



Consumer Financial
Protection Bureau

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

April 10, 2015

The Honorable Ben Ray Luján
U.S. House of Representatives
2446 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Luján:

Thank you for your letter regarding indirect auto lending and compliance with the Equal Credit Opportunity Act (ECOA). The Consumer Financial Protection Bureau (Bureau) is also committed to ensuring fair, equitable, and nondiscriminatory access to credit for all consumers. I appreciate the opportunity to work with you in achieving these important goals in the new Congress.

As you note, in March 2013, the Bureau issued the *Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act* Bulletin (Bulletin),¹ which reminded indirect auto lenders² of their existing responsibilities under the ECOA. Consistent with the jurisdiction granted by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the Bureau uses both supervisory and enforcement tools to ensure compliance with Federal consumer financial laws, including the ECOA. The Bulletin served to remind indirect auto lenders of the heightened fair lending risks associated with lenders' pricing and compensation policies that allow auto dealers the discretion to increase the consumer's interest rate and to benefit from the increased interest revenue.

The Bulletin did not establish additional, legally binding restrictions or requirements for either the public or for the Bureau, nor did the Bulletin require lenders to use a flat fee compensation structure. Rather, the Bulletin provided examples of internal controls, program features, and compliance management systems that indirect auto lenders might use to mitigate fair lending risk. Our issuance of the Bulletin was intended to provide clarity and guidance for indirect auto lenders regarding the application of ECOA and Regulation B and inform lenders of our attendant supervisory and enforcement approach.

Since the Bulletin's release, the Bureau has continued to engage with lenders and other market participants through public events and additional guidance on our supervisory and enforcement activity in the auto lending market. For example, in September 2014, the Bureau released an issue of *Supervisory Highlights* exclusively dedicated to the Bureau's fair lending activity in the indirect

¹ CFPB Bulletin 2013-02 (March 21, 2013), available at http://files.consumerfinance.gov/f/201303_cfpb_march_-_Auto-Finance-Bulletin.pdf.

² In contrast to direct financing, which occurs when a consumer finances a vehicle directly through a financial institution, indirect auto lending occurs when a consumer secures vehicle financing through the dealer, which typically originates the loan to the consumer and arranges financing through a third-party financial institution (the indirect lender).

auto lending market.³ The Bureau also released a white paper entitled: *Using Publicly Available Information to Proxy for Unidentified Race and Ethnicity: A Methodology and Assessment* (proxy methodology white paper) on the proxy methodology that the Bureau uses in its fair lending statistical analysis.⁴

In your letter, you also ask about indirect auto lenders fair lending compliance risk, timeframe for maintaining compliance, and potential costs associated with noncompliance. The Bureau evaluates possible discrimination in both auto lending and in other markets on a case-by-case basis. Our analysis considers appropriate analytical controls in reviewing data to determine whether a specific policy results in unlawful differences on a prohibited basis. If the Bureau identifies situations where fair lending compliance is inadequate, it will direct institutions to establish fair lending compliance programs commensurate with the size and complexity of the institution and its lines of business. If violations of the ECOA have occurred, the Bureau will determine the appropriate corrective action, which may include supervisory or enforcement resolutions; remediation; restitution to consumers; and other appropriate relief.

For example, in December 2013, the Bureau and the Department of Justice (DOJ) completed a joint enforcement action against Ally Financial Inc. and Ally Bank (Ally) for discrimination in indirect auto lending, specifically regarding disparities in the dealer markup. In terms of cost, as a result of this public enforcement action, Ally was required to pay \$80 million in damages for consumer harm; hire a settlement administrator to distribute funds to victims; monitor or eliminate dealer markups to prevent future discrimination; and pay an \$18 million penalty. Moreover, Ally was required to develop and implement a compliance plan within specific timeframes. Corrective action arising from supervisory or enforcement activity is based on a case-by-case assessment. The appropriate corrective action, including remuneration to consumers, penalties, compliance plans, and timing, may vary based on the number of consumers harmed, as well as the nature and scope of the violation.

Lenders making a good faith effort to comply with the ECOA can proactively engage in “responsible conduct” as described in the Bureau’s *Responsible Business Conduct: Self-Policing, Self-Reporting, Remediation, and Cooperation* bulletin.⁵ If a lender meaningfully engages in the activities outlined in this bulletin, it may favorably affect the ultimate resolution of a Bureau enforcement investigation.

In addition, your letter inquired about the benefits to consumers. The Bureau’s work to protect consumers from credit discrimination has generated real results for consumers. As a result of our supervisory and enforcement resolutions with several indirect auto lenders, lenders will collectively pay about \$136 million to provide redress to up to 425,000 consumers who paid more to finance their cars or trucks, based on their race or national origin. Our examination teams will continue to review lenders for compliance with Federal consumer financial law, and take supervisory and

³ Supervisory Highlights: Summer 2014, available at http://files.consumerfinance.gov/f/201409_cfpb_supervisory-highlights_auto-lending_summer-2014.pdf.

⁴ Using Publicly Available Information to Proxy for Unidentified Race and Ethnicity: A Methodology and Assessment (Summer 2014), available at http://files.consumerfinance.gov/f/201409_cfpb_report_proxy-methodology.pdf.

⁵ CFPB Bulletin 2013-06 (June 25, 2013), available at http://files.consumerfinance.gov/f/201306_cfpb_bulletin_responsible-conduct.pdf.

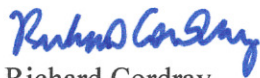
enforcement action as appropriate to address fair lending violations and to promote a fair and competitive auto lending market for consumers.

You also asked for the release of the specific data used in the Bureau's proxy methodology. The Bureau has released the public data sources and proxy methods our examination teams use when conducting our supervisory work. As described in the Bureau's proxy methodology white paper, noted above, when using a proxy, CFPB examination teams are using a borrower's name and geographic information to match data that are publicly available from the Social Security Administration and the United States Census Bureau. In addition, the statistical software code and the publicly available census data files used to build the Bureau's proxy are available via the Bureau's website, which allows individual institutions to construct regression models based on their own specific data.

Finally, your letter inquired about the National Automobile Dealers Association's (NADA) Fair Credit Compliance Policy and Program. The Bureau welcomes such proactive proposals that demonstrate a commitment to fair lending. In general, the NADA Program is based on two DOJ cases from 2007, where that model was negotiated in settlements involving *dealers*, over which the DOJ has jurisdiction. The Bureau's Bulletin addressed indirect auto *lenders*. In general, lenders who choose to implement such programs may want to review the Spring 2014 edition of *Supervisory Highlights*,⁶ which includes guidance related to documenting exceptions to established credit standards to mitigate fair lending risk.

Thank you for your interest in this important issue. I look forward to working with you to ensure that all markets operate fairly and effectively for all market participants.

Sincerely,



Richard Cordray
Director

⁶ Supervisory Highlights: Spring 2014, available at http://files.consumerfinance.gov/f/201405_cfpb_supervisory-highlights-spring-2014.pdf.