumers who were charged for "free trial" offers for cosmetics and weight loss supplements, including products called Amabella Allure, Adelina, Parisian Glow, and Tone Fire Garcinia.<sup>66</sup> The FTC alleged that the defendants AH Media and individuals were operators of an online subscription scheme pitching at least eight different product lines, primarily cosmetics and dietary supplements. Defendants allegedly misled consumers about supposedly "free trial" offers, enrolling them in unwanted continuity plans, billing them without their authorization, and making it nearly impossible for them to cancel or get their money back. The complaint (previously reported) charged the defendants with violations of the FTC Act, the Restore Online Shoppers' Confidence Act, and the EFTA.

## 2. Other Cases

As described above, the FTC settled with national jewelry retailer Harris Jewelry, resolving allegations that the defendants cheated military families with illegal financing and sales practices.<sup>67</sup> Among other things, and according to the complaint, in connection with the offer, sale, and financing of jewelry, watches, military-themed gifts, and ancillary products, the defendants violated the EFTA and Regulation E by using authorization forms with terms that

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<sup>64</sup> See *id.*; see also FTC, Press Release, *Federal Court Rules in Favor of FTC, Halting Illegal Tactics Used to Promote Smoking Cessation, Weight-Loss, and Sexual-Performance Aids* (Mar. 25, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/03/federal-court-rules-favor-ftc-halting-illegal-tactics-used-promote-smoking-cessation-weight-loss>. The court declined to order any compensation due to the recent Supreme Court ruling in *AMG v. FTC*, which undercut the agency's authority to obtain such consumer redress. *Id.*

<sup>65</sup> See *FTC v. Jason Cardiff*, No. 18-cv-02104 (C.D. Cal. Mar. 1, 2022) (default judgment including permanent injunction as to Redwood Scientific Technologies, Inc. (CA), Redwood Scientific Technologies, Inc. (NV), Redwood Scientific Technologies, Inc. (DE), Identify, LLC, Advanced Men's Institute Prolongz LLC, Run Away Products, LLC, and Carols Place Limited Partnership), available at <https://www.ftc.gov/enforcement/cases-proceedings/172-3117-x190001/jason-cardiff-redwood-scientific-technologies-inc>; see also FTC, Press Release, *Federal Court Rules in Favor of FTC, Halting Illegal Tactics Used to Promote Smoking Cessation, Weight-Loss, and Sexual-Performance Aids* (Mar. 25, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/03/federal-court-rules-favor-ftc-halting-illegal-tactics-used-promote-smoking-cessation-weight-loss>.

<sup>66</sup> See FTC, Press Release, *Federal Trade Commission Returns More Than \$5.4 Million to Consumers* (June 29, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/06/federal-trade-commission-returns-more-54-million-consumers>.

<sup>67</sup> See *supra* notes 27-32.

were not clear and readily understandable for preauthorized transfers from consumers' accounts.<sup>68</sup> Under the stipulated order with the FTC and multistate group, the defendants must obtain a written authorization signed or similarly authenticated from the consumer for preauthorized electronic fund transfers from the consumer's account, which must be readily identifiable as such, and the terms of the preauthorization – including the amount of each transfer and the dates on which each transfer will be made – must be clear and readily understandable.<sup>69</sup> The defendants also must provide the consumer with a copy of a written authorization signed or similarly authenticated from the consumer for preauthorized electronic fund transfers from the consumer's account, and must comply with the EFTA and Regulation E.<sup>70</sup>

As also described above, the FTC mailed 26,698 checks totaling more than \$970,000 to people who were harmed by an allegedly deceptive payday lending scheme that operated under the names Harvest Moon Financial, Gentle Breeze Online, and Green Stream Lending.<sup>71</sup> Among other things, the FTC had previously alleged that the defendants continued to make regular withdrawals from consumers' checking accounts without authorization, in violation of the FTC Act, and the EFTA and Regulation E.<sup>72</sup> Under the previously reported settlement, among other things, the owners and operators of the settling entities were permanently prohibited from making loans or extending credit of any kind and from violating the EFTA and Regulation E.<sup>73</sup>

As also described above, the FTC mailed a second round of refund checks to people deceived by a computer financing scheme that targeted customers shopping for computers and related electronic devices.<sup>74</sup> The FTC's case against BlueHippo Funding, LLC and affiliate BlueHippo Capital, LLC, previously reported, alleged violations of the EFTA (conditioning the extension of credit on preauthorized electronic fund transfers) and of the FTC Act related to their promises to finance new computers, collection of money from customers, and failure to provide consumers with computers.

