Statutory and Regulatory Primer: Truck Leasing Task Force
Federal Motor Carrier Safety Administration, Department of Transportation
October 16, 2023
Re: Potential regulatory recommendations to protect commercial motor vehicle operators from predatory truck lease purchase agreements

I. Introduction

Section 23009 of the Infrastructure Investment and Jobs Act of 2022 ("IIJA") directed the Secretary of Transportation to establish the Truck Leasing Task Force ("TLTF").[1] First convened in July 2022, the TLTF is composed of nine members, each of whom brings expertise from the labor movement, motor carriers, consumer protection, the law, academia, or a combination of these sectors.[2]

[1] Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58 (2021) (hereinafter "IIJA").
[2] FMCSA, Truck Leasing Task Force (TLTF) Members, (Accessed: Sept. 14, 2023), https://www.fmcsa.dot.gov/advisory-committees/tltf/tltf-members.

The IIJA directed the TLTF to "examine, at a minimum": common truck leasing arrangements, including lease-purchase agreements ("LPAs"), and their terms; the existence and effects of inequitable leasing agreements and terms; the impact of lease agreements on drivers' net compensation; whether leasing agreements incentivize the safe operation of vehicles; financial resources available to drivers; and opportunities that lease agreements create for drivers.[3] At the conclusion of the taskforce's work, the IIJA directs the TLTF to submit a report of its findings, best practices relating to preventing "impacts on safety," as well as "recommendations relating to changes to laws (**including regulations**) … to promote fair leasing agreements under which a commercial motor vehicle driver … is able to earn a rate commensurate with other commercial vehicle drivers performing similar duties."[4]

A truck leasing arrangement often includes at least two separate leasing contracts. First, a commercial motor vehicle ("CMV")[5] driver signs an "equipment lease," leasing a truck from a motor carrier or an affiliated truck leasing company. Second, that same driver signs a "services lease," leasing their driving services and the truck back to the motor carrier. Under a lease-only agreement, the equipment lease is a time bound rental agreement of equipment over which the motor carrier or affiliate will always retain ownership of the truck. Under an LPA, the driver is required to pay a down payment and, at the end of the lease term, the purported goal is for the driver to gain ownership of the truck.

Due to the particular harms that they can cause and for the sake of simplicity, this document focuses on LPAs. However, many of the dangers and potential remedies could apply to lease-only agreements as well.

This document:

1. briefly explains several problems in the trucking industry caused by truck LPAs;
2. identifies several features of trucking LPAs that are often exploitative;
3. provides an overview of roughly analogous debt products in other areas of the economy, and explains how federal, state, and local agencies and legislatures have constructed regulatory schemes to mitigate predatory behavior; and
4. suggests how existing statutory authorities may empower federal agencies to take action to make trucking LPAs safer for CMV drivers.

II. The Perils of Trucking LPAs

This section briefly explains several problemscaused by trucking LPAs. This justification for action is not exhaustive and could be supplemented by the findings of the Truck Leasing Task Force ("TLTF").

A. Truck lease-purchase agreements are widely used in the trucking sector, but can increase financial precarity for drivers.

A lease-purchase agreement ("LPA") is a form of employer-driven debt that is prevalent in the trucking sector. Large trucks are expensive, and many drivers who have dreams of owning their own rig may not have access to the credit required to finance such a purchase.[6] Some carriers and third-parties advertise LPAs to these

[3] IIJA § 23009(c).
[4] *Id.* § 23009(d) (emphasis added).
[5] Drivers who enter into LAs are almost always classified as independent contractors, and some of those contractors may be "owner-operators." The two terms are often used interchangeably, but there is at least one distinction: owner-operators have legal authority to deliver freight throughout the country without a contract through a carrier. However, this distinction often breaks down in the context of LAs, as such agreements often include restrictions on hauling freight of carriers that are not party to the LA.
[6] Alan Prendergast, *How Lease Deals Have Truckers Hauling a Load of Debt*, Westword, (Mar. 2, 2021), https://www.westword.com/news/truckers-lease-deal-pathways-lawsuit-highway-safety-supply-chain-11907958.

drivers, under which the carrier leases a truck to a driver, with the purported goal of the driver paying off the cost of the truck over the course of the lease and becoming an owner-operator.

LPAs can inflict a variety of harms on drivers. Principal among them is that signing an LPA can result in financial catastrophe for drivers. The difficult economics of trucking – coupled with motor carriers' control over load assignments and contractual terms – can create a virtually impossible economic situation for an owner-operator subject to an LPA. While motor carriers and other LPA providers are not forthcoming about failure rates[7] (i.e. how often LPA drivers are unable to complete payments on the lease and gain ownership of the truck), reports suggest LPAs almost always end in failure and it is common for an LPA program to have a 90 to 95 percent failure rate.[8]

LPAs can create cycles of debt that are difficult for drivers to escape.[9] Many drivers are lured into these agreements with the promise of attractive terms and future ownership, only to find themselves trapped in a cycle of perpetual payments, often at effective interest rates that have them paying up to six or seven times the actual value of the truck over the course of the LPA.[10] The terms of these agreements can be complex and heavily skewed in favor of the LPA provider, which is often a motor carrier. Drivers find themselves burdened by high lease payments, substantial and unexpected maintenance costs, and limited control over the choice of maintenance providers.[11] If drivers are unable to meet the demanding financial requirements, they risk losing not only their investment but also their livelihoods, as agreements include clauses that allow the leasing company to repossess the vehicle with little recourse for the driver. This can lead to a downward spiral of financial instability and job insecurity, undermining the very goal of achieving truck ownership: financial security. While truck LPAs may seem like a stepping stone towards greater autonomy and ownership, they can often result in adverse consequences that harm drivers' financial stability, job satisfaction, and overall well-being.

B. Economic pressure caused by predatory LPAs impacts driver and public safety.

As highlighted above, LPAs have emerged as a source of significant economic pressure on drivers, creating a cascade of consequences that extend beyond financial strain. Drivers who sign these agreements often witness a sharp decline in their take-home net compensation, grappling with lease payments and truck-related expenses.[12] One driver interviewed by USA Today offered a few weeks as examples:

> A stack of weekly paychecks [the driver] keeps in a drawer at home shows his worst weeks. He grossed $1,970 on June 3, 2011, but it all went back to [the LPA provider]. After the lease and other truck expenses, he took home $33. On February 10, 2012, he took home $112 after expenses. The next week, he made 67 cents.[13]

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[7] Real Women in Trucking comment to the Truck Leasing Task Force 3, (Jul. 6, 2023), https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2023-07/RWIT%20Public%20Comment%20Letter%20to%20Truck%20Lease%20Task%20Force.pdf (hereinafter "RWIT comment").
[8] Truckers Justice Center, 10 Stupid Things Drivers Do to Ruin Their Careers - 8 - Signing a Lease Purchase Agreement, (Nov. 16, 2017), https://www.youtube.com/watch?v=WzP0W1Cz_D0; Deposition of Matthew T. Douglass 76, Vice President of Operations, Celadon in *Blakley v. Celadon Group, Inc.*, No. 1:16-cv-00351, (Oct. 26, 2016), on file.
[9] Alan Prendergast, *How Lease Deals Have Truckers Hauling a Load of Debt*, Westword, (Mar. 2, 2021), https://www.westword.com/news/truckers-lease-deal-pathways-lawsuit-highway-safety-supply-chain-11907958.
[10] RWIT comment at 6.
[11] *Id.* at 5-6.
[12] Brett Murphy, *Rigged*, USAToday (Jun. 16, 2017), https://www.usatoday.com/pages/interactives/news/rigged-forced-into-debt-worked-past-exhaustion-left-with-nothing/.
[13] *Id.*

As economic pressure mounts, it creates incentives that can produce unsafe driving practices. The prospect of meeting onerous lease obligations, coupled with the need to secure a livable net compensation, can propel drivers to violate hours-of-service ("HOS") regulations and speed limits.[14] While direct research on the correlation between employer-driven debt practices like LPAs and commercial motor vehicle safety is limited, there is plenty of evidence connecting economic pressure generally and impacts on driver behavior and safety. The work of Professor Michael Belzer underscores the intrinsic connection between trucker pay and safety,[15] while governmental investigations and studies reveal how economic pressure stemming from unpaid detention time[16] can increase crash rates.[17] Comparable findings in Australia prompted legislative action in that country that mandated higher pay for drivers to reduce unsafe driving behavior.[18] The interplay between economic strain and road safety highlights the safety challenges that LPAs pose.

Additionally, economic pressure stemming from LPA may create a disincentive for drivers to invest in critical safety-related repairs and maintenance. A study conducted by the Congressional Office of Technology Assessment revealed that, in situations where financial burdens dominate, drivers may prioritize cost-cutting over comprehensive vehicle upkeep.[19] This dynamic underscores the broader consequences of economic pressure, ultimately compromising the safety of both drivers and the general public, as vehicles may become inadequately maintained due to financial constraints.[20]

III. Often-Exploitative Features of LPAs

[14] Seattle Truck Law PLLC, *Do Truck Companies Pressure Drivers to Break the Law?*, (Feb. 11, 2020), https://www.seattletrucklaw.com/blog/do-truck-companies-pressure-employees-to-break-the-law/.
[15] Belzer's book cites research that suggests that a substantial increase in trucker compensation would reduce truck crashes fourfold. Alan Prendergast, *How Lease Deals Have Truckers Hauling a Load of Debt*, Westword, (Mar. 2, 2021), https://www.westword.com/news/truckers-lease-deal-pathways-lawsuit-highway-safety-supply-chain-11907958; Michael Belzer, Truck drivers are overtired, overworked and underpaid, Wayne State University, (Jul. 25, 2018), https://clas.wayne.edu/news/truck-drivers-are-overtired-overworked-and-underpaid-31408; Michael H. Belzer, Daniel Rodriguez, & Stanley Sedo, Paying for Safety: An Economic Analysis of the Effect of Compensation on Truck Driver Safety, (Jan. 2002), https://www.researchgate.net/publication/242737359_Paying_for_Safety_An_Economic_Analysis_of_the_Effect_of_Compensation_on_Truck_Driver_Safety; Compensation and crash incidence: Evidence fromt he National Survey of Driver Wages, 34 The Economic and Labour Relations Review, 118–139, (2023), https://www.cambridge.org/core/services/aop-cambridge-core/content/view/AD774AF0DACD1B078EB06E182FF3441B/S1035304622000138a.pdf/compensation-and-crash-incidence-evidence-from-the-national-survey-of-driver-wages.pdf (finding that better job benefits are associated with fewer crashes and "that current piece rate practices are unsafe").
[16] Refers to the (mostly) unpaid time that truckers spend waiting for loading and unloading. Safety and Health Magazine, FMCSA to study impact of detention time on trucker safety, (Sept. 2, 2023), https://www.safetyandhealthmagazine.com/articles/24415-fmcsa-to-study-impact-of-detention-time-on-trucker-safety.
[17] Michael Belzer, Truck drivers are overtired, overworked and underpaid, Wayne State University, (Jul. 25, 2018), https://clas.wayne.edu/news/truck-drivers-are-overtired-overworked-and-underpaid-31408; The U.S. Government Accountability Office found a relationship between safety and truck driver compensation. GAO Report to Congressional Requesters, Freight Trucking: Promising Approach for Predicting Carriers' Safety Risks, (Apr. 1991), https://www.gao.gov/assets/pemd-91-13.pdf.
[18] Howard Abramson, *Safety drives Australia to end pay-by-the-mile*, FleetOwner, (Jan. 13, 2016), https://www.fleetowner.com/operations/drivers/article/21692626/safety-drives-australia-to-end-paybythemile.
[19] Congressional Office of Technology Assessment, Gearing Up for Safety: Motor Carrier Safety in a Competitive Environment 51, (1988), https://www.princeton.edu/~ota/disk2/1988/8817/881705.PDF.
[20] *Id.*

This section explains some features of lease-purchase agreements ("LPAs") that can be exploitative of drivers, and can leave drivers in dire financial straits. This section is not exhaustive, and could be supplemented by information gathered by the Truck Leasing Task Force ("TLTF").

A. Lack of disclosure

Trucking LPAs are often not transparent about lease terms, conditions, and likelihood of financial success. Despite the stated requirements of "truth-in-leasing" ("TIL") regulations,[21] LPAs are often complex. They're one-sided, form contracts that do not permit negotiation on terms.[22] Drivers are rushed to sign contracts and do not have the ability to review the LPAs with a lawyer prior to signing.[23] Details about important lease terms like large "balloon payments," miscellaneous equipment expenses, and the conditions around reimbursement to drivers of maintenance funds held in escrow are buried in the contracts.[24] Additionally, the condition of the equipment is not always readily apparent: LPA providers do not regularly provide detailed maintenance and crash records and opportunities to test drive.[25]

Additionally, purveyors of LPAs fail to disclose the frequency with which drivers who sign LPAs actually end up with ownership of the rig. And understandably so: success rates for LPAs are abysmal, frequently hovering below 10 percent.[26] LPA providers convince drivers to take on huge amounts of debt with a largely illusory promise of eventual ownership.

