

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

Office of the Secretary

January 26, 2011

Sandra F Braunstein, Director
Division of Consumer and Community Affairs
Board of Governors of the Federal Reserve System
Washington, D.C. 20551

Dear Ms. Braunstein:

This letter responds to your request, for use in preparing the Federal Reserve Board's (the "Board") 2010 Annual Report to Congress, for information concerning the Federal Trade Commission's ("Commission" or "FTC") enforcement activities related to compliance with the following regulations: Regulation B (Equal Credit Opportunity); Regulation E (Electronic Fund Transfer); Regulation M (Consumer Leasing); Regulation P (Privacy of Consumer Financial Information); Regulation Z (Truth in Lending); Regulation AA (Unfair or Deceptive Acts or Practices Rule); Regulation CC (Expedited Fund Availability); and Regulation DD (Truth in Savings) (collectively "the Regulations"). Specifically, you ask for information concerning the FTC's administration and enforcement of the Regulations, as well as compliance with the Regulations among entities within the FTC's jurisdiction. The Commission is pleased to provide you with this information.

I. FTC Role in Administering and Enforcing the Regulations

Your letter asks for information relating to the Commission's administration and enforcement of the Regulations. The FTC does not have e FTC does not have e Regulations B, E, M,¹ and Z.

The FTC's primary focus in the financial services area is on bringing law enforcement actions against those who violate statutes and regulations (including Regulations B, E, M, and Z). In addition to its law enforcement activities, the FTC engages in research and public education (in

² The Commission also recently issued rules in the financial services area for example, regarding mortgage assistance relief services and debt relief services, *see infra* notes 29 and 51, respectively, and a proposed rule regarding mortgage acts and practices, *see infra* note 36.

to help consumers protect themselves from those who do not. This letter provides information regarding the FTC's law enforcement, research and policy development, educational, and other activities related to financial services.

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 numerous nonbank entities within its jurisdiction. As a result, this letter does not provide information on compliance examinations.

II. Regulation B (Equal Credit Opportunity Act)

The FTC enforces the Equal Credit Opportunity Act ("ECOA") and its implementing Regulation B as to most entities other than banks, thrifts and federal credit unions.³ In 2010, the Commission settled one ECOA enforcement action, modified another from a prior ECOA enforcement action, and engaged in several other fair lending-related initiatives.

A. Fair Lending: Enforcement Actions

In September 2010, the Commission announced a settlement to halt discriminatory practices by a mortgage company that allegedly charged Hispanic consumers higher prices for mortgage loans than similarly situated non-Hispanic white consumers.⁴ The FTC's complaint against Golden Empire Mortgage, Inc. ("GEM") and its owner Edward D. Koostra had alleged that these defendants violated ECOA, Regulation B, and the FTC Act, by charging different prices to Hispanic consumers that could not be explained by their credit characteristics or underwriting risk. The settlement permanently prohibits defendants from discriminating on the basis of national origin in credit transactions, or otherwise failing to comply with ECOA and Regulation B. The order also requires defendants to have a policy that restricts loan originators' pricing discretion, implement a fair lending monitoring program, conduct employee fair lending training, ensure data integrity, and conduct regular compliance reporting. The order imposes a \$5.5 million judgment, all but \$1.5 million of which is suspended based on defendants' financial situation. This money will be used for redress to consumers harmed by defendants' pricing policy.

³ The FTC has authority to enforce ECOA and its implementing Regulation B only as to entities for which Congress has not committed enforcement to some other government agency. See 15 U.S.C. § 1691c(c); see also *infra* Pat V, ¶ 1.

⁴ *FTC v. Golden Empire Mortgage, Inc.*, No. CV 09-03227 CAS (SHx) (C.D. Cal. Sept 24, 2010) (stipulated final judgment and order entered), available at <http://www.ftc.gov/opa/2010/09/gem.shtm>.

In January 2010, the Commission modified a prior fair lending settlement with a home mortgage lender.⁵ The mortgage lender, Gateway Funding Diversified Mortgage Services, LP., and its general partner, Gateway Funding Inc. ("Gateway"), had previously settled FTC charges that Gateway violated ECOA and Regulation B by charging African-American and Hispanic consumers higher prices for mortgage loans than non-Hispanic white consumers. The order required Gateway to develop an effective fair-lending monitoring program, but, according to the FTC, Gateway failed to do so. To resolve Gateway's alleged order violation, the company agreed to additional provisions to strengthen the order. Specifically, it agreed to a modified order under which Gateway must hire an FTC-approved third-party consultant to perform detailed analyses and annual assessments of its lending practices for five years. Gateway also is required to take remedial steps the consultant identifies. The agreement also limits Gateway's discretion over pricing until the consultant certifies that Gateway has an adequate monitoring program in place.

