



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

Division of Financial Practices

February 12, 2024

Patrice Alexander Ficklin, Assistant Director
Office of Fair Lending & Equal Opportunity
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Dear Ms. Ficklin:

This letter responds to your request for information concerning the Federal Trade Commission's (Commission or FTC) enforcement activities related to compliance with Regulation B and the Equal Credit Opportunity Act (ECOA).¹ You request this information for use in preparing the Consumer Financial Protection Bureau's (CFPB) 2023 Annual Report to Congress. Specifically, you ask for information concerning the FTC's activities with respect to Regulation B during 2023. We are pleased to provide the requested information below.²

I. FTC Role in Administering and Enforcing Regulation B

The Dodd-Frank Act, signed into law on July 21, 2010, substantially restructured the financial services law enforcement and regulatory system. Among other things, the Act made important changes to the ECOA and other consumer laws, such as giving the CFPB rulemaking and enforcement authority for the ECOA. Under the Act, the FTC retained its authority to enforce the ECOA and Regulation B. In addition, the Act gave the Commission the authority to enforce any CFPB rules applicable to entities within the FTC's jurisdiction, which include most providers of financial services that are not banks, thrifts, or federal credit unions.³ In accordance with the memorandum of understanding that the Commission and the CFPB entered into in January 2012 and reauthorized in 2015 and again in 2019, and consistent with the Dodd-Frank

¹ The ECOA is at 15 U.S.C. § 1691 *et seq.*; the CFPB's Regulation B is at 12 C.F.R. Part 1002; the Federal Reserve Board's (Board) Regulation B is at 12 C.F.R. Part 202.

² A copy of this letter is being provided to the Board's Division of Consumer and Community Affairs, in connection with its responsibility for some aspects of the Regulations after the transfer date of July 21, 2011. Among other things, the Board retained responsibility for implementing Regulation B with respect to certain motor vehicle dealers, under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act), Pub. L. 111-203, 124 Stat. 1376 (July 21, 2010). *See, e.g.*, Dodd-Frank Act, § 1029 and Subtitle H.

³ The FTC has authority to enforce the ECOA and Regulation B as to entities for which Congress has not committed enforcement to some other government agency. *See* 15 U.S.C. § 1691c(c).

Act, the Commission has been coordinating certain law enforcement, rulemaking, and other activities with the CFPB.⁴

II. Regulation B (ECOA)

In 2023, the FTC engaged in enforcement, research, and policy development related to the ECOA. Further, the Commission provided the public with business and consumer education materials to promote business compliance with the law and to help consumers protect themselves from noncompliant businesses. This letter provides information regarding some of the FTC’s enforcement, research and policy development, and educational initiatives.⁵

A. Fair Lending: Enforcement

1. Rhinelander

In 2023, the FTC and the State of Wisconsin brought an enforcement action in federal court against Rhinelander, a Wisconsin auto dealer group, its current and former owners, and general manager Daniel Towne, alleging, among other things, that defendants violated the ECOA and Regulation B by discriminating against American Indian consumers, charging them higher financing costs and fees.⁶ According to the FTC’s complaint, among other things, defendants regularly charged many of their customers junk fees for “add-on” products or services without their consent. The complaint cites one survey of Rhinelander customers that shows half of the dealer’s customers said they were charged for add-ons without authorization or through deception.⁷ The complaint alleges that American Indian customers were charged for unwanted add-ons at a higher rate than non-Latino White customers – in total paying on average approximately \$1,362 more for add-ons in credit transactions than non-Latino White customers since 2016, and \$1,374 more since the dealerships’ new owners took over in 2019.⁸ According to the complaint, Rhinelander and Towne also discriminated against American Indian customers

⁴ See FTC, Press Releases, *Federal Trade Commission, Consumer Financial Protection Bureau Pledge to Work Together to Protect Consumers* (Jan. 23, 2012), available at <https://www.ftc.gov/opa/2012/01/ftccfpb.shtm>, and *FTC, CFPB Reauthorize Memorandum of Understanding* (Mar. 12, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/03/ftc-cfpb-reauthorize-memorandum-understanding>; see also *FTC and CFPB Reauthorize Memorandum of Understanding* (Feb. 26, 2019), available at <https://www.ftc.gov/news-events/press-releases/2019/02/ftc-cfpb-reauthorize-memorandum-understanding>, and Dodd-Frank Act, § 1024.

⁵ Your letter also asks for specific data regarding compliance examinations, including the extent of compliance, number of entities examined, and compliance challenges experienced by entities subject to the FTC’s jurisdiction. The Commission does not conduct compliance examinations or collect compliance-related data concerning the non-bank entities within its jurisdiction. As a result, this letter does not provide this information.