B. False advertising

Related to the lack of disclosure described above, companies that encourage drivers to sign LPAs may engage in advertising that misleads drivers. For example, many carriers advertise LPAs as "walk-away" leases, meaning that a driver can stop paying and return the truck at any time with no financial penalties. According to a Consumer Financial Protection Bureau report on employer-driven debt practices, so-called "walk away" leases are often not at all what carriers advertise. In reality, drivers who seek to break the terms of their LPA are subject to aggressive attempts to collect on the full, often-inflated value of their truck.[27] Upon breach of a so-called "walk away" lease, drivers are immediately responsible for all payments that would have been made over the life of the contract – even though they build no equity in the equipment and the carrier is able to

[21] 49 C.F.R. Part 376.
[22] Brett Murphy, *Rigged*, USAToday (Jun. 16, 2017), https://www.usatoday.com/pages/interactives/news/rigged-forced-into-debt-worked-past-exhaustion-left-with-nothing/.
[23] Steve Viscelli, The Big Rig: Trucking and the Decline of the American Dream 149, (University of California Press 2016) (hereinafter "Big Rig"); Brett Murphy, *Rigged*, USAToday (Jun. 16, 2017), https://www.usatoday.com/pages/interactives/news/rigged-forced-into-debt-worked-past-exhaustion-left-with-nothing/.
[24] RWIT comment at 7.
[25] LabworksUSA, *Truck Leasing Task Force by FMCSA Targets Predatory Leasing Contracts*, (Jul. 12, 2023), https://labworksusa.com/truck-leasing-task-force-by-fmcsa-targets-predatory-leasing-contracts.
[26] Deposition of Matthew T. Douglass 76, Vice President of Operations, Celadon in *Blakley v. Celadon Group, Inc.*, No. 1:16-cv-00351, (Oct. 26, 2016), on file; Truckers Justice Center, 10 Stupid Things Drivers Do to Ruin Their Careers - 8 - Signing a Lease Purchase Agreement, (Nov. 16, 2017), https://www.youtube.com/watch?v=WzP0W1Cz_D0; RWIT comment at 5 ("Good" turnover in a lease program is ~40%).
[27] CFPB Office for Consumer Populations, *Consumer risks posed by employer-driven debt*, (Jul. 20, 2023), https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-consumer-risks-posed-by-employer-driven-debt/full-report/.

repossess the truck.[28] Owner-Operator Independent Driver Association ("OOIDA") Executive Vice President Lewie Pugh explained that he's "still never seen a walk-away lease."[29] Pugh continued, "[t]he amount of heartbreaking stories that we get here on a daily basis … If you walk away, they are coming after you. The stuff that's in these leases, they could take your home. We see this every single day at OOIDA."[30]

Carriers also like to sell drivers on the benefits of independence, small business ownership, and the ability to build their own fleet with a team of drivers working under them. However, due to the economic pressures that LPAs create for owner-operators, they are very rarely able to build such businesses.[31]

C. Excessive payments and inaccurate valuation

Carriers impose excessive charges on drivers through their equipment leases, including insurance, fuel,[32] maintenance,[33] and other fees.[34] This can leave drivers making close to $0 for their work or even accruing debt by the end of a pay period. Some carriers charge very high interest rates, with at least one carrier charging as much as 70% interest annually.[35]

Additionally, some carriers significantly over-charge the drivers for the price of the truck.[36] This can also manifest in extremely drawn out leases, which may have smaller payments but drag on for many years.[37] Drivers find themselves having to run long routes to try to make the payments, but some carriers also charge drivers for running over a certain number of miles.[38] Some LPAs include early payoff penalties to prevent drivers from fully paying off the principal of their truck ahead of schedule and depriving the carrier of interest payments.[39]

Balloon payments that become due towards the end of lease terms are prevalent and have the potential to devastate drivers' finances. These leave drivers in impossible situations, especially given how little money they are able to make throughout the time they are paying the lease. If a driver doesn't pay the balloon payment, they lose all the payments they have made and everything in their escrow account, as well as access to the

[28] Big Rig at 148; Smart Trucking, The Lease Purchase Contract From Hell, (May 22, 2020), https://www.youtube.com/watch?v=CgwZ2UePxUY (discussing "non-cancellable" lease clauses).
[29] Landline Media, *OOIDA: Be wary of 'predatory' lease-purchase agreements,* (Jul. 27, 2021), https://landline.media/ooida-be-wary-of-predatory-lease-purchase-agreements/.
[30] *Id.*
[31] Deposition of Matthew T. Douglass 86, Vice President of Operations, Celadon in *Blakley v. Celadon Group, Inc.*, No. 1:16-cv-00351, (Oct. 26, 2016), on file.
[32] Sometimes at inflated prices. Big Rig at 156 (discussing a fuel surcharge).
[33] Sometimes this includes requiring drivers to go to certain mechanics affiliated with the company who will charge more than others, rather than conducting their own maintenance or choosing who to work with. Big Rig at 148-9.
[34] There could be a variety of extra fees that drivers pay. Some charge truckers a parking fee to use the company lot. One company charged for the office toilet paper and other supplies. Big Rig at 149; Brett Murphy, *Rigged*, USAToday (Jun. 16, 2017), https://www.usatoday.com/pages/interactives/news/rigged-forced-into-debt-worked-past-exhaustion-left-with-nothing/.
[35] Big Rig at 149.
[36] Truckstop, *Lease Purchase Trucking: Pros, Cons, and Considerations*, (Sept. 18, 2021), https://truckstop.com/blog/lease-purchase-trucking/; Big Rig at 148.
[37] Truckstop, *Lease Purchase Trucking: Pros, Cons, and Considerations*, (Sept. 18, 2021), https://truckstop.com/blog/lease-purchase-trucking/.
[38] Big Rig at 149.
[39] Truckstop, *Lease Purchase Trucking: Pros, Cons, and Considerations*, (Sept. 18, 2021), https://truckstop.com/blog/lease-purchase-trucking/.

truck and their jobs.[40] Even if a driver *is* able to cover the balloon payment, some carriers try to prevent drivers from ultimately paying off their truck by limiting how much work goes to the driver through the service lease.[41]

D. Escrow and maintenance

In addition to miscellaneous fees that carriers add on to LPAs, they frequently require drivers to fund escrow accounts. These accounts are purportedly used for maintenance costs, but in practice function as collateral to be seized if the driver is unable to continue their payments. The escrow contributions reduce drivers' monthly compensation and then subject the drivers to an even larger loss (i.e. forfeiture of the escrow amount) if they breach the LPA.[42]

Drivers under LPAs are responsible for maintenance and repairs, but are also frequently required to perform maintenance only at carrier-approved or carrier-owned sites, which could be more expensive than other sites of comparable quality.[43]

E. Lack of driver control

LPAs are tools that carriers often use to shift business costs onto drivers by classifying drivers as independent contractors, while retaining contractual control over the manner in which they do business. While carriers advertise LPA agreements as a way for drivers to become their own boss and gain freedom to choose their routes and the loads they carry, the reality is that most owner-operators under LPAs are also required to sign a service lease that obligates the driver to haul only freight loads offered to them by that carrier.[44] Without the freedom to advertise their services to other carriers or companies directly – and with the carriers determining both the amount of compensation that the driver earns through hauling loads and the amount the driver owes each month to the carrier on the equipment lease – the owner-operators have little of the autonomy that providers of LPAs promise. Even within service leases that purport to permit the driver to haul for other carriers, the contracts might include prohibitively large security deposits that effectively foreclose this option to drivers.[45]

Newly-trained drivers also often lack a meaningful choice when considering whether to enter into an LPA. Drivers graduating from training schools are often financially stretched and face a challenging set of options. The carrier may offer an employee job to the driver, but these often include restrictive employment terms like training repayment agreement provisions ("TRAPs")[46] that require the driver to pay a financial penalty if they leave within a certain period of time. The carrier may instead demand that the driver sign an LPA – sometimes leveraging the promise of releasing the driver from their TRAP obligation if they sign onto the

[40] *Id.*
[41] Big Rig at 151.
[42] *Id.* at 148.
[43] *Id.* at 148-9.
[44] Big Rig at 146; *see also* DAT Freight & Analytics, *A Guide to Owner-operator Lease Agreements*, (Accessed: Sept. 15, 2023), https://www.dat.com/resources/guide-to-owner-operator-lease-agreements (one industry stakeholder directly suggesting that carriers put clauses into their LPAs that "explicitly state that the trucking company has control and exclusive possession of the owner operator and their equipment while the lease is in effect.")
[45] *Brant v. Schneider Nat'l, Inc.*, 43 F.4th 656, 663 (7th Cir. 2022).
[46] *See* Governing for Impact, et al. letter to Wage and Hour Division, Department of Labor on Fair Labor Standards Act application to stay-or-pay contracts, (Oct. 4, 2023), https://governingforimpact.org/wp-content/uploads/2023/10/DOL-Stay-Or-Pay-Letter.pdf.

new, even more significant debt-load implied by an LPA.[47] Technically, drivers can choose to walk away. But given the training debt many have incurred and the challenging financial situation in which most beginner drivers find themselves, this is rarely a viable option.

IV. Potentially Analogous Regulatory Schemes

As the Truck Leasing Task Force ("TLTF") considers how to recommend mitigating the above-described risks, an examination of roughly analogous debt products and the regulatory schemes that federal, state, and local authorities have crafted to protect consumers could prove useful.

This section identifies five debt areas (rent-to-own retail, auto loans, payday loans, mortgages, and franchising), briefly explains the parallels between those types of debt and lease-purchase agreements ("LPAs"), and details regulatory methods that authorities have used to protect consumers from the products' most harmful outcomes. The final subsection organizes into a table the regulatory tools that various authorities have used to mitigate harms to individuals.

A. Rent-to-own retail

Rent-to-own retailers offer consumers merchandise (furniture, appliances, electronics) on an installment plan: buyers pay monthly payments on the item or appliance until it is paid in full.[48] Sometimes retailers themselves offer the repayment plans; sometimes they work with third-party financing companies to process repayment.[49] Similarly to trucking LPAs, rent-to-own financers generally target consumers with no or poor access to credit, and who may not be able to access financing for the item in another manner.[50] Much like LPAs, consumers ultimately have the goal of owning the item in question, but rent-to-own contracts are set up so that consumers do not accrue equity in the item. If they stop paying their monthly payments, the retailer can repossess the merchandise.[51] Rent-to-own payment schemes often also result in the consumer paying significantly more for the item than it is worth, essentially creating an extremely high interest rate on the line of credit (though financers do not call this "interest," because they hope to avoid state usury caps).[52] Finally, rent-to-own companies rarely allow consumers sufficient time to review their contracts, and mislead consumers about how much their interest rates are (or whether there is interest), about the impact of the financing on consumers' credit, and about the total cost of the lease. These predatory practices parallel those seen in the trucking industry. Like rent-to-own schemes, LPAs impose high effective interest rates, carriers can repossess the trucks with limited recourse for drivers, and drivers are often deprived of a meaningful opportunity to review the contracts.

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[47] *See* RWIT comment at 14 (describing "tuition labor agreement that then roll into lease purchase trucks").
[48] Geoff Williams, *What to Know About Rent-to-Own Stores*, US News & World Reports, (Apr. 10, 2023), https://money.usnews.com/money/personal-finance/spending/articles/what-to-know-about-rent-to-own-stores.
[49] NYC Consumer and Worker Protection, The New Rent-to-Own: More Confusing, Still Expensive, and Offered at an NYC Store Near You, (Apr. 2021), https://www.nyc.gov/assets/dca/downloads/pdf/partners/Lease-To-Own-Report.pdf.
[50] *Id.*
[51] Brian Highsmith & Margot Saunders, The Rent-to-Own Racket, National Consumer Law Center (Feb. 2019), https://www.nclc.org/wp-content/uploads/2022/09/report-rent-to-own-racket.pdf; Geoff Williams, *What to Know About Rent-to-Own Stores*, US News and World Report, (Apr. 10, 2023), https://money.usnews.com/money/personal-finance/spending/articles/what-to-know-about-rent-to-own-stores.
[52] Brian Highsmith & Margot Saunders, The Rent-to-Own Racket 6, National Consumer Law Center (Feb. 2019), https://www.nclc.org/wp-content/uploads/2022/09/report-rent-to-own-racket.pdf.

