

FEDERAL TRADE COMMISSION

In the Matter of Rent-to-Own Store Swaps

Commission File No. 191 0074

Comments of the

National Consumer Law Center
on behalf of its low-income clients

and

Consumer Action
Consumer Federation of America
National Association of Consumer Advocates
National Consumers League
Open Markets Institute
U.S. PIRG

I. Introduction

In this case, the Federal Trade Commission (FTC) uncovered evidence that three major rent-to-own (RTO) players engaged in a market allocation scheme to close down stores that suppressed competition. As a result of this finding, the FTC obtained a promise from the parties engaged in this activity that “they will no longer enter into Swap Agreements and will not take any steps to enforce any non-competition agreements associated with the Swap Agreements.”¹

Given the significant harm caused to consumers by the industry involved in these Swap Agreements, it is disappointing that the FTC failed to do more. Indeed, the list of what the FTC could have and should have done in this enforcement effort is much longer than what it did do. The FTC did not:

- analyze customer contract performance after the store closures, or analyze critical information to determine the extent of harm inflicted on the public, and existing and future customers;
- determine whether customers were deceived when told that they could no longer make payments at the original location where they signed their contracts; or
- analyze the extent to which the low-income customers of the closed stores suffered financial hardships from having to make payments to different locations, which likely included—
 - difficulties in accessing the new locations,

¹ Federal Trade Comm’n, File No. 191 0074, Rent-to-Own Store Swaps; Analysis of Agreement Containing Consent Order To Aid Public Comment, 85 Fed. Reg. 11,082, 11,083 (Feb. 26, 2020), *available at* <https://www.govinfo.gov/content/pkg/FR-2020-02-26/pdf/2020-03782.pdf>.

- additional fees imposed as the result of these difficulties, and
- in some cases, default on their contracts triggered by these difficulties.

Even more importantly, this toothless settlement regarding activity that has been determined by the FTC to be illegal does not touch upon the real illegality relating to the rent-to-own transactions at the center of these enterprises: the use of real and perceived market forces in low-income communities to gouge consumers through exorbitantly expensive and often unfair terms. These comments outline the many additional steps the FTC can and should take to protect consumers from the unfair and deceptive practices inherent in the current structure of the RTO industry, as well as in the related lease-to-own (LTO) industry.

II. The FTC Should Take a Close Look at Unfairness and Deception in RTO Transactions.

RTO transactions are plagued by unfairness and deception. First, RTO transactions are exorbitantly priced. Under most RTO contracts, the customer will pay between \$1,000 and \$2,400 for a television, stereo, or other major appliance worth as little as \$200 retail, if used, and seldom more than \$600 retail, if new. This means that a low-income RTO customer will pay 1.5 to 12 times what a cash customer would pay in a traditional retail store for the same household item. A number of commentators have pointed out the overreaching nature of RTO contracts.²

State retail installment sales acts (RISAs) formerly imposed a number of protections—including, in many states, a cap on finance charges—on RTO transactions, but industry-friendly RTO statutes in almost all states now displace those laws.³ (Three states continue to apply their

² See, e.g., Creola Johnson, *Welfare Reform and Asset Accumulation: First We Need a Bed and a Car*, 2000 Wis. L. Rev. 1221, 1253-1258 (2000) (general description of RTO contracts and study of their use by low-income consumers); Ramp, *Renting-to-Own in the United States*, 24 Clearinghouse Rev. 797 (Dec. 1990). See also Brian Highsmith and Margot Saunders, National Consumer Law Center, *The Rent-To-Own Racket: Using Criminal Courts to Coerce Payments from Vulnerable Families* (Feb. 2019), available at <https://www.nclc.org/images/pdf/criminal-justice/report-rent-to-own-racket.pdf>; Creola Johnson, *Prosecuting Creditors and Protecting Consumers: Cracking Down on Creditors that Extort via Debt Criminalization Practices*, 80 Law & Contemporary Problems 211 (2017); Alice Hines, *Rent-to-Own Industry, Long Criticized for Preying on Military, Pledges to Find Jobs for Vets*, Huffington Post, Apr. 20, 2012; Anya Schiffrin, *Pay Now, Pay Later*, Mother Jones, May/June 2005; Ed Winn, *The RTO Customer Survey See-Saw*, Progressive Rentals (May–June 2004) (reporting on survey commissioned by APRO showing that 40% of RTO customers were unhappy with their experience and 24% felt they had been treated with disrespect by the RTO employees; among non-RTO customers, 55% had a negative image of the industry, down from 64% in 1997); David Abel, *Yours, For a Price*, Boston Globe, Feb. 17, 2003, at B1; *NBC Nightly News, The Fleecing of America* (NBC television broadcast Feb. 25, 1998). Cf. Michael H. Anderson, *An Economic Investigation of Rent-to-Own Agreements*, 89 Chi.-Kent L. Rev. 141 (2014) (reviewing and summarizing various studies, including the author’s own, which rely on transactional data obtained from RTO companies; concluding that the primary customers are the working poor, RTO is an expensive way to purchase merchandise, and there is significant risk catering to this clientele, but consumers are deriving benefit from the options that RTO provides, including the option of renting rather than purchasing).

