

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



Division of Financial Practices

February 8, 2016

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) 2015 Annual Report to Congress. Specifically, you ask for information concerning the FTC's activities with respect to Regulation B during 2015. 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

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).

January 2012 and reauthorized in 2015, and consistent with the Dodd-Frank Act, the Commission has been coordinating certain law enforcement, rulemaking, and other activities with the CFPB.⁴

II. Regulation B (ECOA)

In 2015, 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 2015, the FTC and the NAACP of Georgia hosted a conference on "Obstacles to Economic Opportunity," examining the frauds affecting the African American community. The conference brought together legal service attorneys; community leaders; federal, local and state officials; and consumer advocates from Georgia, to build relationships and explore ways the FTC and the NAACP can better collaborate and share information and resources to best serve the African American community. Participants discussed some of the key consumer issues affecting the African American community, including credit scams, short-term loan scams, income and employment scams, and auto buying.⁶ Among other things, some conference participants provided information about auto loan fraud, and about the denial of mortgages to African Americans at a higher rate than other groups.⁷

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 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 *Obstacles to Economic Opportunity: A Joint Conference of the FTC and the NAACP Examining Frauds that Affect the African American Community* (May 19, 2015), available at <https://www.ftc.gov/news-events/events-calendar/2015/05/obstacles-economic-opportunity-joint-conference-ftc-naacp>. The conference also invited consumers from communities to participate at an informal gathering in the evening. See *Scam Jam: An Evening to Empower Georgia Consumers* (May 19, 2015), available at <https://www.ftc.gov/news-events/events-calendar/2015/05/scam-jam-evening-empower-georgia-consumers>.

⁷ See *infra* note 13, Cindy Liebes, *The 411 on fraud in the 404*, FTC BUREAU OF CONSUMER PROTECTION BLOG (June 4, 2015), available at <https://www.consumer.ftc.gov/blog/411-fraud-404>.

The FTC also hosted a public workshop to explore the growing use of online lead generation in various industries, including lending and education.⁸ Lead generation is the practice of identifying or cultivating consumer interest in a product or service, and selling this information to third parties. The workshop brought together a variety of stakeholders, including industry representatives, consumer advocates, and government regulators. The participants explored consumer protection issues raised by the practices of the lead generation industry, and what consumers and businesses should know and do to address them, including how online lead generation works, why types of lead generation conduct may be unlawful under the FTC Act's prohibition against unfair or deceptive practices, best practices for entities, and how consumers can avoid unlawful conduct. Among other things, some panelists discussed that when firms can and do sell information, they collect more information, deny more applicants, and mortgage denial rates increase; however, consumers who qualify for mortgages benefit from lower rates.⁹ Others noted that the applications used by lead generators incorporate zip code, marital status, sex, and gender — which are factors in the ECOA when credit is involved — and they considered whether a policy gap exists, and whether lead generators may be using proxies for these factors in marketing transactions to avoid ECOA.¹⁰

In addition, the Commission announced that it is seeking public comment on a proposed survey of consumers to learn about their experiences in buying and financing automobiles at dealerships, and published a Federal Register Notice on the matter.¹¹ Comments that are received will be posted on the Commission's website, and considered before the Commission seeks clearance for the survey from the Office of Management and Budget, as required by the Paperwork Reduction Act. In its release, the Commission noted it had brought more than 25 cases in the auto purchase and financing area since 2011, including those in a federal-state effort that yielded more than 200 actions for fraud, deception, and other illegal practices. The survey will include consumer interviews on topics such as: the consumer's experience in shopping for and choosing an automobile; the process of agreeing to a price for the automobile; the process of trading in the consumer's old automobile; the consumer's experience in obtaining financing; additional products or services the dealer may have offered; contacts between the consumer and

⁸ See *Follow the Lead: An FTC Workshop on Lead Generation* ("Follow the Lead Workshop"), (Oct. 30, 2015), available at <https://www.ftc.gov/news-events/events-calendar/2015/10/follow-lead-ftc-workshop-lead-generation>. A webcast and transcript of the workshop are available at that site.

