

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



Division of Financial Practices

February 3, 2017

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) 2016 Annual Report to Congress. Specifically, you ask for information concerning the FTC's activities with respect to Regulation B during 2016. 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 2016, 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

Auto Survey. In 2016, the FTC issued a second Federal Register Notice (FRN) on a proposed qualitative survey of consumers to learn about their experiences in buying and financing automobiles at dealerships.⁶ The FRN sought clearance from the Office of Management and Budget to conduct the study and also called for additional public comments as required by the Paperwork Reduction Act.⁷ The proposed consumer survey, which will include consumer interviews and receipt 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. The FTC received 17 comments in response to that notice that were addressed in the FRN. The FRN also invited further comments concerning the accuracy of burden estimates on surveyed consumers and ways to minimize the information collection burden.

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 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>. As reported on last year, the FTC issued its first FRN seeking public comment on the proposed survey, in December 2015. 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>.

⁷ Agency Information Collection Activities; Submission for OMB Review; Comment Request, Notice, 81 Fed. Reg. 63,179 (Sept. 14, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-09-14/pdf/2016-22106.pdf>.

In its release, the Commission noted that 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 involve an initial sample of five in-person consumer interviews, followed by in-person interviews of 40 consumers, with the option to interview 40 more, if the FTC deems the additional interviews likely to be helpful. For the initial 40 consumers, the FTC seeks to interview approximately 20 consumers with “prime” or “above subprime,” and approximately 20 consumers with “subprime,” credit scores to learn about the consumers’ experience with purchase and financing in these market segments. Generally, the sample group of consumers will be racially diverse, and include participants of both sexes; the contractor also will strive to obtain 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. Participants must have kept their documents received as part of the purchase and financing, and their credit scores will be used in the survey.⁸

Interviews will last approximately 90 minutes with each consumer and focus on matters such as: the consumer’s experience in shopping for and choosing an automobile; the process of agreeing to a price; the process of trading in the consumer’s used automobile; the consumer’s experience in obtaining financing and discussion of any GPS or tracking device installed in connection with the financing; additional products or services the dealer may have offered; contracts and post-purchase experience; other points raised by the consumer about the process; and the consumer’s overall perception of the purchase experience. The interviews will conclude by reviewing the consumer’s documents and exploring their understanding of the documents.

All participation in the survey will be voluntary. As explained in the information released, the FTC has broad authority to protect consumers in this area, including to enforce various applicable statutes, such as the FTC Act and ECOA. While the results will not be generalizable to the U.S. population, the FTC believes that the information will provide useful insights into consumer experiences and understanding of the automobile purchase and financing process at the dealership and consumer protection issues that may exist and could be addressed through FTC action, such as enforcement initiatives or education.

Big Data Report. In 2016, the FTC issued a report outlining a number of questions for businesses to consider to help ensure that their use of big data analytics, while producing many benefits for consumers, avoids outcomes that may be exclusionary or discriminatory.⁹ The report looked specifically at big data at the end of its lifecycle, and how it is used after being collected and analyzed.¹⁰ The report drew on information from an FTC workshop on big data,

⁸ Interview participants and their personal identifying information will be anonymized in the information received by the FTC, and will be vigorously protected by the survey firm.

⁹ See FTC, Press Release, *FTC Report Provides Recommendations to Business on Growing Use of Big Data*, Jan. 6, 2016, available at <https://www.ftc.gov/news-events/press-releases/2016/01/ftc-report-provides-recommendations-business-growing-use-big-data>.

¹⁰ See *Big Data: A Tool for Inclusion or Exclusion? Understanding the Issues* (January 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; Commissioner Ohlhausen issued

and an FTC seminar on alternative scoring products, both held in 2014. The Commission also considered extensive public comments and additional public research in compiling the report.