³ See National Consumer Law Center, *Consumer Credit Regulation* § 13.3.4 (2d ed. 2015), updated at www.nclc.org/library

RISAs,⁴ and six states have enacted RTO laws that cap markups and the total of payments.⁵) Many of the RTO statutes also explicitly exempt RTOs from the state’s home solicitation sales laws and from Article 9 of the Uniform Commercial Code, which imposes some basic protections on repossession.

Second, RTO transactions are structured to evade meaningful disclosure of the cost of this form of purchasing an item. If the APR were computed, using the cash price as the amount financed and the difference between the cash price and the total of payments as the finance charge, typical APRs would be in the triple digits. However, RTO transactions are structured as one-week, two-week, or one-month renewable leases, with no obligation to renew the lease past the initial term. The result is that, even though the consumer must complete all payments in order to purchase the property, the Truth in Lending Act’s disclosure requirements are inapplicable because the lease is terminable without penalty at any time.

RTO transactions also evade the Consumer Leasing Act, because it applies only to leases greater than four months in duration,⁶ and it does not apply to a lease that is terminable without penalty during its first four months.⁷

A third concern is the deceptive marketing of RTO transactions as a means of acquiring ownership of an item when it appears that there is a high rate of failure. This topic is particularly in need of FTC investigation, as studies have produced inconsistent data. There is evidence that a substantial percentage of RTO customers do not succeed in acquiring ownership of the goods.⁸ On

⁴ See *id.* at § 13.3.4.2.

⁵ Cal. Civ. Code § 1812.644 (West); Haw. Rev. Stat. Ann. §§ 481M-1, 481M-5; Me. Rev. Stat. tit. 9-A, § 11-105; N.Y. Pers. Prop. Law § 503 (McKinney); Vt. Stat. Ann. tit. 9, § 41b(c); W. Va. Code § 46B-3-9; W. Va. Code St. R. § 142-22-3.

⁶ 15 U.S.C. § 1667(1).

⁷ *Id.*

⁸ Association of Progressive Rental Organizations, *The Rent-to-Own Industry: About RTO 17* (posted Aug. 16, 2016) available at <https://www.rtohq.org/wp-content/uploads/2019/06/APRO-Flipbook-About-Us.pdf> (stating that 17% of RTO customers exercise the early purchase option and 8% complete the RTO contract to full term); Ed Winn, *The RTO Customer Survey See-Saw*, Progressive Rentals, May–June 2004 (reporting on telephone survey of RTO customers commissioned by APRO, which found that 90% of customers intended to own the product they were renting, but only 40% managed to keep the product). See also Michael H. Anderson & Raymond Jackson, *Rent-To-Own Agreements: Purchases or Rentals?*, 20 J. Applied Bus. Res. 13, 17–18 (2004), available at www.cluteinstitute.com/ojs/index.php/JABR/issue/view/239 (using data provided by RTO stores; finding in Table 2 that 39.09% of customer agreements were paid off early or paid off over the full term and those consumers kept the merchandise, but 51.6% of RTO agreements were terminated when the merchandise was returned to the RTO store; arguing that these findings favor treating RTO transactions as a hybrid rental/purchase agreement that includes a number of options that benefit consumers). With respect to the Anderson/Jackson article, note that there could be data integrity concerns, as it is not clear from the article who coded the data—the stores (as suggested at 17) or the researchers—and whether the data collection and coding systems were uniform among the different RTO companies that submitted data. Note also that, of the 51.6% of contracts that were classified as “returned,” only 38.18% were voluntary returns (short-term rental, affordability, exchanged, loss of income, servicer problem).

the other hand, a few studies conclude that RTO companies sell most of their inventory.⁹ The FTC studied these transactions in 2000, but that study is now very much out of date.

