



Office of the Secretary

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

January 26, 2011

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 use in preparing the Federal Reserve Board's (the "Board") 2010 Annual Report to Congress, for information concerning the Federal Trade Commission's ("Commission" or "FTC") enforcement activities related to compliance with the following regulations: Regulation B (Equal Credit Opportunity); Regulation E (Electronic Fund Transfer); Regulation M (Consumer Leasing); Regulation P (Privacy of Consumer Financial Information); Regulation Z (Truth in Lending); Regulation AA (Unfair or Deceptive Acts or Practices Rule); Regulation CC (Expedited Fund Availability); and Regulation DD (Truth in Savings) (collectively "the Regulations"). Specifically, you ask for information concerning the FTC's administration and enforcement of the Regulations, as well as compliance with the Regulations among entities within the FTC's jurisdiction. The Commission is pleased to provide you with this information.

I. FTC Role in Administering and Enforcing the Regulations

Your letter asks for information relating to the Commission's administration and enforcement of the Regulations. The FTC does not have enforcement or other authority with regard to Regulations P, AA, CC, and DD. Consequently, in this response the Commission provides information concerning its activities regarding Regulations B, E, M,¹ and Z.

The FTC's primary focus in the financial services area is on bringing law enforcement actions against those who violate statutes and regulations (including Regulations B, E, M, and Z).² In addition to its law enforcement activities, the FTC engages in research and policy development related to the types of financial services these statutes and regulations cover. Finally, the Commission provides numerous business and consumer education materials about these types of financial services to the public, to promote business compliance with the law and

¹ In 2010, the Commission did not initiate any enforcement actions alleging violations of the Consumer Leasing Act and Regulation M.

² The Commission also recently issued rules in the financial services area, for example, regarding mortgage assistance relief services and debt relief services, *see infra* notes 29 and 51, respectively, and a proposed rule regarding mortgage acts and practices, *see infra* note 36.

to help consumers protect themselves from those who do not. This letter provides information regarding the FTC's law enforcement, research and policy development, educational, and other activities related to financial services.

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 numerous non-bank entities within its jurisdiction. As a result, this letter does not provide information on compliance examinations.

II. Regulation B (Equal Credit Opportunity Act)

The FTC enforces the Equal Credit Opportunity Act ("ECOA") and its implementing Regulation B as to most entities other than banks, thrifts and federal credit unions.³ In 2010, the Commission settled one ECOA enforcement action, modified an order from a prior ECOA enforcement action, and engaged in several other fair lending-related initiatives.

A. Fair Lending: Enforcement Actions

In September 2010, the Commission announced a settlement to halt discriminatory practices by a mortgage company that allegedly charged Hispanic consumers higher prices for mortgage loans than similarly situated non-Hispanic white consumers.⁴ The FTC's complaint against Golden Empire Mortgage, Inc. ("GEM") and its owner Howard D. Koostra had alleged that these defendants violated ECOA, Regulation B, and the FTC Act, by charging different prices to Hispanic consumers that could not be explained by their credit characteristics or underwriting risk. The settlement permanently prohibits defendants from discriminating on the basis of national origin in credit transactions, or otherwise failing to comply with ECOA and Regulation B. The order also requires defendants to have a policy that restricts loan originators' pricing discretion, implement a fair lending monitoring program, conduct employee fair lending training, ensure data integrity, and conduct regular compliance reporting. The order imposes a \$5.5 million judgment, all but \$1.5 million of which is suspended based on defendants' financial situation. This money will be used for redress to consumers whom defendants' pricing policy harmed.

³ The FTC has authority to enforce ECOA and its implementing Regulation B only as to entities for which Congress has not committed enforcement to some other government agency. *See* 15 U.S.C. § 1691c(c); *see also infra* Part V, ¶ 1.

⁴ *FTC v. Golden Empire Mortgage, Inc.*, No. CV 09-03227 CAS (SHx) (C.D. Cal. Sept. 24, 2010) (stipulated final judgment and order entered), *available at* <http://www.ftc.gov/opa/2010/09/gem.shtm>.

In January 2010, the Commission modified a prior fair lending settlement with a home mortgage lender.⁵ The mortgage lender, Gateway Funding Diversified Mortgage Services, L.P., and its general partner, Gateway Funding Inc (“Gateway”), had previously settled FTC charges that Gateway violated ECOA and Regulation B by charging African-American and Hispanic consumers higher prices for mortgage loans than non-Hispanic white consumers. The order required Gateway to develop an effective fair-lending monitoring program, but, according to the FTC, Gateway failed to do so. To resolve Gateway’s alleged order violation, the company agreed to additional provisions to strengthen the order. Specifically, it agreed to a modified order under which Gateway must hire an FTC-approved third-party consultant to perform detailed analyses and annual assessments of its lending practices for five years. Gateway also is required to take remedial steps the consultant identifies. The agreement also limits Gateway’s discretion over pricing until the consultant certifies that Gateway has an adequate monitoring program in place.

