



Consumer Financial Protection Bureau

Northeast Region
140 East 45th Street
4th Floor
New York, NY 10017

February 21, 2014

Board of Directors

[Redacted]

Dear Directors:

As a follow up to the supervisory letter (the letter) sent last week (dated February 14, 2014) re: the Consumer Financial Protection Bureau's (CFPB) automobile finance review conducted in 2012, we are now transmitting a proposed Memorandum of Understanding (MOU) that addresses the concerns identified and described in the letter.

Based on the findings of the review, on February 14, 2014, the CFPB referred [Redacted] to the Department of Justice (DOJ) pursuant to Section 706(g) of the Equal Credit Opportunity Act (ECOA), 15 U.S.C. § 1691e(g).

Please review the proposed MOU. The CFPB expects the Board of Directors to execute the MOU within 30 days. We currently have a meeting scheduled for February 26, 2014 to discuss any concerns you might have regarding the provisions included; however, the CFPB will likely not consider material revision to the substance of the proposed MOU, but would consider proposed revisions with respect to the timing of the execution of required correction actions outlined in the proposed MOU.

If you have any questions, please call me at [Redacted] If I am unavailable, please call [Redacted]

Donald Groves

Donald Groves
Senior Examination Manager

cc: [Redacted]
[Redacted]
[Redacted] (OCC), [Redacted] (FRBNY),
[Redacted] (FDIC)

[Redacted]



MEMORANDUM OF UNDERSTANDING

Effective Date: _____, 2014

This Memorandum of Understanding (MOU) constitutes an agreement between [REDACTED] (the [REDACTED]),¹ by and through its Board of Directors (Board), and the Consumer Financial Protection Bureau (CFPB), by and through its Regional Director for the Northeast Region (Regional Director). The [REDACTED] agrees to take the actions outlined below to address the findings of the examination team and correct the conditions detailed in the Supervisory Letter dated February 14, 2014, and to improve its processes for managing compliance with Federal consumer financial law.

Based on its examination of the [REDACTED] the CFPB finds that the [REDACTED] has violated the Equal Credit Opportunity Act (ECOA), 15 USC 1691 et seq., and its implementing Regulation B, 12 CFR Part 1002, by engaging in a pattern and practice of discrimination on the basis of race, color, and/or national origin in the pricing of retail installment contracts that the [REDACTED] purchases from automobile dealers. The CFPB identified statistically significant pricing disparities on the basis of race, color, and/or national origin during the time period covered by the examination [REDACTED] (Review Period). These pricing disparities resulted from the Bank's dealer markup and compensation policies and practices, and the insufficient nature of the [REDACTED] fair lending controls and monitoring over these markups. These disparities are not justified by business necessity and constitute discrimination. The [REDACTED] specific policy and practice of providing dealers discretion to mark up a consumer's interest rate above the [REDACTED] established buy rate, compensating dealers for those markups, and not maintaining adequate controls and monitoring, was in place throughout the Review Period.

It is agreed and understood that the [REDACTED] through its Board of Directors, shall take the following actions to improve its processes for managing compliance with the ECOA and Regulation B.

Therefore, the CFPB and the [REDACTED] agree as follows:

I. Compliance.

1. The [REDACTED] and its directors, officers, employees, attorneys, agents, servants, and subsidiaries shall not engage in any act or practice that discriminates on a prohibited basis in any aspect of the pricing of automobile loans in violation of the ECOA, 15 USC 1691(a)(1), and Regulation B, 12 CFR Part 1002.
2. The [REDACTED] shall institute a Compliance Plan, as described below.

¹ All references to the [REDACTED] shall include any direct or indirect subsidiaries and affiliates and their successors and assigns.