⁶ *FTC v. Rhinelander Auto Ctr., Inc.*, No. 23-cv-737 (W.D. Wis., filed Oct. 24, 2023), available at https://www.ftc.gov/system/files/ftc_gov/pdf/1-ComplaintbyFTC-WIagainstRhinelander.pdf.

⁷ See *id.* at 11. See also FTC, Press Release, *FTC and Wisconsin Take Action Against Rhinelander Auto Center for Illegally Discriminating Against American Indian Customers and Charging Unlawful Junk Fees* (Oct. 24, 2023), available at <https://www.ftc.gov/news-events/news/press-releases/2023/10/ftc-wisconsin-take-action-against-rhinelander-auto-center-illegally-discriminating-against-american>.

⁸ See *supra* note 6 at 15-16.

by adding more “markup” to their interest rates, costing American Indian customers approximately \$401 more than non-Latino White customers.⁹ The complaint notes that since Rhinelander changed ownership, this disparity has only increased. Among other things, the settlement with Rhinelander’s current owners and Defendant Towne requires the company to establish a comprehensive fair lending program that will, among other components, allow consumers to seek outside financing for a purchase, and cap the additional interest markup Rhinelander can charge consumers, as well as require the current owners and Defendant Towne to pay \$1 million to refund affected consumers.¹⁰ The former owners, Rhinelander Auto Center, Inc. and Rhinelander Motor Company, agreed to a separate settlement, that requires the companies to permanently wind down the businesses and pay \$100,000 to refund affected consumers.¹¹

2. Refund Checks

In 2023, the FTC also mailed refund checks in connection with the orders in two matters that were previously filed. The Commission sent payments totaling more than \$3.3 million to more than 18,000 consumers who were affected by Passport Auto’s alleged unlawful and discriminatory practices, including discriminating against Black and Latino consumers by charging them higher fees and financing costs.¹² The Commission also sent a second round of payments totaling more than \$857,000, in 37,034 checks to consumers harmed by Napleton Automotive Group’s alleged junk fees and discriminatory practices.¹³

3. Amicus Brief in *CFPB v. Townstone Financial and Barry Sturner*

In 2023, the FTC filed an amicus brief in the U.S. Court of Appeals for the Seventh Circuit challenging a district court ruling that invalidated a key anti-discrimination rule in the

⁹ See *supra* note 6 at 15.

¹⁰ *FTC v. Rhinelander Auto Ctr., Inc.*, No. 23-cv-737 (W.D. Wis. Nov. 6, 2023) (stipulated order for permanent injunction, monetary judgment, and other relief as to Defendants Rhinelander Auto Group LLC, Rhinelander Import Group LLC, and Daniel Towne), available at https://www.ftc.gov/system/files/ftc_gov/pdf/18-ConsentJudgmentEnteredastoRAGRMGandTowne.pdf.

¹¹ *FTC v. Rhinelander Auto Ctr., Inc.*, No. 23-cv-737 (W.D. Wis. Nov. 6, 2023) (stipulated order for permanent injunction, monetary judgment, and other relief as to Defendants Rhinelander Auto Center, Inc., and Rhinelander Motor Company), available at https://www.ftc.gov/system/files/ftc_gov/pdf/17-ConsentJudgmentEnteredastoRACandRMC.pdf.

¹² See FTC, Press Release, *FTC Sends More than \$3.3 Million to Consumers Harmed by Passport Auto’s Illegal Junk Fees and Discriminatory Practices* (May 16, 2023), available at <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-sends-more-33-million-consumers-harmed-passport-autos-illegal-junk-fees-discriminatory-practices>.

¹³ See FTC, Press Release, *FTC Returns Additional \$857,000 To Consumers Harmed by Napleton Auto’s Junk Fees and Discriminatory Practices* (Nov. 20, 2023), available at <https://www.ftc.gov/news-events/news/press-releases/2023/11/ftc-returns-additional-857000-consumers-harmed-napleton-autos-junk-fees-discriminatory-practices>.

ECOA.¹⁴ The case, *CFPB v. Townstone Financial and Barry Sturner*, relates to a Chicago-based mortgage lender and its owner, which the CFPB alleged violated Regulation B, the rule that implements the ECOA. The CFPB alleged that the defendants took steps to discourage Black consumers from applying for loans, violating Regulation B’s anti-discouragement rule. The district court ruled that the anti-discouragement provision was invalid and that the ECOA protects only those consumers who have already applied for credit.¹⁵ In its brief, the FTC argued that the district court’s ruling was incorrect, noting that the anti-discouragement rule – which has stood for nearly 50 years – is authorized by the plain language of the ECOA, which mandates that regulators further the ECOA’s “purpose” and prevent its “evasion.”¹⁶ The brief also notes that the district court’s ruling would have “profoundly negative consequences” for consumers, emboldening discriminatory lenders to openly discourage consumers from applying for loans.¹⁷ This matter is pending in the Court of Appeals for the Seventh Circuit.