B. Fair Lending: Research and Policy Development

In December 2010, FTC staff submitted comments to the Board recommending ways the Board could strengthen the rules under the Home Mortgage Disclosure Act (“HMDA”). HMDA and its implementing Regulation C require some mortgage lenders to collect and report mortgage data for purchase money loans, home improvement loans, and refinancings that the FTC and other government enforcement agencies use to analyze whether the lenders are complying with fair lending laws, such as ECOA and Regulation B.⁶ The FTC staff comments outlined the FTC’s enforcement of fair lending laws and recommended changes to Regulation C. Specifically, the FTC staff recommended that the Board expand the number of mortgage lenders required to report loan data by modifying the criteria for determining which lenders are required to report. According to FTC staff, these changes would not be overly burdensome to lenders and would provide law enforcers with better data to assist in their work. FTC staff also suggested that the Board require lenders to report on additional types of loans, such as reverse mortgages and home equity lines of credit, and to report additional data fields for all reported loans. In addition, the FTC staff recommended that the Board make more mortgage data available to the public and more robust data available to researchers, while still protecting mortgage applicants’ privacy.

During 2010, the Commission’s staff discussed various issues with the Board’s staff in connection with the Board’s report on certain credit card practices that could involve potential fair lending issues. Specifically, Section 505 of the Credit Card Accountability Responsibility

⁵ *FTC v. Gateway Funding Diversified Mortgage Services, L.P.*, No. 08-5805 (E.D. Pa. Jan. 22, 2010) (modified stipulated final judgment and order entered), *available at* <http://www.ftc.gov/opa/2010/01/gateway.shtm>.

⁶ *See* Letter from Donald S. Clark, Secretary, Federal Trade Commission, to Jennifer L. Johnson, Secretary, Board of Governors of the Federal Reserve System (Dec. 3, 2010), *available at* http://www.ftc.gov/opa/2010/12/hmda_fcra.shtm.

and Disclosure Act of 2009 (the “Credit CARD Act”)⁷ required the Board, in consultation with the FTC and other federal banking agencies, to submit a report to Congress addressing the practice of reducing consumer credit card limits or raising interest rates under certain circumstances, including, among other factors, the geographic location of the transaction and the consumer’s credit transaction-related practices. The Credit CARD Act also specified that the report must include various factors, such as the extent to which these practices have an adverse impact on minority or low-income consumers. The Board issued its report in May 2010.⁸ Among other things, the report found that “it is not possible to determine whether any relationship exists between cardholder demographics and [credit] line reductions due specifically to section 505 practices.”⁹ The report found that credit card issuers consider a wide range of information in deciding whether to reduce the credit limit or increase the rate on accounts, including information from their own records and from credit reporting agencies, and may also make such changes in response to economic conditions.¹⁰ The report also found that fair lending laws create compliance risk and may deter issuers from using certain information, including some forms of geographic categorization.¹¹

III. Regulation E (Electronic Fund Transfer Act)

The FTC enforces the Electronic Fund Transfer Act (“EFTA”) and its implementing Regulation E with regard to most non-bank entities in the United States.¹² In 2010, seven new or ongoing Commission cases raised EFTA and Regulation E issues. Six 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 several other research and policy development initiatives involving EFTA and Regulation E.

⁷ See Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734 (May 22, 2009).

⁸ FED. RESERVE BD., REPORT TO THE CONGRESS ON REDUCTIONS OF CONSUMER CREDIT LIMITS BASED ON CERTAIN INFORMATION AS TO EXPERIENCE OR TRANSACTIONS OF THE CONSUMER (May 2010), available at <http://www.federalreserve.gov/boarddocs/rptcongress/creditcard/2009/consumercreditreductions.pdf>.

⁹ *Id.* at 37.

¹⁰ *Id.* at 1.

¹¹ *Id.* at 5.

¹² The FTC has authority to enforce EFTA and Regulation E only as to entities for which Congress has not assigned enforcement responsibility to some other government agency. See 15 U.S.C. § 1693o(c); see also *infra* Part V, ¶ 1.

A. Electronic Fund Transfers: Enforcement Actions

The Commission's cases alleging violations of EFTA and Regulation E arose in the context of negative option plans for a variety of goods and services. With such 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,¹³ 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. EFTA and Regulation E prohibit companies from debiting consumers' bank accounts on a recurring basis without obtaining proper written authorization for preauthorized electronic fund transfers and without providing the consumer with a copy of the written authorization.

