

The New Rent-to-Own: More Confusing, Still Expensive, and Offered at an NYC Store Near You



Bill de Blasio
Mayor

Consumer and
Worker Protection

Lorelei Salas
Commissioner

NO
CREDIT
NEEDED

Preferred lease

NO CREDIT
NEEDED

The New Rent-to-Own: More Confusing, Still Expensive, and Offered at an NYC Store Near You

Bill de Blasio
Mayor

Lorelei Salas
Commissioner

© April 2021. New York City Department of Consumer and Worker Protection.
All rights reserved.

Author Note

While No Credit Needed (NCN) companies operate nationally, their contracts are specific to the states in which they operate. This report focuses on New York law and New York City retailers and consumers. Readers from other jurisdictions should consult their state laws when evaluating the virtual Lease-To-Own (LTO) industry in their areas.¹

Acknowledgments

This report was prepared by Glenna Goldis, Senior Staff Counsel, of the General Counsel Division, which is led by General Counsel Tamala Boyd and Deputy General Counsel Michael Tiger. Special thanks to project contributors: Nicole Arrindell, formerly Associate General Counsel; Daniel DuBois, Staff Counsel; Lena Kasen, Legal Staff Associate; and Chuck Kress, formerly Senior Legal Staff Associate.

The Department of Consumer and Worker Protection (DCWP) also acknowledges the following staff members for their contributions: Zayne Abdessalam, Director of Policy and Research, Office of Financial Empowerment; David Cho, Program Analyst; Debra Halpin, Assistant Commissioner for Creative Services; Abigail Lootens, Associate Commissioner of Communications & Marketing; Karla Morey, Staff Counsel; Ulrike Nischan, Senior Research Analyst, Office of Financial Empowerment; Kwame Simpson, Legal Technology Coordinator; and Samuel Wylde, formerly Policy Analyst, Office of Financial Empowerment.

Acronyms

ACH	Automated Clearing House
APR	Annual Percentage Rate
BBB	Better Business Bureau
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CPL	Consumer Protection Law
DCWP	Department of Consumer and Worker Protection
EPO	Early Purchase Option
FTC	Federal Trade Commission
GBL	General Business Law
LLC	Limited Liability Company
LTO	Lease-To-Own
NCN	No Credit Needed
OAG	Office of the Attorney General
PPL	Personal Property Law
RAC	Rent-A-Center
RIC	Retail Installment Contract
TILA	Truth In Lending Act

Report Terminology

DCWP uses the terms **lease** and **rent** interchangeably. While some commentators, businesses, and advocates prefer one or the other, no distinction exists under New York State law.

This report focuses on **Lease-To-Own (LTO)** only; that is, agreements that automatically lead to ownership. It does not discuss other forms of consumer leasing.²

DCWP refers to virtual LTO agreements as **financing** because this broad term captures how consumers experience the service—as a method of payment using borrowed funds.

Table of Contents

Message from Commissioner Lorelei Salas	7
Introduction	9
The Virtual Lease-To-Own Industry	10
The Virtual LTO Transaction – In Theory...	12
The Virtual LTO Transaction – In Reality...	13
The Virtual LTO Retailer	26
Potential Litigation and Law Enforcement	29
Recommendations	31
Conclusion	32
Endnotes	34



Message from Commissioner Lorelei Salas

“Buy now, pay later.”

Long before the COVID-19 pandemic devastated economies and left already vulnerable consumers in even more precarious situations, the promise of “buy now, pay later” lured too many consumers into agreements they did not understand and payment amounts they could not afford. Known in the industry as “virtual lease to own,” these agreements are promoted by brick-and-mortar businesses, like furniture stores, but the debt is owned by third-party financing companies—usually unbeknownst to the consumer. Complaints about the behavior of the retailers and the deceptive and predatory nature of the agreements led the Department of Consumer and Worker Protection to take a closer look at the agreements, the retailers, and the third-party financing companies that form the crux of the virtual lease-to-own arrangement. This report is the result.

Although our report focuses on brick-and-mortar businesses, lease to own has been identified as the fastest growing e-commerce payment method—an alarming development since, as a result of the pandemic, people are shopping online now more than ever, and many of those people are having difficulty financially.

This report details DCWP’s findings about the industry, offers recommendations for potential enforcement actions, and suggests ways to strengthen regulatory oversight. Protecting consumers is part of our mission, and that mission has renewed importance during economically precarious times.

Sincerely,



Lorelei Salas
Commissioner





Introduction

Imagine that you need a couch and a bed for your apartment, but you do not have the money to buy them. You walk by a furniture store and see a “no credit needed” advertisement in the window. Inside the store, you find a couch and bed that you want. While the price seems high, you need the furniture. When you ask the sales representative about the ad in the window, he ushers you to a computer to complete an “easy” financing application. Believing it is like a credit card application, you enter your bank account details and Social Security number. The screen says you are “approved.” The sales representative enters more information and tells you how much your weekly payment will be. You sign the screen by typing your name. You feel relieved that you managed to purchase furniture so easily and affordably.

In this scenario, you did not actually buy the bed and couch. Rather, when you e-signed the financing application, you agreed to lease the couch and bed from a virtual lease-to-own (LTO) company, which just bought the furniture from the store. If you keep the furniture long enough and make all required payments, you will, eventually, own it, but at what cost? After one year, it is likely you will have paid the virtual LTO company more than double the price—the equivalent of an annual percentage rate (APR) of over 100%.

The stakes are high when it comes to no credit needed (NCN) companies that offer virtual LTO agreements. And it is not just furniture. Consumers who lease eyeglasses, electronics, and jewelry often pay hundreds, sometimes thousands, in leasing charges without ever understanding the leases they signed. Consumers report—and an investigation by the Department of Consumer and Worker Protection (DCWP) confirms—that retailers deceived them about leases, rushed them through the application process, and then stonewalled them when they asked to reverse the transaction. Some consumers claimed that retailers forged their e-signatures.

In New York City, consumers of color are disproportionately affected by these business practices as retailers offering LTO agreements are concentrated in Black and Hispanic neighborhoods.

Despite the evidence that virtual LTO agreements are overpriced, underexplained vehicles responsible for driving already financially vulnerable people further into debt, NCN companies have largely escaped regulatory scrutiny. And NCN companies have turned a blind eye to the misinformation peddled by their retailers.

In this report, DCWP:

- Provides an overview of the virtual LTO industry in New York City, drawing from investigations into five major NCN companies that generate complaints in New York City.
- Details the consumer experience with virtual LTO agreements, including key lease features and the retailer’s role.
- Identifies potential causes of action against NCN companies and retailers.
- Recommends policy reforms to stop consumer abuse, with the goal of dismantling the incentive structures for NCN companies and retailers to harm consumers.

As part of our investigation, we used audio recordings and subpoenaed documents, as well as consumer interviews, public filings, and DCWP undercover operations.

The Virtual Lease-To-Own Industry

In a traditional, brick-and-mortar LTO transaction, the consumer selects merchandise from a retailer and the retailer leases that merchandise directly to the consumer. The parties establish a payment schedule at the outset and, after a certain number of payments, the consumer automatically owns the merchandise and the charges cease.

In a “virtual” LTO transaction, the consumer selects merchandise from a retailer, but a third-party financing company—NCN company—purchases the merchandise from the retailer, then leases it to the consumer.

By partnering with retailers in this way, NCN companies can lease a wide range of merchandise without having to stock inventory themselves. Products leased by NCN companies span the retail spectrum: phones, furniture, eyeglasses, appliances, jewelry, even auto repair. Some retailers are major chains, like Best Buy and T-Mobile; others appear to be small local businesses. The smaller retailers often partner with multiple NCN companies. Some retailers have solid reputations and business practices, while others generate numerous complaints.

LTO agreements are governed by state law. In New York, it is Personal Property Law (PPL) §§ 500-508 (or Article 11), enforced by the New York State Office of the Attorney General (OAG).³

NCN Companies

Over the last five years, NCN companies have received millions in investment dollars and made billions in revenue a year. In New York City, between 2017 and early 2020, five NCN companies in particular entered into over 200,000 leases with New York City consumers and offered leases at over 2,000 New York City storefronts. These companies are the focus of this report and include:

1. *Acceptance Now*

Founded in 2005, Acceptance Now is currently owned by Rent-A-Center, Inc. (RAC), a traditional, brick-and-mortar LTO retailer. Although RAC has financed and leased its own merchandise, its Chief Executive Officer (CEO) publicly stated that its “big growth vehicle certainly is virtual...”⁴ Acceptance Now partners with major furniture retailers and, as of 2019, had generated approximately \$173.1 million in revenue.⁵ In 2020, RAC put all of its leasing options, including Acceptance Now, under the umbrella of “Preferred Lease,” which generated approximately \$750 million in revenue.⁶

2. *Acima Credit (Acima)*

Formerly known as Simple Finance, Acima is a privately held, private equity-backed company founded in 2013. In 2019, it received \$125 million in private equity funds from Comvest Credit Partners.⁷ Acima partners with Cohen’s Fashion Optical and many small retailers, amounting to over 800 active locations in New York City.