3. Within sixty (60) days of the Effective Date, the [REDACTED] shall submit a Compliance Plan to the Regional Director for review and determination of non-objection that details: the actions the [REDACTED] plans to take or has already taken to comply with this MOU; the results and status of those actions, if any; and a compliance program that shall go into effect within thirty (30) days after non-objection by the Regional Director and remain in effect until such time as this MOU is terminated. The Compliance Plan shall, at a minimum, include:
- a. A dealer compensation policy that limits the maximum rate spread between the [REDACTED] buy rate and the contract rate of the retail installment contract to an amount no greater than the [REDACTED] limits currently in effect;
 - b. Regular notices to all participating dealers explaining the ECOA, stating the [REDACTED] expectations with respect to ECOA compliance, and articulating the dealer's obligation to price retail installment contracts in a non-discriminatory manner, including in exercising discretion to set a consumer's contract rate when such discretion is permitted;
 - c. At least quarterly and annual analysis of dealer-specific retail installment contract pricing data, beginning with contracts purchased on or after January 1, 2014, for disparities on a prohibited basis resulting from the [REDACTED] dealer compensation policy that reflects the same methods and controls that the CFPB applied in its analysis, unless the Regional Director approves the use of additional controls or methodological changes proposed by the [REDACTED]. All such analyses shall monitor for potential disparities among all retail installment contracts purchased by the [REDACTED] from each dealer (the dealer's aggregate business with the [REDACTED]);
 - d. At least quarterly and annual analysis of portfolio-wide retail installment contract pricing data, beginning with contracts purchased on or after January 1, 2014, for disparities on a prohibited basis resulting from the [REDACTED] dealer compensation policy that reflects the same methods and controls that the CFPB applied in its analysis, unless the Regional Director approves the use of additional controls or methodological changes proposed by the [REDACTED];
 - e. Corrective action with respect to dealers who are identified in the [REDACTED] analysis of dealer-specific retail installment contract pricing data for disparities on a prohibited basis, or otherwise identified, culminating in the restriction or elimination of such dealers' ability to exercise discretion in setting a consumer's contract rate or exclusion of such dealers from future transactions with the [REDACTED];
 - f. Remuneration of affected consumers within sixty (60) days of the completion of the annual portfolio-wide analysis described in paragraph 3d above where that analysis identifies statistically significant disparities on any prohibited basis, except where portfolio-wide disparities are below 10 basis points for that prohibited basis, in which case remuneration shall be made only to affected

consumers whose loans were purchased from dealers for whom the [REDACTED] most recent annual dealer-level analysis described in paragraph 3c identifies statistically significant disparities on a prohibited basis of 10 basis points or greater. The [REDACTED] shall remunerate affected consumers using the same methodology the CFPB used to calculate damages for the Review Period; and

- g. Specific timeframes and deadlines for implementation of the steps described above.
4. The Regional Director shall have the discretion to make a determination of non-objection to the Compliance Plan or direct the [REDACTED] to revise it. In the event that the Regional Director directs the [REDACTED] to revise the Compliance Plan, the [REDACTED] shall make the revisions and resubmit the Compliance Plan to the Regional Director within thirty (30) days.
5. Upon notification that the Regional Director has made a determination of non-objection to the Compliance Plan, the [REDACTED] shall implement and adhere to the steps, actions, deadlines, and timeframes set forth in the Compliance Plan. To the extent the [REDACTED] seeks to materially change its Compliance Plan after its initial implementation, the [REDACTED] shall submit to the Regional Director for review and determination of non-objection a description of the change to the Compliance Plan. Upon notification, the Regional Director shall have the discretion to make a determination of non-objection to the change or direct the [REDACTED] to revise it. In the event that the Regional Director directs the [REDACTED] to revise the change, the [REDACTED] shall make the revisions and resubmit the change to the Regional Director within thirty (30) days.
6. If the annual portfolio-wide analysis described in paragraph 3d for the preceding year identifies statistically significant disparities on a prohibited basis of 10 basis points or greater, then to the extent the [REDACTED] dealer compensation policy permits dealer discretion, the [REDACTED] shall submit a Revised Compliance Plan to the Regional Director for non-objection within sixty (60) days of the completion of the analysis. The Revised Compliance Plan shall set forth corrective action to reduce the identified disparities based on the [REDACTED] review of the previous year's efforts. The Revised Compliance Plan shall include, as appropriate, modifications to the [REDACTED] dealer compensation policy and/or monitoring programs, dealer education programs, modification and/or termination of dealer relationships, other corrective actions with respect to dealers, or any other action appropriate under the circumstances. The Regional Director shall have the discretion to make a determination of non-objection to the Revised Compliance Plan or direct the [REDACTED] to further revise it. In the event that the Regional Director directs the [REDACTED] to further revise the Revised Compliance Plan, the [REDACTED] shall make the revisions and resubmit the Revised Compliance Plan to the Regional Director within thirty (30) days. Upon notification that the Regional Director has made a determination of non-objection to the Revised Compliance Plan, the [REDACTED] shall implement and adhere to the steps, actions, deadlines, and timeframes set forth in the Revised Compliance Plan.