There is no federal regulation specifically related to rent-to-own credit schemes.[53] However, the FTC has brought enforcement actions against companies that provide this kind of financing under 15 U.S.C. § 45(a)'s prohibition on unfair or deceptive acts or practices. Recently, the FTC settled with a rent-to-own company after claiming that they were engaging in misleading advertising, marketing, and promotion.[54]

These federal consumer protection statutes can prove useful for more generalized issues, however more specific statutes or regulations – which do exist on the state level – better address the unique predatory aspects of rent-to-own financing. New York law, for example, sets price limits on the merchandise, not allowing the total payments the consumer makes to exceed 2.25 times the cash price of the item.[55] New York also requires an extensive set of disclosures[56] to be included with each rent-to-own agreement, and requires that any agreement allow for an early-purchase option where the consumer can elect to pay for the merchandise[57] and immediately receive ownership rights for it. Connecticut state law delineates certain provisions that are prohibited in rent-to-own agreements, including any provisions requiring the garnishment or assignment of wages upon failure to pay.[58] These state statutes help protect consumers from entering into agreements without proper notice and limit the extent to which companies can over charge consumers for the products they are purchasing.

B. Auto loans

When looking to finance a car, most consumers use dealer-provided indirect financing at an auto dealership.[59] Under this financing model, the dealership forwards a consumer's financial information to prospective financing entities that determine whether to provide credit and under what terms.[60] At the same time, dealers often add their own finance charges or markups to the applicant's financing rate, not based on any relevant credit characteristics.[61] Other consumers, particularly those with no or poor access to credit, may find themselves using "buy here, pay here" credit schemes, financing their vehicles directly with the dealership, usually at a much higher interest rate.[62]

While not all car loans are harmful to consumers, predatory auto lending, under either of the financing models mentioned, can be very damaging to consumers and bear certain similarities to trucking LPAs. First, auto financing transactions and negotiations, like those for LPAs, can be extremely confusing to applicants. Though discussions can take a very long time and make applicants weary, consumers are often rushed into

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[53] Geoff Williams, *What to Know About Rent-to-Own Stores*, US News and World Report, (Apr. 10, 2023), https://money.usnews.com/money/personal-finance/spending/articles/what-to-know-about-rent-to-own-stores.
[54] Complaint in *Federal Trade Commission v. Prog Leasing, LLC*, Case 1:20-mi-999990UNA (Apr. 20, 2020), https://www.ftc.gov/system/files/documents/cases/progressive_leasing_complaint.docx.pdf; Settlement in *Federal Trade Commission v. Prog Leasing, LLC*, Case 1:20-mi-999990UNA (Apr. 22, 2020), https://www.ftc.gov/system/files/documents/cases/progressive_entered_order_4-22-2020.pdf.
[55] New York State Attorney General, Consumer Issues: Purchases, (Accessed: Sept. 18, 2023), https://ag.ny.gov/resources/individuals/consumer-issues/purchases; NY Pers. Prop. L. § 503 (2012).
[56] NY Pers. Prop. L. § 501 (2012); also included in Connecticut Law at Chap. 743i Sec. 42-241, https://www.cga.ct.gov/current/pub/chap_743i.htm.
[57] NY Pers. Prop. L. § 504 (2012) ("an amount equal to the cash price stated in the rental-purchase agreement multiplied by a fraction that has as its numerator the number of periodic payments remaining under the agreement and that has as its denominator the total number of periodic payments").
[58] Chap. 743i Sec. 42-242, https://www.cga.ct.gov/current/pub/chap_743i.htm.
[59] Federal Trade Commission, Motor Vehicle Dealers Trade Regulation Rule, 87 Fed. Reg. 42012, 42014 (Jul. 13, 2022).
[60] *Id.*
[61] *Id.*
[62] *Id.*

signing the final agreement without time to closely review the final terms.[63] In advertising, auto dealers fail to clarify whether the agreement is for a lease or purchase, leaving consumers believing they will own the car after making final payments on an advertised contract, but in reality requiring them to return the vehicle at the end of the lease.[64] In addition, "buy here, pay here" financing (particularly the high interest rates that accompany it), additional charges and hidden fees,[65] and the misrepresentation of contract terms reflect conduct seen in the context of LPAs. Auto dealers may advertise terms such as "0% APR," like motor carriers advertise a "walk away lease," but the contracts consumers sign do not reflect those terms.[66]

Some broader consumer protection statutes allow for the regulation of and bringing enforcement actions against predatory auto lenders. For example, under Section 5 of the FTC Act, the FTC can regulate unfair or deceptive business practices including misrepresentations to consumers.[67] To clarify the agency's authority, the FTC issued a proposal for a Motor Vehicle Trade Regulation in July of 2022. The proposed rule aimed to address issues in auto lending specifically and to "prohibit motor vehicle dealers from making certain misrepresentations, … require accurate pricing disclosures in dealers' advertising and sales discussions, require dealers to obtain consumers' express, informed consent for charges, [and] prohibit the sale of any add-on product or service that confers no benefit to the consumer[.]"[68]

This proposed rule would forbid misrepresentations of "[t]he costs or terms of purchasing, financing, or leasing a vehicle."[69] Similarly, the proposed rule would prohibit dealers from charging for any "add-on" products that do not provide a benefit to the consumer, and require that dealers receive "express, informed consent" for any additional charges other than the price of the vehicle.[70] Relatedly, some states require that any prices listed in advertisements be inclusive of all charges, so that consumers are not surprised by additional fees.[71] The proposed rule would also address disclosures, requiring that for every payment the dealer make clear to the consumer "(1) what the charge is for; and (2) the amount of the charge[.]"[72] During the NPRM process, the National Consumer Law Center suggested that the rule also require translation of all disclosures if requested.[73]

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[63] Adam J. Levitin, The Fast and the Usurious: Putting the Brakes on Auto Lending Abuses, Georgetown L. J. Vol. 108:1257, (Apr. 17, 2020), https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2020/05/Levitin_The-Fast-and-the-Usurious-Putting-the-Brakes-on-Auto-Lending-Abuses.pdf.

[64] See Complaint, *FTC* v. *Tate's Auto Ctr. of Winslow, Inc.,* No. 3:18-cv-08176-DJH at ¶¶ 38-46 (D. Ariz. July 31, 2018), (alleging company issued advertisements for attractive terms but concealed that the terms were only applicable to lease offers); Complaint, *United States* v. *New World Auto Imports, Inc.* No. 3:16-cv-02401-K at ¶¶ 36-38 (N.D. Tex. Aug. 18, 2016) (alleging misrepresentation that terms were for financing instead of leasing)

[65] Federal Trade Commission, Motor Vehicle Dealers Trade Regulation Rule, 87 Fed. Reg. 42012, 42016 (Jul. 13, 2022).

[66] Staff Report of the Bureau of Consumer Protection, Buckle Up: Navigating Auto Sales and Financing, Federal Trade Commission, Jul. 2020), https://www.ftc.gov/system/files/documents/reports/buckle-navigating-auto-sales-financing/bcpstaffreportautofinancing_0.pdf.

[67] 15 U.S.C. § 45(a)(1).

[68] Federal Trade Commission, Motor Vehicle Dealers Trade Regulation Rule, 87 Fed. Reg. 42012, 42012 (Jul. 13, 2022).

[69] Federal Trade Commission, Motor Vehicle Dealers Trade Regulation Rule, 87 Fed. Reg. 42012, 42045 (Jul. 13, 2022).

[70] Federal Trade Commission, Motor Vehicle Dealers Trade Regulation Rule, 87 Fed. Reg. 42012, 42046 (Jul. 13, 2022).

[71] *See, e.g.,* 940 CMR 5.00: Motor Vehicle Regulations, https://www.mass.gov/doc/940-cmr-5-motor-vehicle-regulations/download.

[72] Federal Trade Commission, Motor Vehicle Dealers Trade Regulation Rule, 87 Fed. Reg. 42012, 42046 (Jul. 13, 2022).

[73] Comment from National Consumer Law Center, et. al to the Federal Trade Commission on Motor Vehicle Dealer NPRM, (Sept. 12, 2022), https://www.nclc.org/wp-content/uploads/2022/09/FTC_auto_add_on_comment.pdf.

Though the proposed rule did not address interest rates in auto financing or more broadly, many states have laws capping interest rates, which protect consumers against predatory auto lending, among other unfair lending schemes. For example, interest rates are capped at 21% APR in Massachusetts,[74] and at 16% APR in New York[75] and New Jersey.[76] Additionally, some states mandate cooling off periods for consumer credit agreements.[77]

C. Payday and balloon-payment Loans

While there is not a universal or official definition, a payday loan generally refers to a loan that is relatively small ($500 or less), short-term, high-interest, and usually due on a borrower's next payday.[78] As the CFPB described in a rulemaking document on "covered short-term loans," which include payday loans, these credit products are "typically used by consumers who are living paycheck to paycheck" and "have little to no access to other credit products."[79] Payday lenders also typically offer loans without considering whether borrowers will be able to repay the loan while meeting other financial obligations.[80] While the size of the debt load involved with LPAs is significantly larger than that in the payday loan context, LPAs are also marketed to lower-income individuals with limited access to traditional credit, and are often offered to individuals without any verification that the individual would be able to repay the debt.[81] Both forms of debt have high rates of default and can cause cycles of debt from which it is difficult to recover. In many cases, borrowers do not fully understand the financial obligation involved in the arrangement and rush to commit to them without weighing the benefits and costs associated.

There have been numerous attempts at various levels of government to reduce harm to consumers wrought by payday loans, each with varying degrees of success. At the federal level, the CFPB in 2017 issued a final rule on "covered short term" and "longer-term balloon-payment loans," which included payday and vehicle title loans.[82] The centerpiece of the rule was a consumer vetting requirement that most lenders of these loans follow a process to demonstrate that they had reasonably determined that the consumer had the ability to

[74] Massachusetts Executive Office of Economic Development, Motor vehicle financing for consumers, (Accessed: Sept. 18, 2023), https://www.mass.gov/info-details/motor-vehicle-financing-for-consumers.
[75] FindLaw, New York Interest Rates Laws, (Jun. 20, 2016), https://www.findlaw.com/state/new-york-law/new-york-interest-rates-laws.html.
[76] *Id.*
[77] Del. Code Ann. tit. 18, § 3706(a)(4); Comment from National Consumer Law Center, et. al to the Federal Trade Commission on Motor Vehicle Dealer NPRM 39, (Sept. 12, 2022), https://www.nclc.org/wp-content/uploads/2022/09/FTC_auto_add_on_comment.pdf.
[78] CFPB, What is a payday loan?, (Jan. 17, 2022), https://www.consumerfinance.gov/ask-cfpb/what-is-a-payday-loan-en-1567/.
[79] Consumer Financial Protection Bureau, Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. 54472, 54472 (Nov. 17, 2017).
[80] CFPB, What is a payday loan?, (Jan. 17, 2022), https://www.consumerfinance.gov/ask-cfpb/what-is-a-payday-loan-en-1567/.
[81] Meredith Wood, *No Credit Check Semi Truck Financing: Your Best Options*, Fundera, (Jul. 12, 2022), https://www.fundera.com/business-loans/guides/no-credit-check-semi-truck-financing (advertising no credit check financing); Thomas Wasson, *Loaded and Rolling: Inbound container volumes cloud freight rebound, FMCSA task force on truck leasing*, (May 4, 2023), https://finance.yahoo.com/news/loaded-rolling-inbound-container-volumes-180000139.html?guccounter=1 (explaining "no credit checks").
[82] Consumer Financial Protection Bureau, Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. 54472, 54472 (Nov. 17, 2017).

repay the loan.[83] In making this "reasonable determination," the lender needed to take into account the consumer's "ability to meet basic living expenses," debt-to-income ratio, major financial obligations, and net income.[84] The CFPB rescinded the ability-to-repay determination requirement in 2020.[85] The other relevant substantive prohibition the CFPB established in the 2017 rule – and which remains in effect – prevents lenders from making more than two consecutive attempts at withdrawal from customer accounts. This component was meant to protect consumers from overdraft charges.[86] Finally, several components of the 2017 rule required lenders to make disclosures in machine readable formats, match the "content, order, and format" of the CFPB's sample disclosure forms, and in a way that was "clear and conspicuous," meaning that the disclosures were "readily understandable by the consumer and their location and type size are readily noticeable to the consumer."[87]

There is more extensive regulation of payday lending on the state level.[88] A review of state requirements and proposed requirements developed by consumer advocates reveals several common regulatory tools that authorities use to protect consumers:

- Maximum loan amounts: several states including Alabama, Alaska, Kansas, New Hampshire, and Oklahoma, among others, establish a flat cap on the total amount that a lender can offer at a time.[89]
- Maximum loan terms: several states restrict the length of loan terms.[90]
- Restrictions on financing terms: states establish various rules about the kinds of charges and interest lenders can charge. For example, Idaho restricts the maximum principal amount of payday loans to $1,000, and prohibits payday lenders from making a loan that exceeds 25% of the borrower's gross monthly income.[91] Despite predatory lenders' push in several states to allow triple digit effective interest rates, most states have a cap of 60% or less for the full APR allowed on a six-month $500 loan.[92] Most states have a cap of 36% or less for the full APR allowed for a two-year $2000 loan.[93]
- Bans on add-on products: the National Consumer Law Center recommends that states ban the sale of credit insurance and other add-on products "which primarily benefit the lender and increase the cost of credit."[94]

[83] *Id.* at 54896. This section invoked the CFPB's authority to define unfair and abusive practices: §1041.4 identified that "[i]t is an unfair and abusive practice for a lender to make covered short-term loans or covered longer-term balloon-payment loans without reasonably determining that the consumers will have the ability to repay the loans according to their terms."
[84] *Id.*
[85] Consumer Financial Protection Bureau, Executive Summary of the July 2020 Amendments to the 2017 Payday Lending Rule, (Jul. 7, 2020), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_executive-summary_payday-revocation-final-rule_2020-07.pdf.
[86] Consumer Financial Protection Bureau, Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. 54472, 54877 (Nov. 17, 2017).
[87] *See, e.g.,* §1041.6(e), 1041.9(a), Paragraphs 6(e)(1)(i), 9(a)(1) in *id.*
[88] For a summary of state payday lending requirements and regulations, *see* Heather Morton, *Payday Lending State Statutes*, (Feb. 28, 2023), https://www.ncsl.org/financial-services/payday-lending-state-statutes.
[89] Heather Morton, *Payday Lending State Statutes*, (Feb. 28, 2023), https://www.ncsl.org/financial-services/payday-lending-state-statutes.
[90] *Id.*
[91] *Id.*
[92] Carolyn Carter et. al, Predatory Installment Lending in 2017 8, (Aug. 2017), https://www.nclc.org/wp-content/uploads/2022/09/2017-installment-loans-rpt.pdf.
[93] *Id.* at 9.
[94] *Id.* at 20.

- Prohibitions on coercive devices: National Consumer Law Center recommends states "[p]rohibit devices, such as security interests in household goods and post-dated checks that coerce repayment of unaffordable loans."[95]

D. Predatory mortgage lending

One of the primary drivers of the 2008 financial crisis was predatory mortgage lending.[96] Such lending has parallels to LPA lending because they both include unfair fees or high interest;[97] lenders might use high-pressure sales tactics or make deceptive representations to entice someone into signing up;[98] lenders might approve loans without due consideration of the consumer's ability to pay;[99] there may be penalties for early payment;[100] and some loans have hidden balloon payments.[101]

Congress enacted Title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act to rein in predatory mortgage lending. Title XIV, called the Mortgage Reform and Anti-Predatory Lending Act, prohibited lenders of high-cost mortgages from making loans unless they "reasonably determine that the borrower can repay the loan based on the borrower's credit history, current income, expected income and other factors."[102] Additionally, this statute prohibits lenders of high-cost mortgages from charging borrowers a prepayment penalty and charging balloon payments that are higher than two times the size of the average of earlier payments.[103] The Dodd-Frank Act also amended the Truth in Lending Act to impose other limitations on prepayment penalties for most home mortgages.[104]

The FTC's authority to regulate deceptive advertising also protects mortgage borrowers.[105] In response to a congressional directive, the FTC in 2011 issued a final regulation that identified several aspects of a mortgage credit product about which commercial lenders were prohibited from making or implying misrepresentations.[106] These aspects included: interest rates, requirements about mortgage insurance, the potential for and circumstances that could lead to default, the ability of a consumer to refinance, among others.[107]

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[95] *Id.*
[96] Colin McArthur & Sarah Edelman, The 2008 Housing Crisis, Center for American Progress, (Apr. 13, 2017), https://www.americanprogress.org/article/2008-housing-crisis.
[97] Rebecca Safier, *What Is Predatory Mortgage Lending?*, (Oct. 14, 2022), https://www.thebalancemoney.com/what-is-predatory-mortgage-lending-6750922.
[98] District of Columbia Office of the Attorney General, Predatory Mortgage Lending, (Feb. 2018), https://oag.dc.gov/sites/default/files/2018-02/Predatory-Mortgage-Lending.pdf.
[99] Center for Responsible Lending, *8 Signs of Predatory Mortgage Lending*, (Accessed: Sept. 18, 2023), https://www.responsiblelending.org/issues/8-signs-predatory-mortgage.
[100] *Id.*
[101] Rebecca Safier, *What Is Predatory Mortgage Lending?*, (Oct. 14, 2022), https://www.thebalancemoney.com/what-is-predatory-mortgage-lending-6750922.
[102] Legal Information Institute, Dodd-Frank: Title XIV - Mortgage Reform and Anti-Predatory Lending Act Primary tabs, (Accessed: Sept. 18, 2023), https://www.law.cornell.edu/wex/dodd-frank_title_XIV (describing 15 U.S.C. § 1639(h)); *See also* 12 C.F.R. § 1026.43 (describing the basis for consideration).
[103] 15 U.S.C. §§ 1639(c),(e).
[104] 12 C.F.R. § 1026.43 (implementing TILA section 129C (15 USC §1639c(c)). Some states, including MA, ME, and NV also prohibit prepayment penalties. *See* Kayli Schattner, *Mortgage Laws and Regulations in Different States: A Quick Primer*, (Jul. 22, 2020), https://www.focusitinc.com/mortgage-laws-and-regulations-in-different-states-a-quick-primer/.
[105] Federal Trade Commission, Mortgage Acts and Practices-Advertising, 76 Fed. Reg. 43826 (Jul. 22, 2011).
[106] *Id.* at 43845.
[107] 12 CFR § 1014.3 (formerly 16 CFR § 321.3).

E. Franchising

In addition to buying cars and homes, some individuals also take on the financial commitment of buying a franchise — often spending all of their life savings, or taking on debt, to own their own business. In theory, buying a franchise allows the consumer to operate their own business, with assistance and a business model developed by the franchisor, as well as a right to use the franchisor's name, which usually has significant name recognition.[108] In practice, however, there are significant risks associated with buying a franchise. The FTC has found that franchisors often make material misrepresentations about aspects of the business, including the nature of business operations, the costs of purchasing a franchise, the likelihood of success of the franchise and its purchasers, the seller's financial viability, and other contractual terms and conditions.[109] In this way, franchising agreements are similar to LPAs: they are generally marketed as a chance for people to own their own businesses, but often end up leaving new owners with significant debt and a lack of control over the business.[110] Both types of agreements often have an imbalance of negotiating power between the parties, and are rife with misrepresentation by the seller.[111]

In order to address misrepresentation in franchising agreements, the FTC has engaged in extensive rulemaking establishing disclosure requirements for franchisors.[112] Based on the agency's authority to prohibit unfair or deceptive acts or practices,[113] the FTC's regulations prohibit a franchisor from failing to produce certain information to the franchisee at least 14 days before the franchisee signs the agreement and prior to the franchisee making any payments to the seller.[114]

FTC rulemaking is very specific in its description of the necessary disclosures: for example, the disclosure must include i) a cover page with statements written by the Commission, referring prospective buyers to consult FTC resources and state agencies to better understand their investment;[115] ii) explicit mention of the reasoning behind any financial performance representations for a particular franchise, including historical financial performance of other, similarly situated, outlets;[116] iii) statements delineating the franchisees initial investment, as well as any initial and additional fees the franchisee may owe, using a table that lists the fees in a specified format with each amount and due date clearly presented;[117] iv) a statement describing any obligations the franchisee has to purchase goods, services, and supplies from the franchisor, suppliers chosen by the franchisor, or under the franchisor's specifications;[118] and v) the terms of each financing arrangement offered by the franchisor, or its agents or affiliates, including clearly stating the rate of interest, the number of payments or period of repayment, and the nature of any security interest required by the lender, among other things.[119]

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[108] Federal Trade Commission, A Consumer's Guide to Buying a Franchise, (Accessed: Sept. 19, 2023), https://www.ftc.gov/business-guidance/resources/consumers-guide-buying-franchise.
[109] Federal Trade Commission: Disclosure Requirements and Prohibitions Concerning Franchising, 72 Fed. Reg. 15445 (Mar. 30, 2007).
[110] Samuel Levin, *Holding franchisors accountable for illegal practices*, Federal Trade Commission, (Aug. 3, 2022), https://www.ftc.gov/business-guidance/blog/2022/08/holding-franchisors-accountable-illegal-practices.
[111] *See* Federal Trade Commission: Disclosure Requirements and Prohibitions Concerning Franchising, 72 Fed. Reg. 15445, 15467 (Mar. 30, 2007); Big Rig at 148.
[112] 16 C.F.R. § 436.
[113] 15 U.S.C. § 45(a)(1).
[114] 16 C.F.R. § 436.2(a).
[115] 16 C.F.R. § 436.3.
[116] 16 C.F.R. § 436.3.5(s).
[117] 16 C.F.R. § 436.3.5(e)-(g).
[118] 16 C.F.R. § 436.3.5(h).
[119] 16 C.F.R. § 436.3.5(j).

Perhaps most relevant as a potential regulatory tool that could aid drivers in understanding the risks inherent to LPAs, the FTC regulations require franchisors to disclose detailed information about the status and changes in ownership of outlets.[120] This disclosure includes the number of outlets opened, closed, terminated, and transferred back to the franchisor.[121] In so doing, the regulation essentially requires franchisors to disclose to the franchisee the success rate of franchisees (i.e. the frequency with which the average franchisee avoids terminating their agreement or being reacquired by the company, including the large financial burdens that those outcomes involve).

F. Business opportunity disclosures

Some business opportunities sold to individuals do not necessarily match the criteria for application of the FTC's rule on franchising. For example, worker-at-home opportunities like envelope stuffing or craft assembly where the seller offers to buy back merchandise from the bizopp buyer.[122] To remedy this lapse in coverage, as well as to ensure that disclosure requirements would not be overly burdensome, the FTC in 2011 issued a final rule that established abbreviated disclosure requirements for business opportunities that did not amount to franchising.[123] The rules, codified at 16 C.F.R. Part 437, apply to business opportunities, defined as a "commercial arrangement in which: "(1) A seller solicits a prospective purchaser to enter into a new business; and (2) The prospective purchaser makes a required payment; and (3) The seller, expressly or by implication, orally or in writing, represents that the seller or one or more designated persons will:

> (i) Provide locations for the use or operation of equipment, displays, vending machines, or similar devices, owned, leased, controlled, or paid for by the purchaser; or
> (ii) Provide outlets, accounts, or customers, including, but not limited to, Internet outlets, accounts, or customers, for the purchaser's goods or services; or
> (iii) Buy back any or all of the goods or services that the purchaser makes, produces, fabricates, grows, breeds, modifies, or provides, including but not limited to providing payment for such services as, for example, stuffing envelopes from the purchaser's home."[124]

The rule declares as unlawful offering a business opportunity without first disclosing to the prospective purchaser a specific set of information, including: identifying information, earnings claims, legal actions against the seller, cancellation or refund policies, and references of prior purchasers[125] The embedded earnings claim rule requires sellers of a business opportunity to furnish an earnings claim statement that includes details of when the represented earnings were achieved, the number and percentage of all persons who purchased the business opportunity prior to the ending date that achieved the stated level of earnings, and any characteristics of the person who achieved such earns that may differ materially from the characteristics of the prospective purchasers.[126]

G. Table of tools

[120] 16 C.F.R. § 436.3.5(t).
[121] *Id.*
[122] FTC, Selling a Work-at-Home or Other Business Opportunity?, (Accessed: Oct. 11, 2023), https://www.ftc.gov/system/files/documents/plain-language/bus79-selling-work-home-or-other-business-opportunity.pdf.
[123] Federal Trade Commission, Business Opportunity Rule, 76 Fed. Reg. 76816, (Mar. 1, 2012).
[124] 16 C.F.R. § 437.1(c).
[125] 16 C.F.R. § 437.3.
[126] 16 C.F.R. § 437.4.

The following table summarizes some regulatory tools – explained above – that have been used to mitigate consumer harms associated with debt products that are somewhat analogous to trucking LPAs.

Tool	Includes (letters refer to subsection sources above)
Disclosure	Clear and conspicuous financing terms (B, C); add-on disclosure/express informed consent (A, B); success rates (E, F)
Ability to pay determinations	Consumer vetting (C, D)
Advertising rules	Banning misleading price ads and misrepresentations (A, B, D); requiring full-price ads (B)
Financing rules	Capping total payments (A, C); penalty-free early payment (A, D); banning add-ons (B, C); capping interest rates (B, C); refund period for add-ons (B); maximum loan amounts (C); maximum loan duration (C); regulating balloon payments (D)
Collection rules	Limiting allowable collateral (A, C); limiting allowable withdrawal attempts (C)
Improve negotiating position	Permit time for review with a lawyer

V. Potential regulatory recommendations

This section makes suggestions for how various agencies might use their statutory authorities to mitigate the risks posed by trucking lease-purchase agreements ("LPAs"). This section is not exhaustive and could be complemented by information gathered by the TLTF.