Fourth, a widespread abuse involves the inclusion of so-called “optional fees,” such as liability damage waivers (LDW) in RTO contracts. LDW programs purport to relieve customers of any further responsibility for the fair market value of the property if the property is stolen or destroyed by certain specified acts. The value of LDW is highly questionable.¹⁰ RTO dealers rarely, if ever, sue customers. They expect their customers to be judgment proof. The FTC should investigate the penetration rate for LDW, as a high penetration rate is a sign that the fee may not be truly optional but mandatory, and whether it provides merely illusory benefits for consumers.

Fifth, there are many reports regarding the RTO industry’s use of the threat of arrest and criminal sanctions to obtain payments, and of initiating criminal theft charges against borrowers who fall behind on payments.¹¹ These reports show an effort to make simple breach-of-contract behavior a crime, and thus intimidate customers into making unaffordable payments.

III. FTC Action is Particularly Important Because the RTO Industry is Expanding and Changing.

Action by the FTC is particularly important because the RTO industry is expanding. As of the middle of 2017, the Association of Progressive Rental Organizations (APRO), the RTO trade association, reported that RTO is an \$8.2 billion a year industry in the United States, serving about 4 million customers.¹² Thus, the average RTO customer is spending about \$ 2,050 per year, or \$170.83

⁹ See *Perez v. Rent-A-Center, Inc.*, 892 A.2d 1255 (N.J. 2006) (noting testimony by Rent-A-Center’s experts that 64% of that company’s inventory was sold to its customers); James M. Lacko, Signe-Mary McKernan & Manoj Hastak, Federal Trade Comm’n, *Survey of Rent-to-Own Customers* (Apr. 2000), available at www.ftc.gov (reporting on survey of 532 RTO customers; finding that 70% of RTO merchandise was purchased by the customer, and that 90% of the merchandise on which customers had made substantial payments (of six months or more) was purchased); *ABC Rentals v. Commissioner of Internal Revenue*, 142 F.3d 1200, 1202–1203 (10th Cir. 1998) (finding that, on average, RTO stores dispose of rental units within two years of their purchase of inventory and dispose of about 90% of all rental units with 3.5 years of purchase.; this is some indication that most merchandise is sold to the RTO customer base in two to three years, although the opinion does not make clear whether the 90% figure includes other means of disposing of unsold merchandise); Ramp, *Renting-to-Own in the United States*, 24 Clearinghouse Rev. 797 (Dec. 1990) (noting discovery obtained in a class action against a major RTO company showing that 66% of one year’s inventory was sold, and between 73 and 77% of the company’s revenues came from sales, not rentals).

¹⁰ See James Nehf, *Effective Regulation of Rent-to-Own Contracts*, 52 Ohio St. L.J. 751, 824 (1991) (detailed discussion of LDW and other miscellaneous charges such as processing fees and reinstatement fees; recognizing that these miscellaneous charges can present some of the most offensive aspects of RTO contracts, because even a capable customer who has read the contract will have difficulty understanding them).

¹¹ This subject was comprehensively explored in our report: *The Rent-To-Own Racket: Using Criminal Courts to Coerce Payments from Vulnerable Families* (Feb. 2019), available at <https://www.nclc.org/images/pdf/criminal-justice/report-rent-to-own-racket.pdf>.

¹² Association of Progressive Rental Organizations, *The Shape of Rent-to-Own by the Numbers* (posted Aug. 7, 2017), available at www.rtohq.org/2017/08/shape-rent-numbers. APRO’s website also shows that annual industry revenues for all of North America were \$8.6 billion for 2015 and 2016. There were 7,100 rent-to-

per month, on RTO merchandise. The industry is dominated by large national companies,¹³ including those involved in the instant investigation.

