



# CFPB Developments - What Does a Strong Fair Lending Compliance Program Look Like

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- I. **What does a strong fair lending compliance program look like?** [Consumer Financial Protection Bureau, *Supervisory Highlights: Fall 2012* (Oct. 31, 2012), <http://www.consumerfinance.gov/reports/supervisory-highlights-fall-2012>.]
  - A. **Up-to-date fair lending policy.**
  - B. Fair lending **training** for all officers and employees—current and new.
  - C. **Monitoring fair lending policies** to ensure compliance with fair lending laws.
  - D. **Monitoring other policies** that work in conjunction with fair lending policies to cover all of your bases.
  - E. Regular **review of policies** to avoid and/or remedy fair lending violations.
  - F. Regular **review of all loan data** for lending irregularities.
  - G. Regular **assessment of marketing** used to promote loan products.
  - H. Meaningful **oversight** of fair lending compliance.

## II. Why should you do it?

A. As an indirect auto lender, you are under the DIRECT jurisdiction of the CFPB.

B. You are not protected by the third-party creditor exception under Regulation B.

1. Text: "A person is not a creditor regarding any violation of the [ECOA] or [Regulation B] committed by another creditor unless the person knew or had reasonable notice of the act, policy, or practice that constituted the violation before becoming involved in the credit transaction." [12 C.F.R. § 1002.2(f).]

2. Why you are not covered:

a. Your mark up and compensation policies are at issue.

b. YOU violate the ECOA if your own policies allow discrimination.

c. Alternatively, you fall under the "knew or had reasonable notice" category. Without compliance mechanisms and safeguards, you had reasonable notice that your dealers would discriminate.

C. Be invisible or at least fly under the radar.

D. Avoid a costly CFPB lawsuit.

1. Example:

a. *In the Matter of: Ally Financial Inc., and Ally Bank* (File No. 2013-CFPB-0010) (consent order entered December 19, 2013).

- i. \$80 million in damages to borrowers subjected to discriminatory pricing of indirect auto loans.
- ii. \$18 million in civil penalties.

### **III. Looking Forward.**

- A. CFPB regulatory actions targeting indirect auto lenders will continue.
- B. 2015 CFPB Annual Fair Lending Report:
  - 1. CFPB intends to remain focused on indirect auto lending.
  - 2. CFPB is conducting auto finance targeted ECOA reviews, which generally include examination of three areas:
    - a. Credit approvals and denials;
    - b. Buy rates; and
    - c. Discretionary markup or adjustments to buy rates.
  - 3. CFPB has prioritized investigating discrimination resulting from discretionary loan pricing.
- C. As of June 2015, CFPB issued a final rule increasing the entities under CFPB regulatory authority.
- D. In June 2016, CFPB released its “Know Before You Owe” auto loan initiative to help inform consumers of the types of auto financing available.
- E. CFPB Enforcement Actions:
  - 1. Enforcement Resolution against Ally Financial Inc. and Ally Bank:

- a. On December 20, 2013, the CFPB and the DOJ announced an enforcement action and concurrent consent orders that required Ally to pay \$80 million to establish a settlement fund and provide redress to consumers harmed by Ally's discretionary pricing policy.
- b. The consent orders required Ally to hire a settlement administrator to distribute funds to harmed borrowers.
- c. Ally was also directed to pay an \$18 million civil money penalty.

2. Similar enforcement actions have followed:

- a. CFPB and DOJ took action against American Honda Finance Corporation, requiring Honda to pay \$24 million to consumers, and Toyota Motor Credit Corporation, requiring Toyota to pay \$21.9 million to consumers.
- b. CFPB has a number of pending enforcement actions and several authorized enforcement actions in settlement negotiations relating to discretionary loan pricing.

3. Non-Public Supervisory Actions:

- a. The Office of Fair Lending and the Office of Supervision of the CFPB have reached non-public resolutions with institutions to address identified discrimination on a prohibited basis across auto lending portfolios.
- b. Supervisory resolutions have required indirect lenders to pay more than \$56 million to provide redress for more than 190,000 consumers.

- c. Such resolutions direct remediation sufficient to address consumer harm for past disparities in dealer markup, based on a methodology designed to distribute funds to harmed consumers.

CUs must be aware of the CFPB's intent to continue to investigate ECOA violations in the auto lending sector. By ensuring your credit union's policies are in compliance, you can minimize your risk and decrease the chance of being subject to an enforcement action in the future.

