



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

Division of Financial Practices

February 1, 2023

Patrice Alexander Ficklin, Assistant Director  
Office of Fair Lending & Equal Opportunity  
Bureau of Consumer Financial Protection  
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).<sup>1</sup> You request this information for use in preparing the Bureau of Consumer Financial Protection's (CFPB) 2022 Annual Report to Congress. Specifically, you ask for information concerning the FTC's activities with respect to Regulation B during 2022. We are pleased to provide the requested information below.<sup>2</sup>

### **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.<sup>3</sup> 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 Act, the Commission has been coordinating certain law enforcement, rulemaking, and other

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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).

activities with the CFPB.<sup>4</sup>

## II. Regulation B (ECOA)

In 2022, 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.<sup>5</sup>

### A. Fair Lending: Enforcement

In 2022, the FTC and the State of Illinois brought an enforcement action in federal court against Napleton, a large multistate auto group based in Illinois, alleging, among other things, that defendants violated the ECOA and Regulation B by discriminating against Black consumers, charging them more in financing for interest rate markups and illegal junk fees for unwanted “add-ons” that they sneaked onto customers’ bills.<sup>6</sup> According to the FTC’s complaint, among other things, defendants would often wait until the end of the hours-long negotiation process to slip junk fees for add-on products and services into consumers’ purchase contracts, which can run as long as 60 pages.<sup>7</sup> Defendants agreed to pay \$10 million to settle all the charges, a record setting monetary judgment for an FTC auto lending case.<sup>8</sup> Defendants are also required to establish a fair lending program that will, among other components, cap the amount of any

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<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> *FTC v. North American Automotive Services, Inc.*, No. 22-cv-01690 (N.D. Ill., filed Mar. 31, 2022), available at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/1%20-%20Joint%20Complaint.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/1%20-%20Joint%20Complaint.pdf). Chair Khan and Commissioner Slaughter issued a concurring statement. See *Joint Statement of Chair Lina M. Khan and Commissioner Rebecca Kelly Slaughter in the Matter of Napleton Automotive Group* (Mar. 31, 2022), available at <https://www.ftc.gov/news-events/news/speeches/joint-statement-chair-lina-m-khan-commissioner-rebecca-kelly-slaughter-matter-napleton-automotive>.

<sup>7</sup> *Id.* See also FTC, Press Release, *FTC Takes Action Against Multistate Auto Dealer Napleton for Sneaking Illegal Junk Fees onto Bills and Discriminating Against Black Consumers* (Apr. 1, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/04/ftc-takes-action-against-multistate-auto-dealer-napleton-sneaking-illegal-junk-fees-bills>.

<sup>8</sup> *FTC v. North Amer. Auto. Servs., Inc.*, No. 22-cv-01690 (N.D. Ill. Mar. 31, 2022) (stipulated order for permanent injunction, monetary judgment, and other relief), available at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/6-1%20Stipulated%20Order.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/6-1%20Stipulated%20Order.pdf).

additional interest markup they charge consumers.<sup>9</sup> In November, the FTC sent payments totaling more than \$9.8 million to people who were harmed by Napleton Auto's junk fees and discriminatory practices.<sup>10</sup>

In 2022, the FTC brought an action in federal court against Maryland-based Passport Automotive Group, alleging that defendants violated the ECOA and Regulation B, and also violated the FTC Act by engaging in unfair practices, by discriminating against Black and Latino consumers, charging them higher financing costs and illegal junk fees.<sup>11</sup> In its complaint, the FTC alleges, among other things, that Passport regularly advertised certified, reconditioned, or inspected cars at specific prices, but then added extra certification, reconditioning, or inspection fees that it falsely claimed consumers are required to pay, charging Black and Latino consumers more for the fees and imposing the fees more often.<sup>12</sup> The FTC also alleges that Passport charged Black and Latino consumers hundreds of dollars more in financing costs for interest rate markups than White consumers.<sup>13</sup> Among other things, Defendants agreed to pay more than \$3.3 million to settle the FTC's lawsuit, which will be used to refund consumers harmed by Passport's conduct; the order also requires defendants to establish a fair lending program to ensure against discrimination going forward, including requiring each Passport dealership to either charge no financing markup or charge the same markup rate to all consumers.<sup>14</sup>