In 2010, the Commission filed and litigated two new cases alleging that a company violated EFTA and Regulation E through the use of a negative option plan with unauthorized recurrent debiting of bank accounts,¹⁴ settled two cases that the FTC had filed in 2009,¹⁵ continued litigation in another case the Commission had previously filed,¹⁶ and sent consumer redress checks to consumers in one case that it had previously settled.¹⁷

In addition to filing and litigating actions involving negative option plans, the Commission in July 2010 obtained a contempt order against Blue Hippo Funding ("Blue Hippo") for violating a 2008 court order that settled charges that Blue Hippo had, among other

¹³ EFTA and Regulation E apply to debit cards; TILA and Regulation Z apply to credit cards.

¹⁴ *FTC v. Jeremy Johnson*, No. CV 10-2203 (D. Nev. filed Dec. 21, 2010), available at <http://www.ftc.gov/opa/2010/12/iworks.shtm>; *FTC v. Central Coast Nutraceuticals, Inc.*, No. 10C-4931 (N.D. Ill. filed Aug. 5, 2010) (TRO entered Aug. 16, 2010), available at <http://www.ftc.gov/opa/2010/08/acaicolon.shtm>. The court's TRO also imposed an asset freeze and appointed a temporary receiver over Central Coast Nutraceuticals and several related companies. The parties in the *Central Coast Nutraceuticals* litigation subsequently stipulated to a preliminary injunction. *Id.* (N.D. Ill. Sept. 21, 2010) (stipulated preliminary injunction entered).

¹⁵ *FTC v. Infusion Media, Inc.*, No. 2:09-CV-01112 (D. Nev. Oct. 4, 2010) (stipulated final judgment and order entered), available at <http://www.ftc.gov/opa/2010/10/googlemoney.shtm>; *FTC v. In Deep Services, Inc.*, No. 09-CV-01193 (C.D. Cal. Oct. 26, 2010) (final judgment and order entered), available at [http://www.ftc.gov/opa/2010/11/grant\\$.shtm](http://www.ftc.gov/opa/2010/11/grant$.shtm).

¹⁶ *FTC v. Grant Connect, LLC*, No. 2:09-CV-01349 (D. Nev. filed Apr. 21, 2010) (amended complaint), available at <http://www.ftc.gov/opa/2010/04/grant-optical.shtm>. The court subsequently entered a preliminary injunction. *Id.* (D. Nev. June 17, 2010) (preliminary injunction order entered).

¹⁷ In September 2010, in the Commission's previously-settled Remote Response case, a claims administrator working for the FTC began mailing over 22,000 checks to consumers who were victims of a deceptive telemarketing operation that improperly charged consumers without authorization. See FTC, Press Release, *FTC Sends Redress Checks to Victims of Remote Response; Bogus Advance-Fee Credit Card Operation Targeted Hispanic Consumers*, Sept. 9, 2010, available at <http://www.ftc.gov/opa/2010/09/remote.shtm>.

things, violated EFTA and Regulation E.¹⁸ The 2008 order prohibited BlueHippo from conditioning the extension of credit on mandatory preauthorized electronic fund transfers. The contempt motion charged BlueHippo with continuing to engage in these practices in violation of the order. The court held the Blue Hippo defendants jointly and severally liable for over \$600,000 in damages for its order violations.

B. Electronic Fund Transfers: Research and Policy Development

Title IV of the Credit CARD Act, effective August 2010, amended EFTA to make it applicable to general-use prepaid cards, gift certificates, and store gift cards.¹⁹ It also required the Board, in consultation with the FTC, to issue related rules. The Commission's staff consulted with the Board, in connection with its development of these final rules, which the Board issued in April 2010.²⁰ Among other things, the rules provide that gift card funds cannot expire for at least five years, and inactivity fees can be charged only after a card has not been used for at least one year. For all cards sold after January 31, 2011, the expiration date must be clearly disclosed on the card, and fees must be clearly disclosed on the card or its packaging.

In addition, Section 508 of the Credit CARD Act required the FTC to conduct a study regarding the cost-effectiveness of making emergency automated teller machine ("ATM") technology available. Such technology is intended to permit ATM users under duress to electronically alert a local law enforcement agency that an incident is taking place at the ATM.²¹ The Commission's Bureau of Economics conducted this study and issued its report to Congress in April 2010.²² The report concluded that the available evidence did not permit definitive conclusions about whether emergency-PIN or alarm button systems reduce ATM crimes. The report also determined that these systems may impose substantial implementation costs, although no formally derived cost estimates of implementing these technologies are currently available.