The report highlights a number of innovative uses of big data that are providing benefits to underserved populations, including increased educational attainment, access to credit through non-traditional methods, specialized healthcare for underserved communities, and better access to employment. The report also looked at possible risks that could result from biases or inaccuracies about certain groups, including more individuals mistakenly denied opportunities based on the actions of others, exposing sensitive information, creating or reinforcing existing disparities, assisting in the targeting of vulnerable consumers for fraud, creating higher prices for goods and services in lower-income communities, and weakening the effectiveness of consumer choice. The report outlined some of the various laws that apply to the use of big data, especially regarding possible issues of discrimination or exclusion, including the ECOA and FTC Act, among others. It also provided a range of questions for businesses to consider when they examine whether their big data programs comply with these laws.

FinTech Forum. In 2016, the FTC also began a forum series exploring emerging financial technology and its implications for consumers.¹¹ The first FinTech Forum, held in June 2016, addressed marketplace lending.¹² Marketplace lenders are typically nonbank financial platforms that leverage technology to reach potential borrowers, evaluate creditworthiness, and facilitate loans. Marketplace lending can provide an avenue for consumers and small businesses to quickly obtain loans that might not be available from traditional sources. The forum examined a range of marketplace lending models, their potential benefits to consumers, possible consumer protection concerns, and the applicability of consumer protection laws to market participants, including the ECOA and FTC Act. One topic the panelists discussed was whether algorithms and platforms comply with the ECOA,¹³ and whether more transparency is needed in marketplace lending algorithms, or in the ways credit decisions are made, to determine whether fair lending laws have been violated.¹⁴

a separate statement, *Separate Statement of Commissioner Ohlhausen, Big Data: A Tool for Inclusion or Exclusion* (Jan. 6, 2017), available at https://www.ftc.gov/system/files/documents/public_statements/904483/160106bigdatarptmkostmt.pdf.

¹¹ The FinTech series brings together researchers, industry representatives, law enforcement agencies, and consumer advocates for half-day discussion sessions focusing on consumer protection and emerging financial technology.

¹² FTC Forum, *FinTech Series: Marketplace Lending*, June 9, 2016, available at <https://www.ftc.gov/news-events/events-calendar/2016/06/fintech-series-marketplace-lending>. A video and transcript of the forum are available at that site.

¹³ See Remarks of Ed Mierzwinski, Consumer Program Director and Senior Fellow, Federation of State Public Interest Research Groups (U.S. PIRG), available at https://www.ftc.gov/system/files/documents/videos/fintech-series-marketplace-lending/ftc_fintech_series_marketplace_lending_-_transcript.pdf.

¹⁴ See generally Panel 2: Looking Forward: Protecting Consumers as the Market Evolves, available at https://www.ftc.gov/system/files/documents/videos/fintech-series-marketplace-lending/ftc_fintech_series_marketplace_lending_-_transcript.pdf. Some speakers addressed their organizations' review of companies' programs including to ensure compliance with the ECOA. See Remarks of Thomas Dresslar,

Fraud in African American and Latino Communities Report. The Commission issued a report to Congress describing the agency's substantial work on fraud prevention, law enforcement, and consumer outreach and education in African American and Latino communities, and outlining a strategy to build on this prior work.¹⁵ The report set forth the agency's extensive efforts to combat fraud in not only African American and Latino communities, but every community, with an emphasis on raising public awareness and encouraging more fraud reports.¹⁶ The report noted FTC research that found African American and Latino communities under-report scams to the FTC, yet were more likely to experience fraud than the overall population. Under its plan, the FTC will expand efforts to encourage people to talk about fraud within their communities, and to help the FTC by reporting suspected fraud. Among other things, the report noted that the FTC has brought law enforcement actions alleging that African Americans and Latinos suffer discrimination in the lending marketplace.¹⁷ The report also summarized concerns raised by legal service attorneys, community leaders, consumer advocates, and federal, state, and local officials at a conference hosted by the FTC and the Georgia NAACP, including the recent upswing in auto loan fraud and the denial of mortgages to African Americans, among other issues.¹⁸

