

United States Senate
WASHINGTON, DC 20510

November 25, 2019

The Honorable Kathleen Kraninger
Director
Consumer Financial Protection Bureau
1700 G St. N.W.
Washington, D.C. 20552

Dear Director Kraninger:

Recent news reports suggest that women who apply for Goldman Sachs' new Apple Card systematically receive worse terms, which may constitute gender discrimination under fair lending laws enforced by the Consumer Financial Protection Bureau (CFPB or the Bureau).¹ If true, these reports raise serious questions about the Bureau's commitment to enforcing fair lending laws and carrying out its statutory responsibilities, especially after the recent structural changes to the Bureau's Office of Fair Lending.

Goldman Sachs first entered the consumer lending space in 2016 with the launch of Marcus, its online lending platform. Earlier this year, the bank teamed up with Apple to launch the Apple Card, a credit card designed for use with Apple's iPhone Wallet application.²³ Apple Card was launched this past August and described as "new kind of credit card...designed to help customers lead a healthier financial life."⁴ Goldman Sachs CEO David Solomon has described Apple Card as "the most successful credit-card launch ever," and it has been widely recognized as an innovative development in the financial services industry.⁵

Earlier this month, reports appeared to indicate that Goldman Sachs was offering lower credit limits to women than to similarly creditworthy men.⁶ Among those who raised alarm about this apparent discrimination was Apple co-founder Steve Wozniak, who said that he received an offer for ten times the credit limit that his wife received even though they shared the same assets and bank accounts, and his wife had a higher credit scores.⁷ The New York State Department of Financial Services deemed

¹ New York Times, "Apple Card Investigated After Gender Discrimination Complaints," Neil Vigdor, November 10, 2019, <https://www.nytimes.com/2019/11/10/business/apple-credit-card-investigation.html>

² Goldman Sachs, "Goldman Sachs Launches New Online Personal Loan Platform; Marcus by Goldman Sachs Focuses on Helping People Manage Credit Card Debt," October 13, 2016, <https://www.goldmansachs.com/media-relations/press-releases/current/announcement-marcus-by-goldman-sachs.html>

³ The Wall Street Journal, "Apple, Goldman Sachs Team Up on Credit Paired with iPhone," Tripp Mickle, Liz Hoffman, and Peter Rudegeair, February 21, 2019, <https://www.wsj.com/articles/apple-goldman-sachs-team-up-on-credit-card-paired-with-iphone-11550750400>

⁴ Apple, "Apple Card launches today for all US customers," August 20, 2019, <https://www.apple.com/newsroom/2019/08/apple-card-launches-today-for-all-us-customers/>

⁵ CNBC, "Goldman Sachs CEO says Apple Card is the most successful credit card launch ever," Hugh Son, October 15, 2019, <https://www.apple.com/newsroom/2019/08/apple-card-launches-today-for-all-us-customers/>

⁶ CNN Business, "Apple co-founder Steve Wozniak says Apple Card discriminated against his wife," Clare Duffy, November 11, 2019, <https://www.cnn.com/2019/11/10/business/goldman-sachs-apple-card-discrimination/index.html>

⁷ CNN Business, "Apple co-founder Steve Wozniak says Apple Card discriminated against his wife," Clare Duffy, November 11, 2019, <https://www.cnn.com/2019/11/10/business/goldman-sachs-apple-card-discrimination/index.html>

these complaints serious enough to open an investigation into “whether the algorithm used to make these credit decisions violates state law on the basis of sex.”⁸

The Equal Credit Opportunity Act (ECOA), which is enforced by the CFPB, makes it unlawful for creditors to discriminate against applicants, “on the basis of race, color, religion, national origin, sex or marital status, or age.”⁹ That includes “when a creditor employs facially neutral policies or practices that have an adverse effect of impact on a member of the protected class,”¹⁰ including discrimination in underwriting regardless of whether the policy or practice is the result of a decision by an algorithm or traditional underwriting.

These public reports raise questions on whether there is a pattern of sex discrimination in the underwriting of the Apple Card, and underscore the importance of the CFPB adequately monitoring the lending practices of financial institutions, including those like Goldman Sachs, that are new to the consumer lending space. Because the Bureau determines its examination schedule based on an assessment of the risks to consumers, it is not clear how the Bureau evaluates such risks for new lenders or new products. For example, the CFPB’s Supervision and Examination Process Manual does not specify if the Bureau considers novel products or institutions that have previously never offered consumer products inherently risky.¹¹