⁹ See Remarks of Paul McConville, Chief Revenue Office at LeadiD, available at https://www.ftc.gov/system/files/documents/videos/follow-lead-ftc-workshop-lead-generation-part-1/ftc_lead_generation_workshop_-_transcript_segment_1.pdf. *Id.*

¹⁰ See Remarks of Pam Dixon, Exec. Dir., World Privacy Forum, available at *id.*, and Remarks of Ed Mierzewski, Consumer Program Dir., U.S. PIRG (Public Interest Research Group) (The Federation of State PIRGs), available at https://www.ftc.gov/system/files/documents/videos/follow-lead-ftc-workshop-lead-generation-part-3/ftc_lead_generation_workshop_-_transcript_segment_3.pdf, respectively.

¹¹ See FTC, Press Release, *FTC Seeks Public Comment on Proposed Survey of Consumers Regarding Their Experiences Buying and Financing Automobiles from Auto Dealers*, Dec. 29, 2015, available at <https://www.ftc.gov/news-events/press-releases/2015/12/ftc-seeks-public-comment-proposed-survey-consumers-regarding>.

dealer after the purchase; and the consumer's overall perception of the purchase experience. The survey will involve review of the consumer's purchase and financing documents and exploration of their understanding of those documents. As explained in the information released, the FTC has broad authority over automobile dealers, including the authority to enforce various applicable statutes, such as the FTC Act and ECOA. The survey is intended to provide useful insights about current consumer protection issues that exist and could be addressed through FTC action, including enforcement initiatives, rulemaking, or education.

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 2015, the Commission continued its efforts to educate consumers and businesses on important issues, including issues related to the consumer credit transactions to which Regulation B applies. The Commission updated its Mortgage Discrimination publication, which includes information about the ECOA and alerts consumers to practices that are illegal under federal law.¹² The updates clarify the guidance to consumers, including about specific practices in which lenders can and cannot engage under the law.

The Commission issued a blog post related to the conference discussed above that it jointly held with the NAACP on "Obstacles to Economic Opportunity."¹³ The blog provided information about the conference, including the issues discussed, such as housing, short-term loan scams, and car-buying, among others. The blog noted that some participants discussed information about the denial of mortgages to African Americans at a higher rate than other groups even when credit ratings and salaries are the same, and that Georgia authorities are seeing a decrease in mortgage fraud but an increase in auto loan fraud, sometimes by the same convicted mortgage lenders.

The Commission issued information on its business blog about its revamped Business Center website, with design changes to enhance accessibility of guidance for businesses.¹⁴ Among the changes, the new website provides businesses with an easy-to-find navigation tool

¹² See MORTGAGE DISCRIMINATION, available at <https://www.consumer.ftc.gov/articles/0188-mortgage-discrimination>. This publication was also updated for Spanish-language consumers. See DISCRIMINACION HIPOTECARIA, available at <https://www.consumidor.ftc.gov/articulos/s0188-discriminacion-hipotecaria>.

¹³ Cindy Liebes, *The 411 on fraud in the 404*, FTC BUREAU OF CONSUMER PROTECTION BLOG (June 4, 2015), available at <https://www.consumer.ftc.gov/blog/411-fraud-404>.

¹⁴ Alvaro Puig, *Business Center 2.0*, FTC BUREAU OF CONSUMER PROTECTION BUSINESS CENTER BLOG (Jan. 8, 2015), available at <https://www.ftc.gov/news-events/blogs/business-blog/2015/01/business-center-20>.

for the content — “Tips & Advice,” more plain-language guidance, new filters to facilitate location of legal resources, and an accessible design that is mobile and tablet-friendly.

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,

Malini Mithal
Acting Associate Director
Division of Financial Practices