3. *Progressive Leasing (Progressive)*

Founded in 1999, Progressive is currently owned by Aaron’s, Inc., a traditional LTO retailer.⁸ Progressive partners with New York City retailers at several hundred locations and, in 2019, launched partnerships with U.S. Best Buy Co., Inc. (Best Buy)⁹ and Lowe’s Companies, Inc.¹⁰ Progressive reported an annual revenue of approximately \$2 billion in 2018.¹¹ Best Buy employees have expressed antipathy toward Progressive, referring to it as “regressive leasing” and stating that, “[i]t feels abusive and gross.”¹² In 2020, the Federal Trade Commission (FTC) charged Progressive with systematically deceiving consumers about the cost of leasing.¹³ The parties settled the matter for \$175 million—one of the largest settlements in FTC history.¹⁴

4. *SmartPay Leasing LLC (SmartPay)*

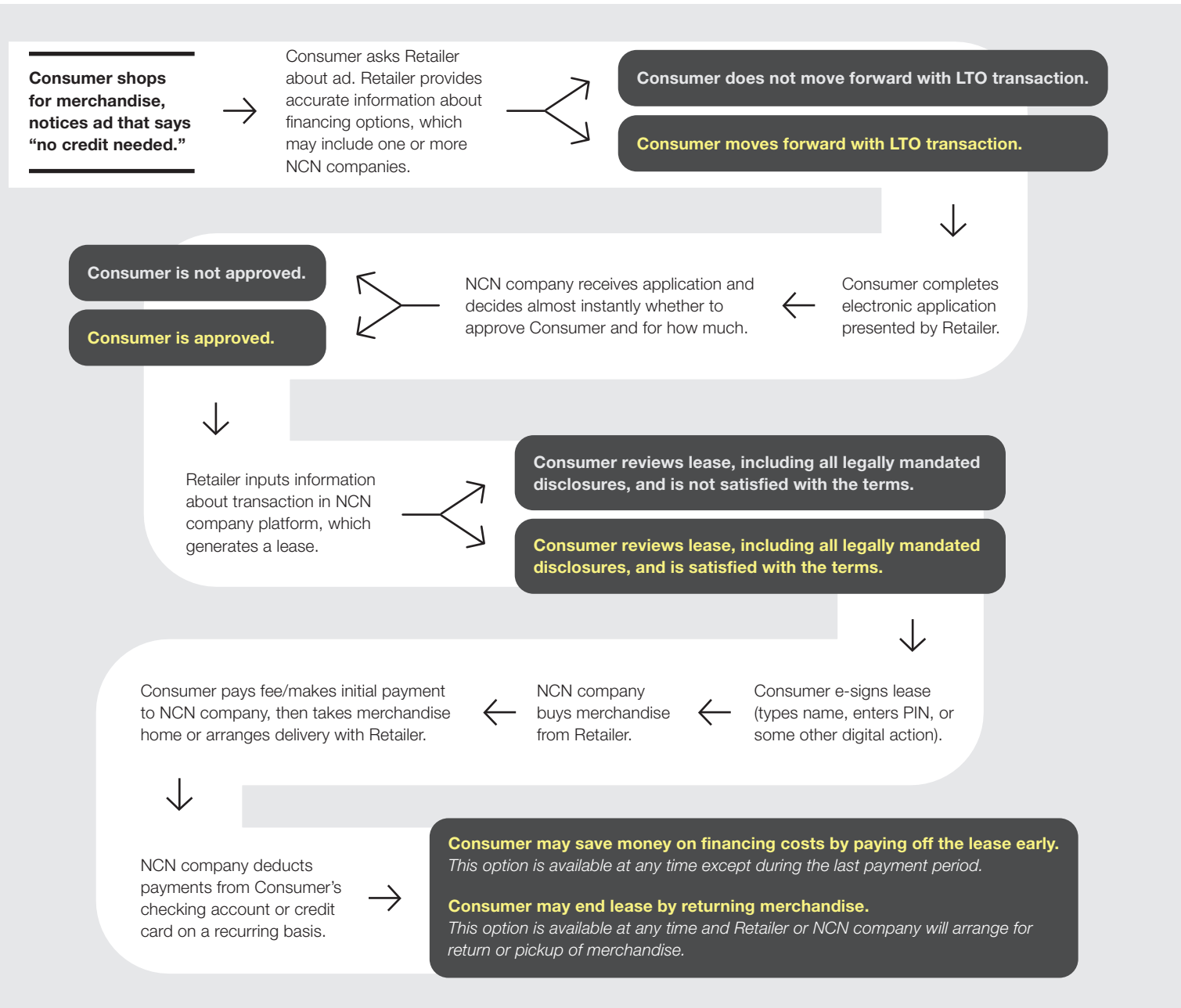
Founded in 2009, SmartPay is currently owned by Tempoe, LLC. SmartPay partners with cell phone stores, with the bulk of its New York City business stemming from partnerships with several hundred Metro by T-Mobile retailers. These retailers are either owned by or partner with MetroPCS New York, LLC, a subsidiary of T-Mobile USA, Inc. In 2019, DCWP sued T-Mobile for systematically deceiving consumers at these stores, including by misleading them about SmartPay leases.¹⁵

5. *Snap Finance (Snap)*

Founded in 2011, Snap is a privately held, privately funded company.¹⁶ In 2017, Snap announced a partnership with BMO Harris Bank to service more than \$1 billion in LTO financing agreements.¹⁷ Snap partners with New York City retailers at several hundred locations, including several auto repair shops.

The Virtual LTO Transaction – In Theory...

According to NCN companies, virtual LTO agreements are a veritable dream come true, especially for individuals with bad credit or no credit. Often touted as fast, flexible, and friendly, a virtual LTO transaction is supposed to proceed as follows:



Fast, flexible, and friendly, right? In reality, however, the virtual LTO process often bears little resemblance to this description.

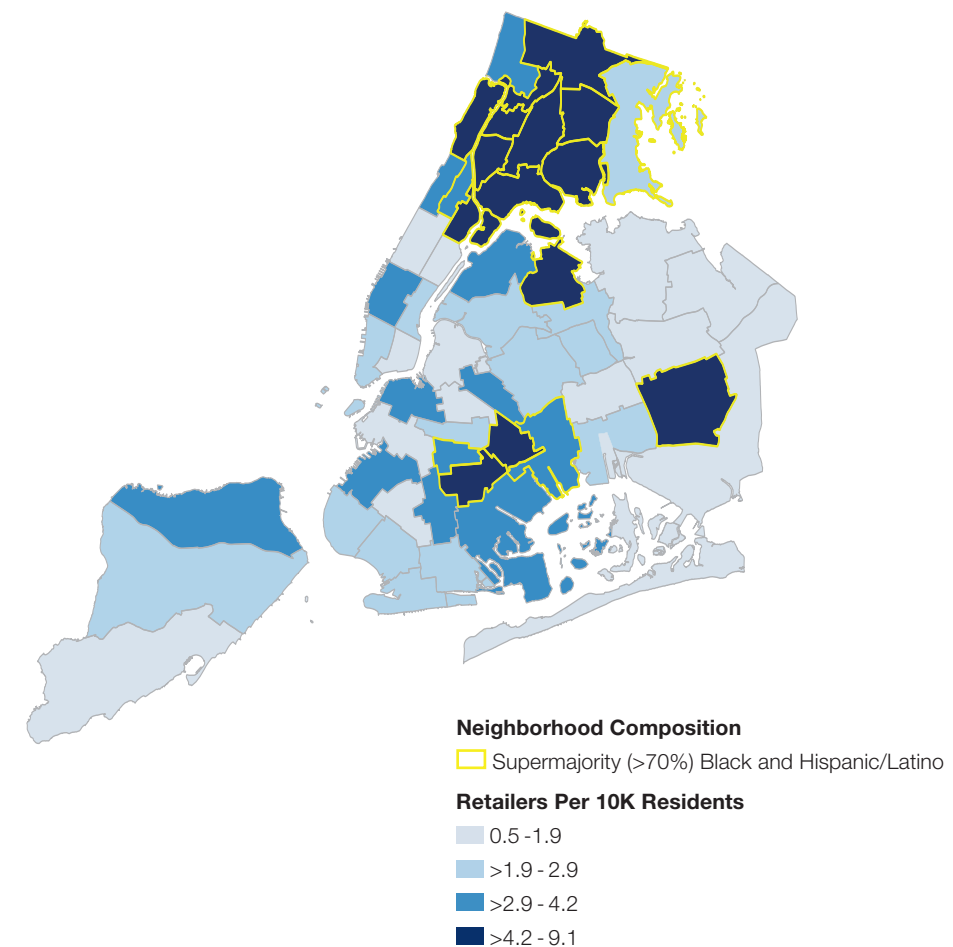
The Virtual LTO Transaction – In Reality...

A review of NCN company records and consumer complaints show that consumers who enter virtual LTO transactions are often targeted, taken advantage of, and tricked.

NCN Companies Target Certain Consumers

In New York City, LTO retailers are heavily concentrated in neighborhoods populated by people of color. See Figure 1. The yellow outline indicates a supermajority, meaning more than 70% of the residents in the area identify as "Black" or "Hispanic/Latino."¹⁸

Figure 1: Map of New York City



As the map illustrates, the number of LTO retailers per resident is highest in supermajority neighborhoods.¹⁹ If NCN companies are to be believed, this is not targeting; rather, it is an effort to provide financing options to those who are financially marginalized, including those with "less than perfect credit" or those who are "credit challenged."²⁰

Such claims, however, do not tell the whole story.

