

**ECOA Compliance and Dealer Markups
By ADR Staff**

The following procedures were documented in the 2007 U.S. v. Pacifico Ford, Inc., Civil Action Consent Order to facilitate Pacifico's compliance with the Federal Equal Credit Opportunity Act (ECOA). These Consent Order procedures may serve as helpful input during development and implementation of a dealership's non-discriminatory lending policy.

The procedures generally require that (1) all negotiations start at the same, pre-determined Dealer Reserve level not to exceed a documented maximum; (2) certain non-discriminatory notices be posted and provided; (3) all relevant employees be fully trained on the requirements of ECOA.

**ECOA-COMPLIANT PROCEDURES
FROM THE PACIFICO CONSENT ORDER**

Maximum Dealer Reserve

1. Establish a maximum Dealer Reserve. The maximum for Pacifico Ford, Inc. was set at:
 - a. 2.5% for loans with a term equal to or less than 60 months
 - b. 2.0% for loans with a term greater than 60 months.

Written "Guidelines for Setting Dealer Reserves"

2. Develop and implement formal, written "Guidelines for Setting Dealer Reserves". The Guidelines shall include, at a minimum:
 - a. The requirement that employees start negotiations in each loan transaction with the Dealer Reserve set at the same, pre-determined level, unless otherwise provided in paragraph 2.b. This Dealer Reserve starting level shall be set forth in writing and distributed to all relevant employees pursuant to Paragraph 3. The Dealer Reserve starting level may be changed by the dealership periodically through a written direction to all relevant employees, but shall not exceed the caps described in Paragraph 1.
 - b. The requirement that employees may start or negotiate a dealer reserve lower than the pre-determined starting level only for a good faith, competitive reason that is consistent with ECOA. A good faith, competitive reason is defined as:
 - a lower cap imposed by the lender for the particular transaction;
 - a constraint on the customer's ability to satisfy monthly payment requirements;
 - a statement by the customer that he or she has access to an equal or more favorable offer from another dealer or lender;
 - a special promotional offer extended to all customers on the same terms;
 - the fact that a particular transaction is eligible for subvented interest rates;
 - the fact that the transaction is eligible for an employee incentive program; or

- documented inventory reduction considerations related to specific vehicles;
- c. Instructions regarding the circumstances under which employees can make a counter-offer or follow-up financing offer, which circumstances shall be consistent with paragraphs 2.a. and 2.b.
 - d. A requirement that for each financing transaction in which there is a Dealer Reserve and that Dealer Reserve is less than the amount of the pre-established starting level described in paragraph 2.a., all documentation related to such financing transaction shall be reviewed by the General Manager or his/her designee who has not participated in the arrangement of the credit under review. Within two business days after the signing of the final contracts, the General Manager or his/her designee shall review the transaction to certify, in writing, either that the Dealer Reserve complies with the “Guidelines for Setting Dealer Reserves” or that the general manager or his/her designee has taken and documented corrective action; and
 - e. Instructions regarding the use of the questionnaire attached as Appendix A to document any good faith, competitive reasons to depart from the Dealer Reserve starting levels, and other documentation that must be included in each loan file to document fully the Dealer Reserve offered each consumer and any and all subsequent financing negotiations, as described in Paragraph 8.
3. The Guidelines and all written instructions regarding the Dealer Reserve starting level shall be distributed to all company officers, employees, and agents (including all salespersons) who participate, in any manner, in the setting and negotiating of Dealer Reserves. The Company shall require its relevant employees to follow the Guidelines and operative written instructions on the Dealer Reserve starting level.

Public Notices

4. The Company shall take the following measures:
 - a. Post and prominently display at its dealership, in its showroom, in each sales office or cubicle, and in each finance or business office or cubicle, a notice of non-discrimination, in the form set forth in Appendix B, and a notice that each APR may be negotiable, in the form set forth in Appendix C.
 - b. Provide consumers who contact or meet with Finance and Insurance personnel to discuss financing options in connection with the purchase of a motor vehicle an individual notice of non-discrimination, in the form set forth in Appendix B, a notice that each APR is negotiable, in the form set forth in Appendix C, and a copy of the booklet, “Understanding Vehicle Financing,” which was produced by the American Financial Services Association Education Foundation and the National Automobile Dealers Association, in cooperation with the Federal Trade Commission. *[The document is available for download from www.e-oiada.com or from www.ftc.gov.]* These documents

shall be provided to the consumer before he or she executes an agreement to purchase a motor vehicle.