In 2022, the FTC also mailed refund checks in connection with the orders in another matter that was previously filed. The Federal Trade Commission sent a second round of refund checks to 3,376 people who bought a car from Bronx Honda and were affected by the company's

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<sup>9</sup> *Id.*

<sup>10</sup> See FTC, Press Release, *FTC Sends Checks to People Who Had Junk Fees Added to Their Vehicle Purchases* (Nov. 14, 2022), available at <https://www.ftc.gov/enforcement/refunds/ed-napleton-automotive-group-refunds>.

<sup>11</sup> *FTC v. Passport Auto. Grp., Inc.*, No. 8:22-cv-02670-GLS (D. Md., filed Oct. 18, 2022), available at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Complaint%20Passport%20Auto%20Group%2C%20Inc.%2C%20et%20al..pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Complaint%20Passport%20Auto%20Group%2C%20Inc.%2C%20et%20al..pdf). Chair Khan, Commissioner Slaughter, and Commissioner Bedoya issued a joint majority statement, available at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/joint-statement-of-chair-lina-m.-khan-commissioner-rebecca-kelly-slaughter-and-commissioner-alvaro-m.-bedoya-in-the-matter-of-passport-auto-group.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/joint-statement-of-chair-lina-m.-khan-commissioner-rebecca-kelly-slaughter-and-commissioner-alvaro-m.-bedoya-in-the-matter-of-passport-auto-group.pdf); Commissioner Wilson issued a concurring and dissenting statement, available at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/commissioner-wilson-passport-statement.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/commissioner-wilson-passport-statement.pdf); then-Commissioner Phillips issued a dissenting statement, available at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Dissenting-Statement-of-Commissioner-Noah-Joshua-Phillips.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Dissenting-Statement-of-Commissioner-Noah-Joshua-Phillips.pdf). This is the second FTC action against Passport in recent years. See <https://www.ftc.gov/news-events/news/press-releases/2018/10/washington-dc-area-car-dealerships-marketing-firm-settle-deceptive-advertising-charges>.

<sup>12</sup> See *id.* See also FTC, Press Release, *Federal Trade Commission Takes Action Against Passport Automotive Group for Illegally Charging Junk Fees and Discriminating Against Black and Latino Customers* (Oct. 18, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/10/federal-trade-commission-takes-action-against-passport-automotive-group-illegally-charging-junk-fees>.

<sup>13</sup> See *supra* notes 11 and 12.

<sup>14</sup> *FTC v. Passport Auto. Grp., Inc.*, No. 8:22-cv-02670 (D. Md. Oct. 18, 2022) (stipulated order for permanent injunction, monetary judgment, and other relief), available at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Order%20As%20Filed.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Order%20As%20Filed.pdf).

unlawful and discriminatory practices.<sup>15</sup>

## **B. Fair Lending: Research and Policy Development**

### **1. Combatting Online Harms Through Innovation Report**

In 2022, the FTC issued a report to Congress titled “Combatting Online Harms Through Innovation,” warning about using artificial intelligence (AI) to combat online problems and urging policymakers to exercise “great caution” about relying on it as a policy solution.<sup>16</sup> The report explains that the use of AI, particularly by big tech platforms and other companies, comes with limitations and problems of its own. The report outlines significant concerns that AI tools can be inaccurate, biased, and discriminatory by design – and can harm marginalized communities – and incentivize relying on increasingly invasive forms of commercial surveillance.<sup>17</sup> The report highlighted that, in addition to inherent design flaws, AI tools can reflect biases of its developers that lead to faulty and potentially illegal outcomes, and provides analysis as to why AI tools could produce unfair or biased results. It also includes examples of instances in which AI tools resulted in discrimination against protected classes of people or overblocked content in ways that can serve to reduce freedom of expression.<sup>18</sup>