A. Federal Motor Carrier Safety Administration

The Federal Motor Carrier Safety Administration ("FMCSA") was created by the Motor Carrier Safety Improvement Act of 1999 with a primary mission of preventing commercial motor vehicle ("CMV")-related fatalities and injuries.[127] The FMCSA possesses the statutory authority to issue regulations in support of its safety mission. The agency also has the authority to issue reporting requirements and lease disclosure requirements. FMCSA could consider: instituting new annual reporting requirements for LPA providers, updating its "truth-in-leasing" ("TIL") requirements to encourage disclosure to owner-operators, and banning predatory terms in LPAs.

a. Statutory authorities

i. Safety

[127] Federal Motor Carrier Safety Administration, About Us, (Accessed: Sept. 19, 2023), https://www.fmcsa.dot.gov/mission/about-us.

49 U.S.C. § 31136(a) directs the FMCSA to "prescribe regulations on commercial motor vehicle safety" that "prescribe minimum safety standards."[128] The statute identifies five goals that regulations under 49 U.S.C. § 31136(a) should accomplish "[a]t a minimum." Among these goals, the statute requires that the regulations ensure that "(1)commercial motor vehicles are maintained, equipped, loaded, and operated safely" and "(2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely …"[129] Additionally, 49 U.S.C. § 31502(b)(1) empowers the FMCSA to "prescribe requirements for … (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier…"

FMCSA has repeatedly used these statutory authorities to issue regulations designed to safeguard drivers' and the public's safety. In 2010, the FMCSA issued a regulation under §31136(a)(1) and §31136(a)(2) prohibiting drivers from texting.[130] In 2011, the FMCSA issued a similar regulation restricting drivers' use of hand-held cellphones.[131] The rules' statutory authority sections were nearly identical, stating that the rules were "based primarily on 49 U.S.C. § 31136(a)(1), which requires regulations that ensure that CMVs are operated safely, and secondarily on §31136(a)(2), to the extent that drivers' use of hand-held mobile telephones [or texting] impacts their ability to operate CMVs safely."[132] In 2015, the FMCSA issued a rule, based in part on its authorities listed in 49 U.S.C. § 31136(a)(3) and (4), that specified processes that drivers must follow for medical examinations prior to beginning work.[133] In 2021, the FMCSA issued a regulation based in part on 49 U.S.C. § 31136(a) that modified controlled substances and alcohol testing requirements for commercial vehicle drivers.[134] In 2020, the FMCSA made modifications to the agency's Hours of Service ("HOS") regulations based on its authority under 49 U.S.C. § 31502(b) and 49 U.S.C. § 31136(a).[135] Several other regulations issued under 49 U.S.C. § 31502(b) and 49 § U.S.C. 31136(a) regulate commercial motor vehicle safety with respect to topics like alcohol and drug use,[136] inspection of cargo,[137] and safe parts and equipment.[138]

The safety regulation perhaps most closely analogous to the regulations discussed in this memorandum was issued prior to the 1984 enactment of the current safety statute. In 1968, the Interstate Commerce Commission ("ICC") (which then possessed regulatory authority over commercial motor vehicle safety) issued a rule, now codified at 49 C.F.R. § 392.6, which prohibits a motor carrier from devising schedules that would place pressure on drivers to drive faster than applicable speed limits.[139] Rather than directly prohibiting

[128] The statute technically empowers the Secretary of Transportation with this authority, but the Secretary has delegated it to the FMCSA via regulation. *See* 49 C.F.R. § 1.87(f).
[129] *Id.*
[130] Federal Motor Carrier Safety Administration, Department of Transportation, Limiting the Use of Wireless Communication Devices, 75 Fed. Reg. 59118, (Sept. 27, 2010).
[131] Federal Motor Carrier Safety Administration and Pipeline and Hazardous Materials Safety Administration, Department of Transportation, Drivers of CMVs: Restricting the Use of Cellular Phones, 76 Fed. Reg. 75470, (Dec. 2, 2011)
[132] Federal Motor Carrier Safety Administration, Department of Transportation, Limiting the Use of Wireless Communication Devices, 75 Fed. Reg. 59118, 59118 (Sept. 27, 2010).
[133] Federal Motor Carrier Safety Administration, Department of Transportation, Medical Examiner's Certification Integration, 80 Fed. Reg. 22789, 22791 (Apr. 23, 2015).
[134] Federal Motor Carrier Safety Administration, Department of Transportation, Controlled Substances and Alcohol Testing: State Driver's Licensing Agency Non-Issuance/Downgrade of Commercial Driver's License, 86 Fed. Reg. 55718, (Oct. 7, 2021).
[135] Federal Motor Carrier Safety Administration, Hours of Service of Drivers, 85 Fed. Reg. 33396, (Jun. 1, 2020).
[136] 49 C.F.R. § 392.4, 392.5.
[137] 49 C.F.R. § 392.9.
[138] 49 C.F.R. Part 393.
[139] 33 Fed. Reg. 19732 (1968), https://www.govinfo.gov/content/pkg/FR-1968-12-25/pdf/FR-1968-12-25.pdf#page=156.

drivers from driving faster than the posted speed limits, this regulation recognizes that forces beyond the driver's control – in this case, a carrier's delivery schedule – can, in the words of the the current statute, impose "responsibilities" on drivers that can "impair their ability to operate" their vehicle safely.[140] Although the current 49 U.S.C. § 31502(b) and 49 U.S.C. § 31136(a) did not yet exist, the statutory language under which the ICC issued this regulation closely resembled these current statutes. The then-extant statute directed the ICC to regulate motor carriers with respect to "safety of operation and equipment" and "establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation."[141] This language is very similar to that of 49 U.S.C. § 31502(b) (e.g. "prescribe requirements for … safety of operation and equipment of, a motor carrier…") and 49 U.S.C. § 31136(a) (e.g. "prescribe regulations on commercial motor vehicle safety" that "prescribe minimum safety standards" to ensure that "commercial motor vehicles are maintained, equipped, loaded, and operated safely"). The FMCSA continues to bring enforcement actions under the schedule-speed limit regulation to ensure that demands from carriers do not encourage unsafe driving behavior.[142]

ii. Truth-in-leasing

49 U.S.C. § 14102(a)(1) permits the FMCSA to require a motor carrier "that uses motor vehicles not owned by it to transport property under an arrangement with another party to … make the arrangement in writing signed by the parties specifying its duration and the compensation to be paid by the motor carrier." 49 U.S.C. § 13301(a) authorizes the FMCSA to "prescribe regulations in carrying out" its authority over freight regulation, including the leasing arrangements. 49 U.S.C. § 14704(a) provides a private right of action for plaintiffs challenging violations of TIL regulations where they can prove actual damages.[143]

The current implementing regulations at 49 C.F.R. §§ 376.11-12 set several requirements for lease agreements, including several disclosure requirements. For example, leases are required to include the specific duration of the lease, the compensation method and amount, the documentation required for payment, specifications of charges due from the owner-operator, and the manner and method of escrow collection and spending.[144]

The ICC issued the initial TIL regulations in 1979 to "promote full disclosure between the carrier and the owner-operator in the leasing contract, promote the stability and economic welfare of the independent trucker segment of the motor carrier industry, and eliminate or reduce the opportunity for skimming and other illegal practices."[145] The regulations were issued pursuant to statutory language that was very similar to the existing statute.[146] The 1979 rulemaking expanded the universe of requirements from the barebones

[140] 49 U.S.C. § 31136(a)(2).
[141] *Bilyou v. Dutchess Beer Distributors, Inc.*, 300 F.3d 217, 227 n.5 (2d Cir. 2002) citing 49 Stat. 546, § 204(a) (1935).
[142] *See, e.g.*, FMCSA, Field Administrator's Submission of Evidence, In the Matter of: Last Chance Trucking & Excavation 7, LLC Docket MCSA-2015-0511, (Dec. 30, 2015), https://www.regulations.gov/document/FMCSA-2015-0511-0001.
[143] *Owner-Operator Indep. Drivers Ass'n, Inc. v. Swift Transp. Co. (AZ)*, 632 F.3d 1111, 1122 (9th Cir. 2011) (explaining that "[e]ach court that has addressed the issue, including our own, has agreed that the statute requires proof of actual damages"); *see also Owner-Operator Indep. Drivers Ass'n, Inc. v. Landstar Sys., Inc.*, 622 F.3d 1307, 1325 (11th Cir. 2010); *Owner-Operator Indep. Drivers Ass'n, Inc. v. New Prime, Inc.*, 339 F.3d 1001, 1012 (8th Cir. 2003).
[144] 49 C.F.R. §§ 376.12(b),(d),(f),(h).
[145] 23 Fed. Reg. 4680 (1979), https://archives.federalregister.gov/issue_slice/1979/1/23/4679-4684.pdf#page=2.
[146] 49 U.S.C. § 304(e) (1976); Subject to a couple of exceptions, "The [ICC] is authorized to prescribe with respect to the use by motor carriers (under leases, contracts, or other arrangements) of motor vehicles not owned by them, in the furnishing of transportation of property— (1) regulations requiring that any such lease, contract, or other arrangement shall be in writing and be signed by the parties thereto, shall specify the period during which it is to be in effect, and shall specify the compensation to be paid by the motor carrier, and requiring that during the entire period of any such lease,

statutory ones, to include requirements for minimum lease lengths,[147] "charge-back" disclosure,[148] and escrow fund limits.[149]

The 1995 ICC Termination Act abolished the ICC and rehoused the TIL regulatory authority within the DOT, and the DOT subsequently renumbered the TIL regulations from 49 C.F.R. Part 1057 to 49 C.F.R. Part 367.[150]As described above, the ICC Termination Act left substantially intact the statutory language authorizing the TIL regulations.

In part due to the limited recovery available to individual plaintiffs for violations of the TIL regulations (only actual damages and legal fees, no treble damages), litigation under TIL regulations has been led primarily by OOIDA.[151] It has brought frequent litigation on behalf of owner-operators under the regulations.[152] However, there is widespread agreement from industry boosters and critics alike that the TIL regulations are outdated and should be updated to reflect the current state of the industry.[153] This includes adjusting such regulations to address the realities of predatory LPAs.

iii. Reporting authority

Several statutory provisions empower the FMCSA to require various reporting from motor carriers. Under 49 U.S.C. § 13301(b), FMCSA can "obtain from carriers…information the Secretary decides is necessary to carry out" 49 U.S.C. Part B, which includes the statutory language that underpins the TIL regulations. 49 U.S.C. § 31133(a)(8) authorizes the FMCSA to "prescribe recordkeeping and reporting requirements" to carry out 49 U.S.C. Subchapter III, which includes the agency's safety regulation authority.[154] Under 49 U.S.C. § 14123(a)(1), the FMCSA must require motor carriers with an adjusted annual operating revenue at or above $3 million to file annual financial and safety reports, the form and substance of which are up to the agency. Additionally, 49 U.S.C. § 14123(a)(2) permits the FMCSA to require a broader array of regulated entities, including individual or classes of "motor carriers, freight forwarders, brokers, lessors, and associations, to file … quarterly, periodic, or special reports with the [FMCSA] and to respond to surveys concerning their operations." In developing all reporting requirements under 49 U.S.C. § 14123(a), the FMCSA must consider safety needs; the need to preserve confidential business information and trade secrets and prevent

contract, or other arrangement a copy thereof shall be carried in each motor vehicle covered thereby…" 23 Fed. Reg. 4680 (1979), https://archives.federalregister.gov/issue_slice/1979/1/23/4679-4684.pdf#page=2.

[147] 49 CFR 1057.12(c) (1979), 23 Fed. Reg. 4682, https://archives.federalregister.gov/issue_slice/1979/1/23/4679-4684.pdf#page=2. This was repealed in 1984. https://archives.federalregister.gov/issue_slice/1984/12/7/47836-47851.pdf#page=15

[148] 49 CFR 1057.12(i) (1979), 23 Fed. Reg. 4682, https://archives.federalregister.gov/issue_slice/1979/1/23/4679-4684.pdf#page=2.

[149] 49 CFR 1057.12(l) (1979), 23 Fed. Reg. 4682, https://archives.federalregister.gov/issue_slice/1979/1/23/4679-4684.pdf#page=2.