- **No NCN company approves every consumer who applies.** NCN companies have a screening process that, while not necessarily reliant on FICO scores like traditional credit, is still essentially an evaluation of creditworthiness.
- **Lease applicants must have a credit card or bank account.** Snap explicitly states, “traditional bank account. No pay cards, Green Dot, Rush, or other such alternatives are allowed.” In other words, Snap rejects the only financial vehicles available to the truly credit challenged.

De facto credit screening, insistence on mainstream payment methods—together, these suggest that NCN companies are not in the market to help consumers with no other financing options. Rather, NCN companies are very savvy businesses that use “modern technology and alternative data sources”²¹ to target consumers who have just enough financial stability to pay what appears to be a reasonable monthly bill but not enough to qualify them for credit that, ultimately, is not predatory.

Retailers for NCN Companies Trick Consumers

It is rare to walk through any New York City business corridor and not encounter some version of NCN company advertising on the doors or in the windows of retailers. NCN company ads are often vague. The ad in Figure 2 does not include the name of the NCN company.

Figure 2: Example of NCN Company Advertisement



Although prevalent, the ads are not informative, generally consisting of words like “no credit needed” and sometimes suggesting cost savings through early payment; for example, “90-day payment option” (Acima) or “100-day cash payoff” (Snap).

Figure 3: Example of Bronx Retailer’s Advertisement for Acima



Rarely seen in NCN company advertisements are the words “lease” and “rent”—the most important feature of the product being offered. Other critical information that rarely, if ever, appears in ads includes:

- leasing fees (akin to interest on a loan);
- other charges and markups;
- duration of the lease; and
- anything else to help a consumer calculate the total cost of the product.²²

Consumers, therefore, are largely dependent on retailers to explain the terms and conditions of NCN products. While some NCN companies make more informative material available to retailers, that information is not necessarily made available to consumers.

During DCWP’s undercover operation, the investigator asked 12 retailers²³ if they had any virtual LTO information he could take with him; 11 said no.²⁴ This failure to provide information—or, more nefariously, the tendency to provide false or misleading information—is also apparent in consumer complaints.

The Better Business Bureau (BBB) has issued “alerts” for some NCN companies regarding “patterns of complaint.” Companies include:

- *Acceptance Now*: “failure to disclose key financing terms and conditions.”²⁵
- *SmartPay*: “[c]ustomers experiencing confusion regarding their contracts.”

BBB has also reported: “Customers allege being provided with information about the payments required to pay off their phones, but later finding they owed more than indicated.”²⁶ In 2020, Progressive agreed to pay \$175 million to the FTC to settle charges related to “misrepresentations” made to consumers.²⁷

In early 2020, a DCWP undercover investigator visited 13 retailers offering LTO agreements and asked them to explain NCN financing. Of the 13, one was a furniture retailer who explained other financing offers but refused to answer questions about virtual LTO agreements, saying, “I don’t want to mislead you.” Sales associates at the remaining 12 locations all made deceptive statements or engaged in deceptive practices, including:

- Promising that lease payments would help the consumer’s credit when, in fact, some NCN companies do not report to credit bureaus.²⁸
- Falsely implying that an LTO agreement is like using a credit card and/or advertising LTO agreements alongside traditional financing products without mentioning that LTO is a lease product.

- Mischaracterizing financing charges as “interest.”
- Falsely implying that there would be no finance charges (“no interest”) if the balance was paid within 90 days or 3.5 months.
- Providing incorrect financing rates and deadlines for early payoffs.
- Referring to products as “no credit check” financing when their partner NCN companies review credit history.

The misstatements about the potential impact of LTO agreements on a consumer’s credit history are particularly pernicious because different NCN companies handle credit reporting in entirely different ways:

- Some report to one or more of the big three credit reporting bureaus.
- Some report to “secondary” credit bureaus with niche specialties, like DataX, which serves “the non-prime lending community.”
- Some do not report to credit bureaus at all but do send delinquent accounts to third parties for collection, which results in reports that can damage consumer credit but not improve it.

Without knowing exactly what is being reported to whom, it is impossible for consumers to know whether entering an LTO transaction will have any effect on their credit. This leads to consumer confusion at best, and consumer deception at worst.

Misstatements about the impact of LTO agreements on consumer credit are not limited to retailers—NCN companies themselves also provide misleading information about credit reporting. For example, Acima boasts:

“Acima reports your customer’s credit to Experian to help your customer eventually leave the poor or no credit box they have been put into.”²⁹

But reporting to Experian only has value if the consumer’s creditors pull—and exclusively rely on—the Experian report. There is no guarantee that they will.

More disturbing is what Best Buy’s Chief Financial Officer (CFO) said during a 2019 investor call, representing the company’s new (LTO) consumers as:

“people who in some cases just have no credit, and this is the start for them to be able to build a credit portfolio and actually will lead to a much more robust credit portfolio over time.”³⁰

Why is this disturbing? Because Progressive, the NCN company with whom Best Buy partners, says exactly the opposite on its website:

Does Progressive report to credit bureaus? Can I build up my credit by doing a successful Lease?

No. We do not currently report to credit bureaus. Progressive Leasing provides a lease-to-own purchase program, not credit.³¹

NCN company websites are also devoid of some critical information about LTO products. None of the websites accessed by DCWP explained how much leasing would cost or how a lease amount is calculated. Although DCWP accessed a SmartPay pricing calculator via Google, it is not linked on SmartPay’s homepage.³²

Although the lease agreement includes legally mandated disclosures,³³ there are several reasons to believe consumers are not shown these disclosures before executing the lease:

- **Consumers have consistently complained about not knowing the cost of a lease until after leaving a retailer.** As an example, the FTC charged that Progressive “received tens of thousands of complaints from consumers saying they were provided inaccurate or misleading information about Progressive’s terms or charges, including more than 15,000 complaints from May 2017 through July 2018 alone.”³⁴
- **Retailer training is so limited that some may not understand that they are legally obligated to show the disclosures to consumers.** Snap’s retailer training materials, for example, do not dictate that disclosures be shown.
- **The technology used by at least four NCN companies allows the retailer to click past disclosures without consumers seeing them and to e-sign on the consumer’s behalf by typing a name or some other digital identifier.**
- **DCWP’s investigation revealed that NCN companies permitted, and sometimes even encouraged, retailers to hide the reality of these transactions from consumers.**

Only one NCN company, Acima, ensures compliance with the disclosure law by texting leases to consumers’ mobile phones for their e-signature. The screen before the lease isolates important information, such as how much it will cost to lease the merchandise. Important as it is to share this communication, reducing a lease agreement to the size of a cell phone screen can make it difficult to read.

Figure 4: Screenshot of Beginning of Acima’s Eight-page Lease Document



Virtual LTO Terms and Conditions Take Advantage of Consumers' Vulnerabilities and the Industry's Lack of Oversight

There is no federal regulatory framework governing LTO transactions. In RAC's words:

"We operate in a supportive regulatory environment with widespread state regulation recognizing lease-to-own sales and no comprehensive federal regulation..."³⁵

In New York, LTO transactions are governed by PPL §§ 500 et seq. (or Article 11). The industry lobbied for passage of state statutes like Article 11 in the 1980s as a safe harbor from claims that LTO agreements were credit sales.³⁶ The New York State Legislature amended Article 11 in 2010 to include various consumer protections, but those protections did not contemplate virtual LTO transactions.

Prices and Disclosures

Prices

Article 11 sets price caps and mandates price disclosures for "merchants," which the statute defines as "a person who, in the ordinary course of business, regularly leases, offers to lease, or acts as an agent for the leasing of merchandise under a rental-purchase agreement."³⁷

In a traditional LTO transaction, this definition is uncontroversial because the merchant will always be the retailer.

In a virtual LTO transaction, however, it is unclear who the "merchant" is:

- the retailer (offers the leasing opportunity to the consumer); or
- the NCN company (issues the lease); or
- both.³⁸

Article 11 provides no clear answer. This lack of guidance can impact the ultimate price paid by consumers who lease merchandise because of the way price caps are calculated. Specifically, Article 11 requires the disclosure of the various prices a consumer may have to pay to own or lease merchandise subject to an LTO transaction, then caps the amounts at which merchants may set those prices. A lease must disclose:

- "cash price:" the amount a consumer must pay to own the merchandise at the beginning of the lease. The cash price for a merchant's "first rental" of merchandise cannot exceed the "*merchant's costs*" (the "actual cost, including [] freight charges" to the merchant of obtaining the goods from a supplier) multiplied by 1.75, 2, or 2.15, depending on the type of merchandise being leased (or the "*maximum cash price*").³⁹
- "total of payments:" the total amount the consumer will have paid to own the merchandise after making all regularly scheduled lease payments. Total of payments cannot exceed the cash price multiplied by 2.25.⁴⁰

Table 1: Example of LTO Price Caps under Article 11, Couch as Merchandise

Type of Cost	Amount
Merchant's Cost (<i>amount the merchant paid for the couch</i>)	\$1,000.00
Maximum Cash Price (<i>the most the merchant can charge the consumer to own the couch outright at the start of the lease: \$1,000 x 2.15</i>)	\$2,150.00
Maximum Total Cost (<i>the most the merchant can charge the consumer to own the couch at the end of the lease: \$2,150 x 2.25 or total of payments</i>)	\$4,837.50

As illustrated in Table 1, the merchant's cost is an important figure that dictates the total a merchant may charge a consumer at different points in the leasing process.