In an attempt to increase its customer base into the middle class, some companies have expanded their product offerings from basic consumer commodities to high-end items, such as big-screen televisions and flashy, oversized chrome auto wheels aimed at young drivers.¹⁴ The APRO reports that RTO transactions involving appliances and furniture have declined in favor of electronics and computers, which account for about 45% of transactions.¹⁵

Some RTO companies have attempted to fill the void left by the departure of traditional credit card companies from the subprime finance market. In 2011, Rent-A-Center (RAC) established “kiosks” in Best Buy, Ashley Furniture, Conn’s, and other retailers.¹⁶ (However, less than a year after announcing the program, Best Buy pulled the kiosks from its stores.¹⁷) Under the arrangement, consumers who do not meet the retailer’s credit standards have the option to enter into an RTO agreement. The retailer then sells the merchandise to the RTO company. In turn, the RTO company marks up the item by about two to three times the item’s cost and leases it to the consumer under its standard RTO agreement. Rent-A-Center named this part of its business “Acceptance Now” and reported that, as of the end of 2017, it operated 1,106 staffed kiosk locations inside furniture and electronics retailers located in 42 states and Puerto Rico, and 125 virtual (direct) locations.¹⁸

Another company, Progressive Leasing, appears to fill in where RAC kiosks leave off. It

own stores in 2014, 6,900 in 2015 and 6,700 in 2016. Brick-and-mortar stores suffered a small decline in revenue of \$100 million between 2014 to 2016. But during that same period, e-commerce revenue increased \$800 million.

¹³ See, e.g., Rent-A-Center, 2017 Annual Report on Form 10-K, at 3-4, *available at* <https://investor.rentacenter.com> (noting that, as of the end of 2017, Rent-A-Center operated 2,381 stores in the United States, Canada and Puerto Rico, and 131 in Mexico, amounting to 37% of all RTO stores in North America in 2016, as reported by APRO; Rent-A-Center also operated 1,106 staffed kiosk locations inside furniture and electronics retailers located in 42 states and Puerto Rico, and 125 virtual (direct) locations).

¹⁴ Chris Woodyard, *Spinning Wheels Got to Go Round for Hip Drivers*, USA Today, Jan. 24, 2005 (noting one consumer who was paying \$60 per week, or a total of more than \$3,000, for a set of “bling-bling” rims retailing for \$1,560).

¹⁵ Association of Progressive Rental Organizations, *The Rent-to-Own Industry: About RTO 15* (posted Aug. 16, 2016) *available at* <https://www.rtohq.org/wp-content/uploads/2019/06/APRO-Flipbook-About-Us.pdf>. See also 2017 Annual Report on Form 10-K, at 6, *available at* <https://investor.rentacenter.com> (reporting that, for 2017, furniture and accessories accounted for approximately 41% of Rent-A-Center’s consolidated rentals and fees revenue, consumer electronic products 20%, appliances 15%, computers 5%, smartphones 3%, and other products and services 16%).

¹⁶ Karen Talley, *Best Buy May Offer Rent-to-Own Option*, MarketWatch, Aug. 22, 2011.

¹⁷ Karen Talley, Dow Jones Newswires, *Best Buy Ceases Rent-To-Own Program with Rent-A-Center*, Wall Street Journal, Apr. 30, 2012.

¹⁸ Data from 2017 Annual Report on Form 10-K, at 4, *available at* <https://investor.rentacenter.com> (showing that as traditional RAC stores decline (down from 3,010 in 2013), the slack is being picked up by kiosk and direct transactions).

operates in a similar fashion (but without kiosks) and is targeted at the customers of merchants that do not qualify for other financing options.¹⁹ Like RAC, Progressive purchases the item selected by the customer from its merchant partner and enters into a lease-purchase agreement at the point of sale. Progressive boasts relationships with merchants at over 30,000 locations in 46 states.²⁰ The company promotes its product to potential merchants by highlighting that its alternative financing option will increase the merchant's sales, decrease layaways, increase repeat customers, expand the customer base, and provide an edge over the competition.²¹

Other virtual RTO companies have also entered the market, including Snap Finance,²² Flex Shopper,²³ Acima,²⁴ and others. The websites for these companies appear to be marketed directly to consumers, but in reality it is much more likely that merchants seeking mechanisms to enable consumers to finance their sales are the real customers. Reports are that consumers are generally introduced to these websites while on the merchant's premises, poised to purchase an item.

Another development is the expansion of the industry into longer-term lease-purchase transactions. These transactions, which we term "lease to own" (LTO) instead of RTO, typically have a fixed payment obligation that exceeds four months. They are not generally governed by state RTO laws, but may be governed by a state RISA. Either the Truth in Lending Act or the federal Consumer Leasing Act also generally applies to these transactions. Some companies have promoted LTO financing as a way to buy a puppy, a highly controversial practice.²⁵ Others have marketed LTO as a way to finance the sale of services such as auto repair,²⁶ a concept so illogical as to be inherently deceptive. Typically, LTO transactions involving consumer goods have APRs over 100%.