We are also concerned about whether regulatory changes and modifications to the CFPB’s structure under Trump Administration officials have hobbled its role enforcing fair lending laws. In 2018, then-Acting Director Mulvaney stripped the CFPB’s fair lending office of enforcement powers and moved the office to the Office of Equal Opportunity and Fairness under the Director.¹² This move substantially undermined the ability of the Bureau to enforce fair lending laws and has resulted in an opaque structure that leaves it unclear as to who in the Bureau is responsible for handling matters such as the Apple Card incident – the Office of Fair Lending and Equal Opportunity or the Division of Supervision, Enforcement and Fair Lending. The CFPB’s new Office of Innovation, which through its No Action Letter program, has authority to effectively unilaterally guarantee that the Bureau will not enforce consumer or fair lending laws with respect to financial technology program further confuses the picture.¹³ We’re concerned that this new structure, where many offices have varying degrees of authority, may allow new potentially discriminatory products to get to market without adequate oversight.

Adding to our alarm, under your leadership, the CFPB has shown little willingness to fulfill its statutory mandate to enforce fair lending laws. In the nearly one year since you were confirmed – and in the two

⁸ NY Department of Financial Services, “Building a fairer and more inclusive financial services industry for everyone,” Linda A. Lacewell, November 10, 2019, <https://medium.com/@nydfs/building-a-fairer-and-more-inclusive-financial-services-industry-for-everyone-917183dae954>

⁹ 15 U.S. Code § 1691

¹⁰ https://files.consumerfinance.gov/f/201306_cfpb_laws-and-regulations_ecoa-combined-june-2013.pdf pg 1.

¹¹ Consumer Financial Protection Bureau, “CFPB Supervision and Examination Process,” October, 2012, https://files.consumerfinance.gov/f/documents/cfpb_supervision-and-examination-manual.pdf

¹² American Banker, “CFPB’s Mulvaney strips his fair-lending office of enforcement powers,” Kate Berry, February 01, 2018, <https://www.americanbanker.com/news/cfpbs-mulvaney-strips-his-fair-lending-office-of-enforcement-powers>

¹³ Consumer Financial Protection Bureau, Federal Register Notice, “Policy on No-Action Letters,” September 10, 2019, https://files.consumerfinance.gov/f/documents/cfpb_final-policy-on-no-action-letters.pdf The new policy gives the authority to issue these No Action letters to the Assistant Director to the Office of Innovation or other member of the Office of Innovation.

years since Mick Mulvaney took control of the Bureau – the CFPB has filed one fair lending enforcement action, which related to HMDA violations, and no ECOA enforcement actions.¹⁴

To gain a better understanding of how the CFPB enforces fair lending laws, how recent changes may have impacted that enforcement, and whether Apple Card faced adequate scrutiny before going to market and in the wake of the allegations related to the Apple Card's terms, we request a response to the following questions by no later than December 09, 2019.

1. How does the CFPB prioritize and evaluate risk when determining which financial institutions to examine for compliance with fair lending laws?
 - a. Does the CFPB evaluate the following when making such a decision, and if so, how?
 - i. How long the institution has been in the business of consumer lending?
 - ii. The type and novelty of the financial products being offered?
2. Has the CFPB ever conducted a supervisory examination to assess the consumer or fair lending compliance management system of Goldman Sachs?
3. The changes to the Bureau's structure have made it unclear where concerns about fair lending associated with financial technology products would be handled. Currently, the Office of Supervision, Enforcement & Fair Lending (SEFL) includes the Office of Supervision Examinations, the Office of Supervision Policy, and the Office of Enforcement.¹⁵ The Office of Fair Lending, however, is now housed under the Director's office without any enforcement power. Regardless of whether or not any action has occurred in the Goldman Sachs Apple Card instance, in what part of the Bureau are these types of issues now dealt with?
 - a. If so, has the size of the staff within any of the components of Supervision and Enforcement changed to account for this expanded responsibilities into fair lending supervision and enforcement?
 - b. How many individuals who worked as fair lending enforcement attorneys in the Office of Fair Lending before February 2018 now work on fair lending enforcement in SEFL? How many left the CFPB?
4. Describe the standards the Bureau uses to determine whether an act constitutes a violation of ECOA, including under the disparate impact theory.
 - a. Are the current standards different from those used under the two previous directors? If so, please describe.

Sincerely,

¹⁴ Consumer Financial Protection Bureau, "Freedom Mortgage Corporation," June 05, 2019, <https://www.consumerfinance.gov/policy-compliance/enforcement/actions/freedom-mortgage-corporation/>

¹⁵ Consumer Financial Protection Bureau, "Supervision, Enforcement, & Fair Lending," <https://www.consumerfinance.gov/about-us/the-bureau/bureau-structure/supervision-enforcement-fair-lending/>



Elizabeth Warren
United States Senator



Sherrod Brown
United States Senator