Ally Financial Settles Allegations of "Disparate Impact" Discrimination
By ADR Staff

Both Ally Financial and the Consumer Financial Protection Bureau (CFPB) have issued notice of Ally's execution of Consent Orders pertaining to allegations of disparate impact discrimination in the auto finance business. The case derives from CFPB guidance issued in March 2013 in which the Bureau claims that research indicates that dealer markup practices "may" lead to racial discrimination. In that same guidance, the Bureau announced their intention to hold third-party finance entities, such as Ally Financial, responsible for perceived discrimination resulting from dealers' variable markups.

Ally's statement notes that the company does not make loans directly to consumers, but rather, it purchases installment contracts originated by auto dealers. Ally's long-time process for evaluating auto installment contracts from dealers does not include information on a consumer's race or ethnicity. Ally assesses these contracts and sets pricing based solely on a consumer's creditworthiness and contract characteristics. The CFPB and the Department of Justice (DOJ) assert that pricing disparity has occurred for certain protected classes of consumers as a result of the auto dealer's ability to mark-up Ally's rate at which it buys a retail installment contract. The CFPB and DOJ also assert that Ally has responsibility for the conduct of its dealer customers and allege that Ally has not sufficiently monitored the pricing practices of its dealer customers.

Ally's statement also says that the company does not engage in or condone violations of law or discriminatory practices, and based on the company's analysis of its business, it does not believe that there is measurable discrimination by auto dealers. Regardless, Ally takes the assertions by the CFPB and DOJ very seriously and has agreed to the terms in the orders, which include enhancing dealer monitoring, reducing the perceived disparity for the protected classes outlined in the order, paying a civil money penalty of $18 million and contributing $80 million toward a settlement fund to be managed by an independent settlement administrator.

Multiple letters from Congressional members directing the CFPB to explain the statistical analysis underlying their allegations of disparate impact discrimination have failed to yield definitive answers. Rather than providing detailed statistical data, the CFPB responses typically indicate a reliance on historical events and the use of proxy data. For instance, an October 30, 2013, letter to the CFPB from a bipartisan group of 22 Senators states that "Unfortunately, the Bureau has not provided complete responses to several of the questions presented by our House colleagues." The Senate letter urges the Bureau to operate as the "transparent and data-driven agency" it declares itself to be. In the meantime, Ally Financial expects to take a $98 million charge in the fourth quarter related to the settlement of the alleged discrimination.