Finally, in May 2010, the FTC hosted counterparts from more than 40 countries to discuss enforcement strategies and emerging consumer protection issues.²³ Among other issues,

¹⁸ *FTC v. BlueHippo Funding, LLC*, No. 1:08-cv-1819 (S.D.N.Y. July 27, 2010) (contempt order entered). The company offers to finance the sale of personal computers to consumers with poor credit ratings. *See id.*

¹⁹ Credit CARD Act, *supra* note 7.

²⁰ Electronic Fund Transfers, Final Rule, 75 Fed. Reg. 16580 (Apr. 1, 2010). *See* Electronic Fund Transfers, Final Rule, 75 Fed. Reg. 66644 (Oct. 29, 2010) (amending Regulation E to delay the effective date of certain disclosure requirements applicable to gift cards under the Credit CARD Act).

²¹ Credit CARD Act, *supra* note 7.

²² FED. TRADE COMM'N, BUREAU OF ECON. STAFF REPORT, CREDIT CARD ACCOUNTABILITY RESPONSIBILITY AND DISCLOSURE ACT OF 2009 – REPORT ON EMERGENCY TECHNOLOGY FOR USE WITH ATMS (2010), *available at* <http://www.ftc.gov/opa/2010/05/atm.shtm>.

²³ *See* FTC, Press Release, *FTC Hosts International Consumer Protection Forum*, May 6, 2010, *available at* <http://www.ftc.gov/opa/2010/05/icpen.shtm>.

the agenda included electronic transactions and protections for payment cards, including debit and credit cards. During the conference, 25 International Consumer Protection Enforcement Network member agencies launched an updated version of the econsumer.gov website, a portal for consumers to file cross-border complaints and find information about possible ways to resolve their complaints.²⁴ In conjunction with the conference, the FTC released its annual report on cross-border fraud complaints, which noted that cross-border fraud complaints comprised 13 percent of all fraud complaints (including those involving various electronic payments) during calendar year 2009.²⁵

C. Electronic Fund Transfers: Consumer and Business Education

In 2010, the FTC released new publications on gift cards, in both English and Spanish.²⁶ The publications are intended to assist consumers using these payment mechanisms and include information about new federal rules that took effect in 2010. In addition, the FTC's "Business Center Blog" posted an update about the new gift card rules.²⁷

IV. Regulation Z (Truth in Lending Act)

The FTC enforces the Truth in Lending Act ("TILA") and its implementing Regulation Z with regard to most nonbank entities in the United States.²⁸ In 2010, the Commission engaged in law enforcement, research and policy initiatives, and consumer and business education to protect consumers of closed-end credit (such as purchase money mortgage loans, small personal loans, and auto loans) and open-end credit (such as credit cards and home equity lines of credit).

²⁴ Consumer complaints filed at the web portal – which operates in English, French, German, Spanish, Korean, Japanese, and Polish – are immediately available to the 25 member agencies that participate in this cross-border enforcement project.

²⁵ FED. TRADE COMM'N REPORT, CROSS-BORDER FRAUD COMPLAINTS – JAN. - DEC. 2009 (2010), *available at* <http://www.ftc.gov/sentinel/reports/annual-crossborder-reports/crossborder-cy2009.pdf>.

²⁶ *See* FED. TRADE COMM'N, BUYING, GIVING, AND USING GIFT CARDS, *available at* <http://ftc.gov/bcp/edu/pubs/consumer/alerts/alt010.shtm>, *see also* FED. TRADE COMM'N, FTC HAS GIFT CARD TIPS FOR HOLIDAY BUYING, *available at* <http://www.ftc.gov/opa/2010/11/giftcards.shtm>; *see also* FED. TRADE COMM'N, CÓMO COMPRAR, OBSEQUIAR Y UTILIZAR LAS TARJETAS DE REGALO, *available at* <http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/salt010.shtm>.

²⁷ Posting of "It's in the Cards" to the Fed. Trade Comm'n's Bureau of Consumer Protection Business Center Blog, <http://business.ftc.gov/blog/2010/12/its-cards> (Dec. 8, 2010).

²⁸ The FTC has authority to enforce TILA and Regulation Z only as to entities for which Congress has not assigned enforcement to some other government agency. 15 U.S.C. § 1607(c); *see also infra* Part V, ¶ 1.

