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Consumer Financial Protection Bureau (CFPB) and the Department of Justice (DOJ) Announce Largest Auto Loan Discrimination Settlement in History

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On December 20, 2013, the **Consumer Financial Protection Bureau (CFPB)** and the **Department of Justice** (DOJ) announced that the federal government has reached a $98 million settlement with Ally Financial, Inc., and **Ally Bank (Ally),** resolving allegations that Ally had allowed automobile dealers to charge minority borrowers higher rates of interest on automobile loans than they charged white borrowers. It is the largest auto loan discrimination settlement in United States history.

The Ally settlement is the latest collaboration between the CFPB and the DOJ in the enforcement of consumer protection statutes. Since May, when the two agencies announced parallel civil and criminal complaints against a debt settlement company, they have worked together on several initiatives. Earlier this month, the CFPB and DOJ signed a memorandum of understanding that outlines the framework of their collaboration on fair lending enforcement and seeks to avoid duplication of their respective efforts in consumer protection.

Companies that offer consumer financial products can expect increased federal scrutiny of their businesses as the two agencies continue this collaboration.

Congress created the CFPB as part of the **Dodd-Frank Wall Street Reform and Consumer Protection Act** (Dodd-Frank), which President Obama signed into law on July 21, 2010. Title X of Dodd-Frank, which is entitled the Consumer Financial Protection Act of 2010, specified that the CFPB, which exists as part of the Federal Reserve System, would be charged with the broad task of regulating “the offering and provision of consumer financial products under the Federal consumer financial laws.” 12 U.S.C. § 5491. Its statutory purpose is to “seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products are fair, transparent, and competitive.” 12 U.S.C. § 5511(a). Accordingly, Congress granted the CFPB authority to enforce 18 existing federal statues related to consumer financial products.

The CFPB began its investigation of Ally in September 2012, and it eventually determined that Ally had violated the **Equal Credit Opportunity Act (ECOA),** which is one of the statutes over which the

CFPB has jurisdiction. The ECOA prohibits discrimination “against any applicant, with respect to any aspect of a credit transaction,” on the basis of a number of characteristics, including race and national origin. 12 U.S.C. § 1691.

According to the CFPB, Ally did not directly discriminate against consumers. Instead, it allegedly violated the ECOA by allowing “dealer markups.” In a common practice in the auto lending business, Ally set risk-based interest rates on automobile loans, but it then allowed auto dealers to increase the rates before they finalized the loans with consumers. Ally would then share part of the revenue from these dealer markups with the individual dealers.

The CFPB’s investigation, which was the agency’s first enforcement action involving discrimination in the auto lending business, concluded that because Ally allowed dealers to increase the rates charged to consumers, more than 235,000 African-American, Hispanic, and Asian borrowers paid higher interest rates than similarly situated white borrowers from April 2011 through December 2013.

Under the terms of the settlement, which the DOJ filed in the U.S. District Court for the Eastern District of Michigan, Ally will pay $80 million in restitution to consumers along with an $18 million penalty. The settlement also requires Ally to work with the CFPB in establishing a compliance program to monitor potential discrimination in its loan portfolio. According to the CFPB, one option for Ally to maintain compliance is to completely eliminate dealer markups.

Ally did not admit to any wrongdoing in the settlement.

In addition to their investigation of auto lending practices, the CFPB and DOJ are currently conducting joint investigations in the mortgage industry and other areas involving loans to consumers.

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