In a traditional LTO transaction, where the merchant is also the lessor, this process works because the maximum cash price will never be more than 2.15 times the actual cost to obtain the merchandise.

In a virtual LTO transaction, however, *the retailer first obtains and owns the merchandise while the NCN company is the merchant "first rent[ing]" the merchandise to the consumer.*

As a result, the cash price cap protection is effectively eliminated because "merchant's cost" will be the amount the NCN company paid for the merchandise *as set by the retailer*—an amount that is *not* capped by Article 11 and may bear no relation whatsoever to the actual cost to the retailer to obtain the merchandise from a supplier (the amount contemplated by Article 11).

Because the merchant's cost is such a vitally important aspect of an LTO transaction, merchants must maintain records that establish the "cost for each item" subject to a lease.⁴¹ As noted, however, the law is unclear about virtual LTO transactions, specifically who qualifies as the merchant. This vagueness becomes important because even if retailers are not subject to the cash price cap, requiring retailers to maintain records of their costs could act as an important check on any impulse to unreasonably inflate merchandise prices.⁴²

Disclosures

Article 11 requires merchants to disclose prices in a particular format.⁴³

Figure 5: Mandatory Disclosure Template

TOTAL OF PAYMENTS	COST OF RENTAL	CASH PRICE	
	\$	\$	
You must pay this amount to own the merchandise if you make all the regular payments. You can buy the merchandise for less under the early purchase option.	Amount over cash price you will pay if you make all regular payments.	Merchandise available at this price for cash from the merchant. See about your early purchase option rights.	
	AMOUNT OF EACH PAYMENT	NUMBER OF PAYMENTS	RENTAL PERIOD
	\$		
	per		
		
	(insert period)		

Two of the NCN companies, SmartPay and Acima, use disclosures that are not strictly compliant with the law and may be confusing to consumers.

SmartPay

See Figures 6 and 7. SmartPay:

- Improperly discloses “OUR PURCHASE PRICE” instead of the legally mandated “CASH PRICE.” “OUR PURCHASE PRICE” is the price SmartPay paid the retailer for the merchandise—a number irrelevant to the consumer if it differs from the “CASH PRICE.”
- Displays the legally mandated “Cash Price” further down the page (see Figure 7), where it also reveals that “Cash Price” is “Our Purchase Price” times 1.2—a larger amount than the one in the disclosure box where the consumer should expect to see the cash price.
- Improperly uses the larger “Cash Price” amount to calculate the Early Purchase Option, purchase price, and cost of rental—meaning SmartPay’s disclosures not only use the wrong words, but also the wrong amounts.
- Refers to itself as “lessor” instead of merchant when, in fact, it is a merchant under the law. As described, the distinction is particularly important for price disclosures and determining price caps.
- Fails to include the payment period (e.g., weekly, biweekly), instead using the generic “term.”

Figure 6: SmartPay’s Price Disclosures

TOTAL OF PAYMENTS \$2,191.30 You must pay this amount to own the property if you make all the regular payments. You can buy the property for less under the early purchase option.	COST OF RENTAL \$1,041.30 Amount over our Purchase Price you will pay if you make all regular payments.	OUR PURCHASE PRICE \$1,150.00 Property available at this price for cash from the lessor.
	AMOUNT OF EACH PAYMENT (per term) • For Leased Items: \$199.21 • For Non-Leased Items: \$0.00 + taxes & fees	NUMBER OF PAYMENTS 11
		RENTAL PERIOD 10 months

Figure 7: Excerpt from SmartPay Lease

Cash Price: \$1,380.00
Our Purchase Price: \$1,150.00
Damage to Property: None
 Cash Price is used in the calculation of Early Purchase Option and reflects the purchase price and cost of SmartPay’s providing of leasing services.

Acima

See Figure 8. Acima’s disclosure is deceptive for several reasons:

- It discloses an “ACIMA CASH PRICE” instead of the legally mandated “CASH PRICE,” a distinction that is only relevant if the two prices are different.
- The “cash price” does not appear to be disclosed anywhere within the lease document.
- Acima refers to itself as “Lessor” instead of “merchant,” then uses its status as lessor to further confuse the “cash price” issue by defining “ACIMA CASH PRICE” as the price at which the property is available “for cash from the Lessor at the time of the Agreement.” As previously noted, however, “cash price” means the amount a consumer must pay (in cash to the merchant) to own the merchandise at the beginning of the lease.

Acima’s disclosure box is yet another illustration of why words matter and how a seemingly small change can result in significantly higher payments for consumers.

Figure 8: Acima Price Disclosures

TOTAL OF PAYMENTS/TOTAL COST/RENT-TO-OWN PRICE \$2,235.60	COST OF RENTAL \$1,200.60	ACIMA CASH PRICE \$1,035.00
You must pay this amount to own the property if you make all the regular Renewal Payments (excludes tax). You can buy the property for less under the early purchase option.	Amount over Acima Cash Price you will pay if you make all regular Renewal Payments (excludes tax).	Property available at this price for cash from the Lessor at the time of the Agreement. See about your early purchase option rights.
	AMOUNT OF EACH PAYMENT \$42.04/weekly	NUMBER OF PAYMENTS 52
	Taxes will be added to all payments.	RENTAL PERIOD 365 DAYS This represents the duration of the Lease if all regularly scheduled payments are made.
The rental property is NEW and is being acquired by the lessor on the lease date above.		

Early Purchase Option

Virtual LTO agreements offer consumers an opportunity to save money by exercising an early purchase option (EPO). Typically, there are two options offered to consumers:

1. One mandated by statute.
2. One created by NCN companies.

The statutory option is mandated by PPL § 504 (statutory EPO). A consumer may exercise the statutory EPO at any time during the lease by making a lump-sum payment following a formula provided in the statute. After each recurring payment, NCN companies must provide the consumer with a receipt listing the statutory EPO amount.⁴⁴

The option created by NCN companies offers greater savings than the statutory EPO; however, a consumer must exercise it by a certain date (deadline EPO).

Table 2: Example of Deadline EPO

NCN Company	Deadline	Cost Above Sticker
Acceptance Now	120 days	12%
Acima	90 days	Up to \$60
Progressive	90 days	Up to \$79
SmartPay	90 days	20%
Snap	100 days	\$39

EPO is a good option for consumers financially able to take advantage of it *if the offer is free from deception or unfair obstacles*.

This, however, is often not the case. Retailers, with the tacit approval of NCN companies, routinely mischaracterize the terms and benefits of EPOs.

During DCWP’s undercover operation, several retailers told the DCWP investigator that no “interest” attached before a deadline EPO’s end date but failed to mention the various fees and markups that *do* attach, leaving the impression that a deadline EPO is the same as paying cash upfront.

It is not.

For this reason, any reference to deadline EPOs as being the “same as cash” or the “cash price” is deceptive. The FTC agrees, finding violations of the law when numerous LTO retailers described Progressive products as “the retail price, cash price, or ‘same as cash’” or as including “no extra fees, charges, or costs.”⁴⁵

In addition to using deceptive advertising about EPOs to drive consumers toward LTO products, NCN companies make it difficult for consumers to exercise the deadline option.

In fact, Acima admitted as much in a blog directed at LTO retailers:

It isn’t a secret that companies offering No Credit Needed financing don’t make a dime unless your customers goes [sic] “over” the advertised 90- or 100-day payment option. Many companies go out of their way to make it hard for customers to pay on time.⁴⁶

Among the obstacles that consumers face, some NCN companies:

- lead consumers to believe that they must exercise the deadline EPO option over the phone where they must deal with potentially poorly trained, or uninterested, customer service agents; and/or
- require immediate lump-sum fund transfers, payments cash-strapped consumers are rarely able to make.

Acima lets consumers schedule payments for deadline EPOs in advance—but then cancels the EPO if a single payment “fails to process” or if the consumer makes a payment by phone.

Some NCN companies advertise deadlines that are longer than the actual time consumers have to exercise the option. For example, Snap advertises a 100-day EPO, but the end date is only 97-99 days if the 100th day falls on a weekend or holiday. Although the logical, fair thing to do would be to extend the payoff period to accommodate the weekend or holiday, Snap instead warns its call center agents to “[e]nsure that the customer’s last payment date does not fall on a weekend or holiday [because t]his may cause issues with paying off the account.”⁴⁷ If the call center agent misses the instruction, which is given amid a stream of other instructions, the consumer suffers the consequences.

Sales Tax

When generating a lease, retailers are supposed to provide the NCN company the before-tax price of the merchandise. This figure should become the “cash price” in the lease.

Only Acceptance Now makes this clear to the retailer on the screen where the price is entered.

