



Office of the Secretary

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

January 23, 2007

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

Dear Ms. Braunstein:

This letter responds to your request for information regarding the enforcement activities of the Federal Trade Commission (“Commission” or “FTC”) under the Truth in Lending, Consumer Leasing, Equal Credit Opportunity, and Electronic Fund Transfer Acts (“Acts”) during the 2006 calendar year, for use in preparing the Federal Reserve Board’s (“Board”) Annual Report to Congress. You have asked for information regarding the Commission’s enforcement activities pursuant to those Acts, including methods of enforcement, and the extent to which compliance is achieved by entities subject to the Commission’s enforcement authority.<sup>1</sup> Also, you have asked whether the Commission recommends any changes to these laws or their implementing regulations or wishes to provide other comments or observations.

## **I. THE COMMISSION’S 2006 ENFORCEMENT ACTIVITIES UNDER THE ACTS<sup>2</sup>**

### **Truth in Lending Act<sup>3</sup>**

In calendar year 2006, the Commission continued its enforcement activities against unlawful subprime lending practices, pursuing one ongoing litigation against a mortgage broker for alleged violations of the TILA, Regulation Z, and the FTC Act. In another action, the Commission settled charges against a corporate defendant in federal district court for alleged

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<sup>1</sup> The Commission is charged with enforcement of the Federal Trade Commission Act (“FTC Act”) and various federal consumer financial laws and regulations, including the Truth in Lending Act (“TILA”), Consumer Leasing Act (“CLA”), Equal Credit Opportunity Act (“ECOA”), and Electronic Fund Transfer Act (“EFTA”), with respect to most nonbank entities in the United States. The Commission does not have data regarding the extent of compliance by those numerous nonbank entities. As a result, this letter does not provide information on that issue.

<sup>2</sup> The Commission’s Web site at <http://www.ftc.gov> has additional information concerning the Commission’s enforcement and other activities discussed in this report.

<sup>3</sup> The Commission’s enforcement activities under the TILA in 2006 pertained to credit violations. No enforcement actions alleging violations of the CLA, an amendment to the TILA, were issued.

violations of the TILA, Regulation Z, and the FTC Act, regarding the sale of and refunds for tax-information products. There are other ongoing investigations of potential TILA violations.

#### **A. TILA Cases**

The Commission continued its litigation in federal district court against a mortgage broker, Chase Financial Funding, and its principals, for alleged violations of the FTC Act, and the TILA and Regulation Z, in connection with advertisements for extremely low mortgage rates.<sup>4</sup> According to the complaint, the defendants sent consumers spam and direct mail falsely offering consumers a “3.5% fixed payment” loan, when the loans advertised were adjustable rate mortgages, where the principal balance would increase if consumers made payments at the advertised rates. The complaint alleged that the defendants violated the FTC Act by deceptively claiming that they offered: 1) a fixed interest rate or fixed payment loan; 2) a loan in which payment of the minimum amount specified covers both interest and principal; 3) a loan with a specific payment schedule, interest rate, and/or APR; and 4) a loan with no prepayment penalty or a penalty that would not apply if the loan was refinanced through the defendants. The complaint also alleged that the defendants misrepresented the “annual cash savings” that consumers would receive if they refinanced through the defendants and that the defendants failed to disclose or to disclose adequately that monthly payment of the specified amount would result in negative amortization, causing an increase in the debt during the loan. The complaint further alleged that the defendants violated the TILA and Regulation Z by: 1) advertising credit terms other than those that actually are or will be arranged or offered by the creditor; 2) stating a rate of finance charge without clearly and conspicuously disclosing the APR or the fact that the APR may increase after consummation; 3) advertising a “payment rate” without making other required disclosures; and 4) failing to disclose the terms of repayment or the APR, as required. The complaint seeks consumer redress and other permanent equitable relief.

As reported last year, the stipulated preliminary injunction that the court entered in Chase Financial Funding remains in place. In 2006, defendant chief executive officer James F. Berry filed for bankruptcy,<sup>5</sup> following his agreement in 2005 to pay \$400,000 to the Commission among other terms, under a stipulated order releasing him from confinement for civil contempt of the stipulated preliminary injunction. The Commission filed a proof of claim for amounts owed to the Commission in the underlying federal district court action and the contempt action.<sup>6</sup> Litigation continues in the case.

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<sup>4</sup> Federal Trade Commission v. Chase Financial Funding, Inc., No. SACV 04-549 GLT (ANx) (C.D. Cal. filed May 12, 2004).

<sup>5</sup> In re Berry, No. 8:06-BK-10560-JR (Bankr. C.D. Cal. Apr. 20, 2006).

<sup>6</sup> Id. (Bankr. C.D. Cal. Oct. 17, 2006).

