CARLTON FIELDS

CFPB and DOJ Continue Enforcement Orders Against Indirect Auto Lenders Based on Discriminatory Loan Pricing Policies

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In February the Consumer Financial Protection Bureau and Department of Justice announced entry of a consent order with Toyota Motor Credit, the U.S. financing arm of Toyota Motors' subsidiary Toyota Financial Services. The order culminated in an investigation begun in 2013, and is the third enforcement order entered this year against an indirect lender based on a finding that loan pricing policies resulted in discriminatory impact in violation of the Equal Credit Opportunity Act. Indirect auto lenders such as TMC set interest rates at which they are willing to purchase auto consumer finance contracts based on the consumer credit scores and other risk criteria and provide these "buy rates" to the auto dealers. It has been a longstanding industry practice for lenders to permit dealers to mark up contract interest rates above the indirect lender's buy rate and receive a participation based on the interest revenue differential as additional compensation for originating the loan. In a bulletin issued in 2013, the CFPB advised indirect lenders that dealer markup policies which give dealers discretion to increase contract rates "create a risk of pricing disparities on prohibited bases such as race or national origin," warning that it would pursue lenders for ECOA violations. Shortly thereafter it entered its first enforcement order against an indirect auto lender bank, assessing nearly $100 million in remediation and penalties based on the discriminatory impact of dealer markup policies. The CFPB and DOJ did not find that TMC intentionally discriminated against its customers, but rather, that its discretionary pricing and compensation policies resulted in discriminatory outcomes as to loans for which TMC did not reduce the loan prices through subsidies. Specifically, the enforcement order states that TMC permitted dealers to mark up contract rates on non-subsidized loans up to 250 basis points, a policy which resulted in minority borrowers paying higher interest rates than non-Hispanic white borrowers without regard to borrower creditworthiness. A similar order was entered against another major auto manufacturer's financing captive in July. The order requires TMC to change its dealer pricing and compensation policies to reduce dealer discretion in setting interest rates and pay restitution of up to $21.9 million to minority borrowers whom the agencies found paid higher interest rates without regard to creditworthiness as a result of dealer markups permitted by TMC. This brings to $162 million the total remediation ordered in the four orders entered against indirect lenders since 2013. According to the CFPB, auto loans are the third-largest source of outstanding household debt in the United States, after mortgages and student loans.

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