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<sup>68</sup> See *supra* note 28.

<sup>69</sup> See *FTC v. Harris Originals of NY, Inc.*, No. 2:22-cv-04260 (E.D.N.Y. July 20, 2022) (stipulated order for permanent injunction, monetary judgment, and other relief), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/1723162-harris-jewelry>.

<sup>70</sup> See *id.*

<sup>71</sup> See generally *supra* note 22.

<sup>72</sup> See *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>73</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>74</sup> See *supra* notes 33-34.



The Commission also returned more than \$3.7 to consumers who lost money because of allegedly unfair or deceptive loan servicing by online lender Avant, LLC.<sup>75</sup> The FTC previously sued Avant, alleging the company falsely advertised that it would accept payments by credit or debit cards, when it did not – a practice that allegedly resulted in customers being charged additional interest on their loans as they tried to arrange a different payment form.<sup>76</sup> The FTC also alleged that the company withdrew money from customers’ bank accounts or charged their credit cards without authorization, failed to properly and timely credit payments made by check, provided deceptive payoff quotes to customers, and tried to collect more money than the quoted payoff amount.<sup>77</sup> The FTC also alleged that the company conditioned the extension of credit on preauthorized electronic fund transfers, in violation of the EFTA.<sup>78</sup> The FTC is sending checks to 17,367 customers harmed by Avant’s practices, with the average payment amount of \$216.<sup>79</sup>

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

The FTC does not have rulemaking authority under the EFTA but in 2022 engaged in research and policy work that addressed EFTA-related issues.

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 charged in Harris Jewelry. The FTC also provided input and presentations to ABA LAMP on EFTs, FTC cases in this area including Harris Jewelry, and the EFTA requirements.

## **C. Electronic Fund Transfers: Consumer and Business Education**

Two of the FTC’s articles on payment cards, described above, also focus on information about ATM and debit cards. One article includes effective ways for consumers to address lost or stolen ATM or debit cards, compares liability limits for these and other payment cards, and explains how best to protect account information for these cards.<sup>80</sup> Another article includes

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<sup>75</sup> FTC, Press Release, *FTC Returns More Than \$3.7 Million To Consumers Harmed by Online Lender Avant* (Jan. 25, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/01/ftc-returns-more-37-million-consumers-harmed-online-lender-avant>.

<sup>76</sup> *See id.*

<sup>77</sup> *See supra* note 75.

<sup>78</sup> *See FTC v. Avant, LLC*, No. 19-cv-02517 (N.D. Ill. filed Apr. 15, 2019), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/162-3090-avant-llc>.

<sup>79</sup> *See supra* note 75.

<sup>80</sup> *See supra* note 53.

information about debit cards in explaining why a card might be declined, along with ways to limit the occurrence.<sup>81</sup>

The information that the FTC provided consumers about the Harris Jewelry case described above noted that the company allegedly violated numerous federal and state lending and consumer protection laws – which includes the EFTA.<sup>82</sup> The information advised consumers that the settlement will stop Harris from similar practices in the future and that it must complete shutting down and dissolving its operations under the states’ laws once it meets its obligations under the order. The FTC guidance to businesses on this settlement referenced above also discussed that, based on the FTC’s complaint, the defendants failed to meet the EFTA’s authorization requirements – which pertain to preauthorization for debits from consumers’ bank accounts on a recurring basis.<sup>83</sup>

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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.<sup>84</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>81</sup> *See supra* note 54.

<sup>82</sup> *See supra* note 57.

<sup>83</sup> *See supra* note 58.

<sup>84</sup> 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 2022, 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.