A. Truth in Lending: Enforcement Actions

The Commission's law enforcement activities related to TILA and Regulation Z included filing and litigating cases against defendants who falsely claim that "forensic audits" will reveal violations of TILA, Regulation Z, and other federal laws. The defendants, who are mortgage assistance relief providers,²⁹ sell these "audits" to consumers for a substantial fee and claim the "audits" give the providers leverage to obtain loan modifications, short sales, and other relief from lenders and servicers. In a forensic audit case the Commission filed in 2010, the federal court entered a temporary restraining order ("TRO") to halt the operations of the provider, Residential Relief Foundation, appointed a receiver for the provider, and froze its assets.³⁰ The FTC also continued to litigate another case against a provider of forensic audit services.³¹

The Commission's law enforcement activities also included distributing substantial refund checks to consumers in previously settled cases alleging violations of TILA, Regulation Z, and the FTC Act. In June 2010, the Commission distributed refund checks to borrowers victimized by a company the Commission had charged with deceptively advertising that it offered 3.5 percent, fixed-payment, 30-year mortgage loans.³² According to a complaint filed by the FTC in 2004, Chase Financial Funding violated TILA, Regulation Z, and the FTC Act by its promotions and other practices that deceived consumers into signing up for adjustable rate mortgages in which the principal balance would increase if they made payments at the advertised rates. The refunds are the result of the settlement between the FTC and defendants and the recent distribution of defendants' assets by the bankruptcy court.

In August 2010, a claims administrator working for the Commission began mailing more than 16,000 checks to consumers who were victims of the unlawful practices of Stewart Finance

²⁹ The Commission has brought over thirty cases against providers of foreclosure rescue and loan modification services. Bogus operations falsely claim that, for a fee, they will negotiate with the consumer's mortgage lender or servicer to obtain a loan modification, short sale, or other foreclosure relief. Many operations pretend to be affiliated with the government and government housing assistance programs. In 2010, the FTC issued the Mortgage Assistance Relief Services ("MARS") Rule, to protect distressed homeowners from such mortgage relief scams, which generally emerged during the mortgage crisis. See MARS, Final Rule, 75 Fed. Reg. 75092 (Dec. 1, 2010), available at <http://www.ftc.gov/opa/2010/11/mars.shtm>; see also "List of FTC MARS Law Enforcement Actions," *id.* The MARS rule was issued pursuant to Section 626 of the 2009 Omnibus Appropriations Act ("Omnibus Act"), Pub. L. No. 111-8, § 626, 123 Stat. 524 (Mar. 11, 2009), as amended by Section 511 of the Credit CARD Act. See *supra* note 7. The rule bans providers of mortgage foreclosure rescue and loan modification services from collecting fees until homeowners have a written offer from their lender or servicer that they decide is acceptable. The rule also imposes disclosure requirements and prohibits certain claims.

³⁰ *FTC v. Residential Relief Foundation, Inc.*, No. 1:10-cv-03214 (D. Md. filed Nov. 15, 2010) (TRO entered Nov. 15, 2010), available at <http://www.ftc.gov/opa/2010/11/mortgage.shtm>.

³¹ *FTC v. The Debt Advocacy Center, LLC*, No. 09-CV-2712 (N.D. Ohio filed May 14, 2010) (amended complaint), available at <http://www.ftc.gov/opa/2010/06/debtadvo.shtm>.

³² See FTC, Press Release, *FTC Mails Redress Checks to Borrowers Misled by Chase Financial Funding, Inc.'s Allegedly Deceptive Mortgage Ads*, July 2, 2010, available at <http://www.ftc.gov/opa/2010/07/chase.shtm>.

Company and other related companies and individuals.³³ The checks were part of a redress fund from the defendants' prior settlement with the FTC. The FTC's complaint had charged defendants with violations of TILA, Regulation Z, and the FTC Act for deceiving consumers, many of them elderly, by packing optional products such as accidental death and dismemberment insurance and roadside assistance club memberships onto small personal loans; by inducing consumers to participate in a free "direct deposit" program that was not in fact free; and by encouraging consumers to incur additional costs and fees by repeatedly refinancing their loans.

Finally, the FTC law enforcement activities included bringing a contempt action against a defendant who was subject to a prior order resolving allegations that the company had violated TILA and Regulation Z, among other laws. As explained above, in July 2010, a U.S. district court entered a contempt order in the Blue Hippo case.³⁴ As previously reported to the Board, in the contempt action the FTC charged, among other things, that the company continued to deceive consumers by falsely 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. The contempt order finds the defendants jointly and severally liable for over \$600,000.

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

1. Mortgage-Related Activities

The Commission in 2010 undertook a variety of initiatives to ensure that information consumers receive about mortgage loans is truthful and non-misleading to assist them in making important financial decisions.

The FTC continued the proceedings in its rulemaking regarding mortgage acts and practices, pursuant to Section 626 of the 2009 Omnibus Act, as amended by Section 511 of the Credit CARD Act.³⁵ In September, the Commission moved to further strengthen its ability to prevent deceptive mortgage advertising, proposing a rule that would ban misrepresentations for all mortgages. The FTC and the states would be able to obtain civil penalties against those who violate the rule.³⁶ The proposed rule does not include any affirmative advertising disclosure requirements; the Commission tentatively concluded that not requiring any disclosures would eliminate the possibility of inconsistencies with the disclosures that TILA, Regulation Z, and

³³ See FTC, Press Release, *FTC Sends Second Round of Redress Checks to Stewart Finance Victims*, Aug. 23, 2010, available at <http://www.ftc.gov/opa/2010/08/stewart.shtm>.

