Excerpt from Online Lenders Alliance (“OLA”) Webinar
“Update on the Current Regulatory and Litigation Environment” – Federal Trade Commission

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Federal Trade Commission Update

•Continuing to move forward with ongoing investigations and litigation; and new investigations.
•Chairman appears to be seeking consensus; but commissioners are objecting to staff work and settlement conditions. What does this mean?
•Safeguarding of consumers during the Coronavirus Pandemic.
•Notable recent developments:
  • Settlement w/ rent-to-own payment plan company (financing)
  • Settlement w/ comparison shopping website
  • Staff Report on Forum on Small Business Financing
  • Settlement w/ student loan debt relief companies, and credit repair company
  • FTC v. LendingClub, filed in 2018, FTC MSJ pending as of April 2020, LC pushing for trial and testimony (alleged misreps re “no hidden fees”)
  • Co-host of Workshop w/ CFPB on Credit Reporting
  • Focus on privacy and data security, w/record settlement
  • Safeguards Workshop on June 13
  • Ongoing litigation over FTC’s enforcement authority, 7th Circuit upends precedent and creates split
FTC v. Progressive Leasing

• Rent-to-own payment plans in retail stores
• Alleged misleading marketing of payment plans, e.g., “same as cash,” or “no interest.”
• Alleged company was aware of consumer confusion with > 15k complaints in 15 month-period
• $175m settlement for refunds, prohibition on misrep. the cost, terms, or nature of its plans, and must get consumers’ express, informed consent before charging or billing them; monitoring of third party, such as retailers.
• Dissent - Commissioner Rebecca Kelly Slaughter contended that the proposed settlement does not adequately remediate harm or achieve appropriate deterrence. She advocated for (i) higher monetary relief, closer to the total amount Progressive charged consumers over the cash price—in excess of $1 billion; (ii) individual liability for Progressive’s CEO because he participated directly in the allegedly illegal practices or had authority to control them and because Progressive’s parent company, Aaron’s, had been subject to prior FTC actions; and (iii) charging Progressive with a violation of the Restore Online Shoppers’ Confidence Act (ROSCA).
• Takeaways: FTC will look at company more than once; importance of disclosure and digital design; responsibility for third parties, such as retailers (e.g., lead generators for financing)
In the Matter of LendEDU, et al.

- Website compares student loans and other financial products
- Alleged misleading marketing that led consumers to believe website provided objective product information, when in fact they provided higher rankings and ratings to companies that paid for placement.
- FTC’s complaint alleged operators of LendEDU.com falsely claimed that the website provided “objective,” “accurate,” and “unbiased” information about consumer financial products, such as student loans, personal loans, and credit cards. Specifically, LendEDU misrepresented that the information on its website was not affected by compensation from advertisers. Also, alleged made-up consumer reviews.
- $350k settlement and prohibition on making the alleged misreps.
- **Takeaways:** disclose material connection, and endorsements; disclosure and placement of influence of compensation on content or other material connections; disclose and placement of any material connection between endorser and advertiser.

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<th>Top 9 Companies for Student Loan Refinancing: In-Depth Reviews</th>
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<td>1. SoFi</td>
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<td>- Refinance and consolidate both federal and private student loans</td>
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<td>- Rates as low as 2.88% for variable rates</td>
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<td>- Rates as low as 3.25% for fixed rates</td>
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<td>- Easy application process</td>
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<td>2. Earnest</td>
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<tr>
<td>- Fixed rates as low as 3.35%</td>
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<td>- Data-driven customer evaluation helps you get qualified</td>
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<td>- Zero application fees, origination fees, or pre-payment fees</td>
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<td>3. LendKey</td>
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<td>- You deserve a better student loan</td>
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<td>- Average client saves $16,609</td>
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LendEDU’s Allegedly Poor For Student Refinancing Rankings
The 12-page report provides staff perspectives on key issues discussed at the FTC’s May 2019 forum on small business financing, “Strictly Business,” including online loans and alternative financing products (Forum).

The report includes several staff cautions to small business finance providers and their service providers to help them avoid the types of conduct the FTC has alleged to be unlawful.

The report emphasizes that the FTC has broad jurisdiction over commercial financing under the FTC Act and other laws that prohibit deceptive, unfair, and unlawful practices by small business financing providers and their marketers, servicers, and collectors.

Perhaps to underscore this point, the staff repeatedly refer to small business borrowers as "consumers" throughout the report, suggesting that they see no difference in the FTC's authority over consumer protection and small business protection.

Between the lines: Given the attention small business financing products are receiving, it would not be surprising if the FTC has open investigations involving small business financing products.
Questions?

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