

CFPB Request for Information on Regulation B

([Link](#) to FRN)

I. Introduction

The staff of the Federal Trade Commission (“FTC” or “Commission”)¹ appreciates the opportunity to provide information to the Consumer Financial Protection Bureau (“CFPB”) regarding Regulation B, 12 C.F.R. §§ 202, 1002, the implementing regulation of the Equal Credit Opportunity Act (“ECOA”), 15 U.S.C. § 1691. ECOA and Regulation B make it unlawful to discriminate against applicants for credit on the basis of race, national origin, sex, marital status, age, or other prohibited factors.

The Commission has wide-ranging responsibilities regarding consumer financial issues, and has enforced ECOA’s and Regulation B’s provisions against auto dealers, subprime lenders, and non-mortgage creditors.² Recently, the FTC brought an action against an auto dealership and its manager alleging that the defendants violated ECOA and Regulation B by discriminating against African-American and Hispanic consumers who financed vehicle purchases.³ According to the complaint, defendants charged higher markups for financing on a prohibited basis, approximately \$163 and \$211 more for African-American and Hispanic applicants, respectively. The order (CFE084) (The order) 1.3 itatus, gaid -1.24 Td[(The orde)6.7 more for

II. Disparate Impact

The first question in the CFPB's request for information concludes as follows: Should the Bureau provide additional clarity regarding its approach to disparate impact analysis under ECOA and/or Regulation B? If so, in what way(s)?

By way of background, when enacted in 1974, the ECOA prohibited discrimination on the