### **2. Fifteenth Annual FTC Microeconomics Conference (Designing Dealer Compensation in the Auto Loan Market: Implications from a Policy Change)**

In 2022, the FTC’s Bureau of Economics co-hosted the Fifteenth Annual FTC Microeconomics Conference, which included a paper session and discussion on designing dealer

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<sup>15</sup> See FTC, Press Release, *FTC sends Refunds to Victims of Bronx Honda’s Illegal Lending and Sales Practices* (Mar. 2022), available at <https://www.ftc.gov/enforcement/refunds/bronx-honda-refunds>.

<sup>16</sup> See FTC, *Combatting Online Harms Through Innovation: Report to Congress* (June 16, 2022) (Report to Congress), available at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Combatting%20Online%20Harms%20Through%20Innovation%3B%20Federal%20Trade%20Commission%20Report%20to%20Congress.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Combatting%20Online%20Harms%20Through%20Innovation%3B%20Federal%20Trade%20Commission%20Report%20to%20Congress.pdf). Chair Khan, Commissioner Slaughter, and Commissioner Bedoya issued separate statements, available at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Khan-Speech-AI-Report.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Khan-Speech-AI-Report.pdf), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/P214501AIReportSlaughterStatement.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/P214501AIReportSlaughterStatement.pdf), and [https://www.ftc.gov/system/files/ftc\\_gov/pdf/P214501AIReportBedoyaStatement.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/P214501AIReportBedoyaStatement.pdf), respectively; Commissioner Wilson issued a concurring statement, available at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/P214501AIReportWilsonStatement.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/P214501AIReportWilsonStatement.pdf); then-Commissioner Phillips issued a dissenting statement, available at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Commissioner%20Phillips%20Dissent%20to%20AI%20Report%20%28FINAL%206.16.22%20noon%29\\_0.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Commissioner%20Phillips%20Dissent%20to%20AI%20Report%20%28FINAL%206.16.22%20noon%29_0.pdf). See also FTC, Press Release, *FTC Report Warns About Using Artificial Intelligence to Combat Online Problems* (Press Release) (June 16, 2022), available at <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-report-warns-about-using-artificial-intelligence-combat-online-problems>.

<sup>17</sup> See *supra* note 16, Report to Congress, at 43-46.

<sup>18</sup> See *supra* note 16, Report to Congress and Press Release.

compensation in the auto loan market.<sup>19</sup> Among other things, the segment addressed how the discretionary markup of interest rates can vary systematically by protected characteristics such as gender and race, and it also referenced the ECOA protections.<sup>20</sup> The segment also addressed research that explored the impact of nondiscretionary models of dealer compensation on consumers.<sup>21</sup>

### **3. Military Outreach**

In 2022, 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, 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 and discuss policy issues.

In 2022, 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 2022, the Commission engaged in efforts to provide education on significant issues to which Regulation B pertains. The FTC released guidance for consumers reiterating that credit discrimination is illegal under federal law, for banks, credit unions, mortgage companies,

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<sup>19</sup> See Fifteenth Annual FTC Microeconomics Conference, Paper Session (Nov. 3, 2022), Zhenling Jiang (Wharton School, University of Pennsylvania), Yanhao "Max" Wei (Marshall School of Business, University of Southern California), Tat Chan (Olin Business School, Washington University in St. Louis), and Nasser Hamdi (Equifax, Inc.) *Designing Dealer Compensation in the Auto Loan Market: Implications from a Policy Change*, available at <https://www.ftc.gov/news-events/events/2022/11/fifteenth-annual-federal-trade-commission-microeconomics-conference>. The participants' presentation slides and their paper are available at that site.