³⁴ See *supra* note 18.

³⁵ See Omnibus Act, *supra* note 29, as amended by the Credit CARD Act, § 511, *supra* note 7.

³⁶ Mortgage Acts and Practices – Advertising Rule, Notice of Proposed Rulemaking, 75 Fed. Reg. 60352 (Sept. 30, 2010), available at <http://www.ftc.gov/opa/2010/09/nprm.shtm>.

other laws already require. The proposal, however, requested comment on whether there are any advertising disclosures that the Commission should consider mandating.³⁷ The comment period ended November 15, 2010. The FTC received numerous comments and is considering them and whether to issue a final rule.

With respect to reverse mortgages, in February 2010, the FTC staff filed comments with the Federal Financial Institutions Examination Council (“FFIEC”) supporting the FFIEC’s guidance designed to protect consumers from deceptive claims and to help them make better-informed decisions about whether to purchase reverse mortgages.³⁸ FTC staff supported the FFIEC’s efforts to advise lenders of the importance of not making deceptive claims for reverse mortgages and to provide them with concrete guidance as to the circumstances under which claims may be deceptive in violation of Section 5 of the FTC Act. The comments also encouraged reverse mortgage lenders and brokers under the FTC’s jurisdiction to review and consider the proposed guidance’s advice and examples relating to deceptive claims. The comments further noted the value of testing disclosures in certain circumstances to confirm that they are clear and useful and do not create unintended consequences. In August 2010, the FFIEC issued its final guidance to address compliance and reputation risks associated with reverse mortgages.³⁹

2. Credit Card-Related Activities

The Commission also has undertaken efforts to assist consumers in making decisions related to their use of credit cards. Pursuant to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), the Board and Commission collaborated to establish toll-free telephone numbers for consumers to call to receive estimated minimum payoff information for their credit card accounts.⁴⁰ This information remained available to consumers until after the Board’s new credit card and open-end credit rules, which implement aspects of the Credit CARD

³⁷ See *id.* at 60361-62.

³⁸ See Comments of the Staff of the Bureau of Consumer Protection, the Bureau of Economics, and the Office of Policy Planning of the Federal Trade Commission Before the Federal Financial Institutions Examination Council In the Matter of Request for Comment on Proposed Guidance Regarding Reverse Mortgage Products, Feb. 16, 2010, available at <http://www.ftc.gov/opa/2010/03/revmortgage.shtml>.

³⁹ See FFIEC, *Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks*, 75 Fed. Reg. 50801 (Aug. 17, 2010). Among other things, the guidance discussed general features, legal requirements, and consumer protection concerns raised by these products. It focused on the need by lenders to avoid deceptive marketing and to provide adequate information to consumers about the products, to provide qualified independent counseling to consumers considering the products, and to avoid potential conflicts of interest. The guidance also addressed third party risk management, including directing lenders to review promotional materials used by third parties (such as mortgage brokers and correspondent lenders) for compliance with TILA, the FTC Act, and other laws, as applicable. In addition, the guidance noted that the FFIEC is considering whether to issue illustrations of information about reverse mortgages that certain entities could provide to consumers and will consider consumer testing in connection with the illustrations. See *id.* at 50802.

⁴⁰ See Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23 (2005).

Act, became effective this year.⁴¹ These new provisions supercede the prior BAPCPA requirements and, among other things, require creditors to provide specific information directly to consumers regarding minimum payoff information on their accounts.

In addition, the Credit CARD Act requires the Board to issue rules under TILA regarding the timely settlement of estate debts and to make other changes to TILA and Regulation Z disclosures required for open-end credit, including credit cards.⁴² The Commission's staff discussed related issues with the Board's staff in connection with the Board's development and issuance of final rules in 2010 establishing procedures for handling the credit card debts of decedents, requirements for credit card penalty fees, and disclosures for annual percentage rate increases.⁴³

C. Truth In Lending: Consumer and Business Education

In 2010, the Commission continued its efforts to assist consumers who may be having difficulty with mortgage loans. The Commission released English and Spanish versions of three publications: "Defaulting on Your Mortgage Has Costly Consequences,"⁴⁴ "For Homeowners,"⁴⁵ and "Forensic Mortgage Loan Audit Scams: A New Twist on Foreclosure Rescue Fraud."⁴⁶ The Commission specifically addressed mortgage servicing issues in English and Spanish versions of "Mortgage Servicing: Making Sure Your Payments Count."⁴⁷

⁴¹ See Final Rule, Truth in Lending, 75 Fed. Reg. 7658 (Feb. 22, 2010).

