

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



Division of Financial Practices

February 21, 2019

Patrice Alexander Ficklin, Assistant Director
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).¹ You request this information for use in preparing the Bureau of Consumer Financial Protection's (CFPB) 2018 Annual Report to Congress. Specifically, you ask for information concerning the FTC's activities with respect to Regulation B during 2018. 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 extended in 2018, 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 2018, 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

Hearings on Competition and Consumer Protection in the 21st Century – Hearing Session 7: Algorithms, Artificial Intelligence, and Predictive Analytics (Nov. 13-14, 2018). In 2018, the FTC commenced a series of public hearings called FTC Hearings on Competition and Consumer Protection in the 21st Century.⁶ The seventh session of these hearings examined competition and consumer protection issues associated with the use of algorithms, artificial intelligence, and predictive analytics in business decisions and conduct.⁷ Among other topics, panelists discussed how issues of fairness, bias, and discrimination could impact use of these technologies and whether legal protections, such as the Equal Credit Opportunity Act, were adequate to address that area.⁸

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 *Extension of Memorandum of Understanding between the FTC and the CFPB* (May 2018), available at https://www.ftc.gov/system/files/documents/cooperation_agreements/second_extension_of_mou_between_ftc_and_the_bcfp_5-15-18.pdf, 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 See FTC, Press Releases, *FTC Announces Hearings On Competition and Consumer Protection in the 21st Century* (June 20, 2018), available at <https://www.ftc.gov/news-events/press-releases/2018/06/ftc-announces-hearings-competition-consumer-protection-21st>. See also *Hearings on Competition and Consumer Protection in the 21st Century*, available at <https://www.ftc.gov/policy/hearings-competition-consumer-protection>.

⁷ See FTC, Press Release, *FTC Announces Agenda for the Seventh Session of its Hearings on Competition and Consumer Protection in the 21st Century; Session at Howard University to Focus on Algorithms, Artificial Intelligence, and Predictive Analytics* (Oct. 31, 2018), available at <https://www.ftc.gov/news-events/press-releases/2018/10/ftc-announces-agenda-seventh-session-its-hearings-competition>.

⁸ See *FTC Hearing #7: Competition and Consumer Protection in the 21st Century*, available at *See FTC Hearing #7: Competition and Consumer Protection in the 21st Century*, available at <https://www.ftc.gov/news-events/events->

Auto Buyer Study. In 2018, the FTC continued work on a qualitative study of consumers' experiences in buying and financing automobiles at dealerships.⁹ 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.¹⁰ 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, including 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 2018, the FTC's Military Task Force, comprised of a cross-section of agency representatives, continued work on military consumer protection issues.¹¹ 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 enforcement actions. Additional information concerning FTC initiatives to assist military consumers is included below.

1. A Closer Look at the Military Consumer Financial Workshop, Staff Perspective

In February 2018, the FTC released a Staff Perspective on its military consumer financial workshop held in San Antonio in July 2017, which brought 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,

[calendar/ftc-hearing-7-competition-consumer-protection-21st-century](#). A video and transcript are available at that site. *See also* Remarks of James Foulds, Assist. Prof., University of Maryland, Transcript – Panel on Perspectives on Ethics and Common Principles in Algorithms, Artificial Intelligence, and Predictive Analytics, at 140-42, 146-47, 149 (Nov. 13, 2018), and Remarks of Mark MacCarthy, Senior Vice Pres. of Pub. Policy, Software & Information Industry Association, Transcript, *id.* at 158-59.

⁹ 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>. 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.

¹⁰ 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.

¹¹ *See generally* FTC, *Military Task Force*, available at <https://www.ftc.gov/policy/advocacy/military-task-force>.

including active duty servicemembers and veterans.¹² The Staff Perspective included discussion of how servicemembers – who have steady paychecks that may make them attractive customers but are also often young with no or minimal established credit history – may only qualify for less advantageous credit terms and higher rate financing, and how best to assist servicemembers in addressing these problems.¹³ In addition, the staff perspective addressed how military consumers, like all consumers, seek access to credit for both short-term and long-term needs, and discussed ways to help servicemembers deal with problems that arise in obtaining credit during service and as they transition to civilian status, as well as resources that exist for servicemembers and veterans in the financial area.

2. Navy Legal Services Training Program (Norfolk, VA) July 2018

The FTC also participated in a Navy Legal Services Training Program in Norfolk, VA in July 2018, for servicemembers and their families. This training included discussion of protections under ECOA and Regulation B, such as the antidiscrimination protections for credit applicants and the right to notice of adverse action taken on credit applications for all consumers, including servicemembers.

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. For example, during ABA LAMP trainings and meetings, FTC staff have addressed issues 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 discuss policy issues. In 2018, the FTC also participated in the Financial Fraud Enforcement Task Force, including, among others, its Nondiscrimination Working Group.

B. Fair Lending: Consumer and Business Education

In 2018, the Commission engaged in efforts to provide education on important issues,

¹² See FTC, Press Release, *FTC Staff Perspective Examines Key Financial Issues That Affect Military Consumers* (Feb. 2, 2018), available at <https://www.ftc.gov/news-events/press-releases/2018/02/ftc-staff-perspective-examines-key-financial-issues-affect>.

¹³ See FTC, A Closer Look At the Military Consumer Financial Workshop: The Federal Trade Commission Staff Perspective (February 2018), available at https://www.ftc.gov/system/files/documents/reports/closer-look-military-consumer-financial-workshop-federal-trade-commission-staff-perspective/military_consumer_workshop_-_staff_perspective_2-2-18.pdf.

including those related to credit transactions to which Regulation B applies or relates. For example, the Commission released a business blog post about the FTC's Staff Perspective on its military consumer financial workshop, discussed above.¹⁴ The blog noted the workshop's focus on the need for ongoing financial education at every stage of a military career, and observed that recent recruits may be away from home for the first time and managing their first paycheck. It also referenced FTC resources available for servicemembers and veterans to deal with the challenges of financial issues, including at www.militaryconsumer.gov, which includes tips on diverse topics, such as on borrowing and obtaining credit.

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

¹⁴ Lesley Fair, *Front and center for military consumers*, FTC BUREAU OF CONSUMER PROTECTION BUSINESS CENTER BLOG (Feb. 2, 2018), available at <https://www.ftc.gov/news-events/blogs/business-blog/2018/02/front-center-military-consumers>.