The failure to clearly and conspicuously include this directive can lead retailers to charge NCN companies the post-tax price for merchandise.

As part of our investigation, DCWP reviewed 12 Snap leases where the cash price included sales tax. If Snap were to charge sales tax to the consumer, then the consumer will pay sales tax for the merchandise twice.

Payment Methods

Many NCN company leases impose payment terms and conditions that can be detrimental to cash-strapped consumers living paycheck to paycheck.

- **Some NCN companies either require payment by Automated Clearing House (ACH) electronic funds transfer or make ACH transfer the default option, which a consumer can change *only after* lease initiation.**⁴⁸

Although ACH transfers can be cheaper than credit/debit cards for financial institutions, for consumers with limited available funds, the potentially lengthy processing time can pose serious problems.

- **Lease terms in small print allow NCN companies to take a consumer's money without the consumer expecting it.** For example, SmartPay and Snap leases allow them to debit a consumer's account early when an installment payment falls on a weekend or holiday.
- **LTO agreements impose various fees related to payment.** For example, Snap charges \$20 for each bounced payment and 10% for each late payment, situations that Snap's early debit practice can create. Acceptance Now charges \$1.99 "for a telephone payment assisted by a customer service representative," even though the complicated nature of some of their own practices is what creates the necessity for customer service assistance.

Return Policies

NCN company advertising for virtual LTO agreements peddle flexibility, using phrases such as "cancel your lease at any time," "terminate ... at any time, without penalty," and "return products at any time, with no long-term debt obligation."⁴⁹ Combined with the potential for low-cost installment payments, these claims could be a big draw for consumers. However, consumers who attempt to cancel leases and return merchandise often find themselves entangled in a Kafkaesque nightmare of endless telephone calls, hidden fees, and undisclosed costs. It is no wonder, then, that between 2017 and February 2020, Snap initiated 39,000 New York City leases *but recorded only two merchandise surrenders*.

Mandatory lease periods and cancellation fees

Acima advertises that consumers can "terminate the Agreement at any time, without penalty." But Acima's lease agreements do not allow consumers to end their leases until they have paid 60 days' worth of rent.⁵⁰

RAC (which owns Acceptance Now) tells investors that consumers have "the ability to return products at any time, with no long-term debt obligation,"⁵¹ but the Acceptance Now lease agreement has a mandatory two-month term.

In fact, four of the five NCN companies investigated require consumers to pay a fee to end a lease, be current with payments, or both. Some have charged "repossession fees." All of these requirements are at odds with the claims of flexible, no-cost lease terminations.

Vague, complicated, and/or nonexistent return policies

Some NCN company leases direct consumers to call the company if they want to return merchandise, while others provide no direction at all. Consumers who call the NCN company may be directed to return the merchandise to the retailer, only to be rebuffed by the retailer and directed back to the NCN company. This problem is especially pernicious because call center staff are trained to steer consumers away from returning merchandise.

For example:

- Progressive representatives are told that "[t]erminating a lease should not be suggested proactively to a customer ... It is our preference to work with customers to find a way for them to retain the merchandise."⁵²
- Acima representatives are told to "urge" consumers to keep the merchandise.

Merchandise too large for ordinary shipping must be scheduled for pickup by the NCN company. But complaint records indicate that NCN companies often fail to appear, fail to appear when scheduled, or show up unexpectedly.

NCN companies have other requirements that make returning merchandise unreasonably complicated such as requiring consumers to:

- submit photographs of merchandise as a condition of pickup; or
- donate oversize merchandise, which includes finding an entity willing to accept the merchandise.

On the surface, these requirements may seem innocuous or altruistic. In practice, however, they improperly extend the period that a consumer must pay on a lease.

Real Consumer Experiences

Acima

On **March 16, 2020**, a consumer informed Acima that she wanted to return a mattress. On Acima's instructions, she emailed photos of the mattress and waited three business days to hear back from Acima.

Hearing nothing, on **March 21**, she called again. The representative said Acima had not received her email. She sent another email.

On **March 24**, she called again. The representative told her there was nothing Acima could do because they had not received her emails. After more than two hours on the phone, the representative acknowledged Acima had received her emails. However, Acima then auto-debited her account.

On **April 13**, she called again. The representative told her that her photographs were not sufficient to initiate the return process.

Although Acima ultimately acknowledged that her experience reflected "an issue on our end," they "could not stop" her next auto-debit and required that she donate the mattress within 14 days to avoid yet another auto-debit. If she could not find an organization to accept the donation, she could call Acima for an extension. By this point, however, her state was under a "stay at home" order due to the COVID-19 global health pandemic.

Progressive

Progressive provides a five-day "cooling off period" during which consumers can "cancel the lease completely if they change their mind."

On **February 10, 2018**, Ms. R tried to take advantage of this policy to cancel a furniture order. She had not received the furniture yet, but the retailer refused to cancel unless she paid 40% of the invoice.

Ms. R had to speak to Progressive on five different days to work out a resolution: Progressive required Ms. R to pack up the merchandise (four nightstands and a dresser with mirror) and keep it in her home until Progressive could pick it up.

On **April 7, 2018**—three months after Ms. R's initial cancellation request—Progressive finally closed out her account.

The Virtual LTO Retailer

As Ms. R's story illustrates, retailers are crucial players in the virtual LTO landscape, and it is impossible to truly understand the industry without understanding what motivates retailers to partner with NCN companies; what NCN companies expect and require of the partnership; and how retailers are held accountable when they fail to meet those expectations or fulfill those requirements. This symbiotic relationship between NCN company and retailer supercharges the potential for consumer deception: NCN companies poorly train retailers, ignore retailers' misdeeds, and profit from the transactions retailers generate.

The current regulatory framework is no match for this setup, and it is doubtful that anything other than a significant change to the law can remedy the problem.

Retailers Are Motivated by Potential Profits

Offering an LTO product is profitable because the product targets consumers who, due to bad, spotty, and/or insufficient credit histories, might not otherwise be able to purchase merchandise—a situation applicable to more than 35% of Americans.⁵³ Consumers buying merchandise they might not otherwise be able to afford means increased sales for retailers. In fact, analysts at the global financial services company UBS estimated that Best Buy's partnership with Progressive could generate as much as an additional \$4 billion per year in revenue, almost 10% of Best Buy's 2019 revenue.⁵⁴

NCN companies know this and press the advantage heavily in their marketing to retailers:

- Snap proclaims: "Many of our Snap Partners have Increased Sales as much as 30%!"
- Acima tells retailers: "if you don't offer your customers the options they want, they will go somewhere that will."⁵⁵

In recent years, some NCN companies have sweetened the LTO pot by eliminating certain retailer fees. NCN companies used to pay retailers approximately 96% of the merchandise's sticker price, but now many pay 100%. This makes virtual LTO transactions more profitable to retailers than letting consumers use their credit card, since credit card companies take a cut from consumer payments.⁵⁶

Retailers may be further incentivized by NCN companies that offer higher bonuses for initiating a certain number of leases. In New York City, 24% of Progressive's retailer locations receive "rebates" on leases from Progressive, ranging from 0.25% to 4.6% of the aggregate invoice prices of leased merchandise.

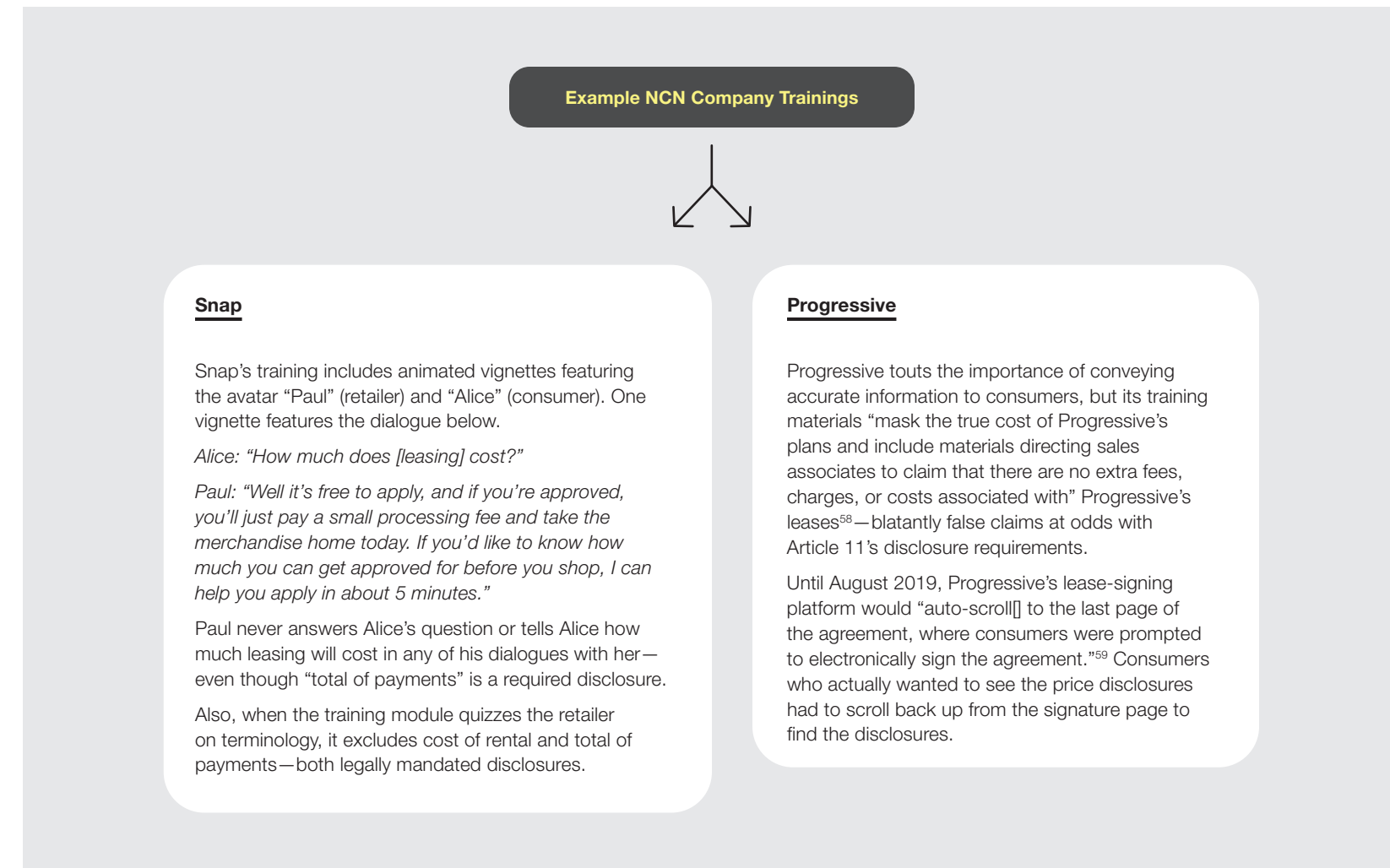
Retailers Are Poorly Trained and Sometimes Encouraged to Deceive or Evade