[150] ICC Termination Act of 1995, Public Law 104-88, https://www.congress.gov/104/plaws/publ88/PLAW-104publ88.htm; Federal Highway Administration, Department of Transportation, Technical Amendments to Former Interstate Commerce Commission Regulations in Accordance with the ICC Termination Act of 1995, 62 Fed. Reg. 15417, 15417, (Apr. 1, 1997), https://www.govinfo.gov/content/pkg/FR-1997-04-01/pdf/97-7961.pdf.

[151] Daniel D. Doyle & Jennifer A. Fletcher, Ooida Class-Action Damages and Other Relief, 32 Transp. L.J. 199, 218 (2005).

[152] *See, e.g., Owner-Operator Indep. Drivers Ass'n, Inc. v. Swift Transp. Co. (AZ)*, 632 F.3d 1111 (9th Cir. 2011); *Owner-Operator Indep. Drivers Ass'n, v. United Van Lines, LLC*, 556 F.3d 690 (8th Cir. 2009).

[153] *See e.g.*, James C. Sullivan, Private Rights of Action to Enforce the Truth-in-Leasing Regulations in Court, 32 Transp. L.J. 159, 173 (2005).

[154] 49 U.S.C. § 31136, discussed *supra* Section V(A)(a)(i).

competitive harm; private sector, academic, and public use of information in the reports; and the public interest.[155]

The FMCSA has cited the safety recordkeeping authority under 49 U.S.C. § 31133(a)(8) to support rulemakings that required electronic logging devices for tracking safe driving hours,[156] modified obligations of drivers with respect to disclosing previous traffic violations,[157] and changed required documentation for exemptions from vision requirements for drivers.[158] It cited both §31133(a)(8) and §13301(b) to establish its Unified Registration System that was meant to simplify identification of and information gathering on FMCSA-regulated entities.[159]

As required by 49 U.S.C. § 14123(a)(1), FMCSA developed Form M for the annual reporting requirements of large motor carriers of property. Form M requires an accounting of the carrier's balance sheet and net income statement.[160] Form M has been reauthorized repeatedly, with minor changes.[161] In 2013, the FMCSA eliminated an additional quarterly financial reporting form based on its permissive reporting authority under 49 U.S.C. § 14123(a)(2) to reduce the "paperwork burden" placed on motor carriers.[162] To our knowledge, there are currently no other reporting requirements under this authority.

b. Potential recommendations

Based on the statutory authorities available to the FMCSA, described above, the agency could consider taking some or all of the following actions.

i. Rulemaking: annual reporting requirements for LPA providers

The FMCSA could require annual reporting from companies offering LPAs. The report could request figures such as:

a) the number of owner-operators that are currently under an LPA with the provider;
b) the number of owner-operators whose agreement with the provider terminated in that year; and
c) of #b, disposition of the termination, most importantly how many of those terminations resulted in the owner-operator gaining title of the vehicle.

The FMCSA could institute these requirements based on its 49 U.S.C. § 14123(a) reporting authority described above. It can also find support for these requirements based on its reporting authority at 49 U.S.C. § 31133(a)(8) to the extent that the FMCSA finds that economic pressures caused by predatory LPAs decrease

[155] 49 U.S.C. § 14123(b).
[156] Federal Motor Carrier Safety Administration, Department of Transportation, Electronic Logging Device Revisions, 87 Fed. Reg. 56921, 56922, (Sept. 16, 2022).
[157] Federal Motor Carrier Safety Administration, Department of Transportation, Record of Violations, 87 Fed. Reg. 13192, 13194, (May 9, 2022).
[158] Federal Motor Carrier Safety Administration, Department of Transportation, Qualifications of Drivers; Vision Standard,, 87 Fed. Reg. 3390, 3392, (Jan. 21, 2022).
[159] Federal Motor Carrier Safety Administration, Department of Transportation, Qualifications of Drivers; Vision Standard, 78 Fed. Reg. 52607, 52611, (Aug. 23, 2013).
[160] Federal Motor Carrier Safety Administration, Department of Transportation, Form M, (Accessed: Sept. 19, 2023), https://www.fmcsa.dot.gov/mission/form-m.
[161] *See, e.g.,* Federal Motor Carrier Safety Administration, Department of Transportation, Agency Information Collection Activities; Revision of Currently-Approved Information Collection Request: Annual Report of Class I and Class II Motor Carriers of Property, 77 Fed. Reg. 52109, (Aug. 28, 2012).
[162] Federal Motor Carrier Safety Administration, Department of Transportation, Rescission of Quarterly Financial Reporting Requirements, 78 Fed. Reg. 76241, (Dec. 17, 2013).

CMV safety. Additionally, it can support these requirements under its reporting authority at 49 U.S.C. § 13301(b) to the extent that the FMCSA updates its TIL regulations to require disclosure of these figures in lease agreements (as suggested below). The requirements could take a form similar to that of the FTC's required disclosures for franchisors.[163]

ii. Rulemaking: updating TIL regulations to require disclosure

The FMCSA could update its TIL regulations to, for example, 1) require the statistics acquired through the reporting requirements identified above to be included on the first page, in clear and conspicuous font, of any new LPA and 2) require additional information to be included in contracts, including all maintenance, repair, and accident records involving equipment subject to the lease, and the estimated book value of such equipment based on the condition, miles, year, make and model, and repair and accident histories.[164]

These changes could be based on the FMCSA's authority at 49 U.S.C. § 13301(a) to prescribe TIL regulations and, secondarily, on the FMCSA's authority to issue regulations supporting its safety regulatory authorities at §31136(a) and §31502(b)(1), to the extent that FMCSA finds that increased disclosure will decrease the threat that economic pressure and potentially unsafe equipment can pose to CMV safety.

iii. Rulemaking: regulating unsafe LPAs

The FMCSA could issue safety regulations that:[165]

- require clear and conspicuous disclosure of success rates, financing terms, and add-on charges in LPAs (in lieu of or in alignment with any disclosure requirements imposed via TIL regulations);
- require LPA providers to make a reasonable determination that a driver has a substantial likelihood of completing an LPA while earning reasonable net compensation and meeting basic living expenses;
- prohibit misleading advertising or misrepresentations of the likelihood of success in an LPA;
- set financing rules that require reasonable proportionality between the value of the equipment and the lifetime sum of LPA payments, cap interest rates, and restrict balloon payments;
- set collection rules that limit allowable collateral for LPAs; and
- require LPA providers to allow drivers time to consider LPA contracts and review them with an attorney.

These regulations could be supported by the FMCSA's authority to issue safety regulations under 49 U.S.C. §§ 31136(a), 31502(b)(1). The FMCSA would need to demonstrate that predatory LPAs threaten CMV safety. One way that the agency could do this is to explain how economic pressure created by these LPAs, as described above,[166] contributes to safety threats. Economic pressure:

- imposes responsibilities on drivers that impair their ability to operate the vehicles safely, permitting FMCSA regulation under 49 U.S.C. § 31136(a)(2) and, secondarily, may cause vehicles not to be operated safety, permitting regulation under 49 U.S.C. § 31136(a)(1) and 49 U.S.C. § 31502(b)(1); and

[163] *See supra* Section IV(E).
[164] Illustrative, to be supplemented by TLTF and FMCSA investigation and policy development. Source: Clifford Petersen, *Time to require good-faith disclosures in lease-purchase agreements?*, (Jan. 15, 2019), https://www.overdriveonline.com/overdrive-extra/article/14895693/time-to-require-good-faith-disclosures-in-lease-purchase-agreements.
[165] Illustrative, to be supplemented by TLTF and FMCSA investigation and policy development. *See supra* Section IV(G) "Table of tools."
[166] *See supra* Section II(B).

- reduces take-home pay (sometimes resulting in negative paychecks), which disincentivizes investment in safety equipment, maintenance, and repairs, which would enable FMCSA regulation of the practices under 49 U.S.C. § 31136(a)(1) and (2), as well as 49 U.S.C. § 31502(b)(1).

iv. Investigation: collecting information on LPA practices, terms, and trends

To support the above-recommended rulemakings, the FMCSA could consider collecting more information on predatory LPAs through its 49 U.S.C. § 14123(a)(2) authority to require regulated entities to respond to surveys and 49 U.S.C. § 31133(1),(2),(7),(10) authorities to "conduct … investigations," "compile statistics," "hold hearings," and "perform other acts the Secretary considers appropriate." Additional evidentiary support from FMCSA and TLTF investigatory activities could help bolster the rulemaking's position if it were to undergo judicial review.

B. Department of Labor

The Department of Labor ("DOL") administers, among other statutes, the Fair Labor Standards Act ("FLSA"). The FLSA establishes minimum wage and overtime[167] obligations for employers. The TLTF could recommend that the DOL take steps to reduce worker misclassification in the trucking industry and identify LPA payments as employer "kickbacks," which are unlawful to the extent that they reduce employee compensation below the minimum wage.

a. Statutory authorities

i. Fair Labor Standards Act

Congress passed the FLSA to help eradicate "labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers."[168] 29 U.S.C. § 206 requires employers to compensate employees at least $7.25 for every hour worked.[169] 29 C.F.R. § 531.35 requires employers to pay the statutorily required wages in a manner that is "free and clear" from conditions or demands for future repayment.[170] The regulations also prohibit an employer from taking a "kickback," "directly or indirectly," from the total wages paid to workers, if doing so would cause the resulting wages to be less than minimum wage. The current, long-standing regulations state:

> § 531.35 "Free and clear" payment; "kickbacks."
> Whether in cash or in facilities, "wages" cannot be considered to have been paid by the employer and received by the employee unless they are paid **finally and unconditionally** or **"free and clear."** The wage requirements of the Act will not be met where the employee "kicks-back" **directly or indirectly to the employer** or to another person **for the employer's benefit** the whole or part of the wage delivered to the employee. This is true whether the "kick-back" is made in cash or in other than cash. For example, if it is a requirement of the employer that the employee must provide tools of the trade which will be used in or are specifically required for the performance of the employer's particular work, there would be a violation of the Act in any workweek when the cost of such tools

[167] Most CMV drivers are exempt from the FLSA's overtime requirements. 29 U.S.C. § 213(b)(1).
[168] 29 U.S.C. § 202(a).
[169] Most states have a higher minimum wage than the federal minimum. *See* Wage and Hour Division, Department of Labor, Consolidated Minimum Wage Table, (Accessed: Sept. 19, 2023), https://www.dol.gov/agencies/whd/mw-consolidated.
[170] 29 C.F.R. § 531.35; 32 Fed. Reg. 13575 (1967), https://archives.federalregister.gov/issue_slice/1967/9/28/13571-13582.pdf#page=5.

> purchased by the employee cuts into the minimum or overtime wages required to be paid him under the Act…[171]

Courts have interpreted "kickback" to be an arrangement that "tend[s] to shift part of the employer's business expense to the employees," which is "illegal to the extent that it reduce[s] an employee's wage below the statutory minimum."[172] The inquiry requires that the expense be "for the employer's benefit"[173] and hinges on "the nature of the expenses themselves and whether they are of the type that should be borne by the employer rather than the employee."[174]

If an expense is first incidental to the needs of the employer rather than those of the employee, then requiring the employee to cover the cost of the expense is impermissible under the FLSA to the extent that it would reduce wages below the statutory minimum.[175] Another way to phrase this distinction is whether, absent the employee making the expenditure, the employer would incur the expense because it is integral to the employer's business.[176] Requiring the employee to agree to cover the expense as a condition of employment is also indicative of kickback status.[177]

The paradigmatic example available in the case law is whether an employer's failure to reimburse an employee for the cost of operating her personal vehicle for a food delivery business constitutes a kickback. Courts have routinely found that it does because employees must have and use a personal car as a condition of their employment and, absent the employee's use of their personal vehicle, the employer would need to cover the cost of a vehicle for its delivery business anyway.[178]

However, the FLSA's requirements only apply to employees, not independent contractors.[179] LPAs are targeted exclusively towards drivers that carriers designate as independent contractors, in large part because doing so helps the carrier avoid responsibilities and expenses associated with complying with wage and hour law, labor law, unemployment insurance, and other regulatory schemes.

