LOEB & LOEB LLP

Consumer Financial Protection Bureau

ALERT

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CFPB Discloses Use of "Proxy Data" in Identifying Discriminatory Auto Lending Practices

Consumer Financial Protection Bureau Director Richard Cordray recently provided a letter response to an inquiry from Democratic members of the House Committee on Financial Services requesting information about the Bureau's methodology for evaluating possible discrimination in the auto lending market. The inquiry letter followed the CFPB's March 21, 2013, bulletin, announcing the agency's intention to treat indirect auto lenders as creditors subject to federal fair lending laws (see our previous alert here) and sought greater transparency concerning the factors the CFPB is using to identify different groups of consumers, its method for ensuring that price differential findings are properly attributable to a consumer's background, and the numerical threshold applied by the Bureau in determining "disparate impact." The members of Congress also inquired about the CFPB's expectations for monitoring compliance in the realm of dealer compensation policies.

In its response, the CFPB outlined the various steps involved in a fair lending evaluation of an indirect auto lender, including a review of credit denials, interest rates quoted by the lender to the dealer (called buy rates), and any discretionary markup of the buy rate by the dealer (the interest rate quoted by the dealer to the consumer less the buy rate). Somewhat vaguely, the CFPB asserted that its analysis incorporated "appropriate analytical controls" in reviewing data to determine whether the lender's policies might have a disparate impact.

Notably, the CFPB acknowledged that the demographic data that is collected in the mortgage lending market is not available in the indirect auto lending market. The Bureau therefore employs "proxy data" using surnames and geographic location, drawing from publicly available data from the Social Security Administration and the Census Bureau. The letter explained that the Bureau encourages lenders to select a reasonable proxy method and to monitor their data for fair lending risk.

Addressing the question of lender compliance, while the CFPB letter echoes the suggestions in the March bulletin, it does so without imposing a single definitive approach to self-monitoring and compliance. Lenders may choose to impose controls on dealer markup and compensation policies, revise these policies to address potential pricing disparities, or entirely eliminate dealer discretion to mark up buy rates.

In the wake of this exchange between House Democrats and the CFPB, a group of 35 Republican lawmakers reportedly also wrote to the CFPB with concerns about the Bureau's "onerous" requirements for auto lenders and the lack of transparency and opportunity for public comment.

For more information about the content of this alert, please contact Michael Mallow or Michael Thurman.

Loeb & Loeb LLP's Consumer Financial Protection Bureau Task Force

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