



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

Division of Financial Practices

January 26, 2021

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:

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

## II. Regulation B (ECOA)

In 2020, the FTC engaged in enforcement, 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 enforcement, research and policy development and educational initiatives.<sup>5</sup>

### A. Fair Lending: Enforcement

In 2020, the FTC brought an enforcement action in federal court against New York City car dealer Bronx Honda and its general manager, Carlo Fittarone, alleging that defendants violated ECOA and Regulation B by discriminating against African American and Hispanic consumers who financed vehicle purchases.<sup>6</sup> According to the FTC's complaint, among other things, defendants charged African-American and Hispanic customers higher markups and fees financing than similarly situated non-Hispanic white consumers.<sup>7</sup>

charged by the complaint, defendants are also required to establish a fair lending program that will, among other components, cap the amount of additional interest markup they charge consumers. The FTC issued refunds totaling nearly \$1.5 million to individuals affected by the allegedly unlawful financing and sales practices of defendants, with refunds averaging about \$371 each to 3,977 victims of Bronx Honda's practices.<sup>9</sup>

In 2020, the FTC and CFPB jointly filed an amici curiae brief with the U.S. Court of Appeals for the Second Circuit in *Tewinkle v. Capital One, N.A.*, an action by a consumer alleging discrimination under ECOA. Addressing “whether a person ceases to be an ‘applicant’ under ECOA and its implementing regulation after receiving (or being denied) an extension of credit.”<sup>10</sup> The agencies disagreed with the district court’s dismissal of the consumer’s ECOA action and filed the amici curiae brief on behalf of the applicant.<sup>11</sup> Specifically, the agencies argued that ECOA’s protections apply to any aspect of a credit transaction, including those pertaining to an existing arrangement with a creditor, noting there is no temporal qualifier in the statute.<sup>12</sup> The brief also argues that ECOA’s implementing Regulation B has for nearly half a century expressly provided that the term “applicant” includes those who have received credit from a creditor.<sup>13</sup> This matter is pending in the Court of Appeals for the Second Circuit.

## B. Fair Lending: Research and Policy Development

### 1. Response to the CFPB Request for Information about Regulation B

In 2020, FTC staff submitted a comment response to the CFPB’s request for information to identify opportunities to prevent credit discrimination, encourage responsible innovation, promote fair, equitable, and nondiscriminatory access to credit, address potential regulatory uncertainty, and develop viable solutions to regulatory compliance challenges under

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<sup>9</sup> See FTC, Press Release, *FTC Sends Nearly \$1.5 Million to Victims of Bronx Honda’s Illegal Financing and Sales Practices* (Nov. 10, 2020) available at <https://www.ftc.gov/news-events/press-releases/2020/11/ftc-sends-nearly-15-million-victims-bronx-honda-illegal>.

<sup>10</sup> See Brief of Amici Curiae Consumer Financial Protection Bureau and Federal Trade Commission in Support of Appellant and Reversal, No. 202049 (2d Cir. Oct. 7, 2020), *Tewinkle v. Capital One, N.A.*, No. 202049 (2d Cir. June 29, 2020) (Notice of Civil Appeal Docketed), available at [https://www.ftc.gov/system/files/documents/amicus\\_briefs/bratwinkle-v-capitalone-na/tewinkle\\_amicus\\_brief.pdf](https://www.ftc.gov/system/files/documents/amicus_briefs/bratwinkle-v-capitalone-na/tewinkle_amicus_brief.pdf)

<sup>11</sup> See generally *id.*

<sup>12</sup> See *supra* note 10 at 14.

<sup>13</sup> See *supra* note 10 at 20.



demographic groups if systematic differences in the groups exist. The paper's study and results were also discussed.<sup>18</sup>

### 3. ECOA in the Military Area

In 2020, the FTC's Military Task Force, comprised of a cross-section of agency representatives, continued work on military consumer protection issues.<sup>19</sup> The Task Force is part of the agency's ongoing collaborative effort to provide resources for military consumers and is aimed at identifying the needs and developing initiatives to empower servicemembers, veterans, and their families, including through law enforcement actions. Additional information (a)-4 (2(i)-2

discriminatory practices and fees, and tips on how to avoid paying too much for your next car.<sup>21</sup> The Commission also issued a blog post for businesses about the ~~Brook~~ case with information on the settlement which requires the company to implement a fair lending program that safeguards against discrimination, highlighting practices that other businesses overdue for an ECOA compliance check may want to consider.<sup>22</sup>

The Commission also released a blog post for businesses about the use of artificial