cfpb Consumer Financial Protection Bureau

1700 G Street, N.W., Washington, DC 20552

January 23, 2014

The Honorable Blaine Luetkemeyer
U.S. House of Representatives
2440 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Luetkemeyer:

Thank you for your November 15, 2013 letter about indirect auto lending practices and compliance with anti-discrimination laws, such as the Equal Credit Opportunity Act (ECOA). The Consumer Financial Protection Bureau (Bureau) shares your commitment to ensuring that lending practices are fair and equitable and that credit markets function competitively and efficiently for all consumers and honest businesses. We appreciate the opportunity to work with you on these important goals.

In April 2012, the Bureau published a Lending Discrimination Bulletin in which we issued guidance about compliance with the fair lending requirements of the ECOA and its implementing regulation, Regulation B.[1] In the Lending Discrimination Bulletin, the Bureau reaffirmed, consistent with other federal supervisory and law enforcement agencies, including the Department of Justice, Federal Trade Commission, and each of the federal prudential agencies with regulatory authority over financial institutions,[2] that the legal doctrine of disparate impact remained applicable as the Bureau exercises its supervision and enforcement authority to ensure compliance with the ECOA and Regulation B.

The Bureau's March 21, 2013 Auto Bulletin was published to offer guidance to all indirect auto lenders within the Bureau's jurisdiction about compliance with the fair lending requirements of ECOA.[3] The Auto Bulletin highlighted the fair lending risk inherent in some indirect auto lenders' markup and compensation policies based upon the discretion those policies permit.

Flat fees are mentioned in the bulletin merely as one example of a non-discretionary compensation mechanism; the bulletin does not mandate flat fees or any other particular system of dealer compensation. It is our understanding that a number of indirect auto lenders currently compensate auto dealers using a variety of non-discretionary or flat fee programs, and lenders

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[1] Lending Discrimination, CFPB Bulletin 2012-04 (Fair Lending), Apr. 18, 2012.
[2] Interagency Task Force on Fair Lending, *Policy Statement on Discrimination in Lending,* 59 Fed. Reg. 18,266 (Apr. 15, 1994).
[3] Indirect Auto Lending and Compliance with ECOA, CFPB Bulletin 2013-02, Mar. 21, 2013 *available at* http://files.consumerfinance.gov/f/201303_cfpb_march_-Auto-Finance-Bulletin.pdf.

may choose to adopt a variety of means, including alternative compensation policies, to address fair lending risk. The Bureau has not undertaken a study of how market-wide adoption of a single non-discretionary compensation program would affect the availability of credit, nor has it attempted to analyze the impact of all the potential actions lenders may take to eliminate discrimination from their indirect auto lending programs. As a general matter, however, the Bureau believes that the legitimate business needs of creditors and fair lending are compatible, a judgment that Congress has enshrined in law by enacting ECOA and by charging the Bureau with its enforcement.

The Bureau and Department of Justice's (DOJ) recently announced enforcement action against Ally Financial Inc. and Ally Bank demonstrates the type of fair lending risk identified in the Bureau's bulletin. In addition to requiring Ally to pay $80 million in damages and $18 million in penalties to resolve these issues, the Bureau and DOJ's coordinated orders require Ally to establish a new compliance framework. Specifically, Ally will monitor dealer markup in order to prevent and redress future discrimination or Ally can decide to eliminate dealer markups altogether. Within this framework, Ally will be able to exercise its business judgment about how best to achieve compliance with fair lending law.

The Bureau understands that certain industry and civil rights organizations are conducting, or plan to conduct, studies of fair lending issues in the indirect auto lending space. As with any topic related to consumer finance, the Bureau will be interested in reviewing the results of those studies.

Thank you for bringing your concerns to the Bureau's attention and for the opportunity to respond. I look forward to working with you on this important issue as the Bureau continues to work to help markets operate more fairly and effectively for consumers and businesses.

Sincerely,

Richard Cordray

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