

October 21, 2014

# Auto Initiative Update and Next Steps

Internal – Sensitive and Pre-decisional  
Confidential Supervisory Information

# Auto Initiative Update and Next Steps

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- Progress Toward Two Key Objectives
- Three Industry-Generated Proposals
- Outcome of Indianapolis Roundtable
- Working Plan
  - Supervisory Matters (see attached tracker)
  - Enforcement Matters (see attached tracker)
  - Continued Outreach
  - Evaluate Compensation Models

# Progress Toward the Two Key Objectives of the Auto Initiative

## 1. Addressing Discrimination

### Tools:

- Compliance bulletin
- Supervisory / Enforcement activity covering [REDACTED] of market
- Ally public consent order
- [REDACTED] confidential MOUs
- [REDACTED] MRAs
- Ally compliance plan
- [REDACTED] PARR letter

### Outcomes:

- Broad adoption of robust CMS
  - Broad adoption of consumer remuneration [REDACTED]
- Broad consideration of alternative structures
  - [REDACTED] adopted lower caps [REDACTED]
  - [REDACTED] adopted NDC
  - Fifth Third adopted lower caps (180 or 205 (AZ 175) bps)
  - [REDACTED] adopted lower caps [REDACTED]

## 2. Encouraging Alternatives

### Tools:

- Compliance bulletin
- Ally public consent order
- [REDACTED] confidential MOUs
- Larger Participant Rule
- Supervisory Highlights
- Indianapolis Roundtable

### Outcomes:

- Industry dialogue re: global resolution
- [REDACTED] adopted lower caps
- [REDACTED] CEO indicated an intent to move to flat fees
- [REDACTED] internal task force is preparing for conversion to flat fees "when inflection point in the market occurs"
- Enhanced dealer compliance

# Three Industry-Generated Proposals for Global Resolution

## Retain Discretion and Engage in Robust Dealer Pricing Monitoring

- Past CFPB Statement: *Indirect auto lenders that choose to retain dealer markup and discretionary compensation policies should be aware of the fair lending risks of such policies. They can help protect themselves and their consumers by implementing systems for monitoring and corrective action by:*
  - *sending communications to all participating dealers, stating the lender's expectations with respect to ECOA compliance;*
  - *conducting regular analyses of both dealer-specific and portfolio-wide loan pricing data for potential disparities;*
  - *commencing prompt corrective action against dealers when analysis identifies unexplained disparities on a prohibited basis; and*
  - *promptly remunerating affected consumers.*

## Narrow Discretion and Engage in Light Dealer Pricing Monitoring

- 9/18/2014 CFPB Statement: *[Our supervisory activity identified significantly lower caps, of 50 or 100 basis points, in place at some lenders.] These significant limits on discretionary pricing considerably reduced or nearly eliminated markup disparities for the particular product or channel subject to the limit, in some circumstances.*
- Proposed CFPB Message: Narrower discretion allows light dealer pricing monitoring.
  - No dealer-specific pricing analyses
  - No dealer corrective action program
  - Annual portfolio-wide analysis serves as confirmation
  - The incidence of discriminatory disparities is rare/nonexistent, requiring infrequent consumer remuneration
  - Lenders would maintain compliance management systems to monitor for compliance with all federal consumer laws, including ECOA

## Eliminate Discretion and Eliminate Dealer Markup Monitoring

- Past CFPB Statement: *Industry participants have identified several possible models of nondiscretionary dealer compensation. One model compensates dealers using the same flat amount for each loan. Under another model, dealers are paid a flat percentage of the amount financed. Alternatively, a lender could develop a hybrid system in which compensation was tied to both the amount financed and the duration of the contract. Both of these latter approaches are examples of nondiscretionary compensation systems that allow for differences in compensation based on loan amount and potentially term and hence differ from a flat fee approach. These are a few examples of potential non-discretionary compensation systems that mitigate fair lending risk. There could be many other possibilities.*
- Proposed CFPB Message: Eliminating discretion eliminates the need for dealer markup monitoring.
  - Lenders would maintain compliance management systems to monitor for compliance with all federal consumer laws, including ECOA

## Continued Outreach (Mkts/EA/FL)

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- Continuing outreach function with specific institutions and consumer groups on alternative dealer compensation
- Recent/Next Steps:
  - AFSA Law Committee Meeting (6/18 in MN)
  - NIADA (Independent Dealers) Conference (6/24-6/25 in NV)
  - Allied Solutions Conference (7/14-16 in CA)
  - CBA Auto Finance Committee (9/30 in DC; spoke)
  - Industry-CFPB dialogue re: broad solutions (ongoing)
  - CBA Fair Lending Committee (10/22 in DC; speaking)
  - Wolters-Kluwer CRA & Fair Lending Colloquium (11/3 in CA; speaking)
  - Mike Carpenter, Ally CEO (11/6 in DC)
  - FICO World Conference (11/12-13 in CA; speaking)
  - NIADA Meeting (11/12 in DC)
- **Goal:** Continue and maintain open dialogue with relevant stakeholders

# Evaluate Compensation Models (RMR)

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- Continue evaluation of possible alternative dealer compensation models
- Next Steps:
  - Evaluate the impact of the NADA-CFPB straw person: lower cap plus flat fee
    - RMR, SEFL, and Legal are reviewing the new NADA proposal for potential legal issues and whether it would be the optimal obtainable solution
    - Expand cap reduction analysis (OR)
    - Deadline: Complete in October
  - Evaluate the impact of adopting a stringent CMS
    - Potential data: Ally, [REDACTED]
    - Deadline: On-going, no deadline
  - Develop responses regarding non-discretionary compensation models, including NADA markdown proposal
  - Analysis of implemented Pilot programs when data becomes available
- Completed:
  - Evaluate [REDACTED] markdown model (OR)
- **Goal:** Determine Bureau's public position on various dealer compensation models.