The FLSA defines "employee" as anyone who is "suffer[ed] or permit[ted] to work" by an employer.[180] An "employer," in turn, is defined as "any person acting directly or indirectly in the interest of an employer in

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[171] (emphasis added).
[172] *Mayhue's Super Liquor Stores, Inc. v. Hodgson*, 464 F.2d at 1198 (finding that an agreement that requires an employee to repay their employer any shortages in cash register money, regardless of the reason for the shortage, violated the FLSA when it caused net wages to dip below minimums because such losses are business expenses "to be expected where cashier employees handle a large number of transactions").
[173] 29 C.F.R. § 531.35.
[174] *Benton v. Deli Mgmt., Inc.*, 396 F. Supp. 3d 1261, 1273 (N.D. Ga. 2019) (distinguishing between personal delivery vehicle expenses associated with a delivery business, which an employer would need to make in order to conduct its business, and employees' street clothes, which it would not).
[175] *Id.*
[176] *Id.*
[177] *Rivera v. Peri & Sons Farms, Inc.*, 735 F.3d 892, 898 (9th Cir. 2013) (requiring the employer to reimburse for travel and immigration expenses incurred before the employment relationship began because these expenses were "essential for the ... employment relationship to come to fruition").
[178] *See, e.g., Perrin v. Papa John's Int'l, Inc.*, 114 F. Supp. 3d 707 (E.D. Mo. 2015); *Graham v. The Word Enters. Perry, LLC*, No. 18-cv-0167, 2018 WL 3036313, *4 (E.D. Mich. Jun. 19, 2018); *Ke v. Saigon Grill, Inc.*, 595 F.Supp.2d 240, 258 (S.D.N.Y. 2008); *Waters v. Pizza to You, LLC*, 538 F. Supp. 3d 785, 791 (S.D. Ohio 2021).
[179] *Rutherford Food Corp.* v. *McComb,* 331 U.S. 722, 729 (1947) (noting that "[t]here may be independent contractors who take part in production or distribution who would alone be responsible for the wages and hours of their own employees").
[180] 29 U.S.C. § 203(e)(1), 203(g).

relation to an employee."[181] The Wage and Hour Division ("WHD") of the DOL recently issued a proposed revision to its regulations to help distinguish between employees and independent contractors. In it, the WHD returned to the long-standing, judicially-recognized "economic realities" test that considers six factors in determining whether a worker is "economically dependent" on an employer for work. The six factors are: 1) opportunity for profit or loss depending on managerial skill; 2) investments by the worker and the employer; 3) degree of permanence of the work relationship; 4) nature and degree of control; 5) extent to which the work performed is an integral part of the employer's business; and 6) skill and initiative.[182]

This "economic realities" test, wherein none of the factors is more or less important to the determination, has been recognized by the courts since soon after FLSA's enactment.[183] However, the WHD took a brief detour in 2021 when it issued a new regulation that explained that there were two "core factors" of the economic realities test: the degree of control and the worker's opportunity for loss or profit.[184] Litigation ensued and the 2021 rule never took effect.

Despite the ongoing litigation, the WHD issued an opinion letter in January 2021 that applied the 2021 rule to facts of owner-operator truck drivers.[185] The opinion letter erroneously found that the "core factors" weighed in favor of independent status, and therefore the submitter could classify its workers as independent contractors. The WHD rescinded this interpretation seven days after it was issued.[186]

There has already been extensive private litigation against motor carriers over their treatment of drivers as independent contractors rather than employees. In ongoing litigation in Kentucky, a group of drivers was granted certification for a FLSA collective action in their claims that a defendant motor carrier misclassified them as independent contractors even though the carrier's required LPA subjected them to intense control and prohibited them from carrying freight for different carriers.[187] The Seventh Circuit recently reversed a district court granting a motor carrier's motion to dismiss on FLSA misclassification claims.[188] The Seventh Circuit examined the allegations in the complaint that detailed a restrictive LPA under which the owner-operator was "responsible for all operating expenses," the carrier "retained sole discretion, however, to deny him permission to haul loads for other carriers," and the plaintiff would default on the equipment lease

[181] 29 U.S.C. § 203(d); The statute itself does not define independent contractors to be excluded from FLSA's coverage, but judicial precedent has made this exclusion clear. As described below, the Supreme Court has repeatedly affirmed both that FLSA's definition of "employee" is very broad (more so than the common law of agency test or the definition present in other legislation) and that independent contractor status for the purposes of FLSA exclusion should be determined based on the economic realities of the relationship between employer and worker.
[182] Wage and Hour Division, Department of Labor, Employee or Independent Contractor Classification Under the Fair Labor Standards Act, Fed Reg. Vol. 87, 62218, 62274-5 (Oct. 13, 2022).
[183] In *Rutherford Food Corp. v. McComb*, the Court emphasized the need to consider "the circumstances of the whole activity" rather than "isolated factors." 331 U.S. 722, 730 (1947). The Supreme Court and circuit courts have repeatedly affirmed a multi-factor approach to the determination. *See, e.g., Nationwide Mut. Ins. v. Darden*, 503 U.S. 318, 326 (1992); *Usery v. Pilgrim Equip. Co.*, 527 F.2d 1308, 1311 (5th Cir. 1976).*See, e.g., Scantland v. Jeffry Knight, Inc.*, 721 F.3d 1308, 1311-12 (11th Cir. 2013). Federal circuit courts have been explicit that no one factor of the test is more controlling of the outcome than the others and that the weight of each factor varies with the specific facts of particular cases. *Scantland v. Jeffry Knight, Inc.*, 721 F.3d 1308, 1311-12 (11th Cir. 2013).
[184] Independent Contractor Status Under the Fair Labor Standards Act 2, 85 Fed. Reg. 60600, 60612 (Sept. 25, 2020).
[185] Wage and Hour Division, Department of Labor, Opinion Letter FLSA 2021-9, (Jan. 19, 2021), https://downloads.regulations.gov/WHD-2022-0003-0002/attachment_11.pdf.
[186] Plunkett Cooney, *DOL Opinion Letter Withdrawals Continue Under Biden Administration*, (Feb. 24, 2021), https://www.plunkettcooney.com/thesophisticatedemployerblog/DOL-withdraws-opinion-letters.
[187] *Carter v. Paschall Truck Lines, Inc.*, 324 F. Supp. 3d 900, 903 (W.D. Ky. 2018).
[188] *Brant v. Schneider Nat'l, Inc.*, 43 F.4th 656, 662–63 (7th Cir. 2022).

if he defaulted on the service lease by hauling for other carriers without permission.[189] The penalty for this default was prohibitively expensive, as the carrier could take measures such as "declaring as due the remaining sums for the entire two-year term of the" equipment lease.[190] The Seventh Circuit also highlighted the fact that the driver had little ability to advertise, was subjected to monitoring by the carrier, and economic realities made it impossible for him to hire drivers under him. Finally, the driver's "supplying" of the truck for the motor carrier did not weigh in favor of contractor status because the lease of the truck from the carrier was required for the services lease to exist.

b. Potential recommendations

Based on the statutory authorities available to the DOL, described above, the agency could consider taking some or all of the following actions.

i. Guidance: issue subregulatory FLSA guidance applying the forthcoming worker classification regulation and the anti-kickback regulation to drivers under LPAs

The WHD could issue an opinion letter, Administrator's Interpretation, Field Assistance Bulletin, or other appropriate form of subregulatory guidance that (1) applies the forthcoming final rule on employee classification to truck drivers who operate under LPAs and (2) explains why employee truck drivers cannot be subject to employer-driven debt agreements if collection on them would qualify as a unlawful kickback of wages.

For (1) above, the WHD's analysis could, for example, track the Seventh Circuit's structure in *Brant v. Schneider Nat'l, Inc.*,[191] which stepped through each of the "economic realities" factors in the context of a motor carrier's attempt to classify a driver as an independent contractor while the driver operated under a restrictive LPA. The guidance document could identify how various characteristics of LPA arrangements can weigh on each factor of the "economic realities" test. The amicus brief that advocates submitted to the Supreme Court in *New Prime v. Oliveira* could also provide helpful analysis for this guidance.[192]

For (2) above, the WHD's analysis could identify features and purposes of LPAs that may weigh in favor of a finding that a debt agreement is primarily for the benefit of the motor carrier and designed to "shift part of the employer's cost of doing business."[193] LPAs routinely serve to cover expenses that an employer would otherwise need to cover because they are inherent in operating a transportation business.[194] Just as cash register shortages are inherent in operating a business in which cashier employees handle a large number of transactions and delivery vehicle expenses are inherent in operating a food delivery business, and are therefore business expenses meant to be borne by the employer,[195] so too are equipment expenses inherent in operating a transportation business. Among these business expenses might be the cost of the truck itself in cases where

[189] *Id.*
[190] *Id.*
[191] *Id.*
[192] 139 S. Ct. 532 (2019), https://www.supremecourt.gov/DocketPDF/17/17-340/55697/20180727121808059_36668%20pdf%20Final%20Brief.pdf.
[193] *Mayhue's Super Liquor Stores, Inc.*, 464 F.2d at 1199.
[194] *Benton v. Deli Mgmt., Inc.*, 396 F. Supp. 3d at 1274.
[195] *Mayhue's Super Liquor Stores, Inc.*, 464 F.2d at 1198.

a driver is not free to use it to haul freight for other carriers, maintenance and equipment required by DOT regulations, fuel, and other similar costs.[196]

ii. Enforcement: engage in FLSA enforcement and amicus practice against motor carriers that misclassify their drivers and subject minimum wages to illegally kickbacks

In addition to issuing the subregulatory guidance suggested above, the DOL should engage in more frequent strategic litigation to prevent motor carrier misclassification of and wage theft from truck drivers. For example, the Department of Labor is involved in ongoing litigation against a transportation company in Michigan, alleging that the company misclassified approximately 700 drivers as independent contractors and deprived workers of overtime pay.[197]

C. Federal Trade Commission

The Federal Trade Commission ("FTC", "Commission") is an independent agency tasked with safeguarding consumer protection and promoting fair competition. The FTC enforces laws that prohibit "unfair or deceptive acts or practices."[198] The TLTF could recommend that the FTC use its rulemaking authority to prohibit some of the more predatory aspects of LPAs and require extensive disclosures to owner-operators to ensure their awareness of the risks associated with trucking LPAs.

a. Statutory authorities

15 U.S.C. § 45(a)(1) prohibits "unfair or deceptive acts or practices" and "[u]nfair methods of competition." 15 U.S.C. § 57a establishes the rulemaking authority and process for the FTC to promulgate rules that "define with specificity acts or practices which are unfair or deceptive acts or practices." 15 U.S.C. § 46(g) authorizes the FTC to "make rules and regulations for the purpose of carrying out" the FTC Act. It is worth noting that the rulemaking procedures required for regulations promulgated under the FTC's authority to prohibit unfair or deceptive acts or practices are more onerous than those used by most other federal agencies and by the FTC itself in issuing unfair competition rules.[199]

i. Unfair acts or practices

An act or practice is unfair under FTC Act Section 5 if: it causes or is likely to cause substantial injury to consumers; it cannot be reasonably avoided by consumers; and it is not outweighed by countervailing benefits to consumers or to competition.[200]

The FTC has repeatedly issued regulations under its authority to regulate unfair acts or practices. Most relevant for the purposes of this memorandum is the Commission's 2007 rulemaking regarding practices in

[196] For more examples of the costs that drivers tend to bear in LPAs, see OOIDA's Lease Purchase Calculator, (Accessed: Sept. 20, 2023), https://www.ooida.com/trucking-tools/lease-purchase-calculator/.
[197] Department of Labor, U.S. Department of Labor Files Suit Alleging Transport Company Owes 700 Drivers More Than $1.5 Million in Overtime Back Wages and Damages, (Jun. 16, 2020), https://www.dol.gov/newsroom/releases/whd/whd20200616.
[198] 15 U.S.C. § 45(a).
[199] Rohit Chopra & Lina Khan, The Case for "Unfair Methods of Competition" Rulemaking, 87 U. Chi. L. R. 357, https://www.ftc.gov/system/files/documents/public_statements/1568663/rohit_chopra_and_lina_m_khan_the_case_for_unfair_methods_of_competition_rulemaking.pdf.
[200] Federal Reserve, Federal Trade Commission Act Section 5: Unfair or Deceptive Acts or Practices, (Accessed: Sept. 20, 2023), https://www.federalreserve.gov/boarddocs/supmanual/cch/200806/ftca.pdf.

franchising. Among other things,[201] the regulation prohibited as an unfair and deceptive practice a franchisor's failure to provide a prospective franchisee with a detailed disclosure of the costs, fees, terms, and other aspects of the franchising agreement.[202] Additionally, the regulation requires detailed accounting of the financial performance of existing franchises, as well as documentation of the frequencies with which franchises turnover or convert to company-owned stores.[203]

ii. Deceptive acts or practices

An act or practice is deceptive under FTC Act Section 5 if there is a representation or omission of information that is likely to mislead a consumer acting reasonably under the circumstances and the representation or omission is likely to affect the consumer's conduct or decision with regard to a product or service.[204]

The FTC has issued numerous regulations under its authority to prohibit deceptive acts or practices. Relevant for the purposes of this memorandum, a rule on used motor vehicle sales identified as deceptive acts or practices "[t]o misrepresent the mechanical condition of a used vehicle[,] …to misrepresent the terms of any warranty offered in connection with the sale of a used vehicle[, or] … [t]o represent that a used vehicle is sold with a warranty when the vehicle is sold without any warranty."[205] The remainder of the rule explained, in great detail, specific actions that dealers must take and disclosures they must make to ensure that they do not run afoul of the regulation's prohibition.[206] In addition to an extensive regulatory history, the FTC has brought enforcement actions against parties engaged in deceptive practices, including advertising. For example, in a complaint against a smoking cessation company, the FTC alleged that the company's advertising statements that the products would eliminate nicotine cravings were "false or unsubstantiated at the time of representation."[207]