B. Fair Lending: Research and Policy Development

In December 2010, FTC staff submitted comments to the Board recommending ways the Board could strengthen the rule under the Home Mortgage Disclosure Act ("HMDA"). HMDA and its implementing Regulation C require some mortgage lenders to collect and report mortgage data for purchase money loans, home improvement loans, and refinancings that the FTC and other government enforcement agencies use to analyze whether the lenders are complying with fair lending laws, such as ECOA and Regulation B.⁶ The FTC staff comments outlined the FTC's enforcement of fair lending laws and recommended changes to Regulation C. Specifically, the FTC staff recommended that the Board expand the number of mortgage lenders required to report loan data by modifying the criteria for determining which lenders are required to report. According to FTC staff these changes would not be overly burdensome to lenders and would provide law enforcers with better data to assist in their work. FTC staff also suggested that the Board require lenders to report on additional types of loans, such as reverse mortgages and home equity lines of credit, and to report additional data fields for all reported loans. In addition, the FTC staff recommended that the Board make more mortgage data available to the public and more robust data available to researchers, while still protecting mortgage applicants' privacy.

During 2010, the Commission's staff discussed various issues with the Board's staff in connection with the Board's report on certain credit card practices that could involve potential fair lending issues. Specifically, Section 505 of the Credit Card Accountability Responsibility

⁵ *FTC v. Gateway Funding Diversified Mortgage Services, L.P.*, No. 08-5805 (E.D. Pa. Jan 22, 2010) (modified stipulated final judgment and order entered), available at <http://www.ftc.gov/opa/2010/01/gateway.shtm>.

⁶ See Letter from Donald S. Clark, Secretary, Federal Trade Commission, to Jennifer L. Johnson, Secretary, Board of Governors of the Federal Reserve System (Dec. 3, 2010), available at http://www.ftc.gov/opa/2010/12/hmda_fcra.shtm.

and Disclosure Act of 2009 (the “Credit CARD Act”)⁷ required the Board, in consultation with the FTC and other federal banking agencies, to submit a report to Congress addressing the practice of reducing consumer credit card limits or raising interest rates under certain circumstances, including, among other factors, the geographic location of the transaction and the consumer’s credit transaction-related practices. The Credit CARD Act also specified that the report must include various factors, such as the extent to which these practices have an adverse impact on minority or low-income consumers. The Board issued its report in May 2010.⁸ Among other things, the report found that “it is not possible to determine whether any relationship exists between cardholder demographics and [credit] line reductions due specifically to section 505 practices.”⁹ The report found that credit card issuers consider a wide range of information in deciding whether to reduce the credit limit or increase the rate on accounts, including information from their own records and from credit reporting agencies, and may also make such changes in response to economic conditions.¹⁰ The report also found that failing laws create compliance risk and may deter issuers from using certain information, including some forms of geographic categorization.¹¹

III. Regulation E (Electronic Fund Transfer Act)

The FTC enforces the Electronic Fund Transfer Act (“EFTA”) and its implementing Regulation E with regard to most non-bank entities in the United States.¹² In 2010, seven new ongoing Commission cases raised EFTA and Regulation E issues. Six cases involved negative option plans and the failure to obtain the consumer’s written authorization for preauthorized electronic fund transfers. One case involved a contempt citation for violation of a prior FTC order. The Commission also engaged in several other research and policy development initiatives involving EFTA and Regulation E.

⁷ See Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub.L. No. 111-24, 123 Stat. 1734 (May 22, 2009).

⁸ FED. RESERVE BD., REPORT TO THE CONGRESS ON REDUCTIONS OF CONSUMER CREDIT LIMITS BASED ON CERTAIN INFORMATION AS TO EXPERIENCE OR TRANSACTIONS OF THE CONSUMER (May 2010), available at <http://www.federalreserve.gov/boarddocs/rptcongress/creditcard/2009/consumercreditreductions.pdf>.

⁹ *Id.* at 37.

¹⁰ *Id.* at 1.

¹¹ *Id.* at 5.

¹² The FTC has authority to enforce EFTA and Regulation E only as to entities for which Congress has not assigned enforcement responsibility to some other government agency. See 15 U.S.C. § 1693o(c); see also *infra* Part V, ¶ 1.