The Commission settled charges in a case filed in 2002 against National Audit Defense Network, Inc. (“NADN”).<sup>7</sup> Among other things, the complaint alleged the defendant violated the FTC Act and the TILA and Regulation Z regarding misrepresentations about merchandise refunds and by failing to timely credit consumers’ credit card accounts after accepting the return of tax-information products or otherwise acknowledging that refunds were owed. Under the stipulated final judgment and order, NADN’s bankruptcy trustee agreed not to seek court authorization to operate the business and will notify the Commission before selling any NADN customer database, to enable the Commission to object to the sale. Litigation continues against various individuals in the case.

## **B. Other Initiatives**

\_\_\_\_\_ In 2006, the Commission sponsored a day-long public workshop, Protecting Consumers in the New Mortgage Marketplace (the “Workshop”), on consumer protection issues arising from the growth of “nontraditional” or “alternative” mortgage products in the residential mortgage marketplace.<sup>8</sup> The Workshop explored the financial benefits and risks of new mortgage products, focusing primarily on the two types of alternative mortgage products that have experienced the greatest growth in popularity and market share in the past two years: interest-only (“I/O”) loans and payment option adjustable rate mortgages (“payment option ARMs”). The Workshop also addressed the then-pending Interagency Guidance on Nontraditional Mortgage Products. Workshop panelists included industry representatives, consumer advocates, federal and state regulators, and academic and market authorities.

A summary of the Workshop was included in a comment letter filed by the Commission with the Board on September 14, 2006 (“comment letter”), in response to the Board’s notice regarding “The Home Equity Lending Market.”<sup>9</sup> The comment letter also describes the unfair and deceptive acts and practices uncovered through the Commission’s law enforcement activities. In addition, the comment letter discusses the importance of informed consumer choice at each stage of the mortgage lending process and the Commission’s Bureau of Economics’ (“BE”) current mortgage lending disclosure study. When the study is completed, the BE staff will publish a report with its findings on how required disclosures and other information impact consumers’ ability to understand mortgage costs and features in the prime and subprime mortgage markets.

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<sup>7</sup> Federal Trade Commission v. National Audit Defense Network, Inc., No. CV-S-02-0131 (D. Nev. filed Jan. 30, 2002); Id. (D. Nev. Aug. 25, 2006) (stipulated final judgment and order).

<sup>8</sup> See <http://www.ftc.gov/bcp/workshops/mortgage/index.htm>. A transcript and other information regarding the Workshop is available on the Commission’s Web site. See <http://www.ftc.gov/bcp/workshops/mortgage/transcript.pdf>.

<sup>9</sup> Letter to Jennifer L. Johnson, Secretary, Board of Governors of the Federal Reserve System from Federal Trade Commission by Donald S. Clark, Secretary (Sept. 14, 2006), available at <http://www.ftc.gov/opa/2006/09/fyi0661.htm>

In October 2006, the President signed into law the John Warner National Defense Authorization Act for Fiscal Year 2007, Pub. L. 109-364. Section 670 of this law provides for rate limits and other requirements, including provisions that relate to the TILA, on certain loans to active duty service members and their dependents. The law is to be implemented through rulemaking by the Department of Defense (“DOD”), which is required to consult with the federal banking agencies and the Commission in prescribing the regulations. The Commission’s staff is part of an interagency working group that is providing input to DOD.

### **C. Consumer and Business Education**

The Commission’s consumer and business education efforts for consumer credit and consumer leasing are important to its mission and enforcement goals. In 2006, the Commission released the “Consumer Credit Briefcase,” a miniature computer disk (“mini CD”) containing copies of many of the Commission’s credit-related consumer education materials, including publications on mortgages, credit cards and consumer loans. In furtherance of the Commission’s Hispanic Outreach program, the Commission published Spanish-language versions of credit-related brochures, including “Credit, ATM, and Debit Cards: What to do if They’re Lost or Stolen,” “Fair Credit Billing,” “Avoiding Credit and Charge Card Fraud,” and “Credit and Your Consumer Rights.”<sup>10</sup> All of the Commission’s consumer protection materials are made available to the public through the Commission’s Web site.<sup>11</sup>

#### **Equal Credit Opportunity Act**

Although no enforcement actions were issued in 2006, there are ongoing investigations of potential violations of the ECOA and Regulation B. As part of the ongoing law enforcement coordination efforts, the Commission staff continued its participation in the Interagency Task Force on Fair Lending, currently chaired by Board staff. The Commission also continued its consumer and business education efforts, including efforts to increase awareness of and compliance with the ECOA. The Commission’s new mini CD “Consumer Credit Briefcase,” and its Spanish-language publication “Credit and Your Consumer Rights,” discussed above, include information on consumer rights under the ECOA.

