

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



Division of Financial Practices

February 2, 2018

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 and the Equal Credit Opportunity Act (ECOA).¹ You request this information for use in preparing the Consumer Financial Protection Bureau's (CFPB) 2017 Annual Report to Congress. Specifically, you ask for information concerning the FTC's activities with respect to Regulation B during 2017. 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 ECOA, and other consumer laws, such as giving the CFPB rulemaking and enforcement authority for 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

¹ 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).

memorandum of understanding that the Commission and the CFPB entered into in 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 2017, the FTC engaged in research and policy development related to 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 research and policy development and educational initiatives.⁵

A. Fair Lending: Research and Policy Development

FinTech Series: Artificial Intelligence and Blockchain. In 2017, the FTC hosted the third forum in its FinTech series that explores emerging financial technology and its implications for consumers; this forum focused on artificial intelligence (AI) and blockchain.⁶ Among other topics, the forum explored technologies that deal with large data sets, as do AI and blockchain, and the ways in which those technologies may reshape many financial transactions and how consumers borrow, spend, share, and manage money. AI may present opportunities that benefit consumers, and may involve cheaper and easier access to financial services, better decision-making tools, personalized assistance, or other benefits from use of these data sets and algorithms.⁷ The forum examined potential challenges that may occur when using AI to inform

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.shtml>, 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 The FinTech series brought together researchers, industry representatives, law enforcement agencies, and consumer advocates for half-day discussion sessions focusing on consumer protection and emerging financial technology. See *FinTech Forum: Artificial Intelligence and Blockchain*, March 9, 2017, available at <https://www.ftc.gov/news-events/events-calendar/2017/03/fintech-forum-blockchain-artificial-intelligence>. A video and transcript of the forum are available at that site. Artificial intelligence focuses on the capability for machines to mimic human thinking or actions, including learning and problem solving; its technology may be used, for example, to provide personalized financial services for consumers. Blockchain technology involves a distributed digital ledger for recording transactions that can be shared widely; it first emerged as a foundation for digital currency and now is being explored for other consumer-focused uses including payment systems and "smart contracts." See *id.*

⁷ See Remarks of Morgan Reed, Exec. Dir., ACT/The App Association, Transcript – Panel 1 at 1, available at https://www.ftc.gov/system/files/documents/public_events/1051963/ftc_fintech_forum_ai_and_blockchain_-_panel_1_transcript.pdf. As noted in the FTC's Big Data report, released and reported on last year, use of AI-enabled data analytics to make credit decisions can implicate ECOA. See *Big Data: A Tool for Inclusion or Exclusion? Understanding the Issues* (Jan. 2016), available at <https://www.ftc.gov/system/files/documents/reports/big-data-tool-inclusion-or-exclusion-understanding-issues/160106big-data-rpt.pdf>. The Commission's vote to issue the report was 4-0; then-Commissioner Ohlhausen

credit decisions.⁸ Panelists discussed how summarized credit statistics could be based on information like geography and zip codes, which can introduce bias in some cases, including that related to marital status and age, among others, and possible solutions to reduce that bias.⁹

Auto Buyer Study. In 2017, following receipt of clearance from the Office of Management and Budget, the FTC began work on a qualitative study of consumers' experiences in buying and financing automobiles at dealerships.¹⁰ The study, which included in-depth consumer interviews and review of consumers' purchase and finance documents, is designed to assist the FTC by providing useful insights into consumer understanding of the automobile purchasing and financing process at dealerships.¹¹ Assessment and review of information pertaining to the study is currently continuing. While the results will not be generalizable to the U.S. population, the FTC believes that the information will offer meaningful information about the consumers' experiences, and help focus FTC initiatives in this area, such as consumer education about the purchase and financing process and business education to foster compliance with the laws the FTC enforces, such as the FTC Act and ECOA.

ECOA in the Military Area. Protecting military consumers is a priority for the FTC. In September 2017, the FTC announced the Military Task Force, comprised of a cross-section of agency representatives.¹² The Task Force is part of the agency's ongoing collaborative effort to provide resources for military consumers, and is aimed at identifying their needs and developing initiatives to empower servicemembers, veterans, and their families, including through law

issued a separate statement, *Separate Statement of Commissioner Ohlhausen, Big Data: A Tool for Inclusion or Exclusion* (Jan. 6, 2016), available at https://www.ftc.gov/system/files/documents/public_statements/904483/160106bigdatarptmokstmt.pdf.