Changing Demographics Workshop. The FTC also hosted a workshop bringing together demographers, researchers, marketers, consumer groups, and federal, state, and local law enforcement to examine the predicted changes in various diverse groups and discuss what impact those changes will have on the marketplace.¹⁹ The workshop focused on topics including (1) how the population is changing – including its increasing diversity (such as multi-racial, Asian, and Latino), and its increasing trend toward aging; (2) how advertising and marketing are changing to reach these consumers; and (3) how fraud likely will change and what the FTC and

Deputy Commissioner for Policy and Planning, Cal. Dep't of Business Oversight, *available at* https://www.ftc.gov/system/files/documents/videos/fintech-series-marketplace-lending/ftc_fintech_series_marketplace_lending_transcript.pdf.

¹⁵ See FTC, Press Release, *FTC Reports on Fighting Fraud in African American and Latino Communities*, June 15, 2016, *available at* <https://www.ftc.gov/news-events/press-releases/2016/06/ftc-reports-fighting-fraud-african-american-latino-communities>.

¹⁶ See *Combating Fraud in African American and Latino Communities: The FTC's Comprehensive Strategic Plan*, FTC Report to Congress, June 15, 2016, *available at* <https://www.ftc.gov/system/files/documents/reports/combating-fraud-african-american-latino-communities-ftcs-comprehensive-strategic-plan-federal-trade/160615fraudreport.pdf>.

¹⁷ See *id.* at 12 n.59.

¹⁸ See *id.* at 8.

In addition, the Commission held a workshop in 2016 to discuss fraud in Latino communities, including scams targeting or disproportionately affecting Latino communities, including through mortgage schemes. See *Combating Fraud in Latino Communities: An FTC roundtable* (Dec. 5, 2016), *available at* <https://www.ftc.gov/news-events/events-calendar/2016/12/combating-fraud-latino-communities>.

¹⁹ FTC Workshop, *The Changing Consumer Demographics*, Dec. 6, 2016, *available at* <https://www.ftc.gov/news-events/events-calendar/2016/12/changing-consumer-demographics>.

others can do to combat fraud perpetrated against these consumers. Studying these questions will help the agency continue to strategize, prioritize, and prepare for the years ahead. Among other things, some panelists discussed the need for financial education materials provided in multiple languages, including those pertaining to consumer scores, credit, mortgages, and other areas.²⁰ Others noted concerns about auto lending and discriminatory lending.²¹

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 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 2016, the Commission engaged in numerous efforts to educate consumers and businesses on important issues, including those related to consumer credit transactions to which Regulation B applies. For example, the Commission issued two consumer blogs and two business blog posts providing information about practices that may violate or pertain to fair lending and the ECOA.

The Commission issued a blog post about its work in combating fraud in every community and its release of a report on these topics.²² The blog noted the FTC's efforts to reach diverse segments of the population, including servicemembers and veterans, older adults, Asian Americans, Native Americans, the disability community, LGBT individuals and groups, and African American and Latino communities, the latter two groups of which are the subject of a recent report to Congress by the agency. The blog noted that: FTC research shows these two groups under-report scams even though consumers in these communities were more likely to experience fraud than the overall population; scams affecting these communities often focus on income and debt; and trusted sources of information can help get the word out on how to avoid scams, including free FTC resources. The blog emphasized that reporting fraud is vital and encouraged consumers who spot fraud to notify the FTC.

The Commission issued a blog post about its workshop on changing demographics, to alert consumers about changes in the U.S. population, including increasing diversity and

²⁰ See Remarks of Ruth Susswein, Dep. Dir. of Nat'l Priorities, Consumer Action, *available at* <https://www.ftc.gov/news-events/audio-video/video/changing-consumer-demographics-part-2>.

²¹ See Remarks of Samatha Vargas Poppe, Assoc. Dir., Policy Analysis Center, Nat'l Council of La Raza, *available at* <https://www.ftc.gov/news-events/audio-video/video/changing-consumer-demographics-part-2>.