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<sup>10</sup> See FEDERAL TRADE COMM’N, TARJETAS DE CREDITO, DEBITO Y ATM; QUE HACER SI SE PIERDEN O SON ROBADAS, at <http://www.ftc.gov/bcp/online/spanish/credit/s-atmcard.htm>; FEDERAL TRADE COMM’N, FACTURACION IMPARCIAL DE CREDITO, at <http://www.ftc.gov/bcp/online/spanish/credit/s-feb.htm>; FEDERAL TRADE COMM’N, COMO EVITAR EL FRAUDE DE TARJETAS DE CREDITO Y CARGO, at <http://www.ftc.gov/bcp/online/spanish/credit/s-cards.htm>; and FEDERAL TRADE COMM’N, CREDITO Y SUS DERECHOS COMO CONSUMIDOR, at <http://www.ftc.gov/bcp/online/spanish/credit/s-crdright.pdf>

<sup>11</sup> See <http://www.ftc.gov/ftc/consumer.htm>

### **Electronic Fund Transfer Act**

In 2006, the Commission filed two federal district court actions for alleged violations of the EFTA, Regulation E, the FTC Act, and other federal statutes. Other investigations of potential EFTA violations are ongoing.

The Commission filed a complaint in federal district court against Remote Response Corporation, its marketing and management company, and various principals for, among other things, alleged violations of the EFTA, Regulation E, and the FTC Act.<sup>12</sup> According to the complaint, the defendants marketed to Spanish-speaking consumers and sold products under the name “Amerikash.” The complaint alleges that defendants made promises of a guaranteed, pre-approved MasterCard for an advance fee ranging from \$138-\$200 (along with free items such as an ATM card and phone card) and a free trial membership in a discount health plan. The complaint alleges that many consumers never received a MasterCard, and instead received only a random combination of the free items, and that many consumers received nothing. The complaint also alleges defendants charged consumers’ credit cards, or debited their bank accounts for the discount health plan on a recurrent basis, without obtaining their authorization for preauthorized electronic fund transfers in violation of the EFTA and Regulation E. The complaint seeks consumer redress and other permanent equitable relief.

Upon motion by the Commission, the court entered an *ex parte* temporary restraining order freezing the defendants’ assets and prohibiting them from engaging in the violations alleged by the complaint<sup>13</sup> and a stipulated preliminary injunction with an asset freeze and other equitable relief.<sup>14</sup> As the litigation progressed this year, the Commission obtained a default judgment and permanent injunction against defendant Instant Way Corp<sup>15</sup> and successfully moved the court for a civil contempt order against three individual defendants for failure to comply with the financial disclosure requirements of the preliminary injunctions.<sup>16</sup> The trial is scheduled for April 2007.

The Commission filed a complaint in federal district court against a group of corporate and individual defendants (collectively, “Berkeley Premium”) for, among other things, alleged violations of the EFTA, Regulation E, and the FTC Act.<sup>17</sup> According to the complaint, the

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<sup>12</sup> Federal Trade Commission v. Remote Response Corp., No. 06-20168-CIV (S.D. Fla. filed Jan. 23, 2006). The complaint was later amended to include additional principals of Remote Response Corp. Id. (S.D. Fla. June 5, 2006).

<sup>13</sup> Id. (S.D. Fla. Jan. 23, 2006).

<sup>14</sup> Id. (S.D. Fla. Feb. 15, 2006). A second stipulated preliminary injunction was entered against two of the additional principals of Remote Response Corp. Id. (S.D. Fla. June 20, 2006).

<sup>15</sup> Id. (S.D. Fla. Aug. 1, 2006).

<sup>16</sup> Id. (S.D. Fla. Oct. 6, 2006).

<sup>17</sup> Federal Trade Commission v. Warshak, No. 1:06-cv-00051-SJD (S.D. Ohio filed Jan. 30, 2006).

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defendants offered consumers “free” samples of their dietary supplements and enrolled them in a program that automatically shipped them more pills and billed them for the shipments, even though most consumers never agreed to participate in the program. The complaint charged that after consumers provided credit or debit card information to pay the \$4.50 shipping and handling fee for the “free” samples, the defendants used that information to bill consumers for future shipments that they sent automatically. The defendants enrolled consumers in the continuity program, according to the complaint, and automatically billed them on a recurring basis without obtaining their authorization for the recurring debits in violation of the EFTA and Regulation E. The complaint seeks, among other things, permanent injunctive relief and consumer redress.

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

The Commission has no suggestions for changes in the Acts or their implementing Regulations at this time.

The Commission 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 Peggy Twohig, Associate Director, Division of Financial Practices, at (202) 326-3224.

By direction of the Commission.

Donald S. Clark  
Secretary