¹³ EFTA and Regulation E apply to debit cards; TILA and Regulation Z apply to credit cards.

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¹⁸ *FTC v. BlueHippo Funding, LLC*, No. 1:08-cv-1819 (S.D.N.Y. July 27, 2010) (contempt order entered). The company offers to finance the sale of personal computers to consumers with poor credit ratings. *See id.*

¹⁹ Credit CARD Act, *supra* note 7.

²⁰ Electronic Fund Transfers, Final Rule, 75 Fed. Reg. 16580 (Apr. 1, 2010). *See* Electronic Fund Transfers, Final Rule, 75 Fed. Reg. 66644 (Oct. 29, 2010) (amending Regulation E to delay the effective date of certain disclosure requirements applicable to gift cards under the Credit CARD Act).

²¹ Credit CARD Act, *supra* note 7.

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²⁴ Consumer complaints filed at the webportal – which operates in English, French, German, Spanish, Korean, Japanese, and Polish – are immediately available to the 25 member agencies that participate in this crossborder enforcement project.

²⁵ FED. TRADE COMM'N REPORT, CROSS-BORDER FRAUD COMPLAINTS – JAN. - DEC. 2009(2010), *available at* <http://www.ftc.gov/sentinel/reports/annual-crossborder-reports/crossborder-cy2009.pdf>.

²⁶ *See* FED. TRADE COMM'N, BUYING, GIVING, AND USING GIFT CARDS, *available at* <http://ftc.gov/bcp/edu/pubs/consumer/alerts/at010.shtm>, *see also* FED.M

Company and other related companies and individuals.³³ The checks were part of a redress fund from the defendants' prior settlement with the FTC. The FTC's complaint had charged defendants with violations of TILA, Regulation Z, and the FTC Act for deceiving consumers, many of them elderly, by packing optional products such as accidental death and dismemberment insurance and roadside assistance club memberships onto small personal loans; by inducing consumers to participate in a free "direct deposit" program that was not in fact free; and by encouraging consumers to incur additional costs and fees by repeatedly refinancing their loans.

Finally, the FTC law enforcement activities included bringing a contempt action against a defendant who was subject to a prior order resolving allegations that the company had violated TILA and Regulation Z among other laws. As explained above, in July 2010, a U.S. district court entered a contempt order in the Blue Hippo case.³⁴ As previously reported to the Board, in the contempt action the FTC charged, among other things, that the company continued to deceive consumers by falsely marketing itself as a computer finance company, signing up consumers and taking their money and collecting at least an additional \$15 million. The FTC alleged that the company not only failed to deliver the financing, but it did not order, much less ship, the computers as advertised. The contempt order finds the defendants jointly and severally liable for over \$600,000.

B. Truth in Lending: Rulemaking, Research, and Policy Development

1. Mortgage-Related Activities

The Commission in 2010 undertook a variety of initiatives to ensure that information consumers receive about mortgage loans is truthful and not misleading to assist them in making important financial decisions.

The FTC continued the proceedings in its rulemaking regarding mortgage acts and practices, pursuant to Section 626 of the 2009 Omnibus Act, amended by Section 511 of the Credit CARD Act.³⁵ In September, the Commission moved to further strengthen its ability to prevent deceptive mortgage advertising, proposing a rule that would ban misrepresentations for all mortgages. The FTC and the states would be able to obtain civil penalties against those who violate the rule.³⁶ The proposed rule does not include any affirmative advertising disclosure requirements; the Commission tentatively concluded that not requiring any disclosures would eliminate the possibility of inconsistency with the disclosures that TILA, Regulation Z, and

³³ See FTC, Press Release, *FTC Sends Second Round of Redress Checks to Stewart Finance Victims*, Aug. 23, 2010, available at <http://www.ftc.gov/opa/2010/08/stewart.shtm>.

³⁴ See *supra* note 18.

³⁵ See Omnibus Act, *supra* note 29, as amended by the Credit CARD Act, § 511, *supra* note 7.

³⁶ Mortgage Acts and Practices – Advertising Rule, Notice of Proposed Rulemaking, 75 Fed. Reg. 60352 (Sept. 30, 2010), available at <http://www.ftc.gov/opa/2010/09/nprm.shtm>.

³⁷ *See id.* at 6036162.

³⁸ *See* Comments of the Staff of the Bureau of Consumer Protection, the Bureau of Economics, and the Office of Policy Planning of the Federal Trade Commission Before the Federal Financial Institutions Examination Council In the Matter of Request for Comment on Proposed Guidance Regarding Reverse Mortgage Products, Feb. 16, 2010, available at <http://www.ftc.gov/opa/2010/03/revmortgage.shtm>.