²² Jessica Rich, *Combating Fraud in African-American and Latino Communities*, FTC BUREAU OF CONSUMER PROTECTION BLOG (June 15, 2016), *available at* <https://www.consumer.ftc.gov/blog/combating-fraud-african-american-and-latino-communities>.

increasing aging. It noted the workshop's focus included determining who are the consumers of the future, and how scammers may try to trick them.²³

The Commission issued a business blog post about its FinTech Forum, to alert businesses to how innovation financial technology is changing the way consumers borrow, share, and spend money, offering the promise of increased convenience and access to financial services.²⁴ The blog noted that the marketplace lending forum involved a robust discussion about ways marketplace lending can expand credit opportunities for consumers, potential challenges and consumer protection issues, and possible future directions. It noted that marketplace lenders are typically online nonbank financial entities that leverage technology to reach potential borrowers, evaluate creditworthiness, and obtain credit sources for loans. The lenders tout their ability to provide consumers with faster, cheaper, and easier ways to get credit than traditional lenders, and their ability to reach and provide credit to those borrowers with limited credit histories and historically underserved communities. Participants highlighted that many existing laws and regulations already apply in this area, including the ECOA and FTC Act, among others. The blog also addressed that marketplace lenders often use consumer data outside traditional sources like FICO scores in making credit decisions, and that some information may be gathered from consumers and some from public sources by the lender. The blog noted that at least one panelist at the forum suggested that lenders do not predominantly rely on novel data sources to make credit decisions, and that it can be hard to obtain a full view of the type of data collected and used because lenders' credit algorithms tend to be proprietary. The blog observed that marketplace lenders must ensure their practices comply with fair lending laws, and that ECOA generally prohibits discrimination in lending on a prohibited basis, such as race, color, religion, national origin, sex or marital status, age, or receipt of public assistance. Lenders also must be aware of the requirement to provide adverse action notices to consumers if credit is denied, and that these types of concerns are discussed in the FTC's Big Data Report (discussed above).

The Commission also issued a blog post pertaining to its release of the Big Data Report.²⁵ The blog noted that although some have talked about the three V's of big data (volume, velocity, and variety), the FTC's report suggests a fourth concept: vigilance, or the care that companies should exercise in complying with the law. The blog noted that the report focuses on some laws that apply in this context, including equal opportunity statutes and Section 5 of the FTC Act. The blog also highlighted some compliance matters for businesses to keep in mind that the report addressed, such as:

²³ Rosario Mendez, *Do population changes mean changes in fraud?* FTC BUREAU OF CONSUMER PROTECTION BLOG (Nov. 8, 2016), available at <https://www.consumer.ftc.gov/blog/do-population-changes-mean-changes-fraud>.

²⁴ Duane Pozza and Helen Wong, *FinTech Forum: A closer look at marketplace lending*, FTC BUREAU OF CONSUMER PROTECTION BUSINESS CENTER BLOG (Aug. 3, 2016), available at <https://www.ftc.gov/news-events/blogs/business-blog/2016/08/fintech-forum-closer-look-marketplace-lending>.

²⁵ Lesley Fair, *Why big data is a big deal*, FTC BUREAU OF CONSUMER PROTECTION BUSINESS CENTER BLOG (Jan. 6, 2016), available at <https://www.ftc.gov/news-events/blogs/business-blog/2016/01/why-big-data-big-deal>.

- if you use big data analytics in a way that could adversely affect people’s ability to get credit, be careful to avoid treating them differently on a prohibited basis, like race or national origin;
- consider whether data sets are missing information from particular populations and, if so, take appropriate steps to address the problem;
- review data sets and algorithms to ensure that hidden biases do not have an unintended impact on certain populations;
- consider the risk of using results – if big data finds a correlation – when policies could negatively affect certain populations; the need for human oversight of data and algorithms when big data tools are used to make important decisions, such as those involving credit; and
- consider whether fairness and ethical considerations advise against use of big data in certain circumstances, and whether you can use big data in ways to advance opportunities for underrepresented populations.

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