As in the case of used vehicle sales, purveyors of LPAs commonly exaggerate the condition of the vehicles or mislead drivers as to the financial obligations required.[208] Developing similar rules based on the FTC's authority to prohibit deceptive acts or practices would seem an appropriate remedy to the troubles associated with LPAs.

iii. Unfair methods of competition

The FTC has the authority to prohibit unfair methods of competition, which extend beyond the acts proscribed in the extant antitrust statutes to include "incipient violations of those statutes, and conduct

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[201] *See supra* Section IV(E).
[202] 16 C.F.R. § 436.2.
[203] 16 C.F.R. § 436.5(s)-(t).
[204] FTC Deception Policy Statement, appended to *Cliffdale Associates, Inc.* 103 FTC 110, 175 (1984). https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf
[205] 16 C.F.R. § 455.1(a).
[206] For example, 16 C.F.R. § 455.2 details the specific disclosures a dealer must make in the "window form" displayed on the dashboard of a used vehicle for sale.
[207] *Smoke Away, U.S. v. FTC*, Matter X050064, Complaint at 24, https://www.ftc.gov/system/files/ftc_gov/pdf/x050064smokeawaycomplaint.pdf
[208] LabworksUSA, *Truck Leasing Task Force by FMCSA Targets Predatory Leasing Contracts*, (Jul. 12, 2023), https://labworksusa.com/truck-leasing-task-force-by-fmcsa-targets-predatory-leasing-contracts; Clifford Petersen, *Time to require good-faith disclosures in lease-purchase agreements?*, (Jan. 15, 2019), https://www.overdriveonline.com/overdrive-extra/article/14895693/time-to-require-good-faith-disclosures-in-lease-purchase-agreements.

which, although not a violation of the letter of the antitrust laws, is close to a violation or is contrary to their spirit."[209] Conduct can be unfair within the terms of the statute when it is facially unfair, when that unfairness burdens commerce, or when the unfairness is coercive and damaging to competition.[210]

The FTC recently used its unfair methods of competition rulemaking authority to issue a proposed rule banning non-compete clauses nationwide.[211] The FTC has also brought numerous enforcement actions against parties engaged in unfair methods of competition.[212]

b. Potential recommendations

Based on the statutory authorities available to the FTC, described above, the agency could consider taking the following action.

i. Regulation: promulgate a trade regulation rule identifying certain practices and acts as unfair or deceptive

The FTC could issue a trade regulation rule, modeled in part on the Commission's rules on franchising disclosure, business opportunity, and used motor vehicle sales, and its proposed rule on motor vehicle dealers.[213] The rule could define as unfair or deceptive practice or act:

- Failure to disclose a detailed accounting of the information contemplated in the FMCSA proposal section earlier in this memorandum.[214]
- Imposing unfair conditions on drivers that sign LPAs, detailed in the FMCSA proposal section earlier in this memorandum.[215]
- Deceptively advertising LPAs as walk away leases and failing to disclose poor success rates for drivers that sign LPAs.

Alternatively or in addition, the FTC could modify its proposed rule on motor vehicle dealers to explicitly include LPA providers.[216] This would involve, at the very least, altering the definition at proposed 16 C.F.R. § 463.2(e) of "motor vehicle dealer."

Alternatively or in addition, the FTC could enforce its business opportunity rule against LPA providers, or modify the rule to explicitly include them in its scope.[217]

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[209] *E.I. du Pont de Nemours & Co. v. F.T.C.*, 729 F.2d 128, 136–37 (2d Cir. 1984).
[210] Federal Trade Commission, Non-Compete Clause Rule, 88 Fed. Reg. 3482, 3499-3500 (Jan. 19, 2023), https://www.federalregister.gov/documents/2023/01/19/2023-00414/non-compete-clause-rule.
[211] *See generally id.*
[212] *See, e.g.,* Federal Trade Commission, Non-Compete Clause Rule, 88 Fed. Reg. 3482, 3499-3500 (Jan. 19, 2023), https://www.federalregister.gov/documents/2023/01/19/2023-00414/non-compete-clause-rule (describing several court cases affirming the FTC's use of its authority to prohibit unfair methods of competition).
[213] Federal Trade Commission, Vehicle Dealers Trade Regulation Rule, 87 Fed. Reg. 42012, (Jul. 13, 2022), https://www.federalregister.gov/documents/2022/07/13/2022-14214/motor-vehicle-dealers-trade-regulation-rule#h-64.
[214] *See supra* Section V(A)(b).
[215] *See supra* Section V(A)(b).
[216] Federal Trade Commission, Vehicle Dealers Trade Regulation Rule, 87 Fed. Reg. 42012, 42045 (Jul. 13, 2022), https://www.federalregister.gov/documents/2022/07/13/2022-14214/motor-vehicle-dealers-trade-regulation-rule#h-6.
[217] 16 C.F.R. Part 437; the existing definition of "business opportunity" under the rule arguably should cover LPAs, but we could not find evidence of FTC enforcement of the rule against LPA providers.

ii. Regulation and enforcement: ensure that non-compete clauses embedded in LPAs are prohibited under the final Non-Compete Clause rule; issue rulemaking banning predatory LPAs.

As part of its final Non-Compete Clause rule, the FTC could explicitly call out (perhaps in the form of a regulatory "example") trucking LPAs that include clauses that prevent LPA drivers from soliciting loads from other carriers. Additionally, the FTC could use its enforcement authority to apply the Non-Compete Clause rule to such restrictive LPAs.

Separately, the FTC could consider an unfair methods of competition rulemaking to prohibit predatory LPA practices and terms.

D. Department of Veterans Affairs

The Department of Veterans Affairs ("VA") is responsible for providing a range of services and benefits to veterans, active-duty service members, and their families. Among other things, the VA distributes educational and training benefits under the GI Bill. Roughly 4.5 of the 18 million veterans in the United States are truck drivers, many of whom obtained their Commercial Driver's License ("CDL") through training funded through the GI Bill. The TLTF could recommend that the VA take steps to ensure that veterans are not misled by training schools that steer students towards risky LPAs upon credentialing.

a. Statutory authorities

i. GI Bill training grants

The Post-9/11 Veterans' Educational Assistance Act of 2008,[218] which went into effect in 2009, is the most recent iteration of the GI Bill. The program is considered an entitlement and is permanently authorized and supported through mandatory funds; it does not have spending limitations, but rather costs the government a certain amount depending on how many eligible veterans choose to access benefits.[219] The entitlement is usually 36 months of education or training (or its equivalent in part-time educational assistance).[220] Programs run by different educational institutions are approved for veterans training purposes by a state approving agency (SAA) or, occasionally, directly by the VA.[221] An eligible veteran can select what kind of training or education program they would like to participate in, and the VA will provide the veteran with funding to cover some or all of the program.

38 U.S.C. § 3452(c) defines the types of training providers eligible to deliver GI Bill-funded training. That list includes "educational institutions," defined as "public or private elementary or secondary schools; vocational, correspondence, business or professional schools; colleges or universities; scientific or technical institutions; other institutions offering education for adults; state-approved alternative teacher certification providers; private entities that offer courses toward the attainment of a license or certificate generally recognized as necessary for a profession or vocation in a high-technology occupation; and qualified providers of

[218] Public Law 110-252 Title V, (Jun. 30, 2008), https://www.congress.gov/110/plaws/publ252/PLAW-110publ252.pdf.
[219] Congressional Research Service, Veterans' Educational Assistance Programs and Benefits: A Primer 5, (Dec. 3, 2021), https://crsreports.congress.gov/product/pdf/R/R42785.
[220] *Id.* at 9.
[221] *Id.* at 8; 38 U.S.C. Part III, Chapter 36, Subchapter II.

entrepreneurship courses." These include preparatory courses for a licensing or certification test for a vocation or profession, such as a CDL.[222]

38 U.S.C. § 3696(a)[223] prohibits educational institutions, and any entity that owns said institutions, from engaging in substantial misrepresentation about their programs. 38 U.S.C. § 3696(b)(2)(A) defines "misrepresentation" to include ""any false, erroneous, or misleading statement, action, omission, or intimation made directly or indirectly to a student" or other parties. 38 U.S.C. § 3696(b)(2)(B) defines "misleading statement" to include "any communication, action, omission, or intimation made in writing, visually, orally, or through other means, that has the likelihood or tendency to mislead the intended recipient of the communication under the circumstances in which the communication is made." Under 38 U.S.C. § 3696(b)(2)(C), a misrepresentation is "substantial" if "the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment."

38 U.S.C. § 3696(b)(1)(B) prohibits misrepresentations about the "financial charges of the institution," including the availability of, nature of, and students' repayment responsibility for financing arrangements for the training. 38 U.S.C. § 3696(b)(1)(C) prohibits misrepresentations about the "employability of the graduates of the institution," including "the relationship of the institution with any organization, employment agency, or other agency providing authorized training leading directly to employment," "the plans of the institution to maintain a placement service for graduates or otherwise assist graduates to obtain employment," and "the **knowledge of the institution about the current or likely future conditions, compensation, or employment opportunities in the industry**[.]"[224]

38 U.S.C. § 3696(e) directs the Undersecretary of Benefits at the VA to use FTC resources to conduct investigations to determine whether institutions are "utiliz[ing] advertising, sales, or enrollment practices of any type which are erroneous, deceptive, or misleading."[225]

b. Potential recommendations

Based on the statutory authorities available to the VA, described above, the agency could consider taking some or all of the following actions.

i. Guidance: issue subregulatory guidance describing substantial misrepresentation in the context of driving schools

The Education Service of the VA could issue subregulatory guidance, in the form of a fact sheet[226] or other appropriate document, which details information that CDL schools ought to disclose about job prospects generally, and LPAs specifically, to ensure they do not run afoul of 38 U.S.C. § 3696(a)'s prohibition against

[222] Congressional Research Service, Veterans' Educational Assistance Programs and Benefits: A Primer 8, (Dec. 3, 2021), https://crsreports.congress.gov/product/pdf/R/R42785.
[223] Implementing regulations for this section are located at 38 C.F.R. § 21.4252.
[224] Emphasis added.
[225] Implementing regulations for this section are located at 38 C.F.R. § 21.4001.
[226] Other components of the VA issue various forms of subregulatory guidance. *See, e.g.,* Office of Community Care, Fact Sheet: Veteran Community Care Eligibility, (Accessed: Sept, 20, 2023), https://www.va.gov/COMMUNITYCARE/docs/pubfiles/factsheets/VA-FS_CC-Eligibility.pdf; Office of Community Care, Fact Sheet: Veteran Community Care Appointments and Getting Care, (Accessed: Sept, 20, 2023), https://www.va.gov/COMMUNITYCARE/docs/pubfiles/factsheets/VA-FS_Getting_Care.pdf; Loan Guaranty Service, Circular 26-19-24, Servicer Loss mItigation Letters on Delinquent Loans, (Aug. 19, 2019), https://www.benefits.va.gov/homeloans/documents/circulars/26_19_24.pdf. =

substantial misrepresentation. For example, some driver training schools advertise as pathways to company driver jobs, only to steer trainees into LPAs instead.[227]

ii. Enforcement: investigate substantial misrepresentation in recruitment for CDL training schools

On its own, or with the help of the investigative resources of the FTC,[228] the Education Service of the VA should open investigations into driver training schools under 38 U.S.C. § 3696(a). In particular, the investigations could focus on whether the training schools are sufficiently transparent about the career opportunities after certification, including the risks and failure rates associated with LPAs.

VI. Conclusion

Although not exhaustive,[229] this memorandum outlines the potential harms created by predatory trucking LPAs, what kinds of regulatory schemes various governments have used to mitigate similar problems created by analogous debt products, and, finally, how federal agencies might go about grounding driver-protective action in existing statutes.

[227] Alan Prendergast, *How Lease Deals Have Truckers Hauling a Load of Debt*, Westword, (Mar. 2, 2021), https://www.westword.com/news/truckers-lease-deal-pathways-lawsuit-highway-safety-supply-chain-11907958.
[228] Pursuant to the VA-FTC Memorandum of Agreement on shared investigatory authority, (Nov. 29, 2018), https://www.ftc.gov/system/files/documents/cooperation_agreements/ftc-va_memorandum_of_agreement_2018_1.pdf.
[229] Each analysis presented above is preliminary. Additional authorities that may apply include the Truth in Lending Act, the Workforce Innovation and Opportunity Act, the Trafficking Victims Protection Act, among others.