NCN companies encourage retailers to promote LTO products to consumers, and they profit handsomely from that promotion. But they make retailers responsible for ensuring that consumers understand what they are signing.

Neither NCN companies nor retailers appear to take this responsibility seriously.

The failure to train is particularly problematic when the contract between NCN company and retailer creates a legal obligation on the part of the retailer to educate consumers about the LTO product.⁵⁷

NCN company trainings for retailers tend to be simplistic and largely focused on the mechanics of navigating the application platform. More egregiously, however, trainings that do venture into the substance of an LTO agreement are focused on diverting consumers away from important information.



Retailers Have Very Little Accountability

Consumers who find themselves aggrieved by retailer misconduct have very few options if they cannot obtain relief from the NCN company. And NCN companies appear to have very little interest in tracking and investigating claims of retailer misconduct toward consumers.

In response to a subpoena from DCWP, the five NCN companies produced their complaint handling procedures:

- Four had no clear instructions about how to detect retailer misconduct and focused instead on placating the consumer.
- SmartPay had procedures to investigate retailers defrauding SmartPay but not retailers mistreating consumers.

Sometimes misconduct is obvious: a required email address field entered as “idonthaveemail” or a lease amount that does not match the invoice/receipt. But most of the NCN companies examined did not have policies that would detect even these obvious red flags.

Rather than seek out and investigate retailer misconduct, NCN companies place the burden on consumers to work out a return with the retailer or to buy out the lease early.

Real Consumer Experience



In January 2019, Ms. J reported to Snap that a retailer had lied to her about her payment amount. Snap proposed she pay off the lease right away under the deadline EPO, but she could not afford to exercise that option. Ms. J continued to press her case over multiple phone calls, but Snap kept telling her to talk to the retailer about returning the merchandise. The retailer refused to accept a return, and Snap refused to accept a surrender because she had not yet paid 60 days of leasing fees. After Ms. J fought for weeks, filed a BBB complaint, and threatened to sue, Snap agreed to let her pay the deadline EPO amount over the course of a year. That figure, \$122/month, was still higher than the retailer had promised. At least four times, Ms. J's bank account lacked enough funds because of Snap-initiated ACH transfers.

Potential Litigation and Law Enforcement

This section identifies potential claims against NCN companies and retailers in New York City. Claims relate to virtual LTO agreements, and the sales, servicing, and collection conduct around them. Some claims must be brought by enforcement agencies, and some may be asserted by consumers themselves.

This section is not intended to be exhaustive of all potential claims.

Claims Against NCN Companies

Law	Who Can Assert	Claim Description
PPL Article 11, enforced through New York General Business Law (GBL) § 349	OAG, Consumers	<i>LTO law violations:</i> Disclosures, pricing, lease terms, or lease servicing do not comply with LTO law, e.g., price disclosures are not provided.
GBL § 350	OAG, Consumers	<i>Deceptive written statements:</i> In-store or online advertising contain false or misleading statements, e.g., “cancel the lease at any time without penalty,” if false.
New York City Consumer Protection Law (CPL) ⁶⁰	DCWP	
GBL § 349	OAG, Consumers	<i>Deceptive oral statements:</i> NCN company customer service representative makes false or misleading statement to consumer, e.g., “your EPO deadline has passed,” when the statutory EPO is still available.
CPL	DCWP	
Telephone Consumer Protection Act ⁶¹	OAG, Consumers	<i>Collections abuses:</i> NCN company violates consumer protections in course of seeking past-due payments, e.g., NCN company calls the consumer 10 times a day.
CPL	DCWP	
PPL Article 10; Banking Law §§ 492, 499	New York State Department of Financial Services, Consumers	<i>Lease is Retail Installment Contract (RIC):</i> Lease fits definition of RIC but NCN company is not licensed as sales finance company and/or violated RIC law (e.g., does not include required RIC disclosures). ⁶²
Truth in Lending Act (TILA)	Consumer Financial Protection Bureau, OAG, Consumers	<i>Lease is a credit sale:</i> Lease fits definition of credit sale but NCN company did not provide TILA disclosures. ⁶³
Electronic Signatures in Global and National Commerce Act	Consumers	<i>NCN company failed to obtain valid e-signature:</i> Lease was e-signed on a retailer device and retailer failed to confirm that consumer had the technology necessary to receive the lease and EPO information electronically. ⁶⁴

Claims Against Retailers

Law	Who Can Assert	Claim Description
PPL Article 11, enforced through GBL § 349	OAG, Consumers	<i>LTO law violations:</i> Disclosures, pricing, lease terms, or lease servicing do not comply with LTO law, e.g., price disclosures not provided.
GBL § 350	OAG, Consumers	<i>Deceptive written statements:</i> In-store or online advertising contain false or misleading statements, e.g., “90 days same as cash,” if there is a financing charge.
CPL	DCWP	
GBL § 349	OAG, Consumers	<i>Deceptive oral statements:</i> LTO retailer makes false or misleading statement to consumer, e.g., “making payments on time will improve your credit score.”
CPL	DCWP	
GBL § 349	OAG, Consumers, District Attorney	<i>Retailer signs lease in place of consumer:</i> Retailer e-signs consumer’s name on lease.
CPL	DCWP	
New York State Penal Law § 170.05	District Attorney	

Recommendations

NCN companies thrive because they sell a product that is deceptively attractive:

- Yes, they offer low installment payments. BUT, *because of excessively high financing rates, over the course of a lease, a consumer will pay twice what the merchandise is worth.*
- Yes, the lease may offer conveniences like cancellation “at any time.” BUT *a consumer must clear significant hurdles placed by NCN companies and LTO retailers to keep them from cancelling.*

In such an atmosphere, policy solutions should focus on ensuring that the product presented is the product offered, and legislative half measures will not solve the problem. Stated differently:

The incentive structure of the retailer-NCN company relationship, in which both parties profit from consumer deception and obfuscation, may be irredeemable.

Article 11 is insufficient. A regulatory framework is needed to truly protect consumers.

1. Ban Usury (For Real This Time)

Usury has always been unpopular.⁶⁵ It is expressly banned in several states.⁶⁶ Despite this, some industries have managed to elude usury laws by inventing loanlike alternative financial products, such as LTO leases, and by lobbying for exemptions from usury or other special protections.

The federal government should dismantle these protections by enacting legislation like the Loan Shark Prevention Act—introduced in both the House and Senate—which would cap credit card and loan interest at 15%.

At the state level, New York should amend its usury statute to ban *effective* APRs above 16% and write the cap into statutes like PPL Article 11 that cover specific financial products.⁶⁷

New York has attempted to combat usurious interest rates in various ways:

- banning loans with APRs over 16%;
- requiring a license for sales financing companies that charge effective APRs over 16%; and
- banning the collection of payday loans that originate out of state.

