



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

Division of Financial Practices

February 13, 2020

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).¹ You request this information for use in preparing the Bureau of Consumer Financial Protection's (CFPB) 2019 Annual Report to Congress. Specifically, you ask for information concerning the FTC's activities with respect to Regulation B during 2019. 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 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

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).

Commission has been coordinating certain law enforcement, rulemaking, and other activities with the CFPB.⁴

II. Regulation B (ECOA)

In 2019, 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. In 2019, the FTC continued the series of public hearings called FTC Hearings on Competition and Consumer Protection in the 21st Century.⁶

1. **FTC Hearing #12: The FTC's Approach to Consumer Privacy (Apr. 9-10, 2019).** The twelfth session of these hearings examined the FTC's approach to consumer privacy.⁷ Among other topics, panelists discussed the use of big data in automated decision making and how the ECOA should inform the use of data collected from consumers.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 *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.

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 Release, *FTC Announces New Sessions of its Hearings on Competition and Consumer Protection in the 21st Century* (Feb. 13, 2019), available at <https://www.ftc.gov/news-events/press-releases/2019/02/ftc-announces-new-sessions-its-hearings-competition-consumer>. See also *Hearings on Competition and Consumer Protection in the 21st Century*, available at <https://www.ftc.gov/policy/hearings-competition-consumer-protection>. See also *FTC Hearing #12: The FTC's Approach to Consumer Privacy*, available at <https://www.ftc.gov/news-events/events-calendar/ftc-hearing-competition-consumer-protection-21st-century-february-2019>.

⁷ See FTC, Press Release, *FTC Hearings on Competition and Consumer Protection in the 21st Century Continue with Discussion of the FTC's Approach to Consumer Privacy* (Apr. 8, 2019), available at <https://www.ftc.gov/news-events/press-releases/2019/04/ftc-hearings-competition-consumer-protection-21st-century>. See also FTC, Press Release, *FTC Announces Agenda for Privacy Hearing, the 12th Session of the FTC's Hearings on Competition and Consumer Protection in the 21st Century* (Mar. 25, 2019), available at <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-announces-agenda-privacy-hearing-12th-session-ftcs-hearings>.

⁸ See *FTC Hearing #12: The FTC's Approach to Consumer Privacy*, available at <https://www.ftc.gov/news-events/events-calendar/ftc-hearing-competition-consumer-protection-21st-century-february-2019>. A video and

2. FTC Hearing #14: Roundtable with State Attorneys General (June 12, 2019).

The fourteenth, and final, session of these hearings featured a roundtable with State Attorneys General, or their senior staff, on consumer protection and antitrust enforcement and policy issues. Among the consumer protection topics discussed was the impact of big data and algorithms on equal access to credit.⁹

Strictly Business Forum. The FTC hosted a forum on small business financing on May 8, 2019, to examine trends and consumer protection issues in this marketplace, including the recent proliferation of online loans and alternative financing products.¹⁰ The forum gathered a variety of stakeholders to examine this industry, including the different types of products available to small businesses, the benefits of these products, and possible consumer protection concerns.¹¹ The forum included discussion of ECOA's applicability to small business loans.¹²

Accuracy in Consumer Reporting Workshop. The FTC and CFPB hosted a public workshop on December 10, 2019, to discuss issues affecting the accuracy of traditional credit reports and employment and tenant background screening reports.¹³ The workshop brought together stakeholders for a wide-ranging discussion of issues impacting the accuracy of consumer reports, including how furnisher's practices differ and how that can impact accuracy.¹⁴ The workshop included panelists' comments that creditors must comply with a variety of

transcript are available at that site. *See also* Remarks of Pam Dixon, Founder and Exec. Dir., World Privacy Forum, Transcript – Panel on Role of Notice and Choice, at 61 (Apr. 10, 2019).

⁹ *See* *FTC Hearing #14: Roundtable with State Attorneys General*, available at <https://www.ftc.gov/news-events/events-calendar/ftc-hearing-14-roundtable-state-attorneys-general>. A video and transcript are available at that site. *See also* Remarks of Benjamin Wiseman, Office of Attorney General, District of Columbia, Transcript – Consumer Protection Enforcement and Policy (Panel A), at 39-42 (June 12, 2019); Remarks of Kaitlin Caruso, Office of Attorney General, New Jersey, Transcript – Consumer Protection Enforcement and Policy (Panel A), at 42-43 (June 12, 2019); Remarks of Jeffrey C. Mateer, Office of Attorney General, Texas, Transcript – Consumer Protection Enforcement and Policy (Panel A), at 44-46 (June 12, 2019).

¹⁰ *See* FTC, Press Release, *FTC to Host Forum on Small Business Financing* (Feb. 14, 2019), available at <https://www.ftc.gov/news-events/press-releases/2019/02/ftc-host-forum-small-business-financing>. A transcript of the workshop is available at that site.

¹¹ *Id.*

¹² *See* Remarks of Katherine Fisher, Partner, Hudson Cook, LLP, Transcript – Panel 2: Case Study on Merchant Cash Advances, at 40-41 (May 8, 2019).

¹³ *See* FTC, Press Release, *FTC and CFPB to Host December Workshop on Accuracy in Consumer Reporting* (Sept. 19, 2019), available at <https://www.ftc.gov/news-events/press-releases/2019/09/ftc-cfpb-host-december-workshop-accuracy-consumer-reporting>.

¹⁴ *See* *Accuracy in Consumer Reporting Workshop, An FTC/CFPB Workshop*, Dec. 10, 2019, available at <https://www.ftc.gov/news-events/events-calendar/accuracy-cnsumer-reporting-workshop>. A video and transcript are available at that site.

requirements including the ECOA and must make credit decisions based on fairness and avoid using a prohibited basis.¹⁵

ECOA in the Military Area. Protecting military consumers is a priority for the FTC. In 2019, the FTC’s Military Task Force, comprised of a cross-section of agency representatives, continued work on military consumer protection issues.¹⁶ 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. 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.

B. Fair Lending: Consumer and Business Education

In 2019, the Commission conducted efforts to provide education on significant issues, including those related to credit transactions to which Regulation B pertains. For example, the Commission issued blog posts about its small business financing forum, discussed above. The blog addressed the workshop’s focus on the online marketplace for small business financing, including terms loans, lines of credit, and cash advances, and how some products may raise consumer protection concerns.¹⁷

¹⁵ See Remarks of Leslie Bender, Chief Strategy Officer and General Counsel, BCA Financial Services, and Nessa Feddis, Senior Counsel and Vice President, American Bankers Association, Transcript (Morning Session) – Panel 1: Furnisher Practices and Compliance with Accuracy Requirements (Dec. 10, 2019).

¹⁶ See generally FTC, *Military Task Force*, available at <https://www.ftc.gov/policy/advocacy/military-task-force>.

¹⁷ Lesley Fair, *Forum on new forms of financing is strictly business*, FTC BUREAU OF CONSUMER PROTECTION BUSINESS CENTER BLOG (Mar. 5, 2019), available at <https://www.ftc.gov/news-events/blogs/business-blog/2019/03/forum-new-forms-financing-strictly-business>, and *Putting the focus on small business financing*, FTC BUREAU OF CONSUMER PROTECTION BUSINESS CENTER BLOG (Apr. 23, 2019), available at <https://www.ftc.gov/news-events/blogs/business-blog/2019/04/putting-focus-small-business-financing>.

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
Associate Director
Division of Financial Practices