

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



Division of Financial Practices

February 6, 2015

Patrice Alexander Ficklin, Assistant Director
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 (Equal Credit Opportunity Act, or ECOA).¹ You request this information for use in preparing the Consumer Financial Protection Bureau's (CFPB) 2014 Annual Report to Congress. Specifically, you ask for information concerning the FTC's activities with respect to Regulation B during 2014. 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

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 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).

with the memorandum of understanding that the Commission and the CFPB entered into in January 2012, and consistent with the Dodd-Frank Act, the Commission has been coordinating certain law enforcement, rulemaking, and other activities with the CFPB.⁴ The Commission is committed to continuing its enforcement of Regulation B, and it intends to do the same with other rules the CFPB issues that apply to entities within the FTC's jurisdiction.

II. Regulation B (ECOA)

In 2014, the FTC engaged in research and policy development related to the ECOA. Further, the Commission provided the public with numerous 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 research and policy development and educational initiatives.⁵

A. Fair Lending: Research and Policy Development

In 2014, the FTC hosted a public workshop to examine the use of "big data" and its impact on American consumers, including low-income and underserved consumers.⁶ Panelists included representatives from federal government agencies and organizations, academic researchers, trade associations, and industry. Topics discussed included the scope of ECOA and Regulation B, and how big data impacts the extension of credit, employment offers, and insurance to consumers. The workshop was open to the public, and the audience raised questions during the event, which participants answered. Since the event, the FTC has received more than sixty public comments responding to issues raised by the workshop.

The FTC also hosted a seminar on alternative scoring products, in which speakers described a variety of predictive analytics products offered by many data brokers to predict trends and consumer behavior in many contexts, including identity verification and fraud prevention, and marketing and advertising.⁷ The seminar included a discussion of the protections of the ECOA, how its requirements can reduce discrimination in lending, and

⁴ See FTC, Press Release, *Federal Trade Commission, Consumer Financial Protection Bureau Pledge to Work Together to Protect Consumers*, Jan. 23, 2012, available at <http://www.ftc.gov/opa/2012/01/ftccfpb.shtm>; see also 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 See *Big Data: A Tool for Inclusion or Exclusion?* (Sept. 15, 2014), available at <http://www.ftc.gov/news-events/events-calendar/2014/09/big-data-tool-inclusion-or-exclusion>. A webcast and transcript of the workshop are available at that site.

⁷ See *Alternative Scoring Products* (Mar. 19, 2014), available at <http://www.ftc.gov/news-events/events-calendar/2014/03/spring-privacy-series-alternative-scoring-products>. A webcast and transcript of the seminar are available at that site.

whether certain predictive scoring products could fall outside its reach. The public participated by attending and asking questions during the event, and before and after the event, public comments were invited and received on seminar issues.

In addition, the Commission hosted a workshop to examine how fraud affects every community group including older adults, servicemembers and veterans, low-income communities, and African-Americans, Latinos, Asians, and Native Americans.⁸ It addressed marketplace experiences of people in these communities, and ways to prevent fraud through cooperation, law enforcement, industry initiatives, community outreach and education. Among other things, the workshop included some panelists' consideration of fair lending issues.⁹ Public participation was included in the workshop through questions and answers.

The FTC continues to be a member of the Interagency Task Force on Fair Lending, a joint undertaking with the CFPB, the Department of Justice, the Department of Housing and Urban Development, and the federal banking regulatory agencies. Task Force members meet regularly to share information on lending discrimination, predatory lending enforcement, and policy issues. The FTC also participates in the Financial Fraud Enforcement Task Force, including, among others, its Nondiscrimination Working Group.

B. Fair Lending: Consumer and Business Education

In 2014, the Commission continued its efforts to educate consumers and businesses about issues related to the consumer credit transactions to which Regulation B applies. The Commission issued a blog post related to its big data workshop, with information about the use of big data analytics in online advertising, including the FTC's then-Chief Technologist's research findings.¹⁰ The blog includes a discussion of laws such as the ECOA, that protect classes based on race, color, religion, sex or national origin; whether such protected classes could see entirely different ads due to different advertising delivery approaches; and whether that may have a disproportionate adverse impact on such classes.

Additionally, the Commission, in cooperation with the American Financial Services Association Education Foundation and the National Automobile Dealers Association, updated its brochure offering consumer education on auto financing issues.¹¹ The publication discusses various financing options available to consumers, including direct lending and dealership

⁸ See *Fraud Affects Every Community* (Oct. 29, 2014), available at <http://www.ftc.gov/news-events/events-calendar/2014/10/fraud-affects-every-community>. A webcast and transcript of the workshop are available at that site.

⁹ See e.g., *Presentation of Charles R. Lowery, Jr., Director of Fair Lending and Inclusion, NAACP, id.*

¹⁰ See Latanya Sweeney, then-Chief FTC Technologist, *Online ads roll the dice*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Sept. 25, 2014), <http://www.ftc.gov/news-events/blogs/techftc/2014/09/online-ads-roll-dice>.

¹¹ See UNDERSTANDING VEHICLE FINANCING, available at <http://www.consumer.ftc.gov/articles/0056-understanding-vehicle-financing>.

financing, and additional points for consumers to consider when reviewing financing options. It also contains worksheet templates allowing consumers to assess their monthly spending as well as a worksheet to compare competing credit offers. In a new blog post on autos and financing, the Commission highlighted the importance of consumers reviewing information about auto dealers and financing options, with tips to avoid unscrupulous finance dealers. For example, it guided consumers to research the dealer with state Attorneys General and local consumer protection agencies for any unresolved complaints, and recommended that consumers ask to see their consumer credit application at the dealership, completely filled out, before signing it.¹²

Also, in 2014, the FTC updated its financial education site, with additional information on diverse credit topics of particular interest to those engaged in educating consumers.¹³

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) 326-3292, or Carole Reynolds at (202) 326-3230.

Sincerely,

James Reilly Dolan
Associate Director
Division of Financial Practices

¹² See also Colleen Tressler, *Check Out the Auto Dealer and Financing – Before You Sign*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Oct. 31, 2014), <http://www.consumer.ftc.gov/blog/check-out-auto-dealer-and-financing-you-sign>.

¹³ See JUST FOR YOU: FINANCIAL EDUCATORS, <http://www.consumer.ftc.gov/features/feature-0022-financial-educators>.