⁴² See Credit CARD Act, *supra* note 7.

⁴³ See Truth in Lending, Final Rule, 75 Fed. Reg. 7658 (Feb. 22, 2010) (establishing several substantive and disclosure requirements pertaining to open-end consumer credit plans, including procedures regarding treatment of decedent's credit card debts); Truth in Lending, Final Rule, 75 Fed. Reg. 37526 (June 29, 2010) (establishing requirements regarding penalty fees imposed by card issuers and evaluations of and related disclosures regarding annual percentage rate increases).

⁴⁴ See FED. TRADE COMM'N, DEFAULTING ON YOUR MORTGAGE HAS COSTLY CONSEQUENCES, *available at* <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea17.shtm>; FED. TRADE COMM'N, INCUMPLIR EL PAGO DE SU HIPOTECA TIENE CONSECUENCIAS COSTOSAS, *available at* <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/srea17.shtm>.

⁴⁵ See FED. TRADE COMM'N, FOR HOMEOWNERS, *available at* <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea16.shtm>; FED. TRADE COMM'N, UN NOTA PARA LOS DUEÑOS DE CASA, *available at* <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/srea16.shtm> (providing guidance to homeowners in danger of foreclosure and foreclosure-related scams).

⁴⁶ See FED. TRADE COMM'N, FORENSIC MORTGAGE LOAN AUDIT SCAMS: A NEW TWIST ON FORECLOSURE RESCUE FRAUD, *available at* <http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt177.shtm>; FED. TRADE COMM'N, ESTAFAS DE AUDITORÍA FORENSE DE PRÉSTAMOS HIPOTECARIOS UNA NUEVA VARIACIÓN DEL FRAUDE DE RESCATE DE EJECUCIÓN HIPOTECARIA, *available at* <http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/salt177.shtm>.

⁴⁷ See FED. TRADE COMM'N, MORTGAGE SERVICING: MAKING SURE YOUR PAYMENTS COUNT, *available at* <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea10.shtm>; FED. TRADE COMM'N, SERVICIOS DE ADMINISTRACIÓN DE PRÉSTAMOS HIPOTECARIOS: CÓMO ESTAR SEGURO DE QUE SUS PAGOS SE ACREDITEN, *available*

Information about timeshares is provided in the FTC’s consumer alert “Selling a Timeshare Through a Reseller: Contract Caveats.”⁴⁸

V. Future FTC Activities and the Dodd-Frank Act

The Dodd-Frank Act, enacted in July 2010, substantially restructured the financial services law enforcement and regulatory system.⁴⁹ Under the Act, the Commission retains its authority to enforce Regulations B, E, M, and Z (and was granted the authority to enforce any Bureau of Consumer Financial Protection (“CFPB”) rules) regarding the entities within the FTC’s jurisdiction; these include most providers of financial services that are not banks, thrifts, and federal credit unions. The Dodd-Frank Act requires that the Commission and the CFPB coordinate certain law enforcement activities, and negotiate an agreement to do so by January 21, 2012.⁵⁰ The Commission is committed to continuing to vigorously enforce Regulations B, E, M, and Z.⁵¹ The FTC looks forward to coordinating with the Board, the CFPB, and other federal agencies in the implementation of the Dodd-Frank Act.

The Dodd-Frank Act assigns the FTC new enforcement authority regarding payment cards by adding a new Section 920 to EFTA, which, among other things, restricts certain

at <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/srea10.shtm>.

⁴⁸ See FED. TRADE COMM’N, SELLING A TIMESHARE THROUGH A RESELLER: CONTRACT CAVEATS, *available at* <http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt185.shtm>.

⁴⁹ 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). Part V of this report addresses the impact of the Dodd-Frank Act on selected Commission activities pertaining to the statutes and Regulations that are covered by this report and over which the Commission has jurisdiction. The Dodd-Frank Act may affect additional aspects of these statutes and Regulations in the future.

⁵⁰ Dodd-Frank Act, *supra* note 49, § 1024.

⁵¹ The Commission is also committed to continuing to vigorously enforce the law to prevent fraud related to mortgage assistance relief services and foreclosure rescue services, *see supra* note 29, as well as debt relief services. The Commission has brought over twenty-three cases against providers of debt relief services. Among other things, bogus operations offer consumers false promises of reducing credit card debts in exchange for large, up-front fees. In 2010, the Commission amended the Telemarketing Sales Rule (“TSR”), 16 C.F.R. § 310, to address these issues. *See* TSR, Final Rule Amendments, 75 Fed. Reg. 48458 (Aug. 10, 2010), *available at* <http://www.ftc.gov/opa/2010/07/tsr.shtm>; *see also* “List of FTC Law Enforcement Actions Against Debt Relief Companies,” *id.* The rule bans for-profit companies that sell debt relief services over the telephone from charging advance fees before providing services; prohibits misrepresentations; requires specific disclosures; and extends the TSR to cover calls that consumers make to these companies in response to debt relief advertising.