The growth and changing nature of the RTO industry makes it all the more urgent for the FTC to pay attention to this industry. Typically, LTO transactions involving consumer goods have APRs over 100%.

IV. The FTC Should Protect Consumers from the Unfair and Deceptive Practices in These Rental Industries.

A. RTO Customers Need to be Protected from Unfair Activities in RTO Transactions.

1. Prices Are Exorbitant and Costs are Not Disclosed. As described in section II, the prices charged by RTO dealers for customers to succeed in purchasing goods through RTO transactions

¹⁹ <https://progleasing.com/merchant>.

²⁰ <https://progleasing.com/merchant>.

²¹ <https://progleasing.com/merchant/how-it-works>.

²² <https://snapfinance.com/virtual-rent-to-own>.

²³ <https://www.flexshopper.com/>.

²⁴ <https://www.acimacredit.com/>.

²⁵ <https://consumerist.com/2016/04/14/yes-you-can-rent-to-own-a-dog-its-expensive/> (Consumerist Archives).

²⁶ <https://www.ntb.com/topic/flexshopper>.

are often astronomical. Moreover, the actual markups—or effective APRs—charged in RTO transactions are not disclosed at all.

2. *RTO Transactions Are Presented as a Path to Ownership.* Most RTO customers enter into these transactions to obtain ownership of the goods. Indeed, the aspect of the transactions that is their justification for charging high fees is the termination ability of the transactions, which is of little benefit to consumers who have no intention of terminating, because they intend to complete the purchase transaction. This is an indication of a market failure, or *unfairness*, as the market is failing to correct itself so that transactions meet consumers' expectations, and prices charged for the transaction far exceed the benefits provided to consumers from the transactions.

3. *“Optional” Fees Offer Little or No Real Value and May Not be Optional.* As described in section II, it is questionable whether there is any benefit whatsoever received by consumers in the sale liability damage waivers. Leading consumers to believe that purchasing these expensive waivers is necessary to protect themselves from potential liability is unfair and deceptive.

4. *RTO Companies Use Criminal Prosecution or the Threat of Prosecution to Intimidate Customers.* RTO companies use arrest or the threat thereof to intimidate struggling customers into making payments. Charges may even be brought against those who have already paid the full retail value of the goods, but simply have not paid the excessively high effective financing charges imposed by the industry. These criminalization tactics are unfair and deceptive, as companies accuse customers of stealing merchandise, when the reality is often that customers simply missed a payment on a deceptively expensive contract—conduct that would, in other consumer transactions, be considered a breach of contract and not a crime.

B. Clear Analysis of RTO and LTO Transactions Would Also Be Helpful.

As most of the current RTO and LTO contracts include arbitration clauses, there is a dearth of litigation and thus no discovery about the practices of these industries. The FTC should study both of these industries, the consumers who use them, and the retailers who work with them. The FTC should ask the following questions, among others, and these questions should be separately applied to RTO and LTO transactions:

1. What percentage of customers enter into the transactions with the intent to own the goods?
2. What percentage of individual contracts result in actual transfer of ownership of the goods?
3. Typically, how many reinstatements and/or renewals or extensions of contracts do most customers enter into before they succeed in obtaining ownership?
4. Comparing the cash price of the goods with the total amount to be paid under the contracts, assuming no late fees or other unanticipated fees, what is the equivalent APR to be charged to the consumer for making all of the payments in a timely fashion?
5. What percentage of consumers complete their contracts without late fees?
6. What percentage of consumers complete their contracts with three or fewer late fees?
7. What percentage of consumers did not understand when they initiated the transaction that they were entering into a rental or lease, and that they would not be the owner until making all of the payments required under the lease or RTO contract?

In addition, the FTC should gather more information about the use of the criminal courts to enforce rental/purchase agreements, and the use of threats about the potential for referrals to criminal courts.

IV. Conclusion

Given the long list of harms that we know or suspect that consumers have suffered at the hands of the RTO industry, it is very disappointing that the FTC settled this investigation without gathering more information and establishing more robust protections for consumers. There is still much to be done. We hope the FTC moves forward aggressively in its reviews of the rental/purchase marketplace and finds way to provide more meaningful protections to consumers.

Thank you for considering our views.

This the 25th day of March 2020,

Margot Saunders

Senior Counsel
National Consumer Law Center
1001 Connecticut Ave, NW
Washington D.C.
202 452-6252 ext. 104
msaunders@nclc.org

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