B. Fair Lending: Research and Policy Development

1. FTC Report on American Indian and Alaska Native Consumer Issues

In 2023, the FTC sent a report to Congress detailing the consumer issues that affect American Indian and Alaska Native (AI/AN) populations and the FTC’s enforcement, outreach and education initiatives on these issues.¹⁸ Among other things, the report summarizes the agency’s outreach involving tribal leaders, community members, advocates and others about issues affecting their communities, and also summarizes numerous FTC law enforcement actions related to consumer abuses identified as impacting AI/AN communities.¹⁹ For example, the report addressed the action brought jointly by the FTC and the Illinois Attorney General, which included allegations that Napleton Automotive Group and eight of its dealerships engaged in discrimination (in violation of the ECOA) by charging Black consumers disproportionately more for markups and add-ons like payment insurance or paint protection – differences that could not

¹⁴ See FTC, Press Release, *FTC Files Amicus Brief in CFPB Action Opposing Efforts to Weaken Equal Credit Opportunity Act* (June 22, 2023), available at <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-files-amicus-brief-cfpb-action-opposing-efforts-weaken-equal-credit-opportunity-act>.

¹⁵ See *id.*

¹⁶ See Brief for the Federal Trade Commission as Amicus Curiae in Support of Appellant and Reversal at 1, *CFPB v. Townstone Fin., Inc. & Barry Sturner*, No. 23-1654 (7th Cir. Apr. 4, 2023), available at <https://www.ftc.gov/legal-library/browse/amicus-briefs/cfpb-v-townstone-financial-inc-barry-sturner>.

¹⁷ See *id.* at 2; see also *supra* note 14.

¹⁸ See FTC, Consumer Issues Affecting American Indian and Alaska Native Communities: A Report to Congress (Mar. 15, 2023), available at https://www.ftc.gov/system/files/ftc_gov/pdf/p035201consumerissuesaffectingaianreport.pdf.

¹⁹ See FTC, Press Release, *FTC Issues Report to Congress on American Indian and Alaska Native Consumer Issues* (Mar. 15, 2023), available at <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-issues-report-congress-american-indian-alaska-native-consumer-issues>.

be explained by factors related to underwriting risk or credit characteristics of the applicants.²⁰ The report noted that the action resulted in a \$10 million judgment to settle the lawsuit, almost all of which will be used to redress consumers.²¹ The report also noted the FTC’s enforcement action against Passport Automotive Group, including for allegedly charging Black and Latino consumers more in fees and interest rate markups than White consumers, in violation of the ECOA. The report referenced the resulting order requiring Passport to pay \$3.38 million to refund consumers and requiring each Passport dealership location to either charge no financing markup or charge the same markup rate to all consumers.²²

2. Joint Statement on Enforcement Efforts Against Discrimination and Bias in Automated Systems

In 2023, FTC Chair Lina M. Khan and officials from three other federal agencies issued a joint statement pledging to uphold America’s commitment to the core principles of fairness, equality, and justice as emerging automated systems, including those sometimes marketed as “artificial intelligence” or “AI,” become increasingly common in our daily lives – impacting civil rights, fair competition, consumer protection, and equal opportunity.²³ Among other things, the statement outlined a commitment by each agency (the FTC, the Civil Rights Division of the U.S. Department of Justice, the CFPB, and the U.S. Equal Employment Opportunity Commission) to enforce their respective laws and regulations that protect civil rights, fair competition, consumer protection, and equal opportunity, and to ensure that rapidly evolving automated systems are developed and used in a manner consistent with federal laws.²⁴ The statement also noted that automated system outcomes can be skewed by unrepresentative or imbalanced datasets, datasets that incorporate historical bias, or datasets that contain other errors, and the automated systems can correlate data with protected classes, which can lead to discriminatory outcomes, and that the agencies pledge to vigorously use their collective authorities to protect individuals’ rights regardless of whether legal violations occur through traditional means or advanced technologies.²⁵

²⁰ See *supra* note 18 at 26.

²¹ See *id.*

²² See *supra* note 18 at 26-27.

²³ See FTC, Press Release, *FTC Chair Khan and Officials from DOJ, CFPB and EEOC Release Joint Statement on AI* (Apr. 25, 2023), available at <https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-chair-khan-officials-doj-cfpb-eeoc-release-joint-statement-ai>.

²⁴ See Rohit Chopra, Dir., CFPB, Kristen Clarke, Assist. Att’y. Gen., Civ. Rts. Div., U.S. Dep’t of Just., Charlotte A. Burrows, Chair, U.S. EEOC, Lina M. Khan, Chair, FTC, *Joint Statement of Enforcement Efforts Against Discrimination and Bias in Automated Systems* (Apr. 25, 2023) at 1-2, available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/joint-statement-enforcement-efforts-against-discrimination-bias-automated-systems>.