Equal Credit Opportunity Training Program

5. Establish an equal credit opportunity training program. Require the attendance of its relevant employees (as defined in paragraph 3) within one hundred twenty days of implementation and annually thereafter. The equal credit opportunity training program shall include instruction in the appropriate application of the Guidelines for Setting Dealer Reserves. During the equal credit opportunity training program, the Company shall provide to each relevant employees: (1) a copy of the Guidelines; (2) training on ECOA requirements; (3) his or her responsibilities and obligations under each.
6. Secure from each relevant employee a signed statement indicating that he or she has received copies of the Guidelines and has completed equal credit opportunity training. These statements shall be substantially in the form of Appendix D (Acknowledgement of Receipt of "Guidelines for Setting Dealer Reserves") and Appendix E (Certification of Equal Credit Opportunity Training).
7. The equal credit opportunity training shall be conducted by an independent qualified person or organization. The Company may videotape the original training program for use in lieu of a live presentation for training subsequently hired employees.

Record-Keeping Requirements

8. Pacifico Ford was required to retain the following documentation:
 - a. All consumer motor vehicle loan applications submitted to lenders for approval and all documents, notices and communications concerning the Buy Rates, Dealer Reserves, and APRs of such motor vehicle loan applications;
 - b. All approved loan files, which shall include but are not limited to the following documents (1) the financing contract; (2) a copy of the supporting documentation for the financing contract, vehicle purchase, registration, and credit application process; (3) a questionnaire attached as Appendix A which has been completed by the employee who negotiated the transaction to describe the good faith, competitive reason for any reduction from the pre-determined Dealer Reserve starting rate, and any supporting documentation; and (4) all required manager certifications; and
 - c. All non-privileged records relating to its equal credit opportunity compliance program, including documents concerning its equal credit opportunity employee training program.

APPENDIX A

Customer _____ Date _____ Deal # _____

Pre-established dealer reserve starting rate _____ % Final dealer reserve rate _____ %

If the final dealer reserve does not equal the pre-established starting rate, check the reason for the departure and fill out the corresponding blanks. If the customer did not state a specific amount or source of a competing offer, indicate “not identified.”

- Dealer reserve limited by financing source
- Customer stated monthly payment constraint of \$_____ per month
- Customer stated competing dealer offer by (name) of \$_____
- Customer stated competing credit offer by _____ (name) of _____ %
- Company promotional financing campaign offered to all customers on same terms
- Subvented interest rate from _____ (name) of _____ %
- Company employee incentive program
- Inventory reduction considerations (describe approximate number of days in inventory, approximate number in stock declining value of vehicle, etc.)

I certify that the departure described above was made in good faith.

Sign _____ Title _____ Date _____

General Manager or Designee Review

***** Must be completed within two (2) business day of sale *****

(Signer shall not have participated in arrangement of credit under review.)

I have reviewed the above information and:

- certify that the dealer reserve complies with the Guidelines for Setting Dealer Reserves,
or
- certify that I have ordered the following correction action:

Customer interest rate reduced or refund paid to customer _____

Employee corrective action taken (describe): _____

Other (describe): _____

Sign _____ Title _____ Date _____

APPENDIX B

We do Business in Accordance with Federal Fair Lending Laws

UNDER THE EQUAL CREDIT OPPORTUNITY ACT, IT IS ILLEGAL TO DISCRIMINATE IN ANY CREDIT TRANSACTION:

- **On the basis of race, color, national origin, religion, sex, marital status, or age;**
- **Because income is from public assistance; or**
- **Because a right has been exercised under the Federal Consumer Credit Protection Laws.**

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD SEND A COMPLAINT TO:

**Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington DC 20580
Telephone: 1-877-382-4357
Web site: www.ftc.gov**

or

**U.S. Department of Justice
civil Rights Division – NWB 7062
Chief, Housing and Civil Enforcement Sect
950 Pennsylvania Ave., N.W. – G St
Washington DC 20530
Telephone: 1-800-896-7743
Web site: <http://www.usdoj.gov/crt/housing>**

APPENDIX C

The annual Percentage Rate (“APR”) on the loan you use to purchase a motor vehicle may be negotiable with [company name].

In order to compensate [company name] for the services it provides in arranging your loan, [company name] may receive a portion of the Finance Charge on the loan you use to purchase your motor vehicle.

APPENDIX D

**ACKNOWLEDGMENT OF RECEIPT OF
“GUIDELINES FOR SETTING DEALER RESERVES”**

On _____, I received a copy of the “Guidelines for Setting Dealer Reserves.”
I have had all of my questions concerning the Guidelines and the Equal Credit Opportunity Act,
15 U.S.C. §§ 1691-1691f, answered to my satisfaction.

(Signature)

(Print Name)

(Position)

(Date)

APPENDIX E

CERTIFICATION OF EQUAL CREDIT OPPORTUNITY TRAINING

On _____, I attended training on the Federal Equal Credit Opportunity Act. I have had all of my questions concerning the Equal Credit Opportunity Act answered to my satisfaction.

(Signature)

(Print Name)

(Position)

(Date)