<sup>20</sup> See *id.*

<sup>21</sup> See *supra* note 19. A transcript including remarks from this session's participants is also available. See [https://www.ftc.gov/system/files/ftc\\_gov/pdf/FTC15thAnnualMicroeconomicsConferenceDay1-November3-2022.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/FTC15thAnnualMicroeconomicsConferenceDay1-November3-2022.pdf), at 41-50.

retailers, and other companies that extend credit.<sup>22</sup> The guidance emphasized that creditors may not consider during the application process or when making a credit decision, among other things, consumers' race or sex, including sexual orientation and gender identity (although they can ask consumers to voluntarily disclose this information, which assists federal agencies in enforcing anti-discrimination laws). The guidance also noted that consumers have the right to know within thirty days of filing a completed application whether it was accepted or rejected and, if rejected, the reason(s) why, and that they must disclose the federal agency (including the FTC, as applicable) to contact in the denial notice.

The FTC released information for consumers noting that reports to the FTC, analysis of data from FTC enforcement actions, and research have shown that people living in majority Black communities are disproportionately harmed by fraud and other consumer problems.<sup>23</sup> The release noted that racial discrimination has led to structural barriers to accessing credit especially in Black communities, outlined initiatives in which the FTC is engaged to center racial equity and economic equality in its work, and also highlighted the FTC's previously released Serving Communities of Color report.

The FTC also issued alerts for consumers about the cases discussed above, providing guidance about the Napleton defendants' alleged discriminatory lending and illegal junk fees, and the Passport defendants' alleged unfair and discriminatory charges to Black and Latino consumers through junk fees and financing markups.<sup>24</sup> The FTC also provided businesses with guidance on these settlements, including on the importance of ensuring compliance with the ECOA and the FTC Act.<sup>25</sup>

We hope that the information discussed above responds to your inquiry and will be useful

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<sup>22</sup> See Carol Kando-Pineda, *Credit discrimination is illegal*, FTC BUREAU OF CONSUMER PROTECTION ALERT (June 15, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/06/credit-discrimination-illegal>.

<sup>23</sup> See Rhonda Perkins, *Advancing racial equity by addressing consumer issues affecting Black communities*, FTC BUREAU OF CONSUMER PROTECTION ALERT (Feb. 10, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/02/advancing-racial-equity-addressing-consumer-issues-affecting-black-communities>. The FTC also updated its other consumer information on credit discrimination, clarifying what a creditor may not do during the credit application process (such as considering consumers' race or sex, or sexual orientation and gender identity) and in evaluating consumers' income (including discounting consumers' income due to their sex or marital status, among other things). See *Credit Discrimination* (Jan. 2022), available at <https://consumer.ftc.gov/articles/credit-discrimination>.

<sup>24</sup> See Seena Gressin, *Auto dealers to pay \$10 million for discriminatory lending and sneaking in junk add-on fees*, FTC BUREAU OF CONSUMER PROTECTION ALERT (Apr. 1, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/04/auto-dealers-pay-10-million-discriminatory-lending-and-sneaking-junk-add-fees>, and Rosario Mendez, *Discriminatory financing and bogus fees at the car dealer? No thank you*, FTC BUREAU OF CONSUMER PROTECTION ALERT (Oct. 18, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/10/discriminatory-financing-and-bogus-fees-car-dealer-no-thank-you>, respectively.

<sup>25</sup> See Lesley Fair, *Record-setting \$10 million FTC-Illinois settlement takes on car dealers' unauthorized add-ons and discriminatory lending practices*, FTC BUSINESS BLOG (Apr. 4, 2022), <https://www.ftc.gov/business-guidance/blog/2022/04/record-setting-10-million-ftc-illinois-settlement-takes-car-dealers-unauthorized-add-ons-and>, and *\$3.3 million FTC settlement with Passport drives home importance of fair lending*, FTC BUSINESS BLOG (Oct. 18, 2022), <https://www.ftc.gov/business-guidance/blog/2022/10/33-million-ftc-settlement-passport-drives-home-importance-fair-lending>, respectively.

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  
Associate Director  
Division of Financial Practices