⁸ See Remarks of Pam Dixon, Exec. Dir., World Privacy Forum, Transcript – Panel 1 at 5, 11, available at https://www.ftc.gov/system/files/documents/public_events/1051963/ftc_fintech_forum_ai_and_blockchain_-_panel_1_transcript.pdf. See Remarks of Rayid Ghani, Dir., Center for Data Science & Public Policy, University of Chicago, Transcript – Panel 1 at 11-12, available at *id.* Deidre Mulligan, Assoc. Prof. UC Berkeley School of Information, Transcript – Panel 1 at 12, available at *id.*

⁹ See Remarks of Pam Dixon, Exec. Dir., World Privacy Forum, Transcript – Panel 1 at 17, available at *id.* See also Remarks of Deidre Mulligan, Assoc. Prof., UC Berkeley School of Information, Transcript – Panel 1 at 19, available at *id.*

¹⁰ Generally, the sample group of consumers is designed to be racially diverse, and include participants of both sexes. The contractor also has focused on including a mix of ages and income levels, and a mix of consumers who purchased and financed a vehicle from franchise, independent, and buy here pay here dealers. The study involves only voluntary consumer participation. For more information about the study, see FTC, Press Release, *FTC Announces Second Federal Register Notice on Proposed Study of Consumers' Experiences Buying and Financing Automobiles from Auto Dealers*, Sept. 13, 2016, available at <https://www.ftc.gov/news-events/press-releases/2016/09/ftc-announces-second-federal-register-notice-proposed-study>, reported on last year. In that 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.

¹¹ Interview participants and their personal identifying information, including credit scores, are anonymized in the information received by the FTC, and protected by the study firm.

¹² See FTC, Press Release, *FTC Launches Website Dedicated to New Military Lending Task Force*, Sept. 25, 2017, available at <https://www.ftc.gov/news-events/press-releases/2017-09/ftc-launches-website-dedicated-new-military-task-force>.

enforcement actions. Additional information concerning FTC initiatives to assist military consumers is included below.

1. Military Consumer Financial Workshop: Protecting Those Who Protect Our Nation (Texas)

The FTC hosted a workshop bringing together military consumer advocates, consumer groups, government representatives (local, state, and federal), military legal services and legal clinics (including those at universities), all service branches, and industry representatives to examine financial issues and scams that can affect military consumers, including active duty servicemembers in all branches and veterans.¹³ The workshop focused on diverse financial topics for military consumers including, among other things, auto purchase, financing, and leasing; student and other lending, including installment credit practices; legal rights and remedies; and financial literacy and capability. The workshop included discussion of how servicemembers - who are often young with no established credit history - could be denied credit or receive the worst or high rates and terms, and how best to assist servicemembers in addressing these problems.¹⁴

2. Protecting Military Consumers: A Common Ground Conference (California)

The FTC also hosted a Common Ground conference focused on protecting military consumers. The conference brought together and trained military attorneys, law enforcement personnel, and consumer protection officials to identify, prevent, and respond to consumer fraud and other issues affecting military servicemembers and their families. The conference examined: current and emerging issues impacting servicemembers and their families; federal, state, and local consumer protection laws; effective consumer fraud prevention, detection, and resolution strategies; and resources available to servicemembers.¹⁵ The workshop included discussion of the antidiscrimination provisions of ECOA and Regulation B.

3. ABA Legal Assistance for Military Personnel

The FTC staff is 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. Among other things, FTC staff have addressed in ABA LAMP trainings and meetings issues

¹³ See FTC, Press Release, *Military Consumer Financial Protection Workshop: Protecting Those Who Protect Our Nation*, July 19, 2017, available at <https://www.ftc.gov/news-events/press-releases/2017/04/ftc-announces-2017-military-consumer-financial-workshop>. A video of the workshop is available at that site.

¹⁴ See generally Remarks of Dwain Alexander II, Capt. Ret. USN, Attorney, U.S. Navy Region Legal Service Office, Mid Atlantic, Legal Assistance Department, available at <https://www.ftc.gov/news-events/audio-video/video/military-consumer-workshop-panel-1-military-consumers-experience-auto>.

¹⁵ See FTC, *Protecting Military Consumers: A Common Ground Conference*, Sept. 7, 2017, available at <https://www.ftc.gov/news-events/events-calendar/2017/09/protecting-military-consumers-common-ground-conference>.

related to military consumers' (and other consumers') rights to various types of notifications as applicants for credit, including for adverse action, and information about the anti-discrimination provisions, in ECOA and Regulation B.

Interagency Task Force on Fair Lending. 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 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 2017, the Commission engaged in efforts to provide education on important issues, including those related to consumer credit transactions to which Regulation B applies or relates. For example, the Commission issued a business blog post about the then-upcoming FTC's forum on AI and blockchain, discussed above.¹⁶ The blog post addressed the forum's anticipated focus on the benefits and risks to consumers as AI is adapted to financial services.

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

¹⁶ Lesley Fair, *Third FinTech Forum to discuss artificial intelligence and blockchain*, FTC BUREAU OF CONSUMER PROTECTION BUSINESS CENTER BLOG (Feb. 27, 2017), available at <https://www.ftc.gov/news-events/blogs/business-blog/2017/02/third-fintech-forum-discuss-artificial-intelligence>.