²⁵ See *id.* at 3. Chair Khan also issued a separate statement. See *Statement of Chair Lina M. Khan Regarding the Joint Interagency Statement on AI (Chair Khan Statement)* (Apr. 25, 2023), available at <https://www.ftc.gov/news-events/news/speeches/statement-chair-lina-m-khan-regarding-joint-interagency-statement-ai>. Among other things, Chair Khan’s statement noted the FTC’s long track record of adapting its enforcement of existing laws to protect

3. Military Outreach

In 2023, the FTC's staff continued its work as a liaison to the American Bar Association's Standing Committee on Legal Assistance for Military Personnel (ABA LAMP). The ABA LAMP Committee supports initiatives to deliver legal assistance and services to servicemembers, veterans, and their families. For example, during ABA LAMP trainings and meetings, FTC staff addressed issues related to military consumers' (and other consumers') rights pertaining to the anti-discrimination provisions in the ECOA and Regulation B.

4. Interagency Task Forces on Fair Lending

The FTC continues to serve as a member of the Interagency Task Force on Fair Lending, a joint undertaking with the CFPB, U.S. Department of Justice, U.S. Department of Housing and Urban Development, and the federal banking regulatory agencies. Task Force members meet regularly to share information and discuss policy issues.

In 2023, the FTC also continued its participation in the Interagency Fair Lending Methodologies Working Group. The FTC staff, along with the staff of the CFPB, Federal Housing Finance Agency, U.S. Department of Housing and Urban Development, U.S. Department of Justice and the federal banking agencies, coordinate and share information on analytical methodologies used in enforcement of and supervision for compliance with fair lending laws, including the ECOA, among others.

C. Fair Lending: Consumer and Business Education

In 2023, the Commission engaged in initiatives to provide education on issues related to Regulation B topic areas. The FTC issued guidance for consumers on issues affecting American Indian and Alaska Native communities, related to the report described above.²⁶ Among other things, this information highlighted problems cited by consumer advocates related to auto purchase and financing, including deceptive advertising and a lack of clarity about fees at the dealership.

The Commission also issued an alert for consumers about the *Rhineland* case discussed above.²⁷ The alert offered tips to consumers, such as shopping around for financing, particularly

Americans from evolving technological risks, that AI is no different, and that the FTC's legal authority to address unfair and deceptive practices squarely applies, as do the ECOA and other laws. *See Chair Khan Statement* at 1.

²⁶ *See* Kira Krown, *Consumer issues affecting American Indian and Alaska Native communities*, FTC BUREAU OF CONSUMER PROTECTION ALERT (Mar. 15, 2023), <https://consumer.ftc.gov/consumer-alerts/2023/03/consumer-issues-affecting-american-indian-and-alaska-native-communities>. *See also supra* note 18.

²⁷ *See* Gema de las Heras, *Overcharging car buyers based on how they look? That's illegal*, FTC BUREAU OF CONSUMER PROTECTION ALERT (Oct. 24, 2023), <https://consumer.ftc.gov/consumer-alerts/2023/10/overcharging-car-buyers-based-how-they-look-thats-illegal-0>; *Cobrar de mas a ciertos compradores de carros segun su aspecto? Eso es ilegal*, FTC ALERTA PARA CONSUMIDORES (24 de Oct de 2023), <https://consumidor.ftc.gov/alertas-para-consumidores/2023/10/cobrar-de-mas-ciertos-compradores-de-carros-segun-su-aspecto-eso-es-ilegal>. *See also supra* notes 6-11.

with banks, credit unions, and other financing companies to get pre-approved and use offers to negotiate with the dealer, and walking away if terms are not what was promised. The Commission also provided businesses with guidance on this settlement, including a reminder that discriminating against consumers in credit transactions on the basis of race, color, national origin, or certain other criteria violates the law.²⁸

We hope that the information discussed above responds to your inquiry and will be useful in preparing the CFPB's Annual Report to Congress. Should you need additional assistance, please contact me at (202) 326-2972, or Carole Reynolds at (202) 326-3230.

Sincerely,

/s/ Malini Mithal

Malini Mithal
Associate Director
Division of Financial Practices

²⁸ See Lesley Fair, *FTC-Wisconsin settlement challenges car dealers' sales practices, including alleged discrimination against American Indian consumers*, FTC BUSINESS BLOG (Oct. 26, 2023), <https://www.ftc.gov/businessguidanceblog/2023/10/FTCWisconsinsettlementchallengescardealers%E2%80%99salespracticesincludingallegeddiscriminationagainstAmericanIndianconsumers>.