New York should ban usury for good—no exceptions or protections. By firmly capping interest rates on LTO transactions, NCN companies and retailers may no longer profit so successfully on a product that harms consumers. Indeed, NCN companies have argued that they provide a vital service to people who would not otherwise be able to obtain necessities.⁶⁸ But studies about another high-cost financing product, payday loans, do not support this argument. Rather, studies show that consumers do better when payday loans are banned; they find other ways to make ends meet, and they save a lot of money on financing in the process.⁶⁹

2. Treat LTO Transactions Like Credit Sales

At the very least, LTO agreements should be classified as retail installment contracts (RICs) governed by Article 10 of PPL. New York should end the distinction between RICs and LTO agreements, since, given the obstacles faced by consumers who wish to terminate leases, the distinction is negligible in practice. Applying Article 10 to LTO agreements would also require that NCN companies not otherwise licensed obtain a license from the Department of Financial Services.⁷⁰

Conclusion

For many consumers on a tight budget, the lure of a virtual LTO agreement to obtain merchandise otherwise too expensive to buy on the spot may be too attractive to resist. But, as DCWP's investigation highlights, after signing an agreement, consumers are often left blindsided by lease terms and face major hurdles when trying to cancel their purchase. And thanks to weaknesses in regulatory oversight for virtual LTO agreements, NCN companies have been able to escape intense scrutiny for potentially predatory practices.

New Yorkers are not powerless, however.

Through a combination of increased awareness, reliance on existing legal options, and potential legislative reform identified by DCWP, New Yorkers can demand more transparency and fairness from virtual LTO providers.



Endnotes

- ¹ NCN companies appear to use significantly different contracts in four states, if they operate there at all: Minnesota, New Jersey, Wisconsin, and Wyoming.
- ² DCWP knows of only one NCN company offering leases that do not end in ownership: Tempoe, LLC a.k.a. Why Not Lease it. Tempoe partners with a handful of New York City retailers and its footprint in New York City appears to have decreased even as virtual LTO transactions have surged.
- ³ PPL § 507(4).
- ⁴ *Rent-A-Center (RCII) Q3 2019 Earnings Call Transcript*, The Motley Fool, Nov. 8, 2019, <https://www.fool.com/earnings/call-transcripts/2019/11/08/rent-a-center-rcii-q3-2019-earnings-call-transcrip.aspx>; see also *Rent-A-Center: Positioned for Growth*, March 2020 (“RAC Investor Presentation March 2020”), available at <https://investor.rentacenter.com/static-files/807fda2a-3b53-4672-8370-b0055e7d38c0>, at 5 (“LTO revenue gains have accelerated since 2015”).
- ⁵ Clint Engel, *Profits drops [sic] after 2017 Tax Cut Gains*, Furniture Today (Feb. 26, 2019), [https://www.furnituretoday.com/business-news/rent-center-q4-earnings-sales-beat-expectations/#:~:text=RAC's%20Acceptance%20Now%20division%2C%20which,store%20sales%20gain%20of%209.6%25.&text=Franchising%20revenues%20increased%20to%20%249.5%20million;Rent-A-Center\(RCII\)Q42019EarningsCallTranscript](https://www.furnituretoday.com/business-news/rent-center-q4-earnings-sales-beat-expectations/#:~:text=RAC's%20Acceptance%20Now%20division%2C%20which,store%20sales%20gain%20of%209.6%25.&text=Franchising%20revenues%20increased%20to%20%249.5%20million;Rent-A-Center(RCII)Q42019EarningsCallTranscript), The Motley Fool, Feb. 25, 2020, <https://www.fool.com/earnings/call-transcripts/2020/02/26/rent-a-center-rcii-q4-2019-earnings-call-transcrip.aspx>.
- ⁶ RAC Investor Presentation March 2020, *supra* note 4, at 7.
- ⁷ Comvest Partners, <https://comvest.com/portfolio/acima-credit/> (last visited Feb. 1, 2021).
- ⁸ Rich Duprey, *Aaron's Uses Acquisition to Thwart Takeover*, The Motley Fool (April 21, 2014), <https://www.fool.com/investing/general/2014/04/21/aarons-uses-acquisition-to-thwart-takeover.aspx>.
- ⁹ *Id.*
- ¹⁰ Lowe's Credit Center, www.lowes.com, <https://www.lowes.com/l/Credit.html> (last visited Jan. 15, 2021).
- ¹¹ Progressive Leasing, <https://progleasing.com/merchant/> (last visited Jan. 15, 2021).
- ¹² Abha Bhattarai, *A Best Buy program is doubling the price of items for some customers*, Wash. Post, Feb. 27, 2020, <https://www.washingtonpost.com/business/2020/02/27/best-buy-program-gets-shoppers-pay-twice-list-price-big-ticket-items/>.
- ¹³ See *Federal Trade Commission v. Prog Leasing, LLC*, Case No. 1:20-mi-99999-UNA, Complaint filed April 20, 2020 (N.D. Ga) (“FTC v. Prog Complaint”) available at <https://www.ftc.gov/enforcement/cases-proceedings/182-3127/progressive-leasing>.
- ¹⁴ Matt Kempner, *Atlanta-based Aaron's agrees to one of largest ever FTC settlements*, Atlanta J.-Const., April 21, 2020, <https://www.ajc.com/news/local/atlanta-based-aaron-agrees-one-largest-ever-ftc-settlements/NJWGcx4v4B1UPwLjnwvxK/>.
- ¹⁵ Shant Sharigian, *‘Get the f—k out of the store.’ T-Mobile stores accused of ripping off New York City customers*, N.Y. Daily News, Sept. 5, 2019, <https://www.nydailynews.com/news/politics/ny-t-mobile-new-york-alleged-scam-20190905-au4zls7ggbfbdlkzicdyvqjci-story.html>.
- ¹⁶ See *Snap Finance Overview*, Pitchbook, <https://pitchbook.com/profiles/company/98317-36> (last visited Jan. 15, 2021).
- ¹⁷ See Valerie Villareal, *Snap Finance Partners with BMO Harris Bank to Expand Rent-to-Own Financing*, @PRO, <https://www.rtohq.org/2017/09/snap-finance-partners-bmo-harris-bank-expand-rent-financing/> (last visited Jan. 15, 2021).

¹⁸ Race/ethnicity data are based on calculations using U.S. Census Bureau's American Community Survey (ACS), One-Year Public Use Microdata Sample (PUMS), 2018. Retailer addresses were supplied by the five subject NCN companies.

¹⁹ This pattern resembles that of other high-cost financing. For the connections between race and predatory mortgage lending, see Patrick Bayer et al., *What Drives Racial and Ethnic Differences in High-Cost Mortgages? The Role of High-Risk Lenders*, 31(1) Rev. Fin. Studies 175, 182 (2018) (“the substantial market-wide racial and ethnic differences in the incidence of high-cost mortgages arise because African-American and Hispanic borrowers tend to be more concentrated at high-risk lenders. Strikingly, this pattern holds for all borrowers even those with relatively unblemished credit records and low-risk loans.”); Justin P. Steil et al., *The Social Structure of Mortgage Discrimination*, 33(5) Hous. Stud. 759 (2018) (finding that high-cost mortgage lenders sought out borrowers in Black and Hispanic neighborhoods and sought to influence leaders within Black and Hispanic communities). Regarding payday loans, see *Payday Lending in America: Who Borrows, Where They Borrow, and Why*, Pew Charitable Trusts (2012); *Race Matters: The Concentration of Payday Lenders in African American Neighborhoods in North Carolina*, Center for Responsible Lending (2005).

²⁰ See, e.g., *About Us*, www.progleasing.com, <https://progleasing.com/about-us/> (last visited Jan. 15, 2021) (Progressive helps retailers “provide ... options to consumers with less than perfect credit”); *What Others Are Saying*, www.smartpay.com, <https://www.smartpaylease.com/using-smartpay> (last visited Feb. 1, 2021) (quoting a customer: “They have allowed me, a minister on a very strict budget, to obtain a high quality phone...”); *What Snap Is All About*, www.snapfinance.com, <https://snapfinance.com/partner/why-snap> (last visited Jan. 15, 2021) (“We recognize the need to provide easy financing for credit challenged customers, because even though their traditional options are limited, they still need to replace worn tires or buy a new bed for their growing child. That’s where we come in!”).

²¹ Acima, <https://www.acimacredit.com/company> (last visited Jan. 15, 2021).

²² FTC v. Prog Complaint, *supra* note 13, ¶ 18.

²³ DCWP’s undercover operation involved visits to 13 retailers. The undercover investigator asked 12 retailers for print materials.

²⁴ Interestingly, when a different DCWP employee went back to the same retailers and requested information after identifying herself as a DCWP employee, three of the retailers produced material that they had not offered to the undercover investigator.

²⁵ *Rent-A-Center, Inc.*, Better Business Bureau, <https://www.bbb.org/us/tx/plano/profile/rental-furniture/rent-a-center-inc-0875-21001476/details#all-alerts> (last visited Jan. 15, 2021) (The alert is associated with Acceptance Now’s parent, RAC).

²⁶ *Smart Pay, LLC*, Better Business Bureau, <https://www.bbb.org/us/oh/cincinnati/profile/bill-paying-services/smartpay-llc-0292-90020874/details#all-alerts> (last visited Jan. 15, 2021).

²⁷ See *Federal Trade Commission v. Prog Leasing, LLC*, Case No. 1:20-mi-99999-UNA, Stipulated Order for Permanent Injunction and Monetary Judgment, 2020 (N.D. Ga), available at <https://www.ftc.gov/enforcement/cases-proceedings/182-3127/progressive-leasing>.

²⁸ In one of Progressive’s training videos for retailers, the presenter explains that Progressive does not report to credit bureaus and therefore does not help consumers’ credit scores. He then asks with a wince: “not the answer you were expecting? Have you maybe been telling customers it will help?”