Under the Dodd-Frank Act, *see supra* note 49, the Commission’s rulemaking authority under the Omnibus Act (both for the mortgage assistance relief services rulemaking, *see supra* note 29, and the mortgage acts and practices rulemaking, *see supra* note 36) will transfer to the CFPB on July 21, 2011. *See* 75 Fed. Reg. 57252 (Sept. 20, 2010).

practices related to debit and credit card transactions.⁵² These new provisions generally address business-to-business relationships and interactions between merchants, networks, issuers, and acquirers in the payment card transaction process. For example, payment card networks may not inhibit a merchant from offering consumers a discount or in-kind incentive for using a particular form of payment, provided the discount or incentive meets certain requirements. The Board must issue several implementing regulations regarding certain of the new EFTA requirements, and it recently issued new proposed rules to implement the debit card interchange fee and routing provisions of the Dodd-Frank Act.⁵³ The FTC has responsibility for enforcing the new requirements and any implementing regulations for payment card networks and certain other nonbank entities, such as non-federally chartered credit unions, that are covered by the rules. The Commission is continuing to monitor this area.

In connection with the Dodd-Frank Act, the Commission's staff has been engaged in ongoing and significant coordination with the U.S. Department of the Treasury regarding a possible new mortgage shopping form and streamlined mortgage disclosures, including those that may relate to TILA and the Real Estate Settlement Procedures Act.⁵⁴ Commission staff has previously conducted research on mortgage disclosures generally, and it continues to be actively involved in evaluating the efficacy of such disclosures.⁵⁵

Finally, Section 1029 of the Dodd-Frank Act gives the Commission new and expanded authority regarding motor vehicle dealers. The FTC retains its current law enforcement authority over motor vehicle dealers, although it will share that authority with the CFPB with respect to dealers engaged in certain practices. The Commission also obtains new authority as of July 21, 2011, to issue rules prohibiting unfair and deceptive acts and practices in connection with motor vehicle dealers, using the notice and comment rulemaking procedures in Section 553 of the Administrative Procedure Act rather than the more elaborate rulemaking procedures in Section 18 of the FTC Act. In connection with this new authority, the FTC is conducting outreach activities and reviewing a wide range of motor vehicle dealer practices. Section 1029

⁵² Dodd-Frank Act, *supra* note 49, § 1075. Certain amended provisions of EFTA took effect July 21, 2010; others become effective in 2011. *See id.*

⁵³ *See* Debit Card Interchange Fees and Routing, Notice of Proposed Rulemaking, (Dec. 16, 2010), *available at* <http://www.federalreserve.gov/newsevents/press/bcreg/20101216a.htm>. Among other things, the proposed rules would set standards for determining whether a debit card interchange fee that is received by a card issuer is reasonable and proportional to the cost incurred by the issuer for the transaction. The standards cover issuers (inclusive of their affiliates) with assets of at least \$10 billion; certain government-administered payment programs and reloadable general-use prepaid cards are exempt from the interchange fee limits. The proposal would also prohibit issuers and networks from restricting the number of networks over which debit cards may be processed.

⁵⁴ *See, e.g.*, Dodd-Frank Act, *supra* note 49, § 1098.

⁵⁵ *See, e.g.*, "Consumer Information and the Mortgage Market," <http://www.ftc.gov/be/workshops/mortgage/index.shtml> (conference regarding economic assessment of information regulation, mortgage choice, and mortgage outcomes); JAMES L. LACKO AND JANIS K. PAPPALARDO, FEDERAL TRADE COMM'N, BUREAU OF ECONOMICS STAFF REPORT, IMPROVING CONSUMER MORTGAGE DISCLOSURES: AN EMPIRICAL ASSESSMENT OF CURRENT AND PROTOTYPE DISCLOSURE FORMS (2007), *available at* <http://www.ftc.gov/opa/2007/06/mortgage.shtml>.

of the Dodd-Frank Act also requires the FTC and Board to coordinate with the CFPB's Office of Service Member Affairs to address certain motor vehicle issues related to members of the military. The Commission looks forward to working with the Board, the CFPB, and other federal agencies on this initiative.

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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 Carole Reynolds or Laura Johnson, Division of Financial Practices, at (202) 326-3224.

By direction of the Commission.

Donald S. Clark
Secretary