7. At any time while this MOU is in effect, the [REDACTED] may submit a Non-discretionary Dealer Compensation Plan to the Regional Director for review and determination of non-objection.
 - a. The Non-discretionary Dealer Compensation Plan shall set forth a proposed nondiscretionary dealer compensation structure that includes an appropriate compliance management system to ensure compliance with the ECOA and shall be implemented within ninety (90) days after non-objection by the Regional Director and remain in effect until the termination of this MOU.
 - b. The Regional Director shall make a determination of non-objection to the Non-discretionary Dealer Compensation Plan or direct the [REDACTED] to revise it. In the event that the Regional Director directs the [REDACTED] to revise the Non-discretionary Dealer Compensation Plan, the [REDACTED] shall make the revisions and resubmit the Non-discretionary Dealer Compensation Plan to the Regional Director within thirty (30) days.
 - c. Upon notification that the Regional Director has made a determination of non-objection to the Non-discretionary Dealer Compensation Plan, the [REDACTED] shall implement and adhere to the steps, actions, deadlines, and timeframes set forth in the Non-discretionary Dealer Compensation Plan.
 - d. To the extent the [REDACTED] seeks to subsequently change its Non-discretionary Dealer Compensation Plan after its initial implementation, the [REDACTED] shall submit to the Regional Director for review and determination of non-objection a description of the change. Upon notification, the Regional Director shall make a determination of non-objection to the change or direct the [REDACTED] to revise it. In the event that the Regional Director directs the [REDACTED] to revise the change, the Bank shall make the revisions and resubmit the change to the Regional Director within thirty (30) days. The [REDACTED] may request the Regional Director to conduct an expedited review of any proposed changes when required by circumstances related to the non-discretionary dealer compensation structure. The Regional Director shall conduct an expedited review of the change as soon as practicable and make a determination of non-objection to the change or direct the [REDACTED] to revise it.
 - e. Upon implementation of the Non-discretionary Dealer Compensation Plan, the [REDACTED] may terminate those elements of the Compliance Plan that were required by paragraphs 3a, 3c-g, and 6 of this MOU.
8. The [REDACTED] agrees to launch a pilot program of non-discretionary dealer pricing in an effort to reduce or eliminate the fair lending risk associated with discretionary dealer pricing.
 - a. The [REDACTED] agrees to make best efforts to launch such a pilot by [REDACTED]
 - b. With respect to each pilot program (or variation thereof) that the [REDACTED] launches, the [REDACTED] shall provide the CFPB with details of said pilot program in advance of

its launch. The [REDACTED] shall provide detail sufficient to allow the CFPB to analyze the pilot program and shall provide such detail sufficiently in advance of the launch so as to allow the CFPB reasonable time to analyze the program and to provide comments to the [REDACTED] and so as to allow the [REDACTED] sufficient time to consider the CFPB's comments and to make any appropriate modifications prior to launch. The [REDACTED] shall advise the CFPB when a pilot program is launched, and shall provide details about the timing of the launch and about any public or dealer-facing messaging associated with the launch.