²⁹ *The Truth About No Credit Needed*, Acima Blog (Posted Oct. 3, 2018; link no longer accessible). <https://www.acimacredit.com/blog/the-truthabout-no-credit-needed>.

³⁰ *Best Buy (BBY) Q4 2019 Earnings Conference Call Transcript*, The Motley Fool, Feb. 27, 2019, <https://www.fool.com/earnings/call-transcripts/2019/02/27/best-buy-bby-q4-2019-earnings-conference-call-tran.aspx>.

³¹ *Frequently Asked Questions*, Progressive Leasing, <https://progleasing.com/frequently-asked-questions/> (last visited Jan. 15, 2021) (“Does Progressive report to credit bureaus?”).

³² Smart Pay Lease.com, <https://apply.smartpaylease.com/learnmore/q1w-dgtracfoneweb> (last visited Jan. 15, 2021).

³³ See PPL § 501(16)(b)(1).

³⁴ FTC v. Prog Complaint, *supra* note 13, ¶ 48.

³⁵ RAC Investor Presentation March 2020, *supra* note 4, at 4. See also FTC v. Progressive Leasing, Comm’n File No. 1823127, Dissenting Statement of Commissioner Rebecca Kelly Slaughter (April 20, 2020), at 2, available at https://www.ftc.gov/system/files/documents/public_statements/1571915/182_3127_prog_leasing_-_dissenting_statement_of_commissioner_rebecca_kelly_slaughter_0.pdf (“At almost every turn, this \$8.5 billion industry escapes oversight.”).

³⁶ See National Consumer Law Center (NCLC), Consumer Credit Regulation § 13.3.4.1 (rev. 2020). See also @PRO *The Rent-To-Own Industry Legislative Information*, www.rtohq.org, <https://www.rtohq.org/wp-content/uploads/2019/07/APRO-Flipbook-Legislative-Information.pdf> (last visited Jan. 15, 2021), at 5. (LTO lobbying group claiming “the lack of definition” of LTO in the law “caused confusion in the courts in the early 1980s”).

³⁷ See PPL §§ 503(1)-(4); 501(16)(b)(1); 500(5).

³⁸ In this regard, NCN companies are left to their own devices and it shows: in lease documents, Snap refers to itself as the “merchant,” while Acceptance Now, Acima, Progressive, and SmartPay refer to themselves as “lessors.”

³⁹ See PPL §§ 500(2), 500(12), 503(2).

⁴⁰ PPL § 503(3).

⁴¹ PPL § 503(1).

⁴² DCWP reviewed NCN company training manuals and other documents used for, by, or impacting New York City retailers—none mentioned whether the NCN companies were told, or were otherwise aware, of a merchant’s obligation to maintain records of costs.

⁴³ PPL § 501(16)(b)(1).

⁴⁴ PPL § 504(2).

⁴⁵ FTC v. Prog Complaint, *supra* note 13, ¶ 25.

⁴⁶ *The Truth About No Credit Needed*, *supra* note 29.

⁴⁷ Excerpt is based on subpoenaed records.

⁴⁸ Snap requires payment by ACH. Acima and SmartPay require that consumers enter checking account information and ACH is the default payment method.

⁴⁹ FAQs, www.progleasing.com, <https://progleasing.com/frequently-asked-questions/> (last visited Feb. 1, 2021) (“You can cancel your lease at any time.”); *Frequently Asked Questions*, www.acima.com, <https://www.acimacredit.com/faqs-new#can-cancel> (last visited Jan. 15, 2021) (“You may terminate the Agreement at any time, without penalty.”); RAC tells investors that consumers have “the ability to return products at any time, with no long-term debt obligation[.]” RAC Investor Presentation March 2020, *supra* note 4, at 4.

⁵⁰ Snap’s 2019 lease states the same rule, but its Feb. 2020 internal policies seem to allow returns during this period, after Snap has determined that the retailer will not allow a return.

⁵¹ RAC Investor Presentation March 2020, *supra* note 4, at 4.

⁵² But Progressive also tells employees: “once a customer has indicated a desire to terminate their leases, no effort should be made to talk them out of it[.]”

⁵³ Bhattarai, *supra* note 12.

⁵⁴ *Id.*

⁵⁵ *The Truth About No Credit Needed*, *supra* note 29.

⁵⁶ *Swipe Fees*, National Retail Federation, <https://nrf.com/hill/policy-issues/swipe-fees> (last visited Feb. 1, 2021).

⁵⁷ For example, SmartPay’s contract states, “Retailer will be responsible for educating its ... potential customers about the [leasing] Program and its features.” Another NCN company tells the retailers, “to the best of your ability, correctly explain our financing plan” See also FTC v. Prog Complaint, *supra* note 13, ¶ 24.

⁵⁸ FTC v. Prog Complaint, *supra* note 13, ¶ 24.

⁵⁹ *Id.*, ¶¶ 36-37.

⁶⁰ Consumer Protection Law, NYC Administrative Code § 20-700 *et seq.*

⁶¹ Telephone Consumer Protection Act, 47 U.S.C. § 227.

⁶² PPL Article 10 defines retail installment contracts (RIC) to include leases where the lessee “is bound to become, or has the option of becoming, the owner of the goods upon full compliance with the contract.” PPL § 401(6). The only stipulation is that the merchandise must be taken as “security ... for the buyer’s obligation.” *Id.* The New York Uniform Commercial Code (UCC) states that “whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.” UCC § 1-203(a). The lease “creates a security interest if the consideration ... is an obligation for the term of the lease and is not subject to termination by the lessee[.]” *Id.* at § 1-203(b). An LTO lease that the consumer cannot terminate will, therefore, fit the definition of a RIC.

New York courts have not been confronted with the question of whether LTO leases are RICs. As to leases generally, the Second Department held a purported lease of a boat to be a RIC, noting that it was obligated to “look to the rights [the contract] confers and the obligations it imposes to determine whether it has the essential attributes of a” RIC. *Granite Auto Leasing Corp. v. Jeff-Mar Bus Leasing Corp.*, 353 N.Y.S.2d 217, 220 (2d Dep’t 1974).

Several high courts of other states have ruled that LTO leases can be or always are RICs under their states’ analogous statutes. See *LeBakken Rent-To-Own v. Warnell*, 223 Wis.2d 582 (Wisc. 1998); *Perez v. Rent-A-Center, Inc.*, 186 N.J. 188 (N.J. 2006); *Miller v. Colortyme, Inc.*, 518 N.W.2d 544 (Minn. 1994).

⁶³ TILA defines “credit sales.” See 15 U.S.C. § 1602(h), 12 C.F.R. § 1026.2(a)(16). The definition is like Article 10’s definition of RICs (see *supra* note 62), but clearer, expressly including all leases unless the consumer can terminate them “without penalty at any time[.]” *Id.* This captures all leases that disallow returns before 60 days of rent has been paid. Such credit sales are regulated as “closed-end credit” and subject to specific disclosure requirements, including that the contracts state the APR. See 12 C.F.R. § 10.26.18.

⁶⁴ E-contracts are governed by the federal Electronic Signatures in Global and National Commerce law (ESIGN). 15 U.S.C. § 7001, *et seq.* ESIGN establishes that e-signatures on contracts are generally valid but imposes special requirements on consumer transactions. See 15 U.S.C. § 7001(c)(1)(C). When legally mandated information is involved, it may only be provided electronically if the consumer “consents electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent.” *Id.* subd. (C)(ii). There are no cases interpreting this provision of the 2000 law. NCLC has analyzed the provision and its history and concludes that it requires the merchant to “test [] the consumer’s technology,” not just the “consumer’s technical knowledge,” and therefore this requirement is not satisfied when a consumer electronically consents on a retailer’s device. See NCLC, Consumer Banking and Payments Law § 11.4.3.

⁶⁵ Christopher L. Peterson, *Usury Law, Payday Loans, and Statutory Sleight of Hand: Saliency Distortion in American Credit Pricing Limits*, 92 Minn. L. Rev. 1110, 1116-18 (2008).

⁶⁶ See *Why 36%? The History, Use, and Purpose of the 36% Interest Rate Cap*, NCLC, 3-4 (April 2013), available at <https://www.nclc.org/images/pdf/pr-reports/why36pct.pdf>.

⁶⁷ Legislation has been introduced to ban auto finance charges above 16% effective APR. See N.Y. Senate Bill S5947, available at <https://www.nysenate.gov/legislation/bills/2019/s5947>.

⁶⁸ See, e.g., *About Us*, www.progleasing.com, <https://progleasing.com/about-us/> (last visited Jan. 15, 2021) (Progressive helps retailers “provide ... options to consumers with less than perfect credit”); www.smartpay.com, <https://www.smartpaylease.com/using-smartpay> (quoting a customer: “They have allowed me, a minister on a very strict budget, to obtain a high quality phone”); *What Snap is All About*, www.snapfinance.com, <https://snapfinance.com/partner/why-snap> (last visited Feb. 1, 2021) (“We recognize the need to provide easy financing for credit challenged customers, because even though their traditional options are limited, they still need to replace worn tires or buy a new bed for their growing child. That’s where we come in!”).