³⁹ *See* FFIEC, *Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks*, 75 Fed. Reg. 50801 (Aug. 17

⁴¹ See Final Rule, Truth in Lending, 75 Fed. Reg. 7658 (Feb. 22, 2010).

⁴² See Credit CARD Act, *supra* note 7.

See Truth in Lending, Final Rule, 75 Fed. Reg.

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practices related to debit and credit card transactions.⁵² These new provisions generally address business-to-business relationships and interactions between merchants, networks, issuers, and acquirers in the payment card transaction process. For example, payment card networks may not inhibit a merchant from offering consumers a discount or in-kind incentive of using a particular form of payment, provided the discount or incentive meets certain requirements. The Board must issue several implementing regulations regarding certain of the new EFTA requirements, and it recently issued new proposed rules to implement the debit card interchange fee and routing provisions of the Dodd-Frank Act.⁵³ The FTC has responsibility for enforcing the new requirements and any implementing regulations for payment card networks and certain other nonbank entities, such as non-federally chartered credit unions, that are covered by the rules. The Commission is continuing to monitor this area.

In connection with the Dodd-Frank Act, the Commission's staff has been engaged in ongoing and significant coordination with the U.S. Department of the Treasury regarding a possible new mortgage shopping form and streamlined mortgage disclosures, including those that may relate to TILA and the Real Estate Settlement Procedures Act.⁵⁴ Commission staff has previously conducted research on mortgage disclosures generally, and it continues to be actively involved in evaluating the efficacy of such disclosures.⁵⁵

Finally, Section 1029 of the Dodd-Frank Act gives the Commission new and expanded authority regarding motor vehicle dealers. The FTC retains its current law enforcement authority over motor vehicle dealers, although it will share that authority with the CFPB with respect to dealers engaged in certain practices. The Commission also obtains new authority of July 21, 2011, to issue rules prohibiting unfair and deceptive acts and practices in connection with motor vehicle dealers, using the notice and comment rulemaking procedures in Section 553 of the Administrative Procedure Act rather than the more elaborate rulemaking procedures in Section 18 of the FTC Act. In connection with this new authority, the FTC is conducting outreach activities and reviewing a wide range of motor vehicle dealer practices. Section 1029

⁵² Dodd-Frank Act, *supra* note 49, § 1075. Certain amended provisions of EFTA took effect July 21, 2010; others become effective in 2011. *See id.*

⁵³ *See* Debit Card Interchange Fees and Routing, Notice of Proposed Rulemaking, (Dec. 16, 2010), available at <http://www.federalreserve.gov/newsevents/press/bcreg/20101216a.htm>. Among other things, the proposed rules would set standards for determining whether a debit card interchange fee that is received by a card issuer is reasonable and proportional to the cost incurred by the issuer for the transaction. The standards cover issuers (inclusive of their affiliates) with assets of at least \$10 billion; certain government-administered payment programs and reloadable general-use prepaid cards are exempt from the interchange fee limits. The proposal would also prohibit issuers and networks from restricting the number of networks over which debit cards may be processed.

⁵⁴ *See, e.g.*, Dodd-Frank Act, *supra* note 49, § 1098.

⁵⁵ *See, e.g.*, "Consumer Information and the Mortgage Market," <http://www.ftc.gov/be/workshops/mortgage/index.shtml> (conference regarding economic assessment of information regulation, mortgage choice, and mortgage outcomes); JAMES L. LACKO AND JANIS K. PAPPALARDO, FEDERAL TRADE COMM'N, BUREAU OF ECONOMICS STAFF REPORT, IMPROVING CONSUMER MORTGAGE DISCLOSURES: AN EMPIRICAL ASSESSMENT OF CURRENT AND PROTOTYPE DISCLOSURE FORMS (2007), available at <http://www.ftc.gov/opa/2007/06/mortgage.shtml>.

of the DoddFrank Act also requires the FTC and Board to coordinate with the CFPB's Office of ServiceMember Affairs to address certain motor vehicle issues related to members of the military. The Commission looks forward to working with the Board, the CFPB and other federal agencies on this initiative.

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The FTC hopes that the information contained in this letter responds to your inquiry and will assist in preparation of the Board's Annual Report to Congress. If any other information would be useful or if you wish to request additional assistance, please contact Carole Reynolds or Laura Johnson, Division of Financial Practices, at (202) 326-2224.

By direction of the Commission.

Donald S. Clark
Secretary