- c. For each pilot program (or variation thereof) that the [REDACTED] launches, the [REDACTED] shall conduct, and provide to the CFPB, analyses concerning the impact and effectiveness of the pilot, including but not limited to analyses of: (1) the impact of the pilot on the [REDACTED] portfolio, the dealers' sales, or the cost of credit for consumers; (2) comparisons of origination volume; (3) dealer feedback; and (4) other possible risks to consumers from the compensation structure (such as steering risk). In addition, the [REDACTED] shall provide the CFPB with copies of any other analyses, including the underlying data, of the pilot programs.
- d. Once a month the [REDACTED] shall provide to the CFPB detailed transaction data of all loans originated under pilot programs. The transaction data shall include the same information as the transaction data provided as part of the examination, along with any other information the [REDACTED] deems useful to interpreting the results of the pilot.
- e. The [REDACTED] will continue its program of seeking dealer feedback on improved fair lending compliance.
- f. The [REDACTED] will continue to develop systems and process enhancements that will allow it to support non-discretionary pricing programs.

II. Reporting Requirements.

- 9. Within forty-five (45) days of the end of the second calendar quarter after the Effective Date, and every six (6) months thereafter, the [REDACTED] shall submit to the Regional Director a true and accurate written Compliance Progress Report, which has been approved by the Board, and which shall at a minimum:
 - a. Separately list each action required by the Compliance Plan pursuant to paragraph 3 and by this MOU;
 - b. Describe the status of each action taken or to be taken to comply with the Compliance Plan pursuant to paragraph 3, as well as each action taken or to be taken to comply with the other provisions of this MOU; and

- c. Summarize and provide supporting data of the activities set forth in paragraphs 3c-f, including the just-completed quarter's (and year's, if applicable) portfolio-wide analysis required by paragraph 3d.
10. The [REDACTED] shall notify the Regional Director of any change in the Bank that may affect compliance obligations arising under this MOU, at least thirty (30) days prior to such change.

III. Role of the Board.

11. The Board shall review all submissions (including plans, reports, programs, policies, and procedures) required by this MOU prior to submission to the Regional Director.
12. Although this MOU requires the [REDACTED] to submit certain documents for the review or non-objection by the Regional Director, the Board shall have the ultimate responsibility for proper and sound oversight of the [REDACTED] and for ensuring that the [REDACTED] complies with federal consumer financial law, including the ECOA, and this MOU. In each instance in this MOU in which the Board is required to ensure adherence to, or undertake to perform, certain obligations of the [REDACTED] the Board shall:
- a. Authorize and adopt such actions on behalf of the [REDACTED] as may be necessary for the Bank to perform its obligations and undertakings under the terms of this MOU;
 - b. Require the timely reporting by the [REDACTED] management of such actions directed by the [REDACTED] management to be taken under the terms of this MOU; and
 - c. Require corrective action be taken in a timely and appropriate manner in the case of any material non-compliance with such actions.

IV. Requirement to Pay Redress.

13. Within thirty (30) days of the Effective Date, the [REDACTED] shall reserve or deposit into a segregated deposit account not less than \$22 million, which represents the estimated amount of total consumer monetary and other damages caused by the practices described in this MOU for the Review Period. The [REDACTED] shall provide written verification of the reservation or deposit to the Regional Director within five (5) days of reserving or depositing the funds described in this paragraph.
14. The [REDACTED] shall conduct an analysis of the records of all automobile financing contracts booked by the [REDACTED] from [REDACTED] (Post-Review Period), using the same methodology that the CFPB applied to the Review Period, to determine (1) whether there exist disparities on a prohibited basis resulting from the [REDACTED] dealer compensation policy for the Post-Review Period and, if so, (2) the scope of monetary and other damages for the Post-Review Period. Within sixty (60) days of the Effective Date, the [REDACTED] shall submit to the Regional Director for review and determination of non-

objection a report describing the results of this analysis in detail, including the calculated damages amount for the Post-Review Period. The underlying data and/or code used in this analysis, along with any other data the CFPB considers relevant to the analysis, shall be made available upon the CFPB's request to CFPB representatives within ten (10) days of such a request. Within thirty (30) days after non-objection by the Regional Director, the [REDACTED] shall add to the reserve or segregated deposit account created pursuant to paragraph 13 an amount not less than the calculated amount of monetary and other damages for the Post-Review Period. The [REDACTED] shall provide written verification of the additional reservation or deposit to the Regional Director within five (5) days of reserving or depositing the additional funds described in this paragraph.

15. Collectively, the amounts reserved or deposited pursuant to paragraphs 13 and 14 will constitute the Remuneration Fund. Any interest that accrues will become part of the Remuneration Fund and will be utilized and disposed of as set forth herein. Any taxes, costs, or other fees incurred by the Remuneration Fund shall be reimbursed by the Bank.
16. Within sixty (60) days of the Effective Date, the [REDACTED] shall submit a Reimbursement Plan to the Regional Director for review and determination of non-objection. The Reimbursement Plan will detail how the [REDACTED] shall identify and reimburse customers who were affected by the pricing disparities described above during the Review Period and the Post-Review Period. The Reimbursement Plan shall be designed to maximize the distribution of the Remuneration Fund, while including reasonable steps to appropriately limit the likelihood of distributing funds to non-victims. The Board shall review and approve the Reimbursement Plan prior to submission to the CFPB. The Regional Director shall have the discretion to make a determination of non-objection to the Reimbursement Plan or direct the [REDACTED] to revise it. In the event that the Regional Director directs the [REDACTED] to revise the Reimbursement Plan, the [REDACTED] shall make the revisions and resubmit the Reimbursement Plan to the Regional Director within thirty (30) days. Within one-hundred and eighty (180) days after notification that the Regional Director has made a determination of non-objection, the [REDACTED] shall make all of the reimbursements and otherwise fully comply with the obligations described in the Reimbursement Plan.
17. The [REDACTED] shall engage an independent auditor or third-party consultant (or other independent party), whose engagement shall be subject to a determination of non-objection by the Regional Director, to produce a Reimbursement Report validating that the [REDACTED] adequately executed the Reimbursement Plan. The Reimbursement Report shall set forth a schedule of remediation payments made by the [REDACTED] to each consumer, including a detailed list of individual consumers paid or reimbursed and applicable dollar amounts. Within two-hundred and ten (210) days after notification that the Regional Director has made a determination of non-objection to the Reimbursement Plan pursuant to paragraph 16, the [REDACTED] shall submit the Reimbursement Report to the CFPB. The Board shall review and approve the Reimbursement Report prior to submission to the CFPB.

18. The [REDACTED] will not be entitled to a set-off, or any other reduction, of the amount of remuneration paid to individual consumers because of any debts owed by the consumers. The [REDACTED] also will not refuse to make a payment based on a release of legal claims or loan modification previously signed by any consumer, nor will the [REDACTED] seek or make any claim, request, or demand of any consumer to execute a release of legal claims or loan modification in order to receive the remuneration the consumer is due pursuant to this MOU.
19. In the event that the amount of remuneration provided to consumers is less than the amount of the Remuneration Fund, the [REDACTED] agrees to pay to the CFPB, in the form of a wire transfer to the CFPB or to such agent as the CFPB may direct, and in accordance with wiring instructions to be provided by counsel for the CFPB, the difference between the amount of remuneration provided to consumers and the amount of the Remuneration Fund.
20. If the CFPB determines, in its sole discretion, that additional redress to aggrieved borrowers is wholly or partially impracticable, otherwise inappropriate, or if funds remain after any additional redress is completed, any remaining funds shall be deposited in the U.S. Treasury as disgorgement.

V. Submissions and Notices.

21. All submissions to the CFPB that are required by or contemplated by this MOU shall be submitted within the specified timeframes or by the specified deadlines, unless an extension is granted pursuant to paragraph 29.
22. Except as otherwise provided herein, all submissions, requests, communications, consents, or other documents relating to this MOU shall be in writing and sent by secured electronic mail or reputable overnight carrier addressed as follows:

- a. To the CFPB:

Steven Kaplan, Regional Director
Attn: Eric Diamant, Field Manager
Consumer Financial Protection Bureau, Northeast Region

[REDACTED]
[REDACTED]

Charles Nier, Regional Counsel
Consumer Financial Protection Bureau, Office of Fair Lending

[REDACTED]
[REDACTED]

- b. To the [REDACTED]

[_____]

[_____]
[_____]

VI. Other Provisions.

23. Nothing in this MOU shall inhibit, estop, bar, or otherwise prevent the CFPB from taking any other action affecting the [REDACTED] if at any time the CFPB deems it appropriate to do so to fulfill the responsibilities placed upon the CFPB by law. This MOU does not constitute a release or settlement of any actions by the CFPB or any other governmental entity. The CFPB reserves the right to impose further corrective measures based on review of actions taken or materials submitted pursuant to this MOU.
24. In the event the CFPB files an enforcement action against the [REDACTED] including claims related to the conduct and violations described in this MOU and in the Supervisory Letter dated February 14, 2014, the [REDACTED] hereby waives its right to assert any and all statute-of-limitations defenses to said claims and agrees that any statutes of limitations applicable to said claims are tolled as of the Effective Date of this MOU.
25. The [REDACTED] shall create or maintain all documents and records necessary to demonstrate full compliance with each provision of this MOU, including but not limited to, reports submitted to the CFPB, analyses and all information related to the analyses conducted pursuant to paragraph 3, and all documents and records pertaining to redress, as set forth in Section IV above. All such documents and records shall be retained at least until the termination of this MOU, and shall be made available upon the CFPB's request to CFPB representatives within thirty (30) days of a request.
26. This MOU and its contents constitute confidential supervisory information that is subject to the rules of the CFPB regarding the availability and disclosure of such information consistent with 12 CFR Part 1070.
27. This MOU is effective on the Effective Date shown on the first page.
28. This MOU shall remain in effect until terminated, modified, or suspended by written notice of such action by the CFPB, acting by and through its authorized representatives. To the extent the provisions described herein require ongoing performance, they shall represent continuing commitments of the [REDACTED]
29. Calculation of time limitations for compliance with the terms of this MOU run from the Effective Date and shall be based on calendar days, unless otherwise noted. The Regional Director, or another CFPB authorized representative, may extend any of the deadlines set forth in the provisions of this MOU upon a written request by the [REDACTED] that includes reasons in support for any extension. No extension will be effective unless made in writing by the Regional Director or another CFPB authorized representative.
30. Notwithstanding the deadlines specified in this MOU, the [REDACTED] shall ensure that all corrective actions required in connection with the violations of law and/or regulation

discussed in the Supervisory Letter dated February 14, 2014, are completed and that adequate policies, procedures, and systems are established or revised and thereafter implemented within the timeframes set forth in the Supervisory Letter, as well as those set forth in this MOU. In the case of any inconsistency between the Supervisory Letter and this MOU, the provisions of this MOU shall control.

31. The requirements of this MOU shall be binding upon the [REDACTED] its officers, agents, servants, employees, and attorneys, and any successors and assigns thereof.
32. Each Director signing this MOU attests that he or she voted in favor of a Board Resolution authorizing the consent of the [REDACTED] to the issuance and execution of this MOU. This MOU may be executed in counterparts by the Directors after approval of execution of the MOU at a duly called Board meeting. A copy of the Board resolution authorizing execution of this MOU shall be delivered to the CFPB, along with the executed original(s) of this MOU.

[Remainder of page intentionally left blank]

WHEREFORE, the undersigned, duly authorized to enter into this MOU on behalf of the [REDACTED] and the CFPB, acting by and through its Regional Director, hereby execute this MOU.

Consumer Financial Protection Bureau

By:

Steven Kaplan
Regional Director, Northeast Region
Consumer Financial Protection Bureau
[REDACTED]

Date

[REDACTED]

[REDACTED]

[REDACTED]

Date

[REDACTED]

Date