Consumer Financial Protection Bureau

1700 G Street, N.W., Washington, DC 20552

August 31, 2015

The Honorable Jeb Hensarling
Chairman
Committee on Financial Services
U.S. House of Representatives
2129 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Hensarling:

Thank you for your letter regarding the distribution and administration of the Consumer Financial Protection Bureau and Department of Justice's joint settlement with Ally Financial Inc. and Ally Bank. I appreciate the opportunity to discuss our work on these important issues with you.

As you know, in December 2013, the Bureau and the Department of Justice completed a joint enforcement action against Ally for discrimination in its indirect auto lending, specifically regarding disparities in discretionary dealer markup. As a result of this public enforcement action, Ally was required to pay $80 million in damages to address harm affecting over 235,000 consumer loans[1]; hire a settlement administrator to distribute funds to victims; monitor or eliminate discretionary dealer markups to prevent future discrimination; and pay an $18 million penalty. The Bureau and the Department of Justice have been working closely with the administrator and Ally to implement consumer outreach and participation methods and materials in order to effectively distribute the settlement fund.[2] The manner of distribution is specific to this particular case and is not necessarily indicative of how settlement funds may be distributed in other cases.

To be eligible for a payment, a borrower must have entered a retail installment sale contract to buy a vehicle financed by Ally Financial Inc. or Ally Bank between April 1, 2011, and December 31, 2013, and at least one borrower on the contract must be African American, Black, Latino, Hispanic, of Spanish origin, Asian, Native Hawaiian, and/or other Pacific Islander. The customer must also have been identified by the agencies as having been overcharged, namely paying more than the non-Hispanic white average markup.

The agencies used the Bayesian Improved Surname Geocoding proxy method—described in the Bureau's Proxy Methodology White Paper[3]—to identify consumers potentially eligible to receive relief from the settlement fund. The White Paper explains the research that underlies the BISG analysis, a widely-accepted methodology used in fair lending and other analyses. The Ally

[1] This represents about [redacted] of the total number of Ally auto loans during the relevant time period.
[2] Information furnished by the Bureau regarding the Ally settlement—including this letter and attached materials—is not intended to represent the views or positions of the Department of Justice.
[3] http://files.consumerfinance.gov/f/201409_cfpb_report_proxy-methodology.pdf.

settlement—including decisions regarding utilization of the BISG proxy methodology as part of that settlement—is the result of engagement across the Bureau and with the Department of Justice.

The agencies are identifying eligible consumers using a combined opt-in/opt-out approach. Beginning on June 26, 2015, the administrator sent two different direct mailings to consumers. Borrowers with the highest likelihood of being in one of the previously specified racial/ethnic groups based on combined BISG probabilities received a mailing indicating that they would receive remuneration unless they opt-out due to ineligibility or any other reason. Other borrowers who were more likely than not to be in one of the specified racial/ethnic groups based on combined BISG probabilities received a mailing indicating that they are required to opt-in to receive remuneration if they are indeed eligible to receive settlement funds.

As set forth on the Bureau's website[4] and the settlement administrator's website,[5] affected borrowers who were not contacted through direct mailing are being given the opportunity to self-identify as being in one of the specified racial/ethnic groups—or having a co-borrower who is—using the eligibility request form available on the settlement administrator's website, and if otherwise eligible, may also receive payment. The Bureau's website, as well as the settlement administrator's website, contains additional information for consumers. Information on the settlement administrator's website is available in English and Spanish. Information is also available in Mandarin, Cantonese, Vietnamese, Korean, and Tagalog upon request.

The total amount of monetary relief to be paid to affected consumers is $80 million, plus any interest that has accrued in the settlement fund. The direct mailings that were sent to potential settlement recipients contained an estimated minimum payment amount, specific to each individual borrower. The individual minimum payments included in the direct mailings reflect the amount that was overpaid by that borrower, adjusted to account for the overall size of the settlement fund. The amount was not adjusted to account for an individual borrower's BISG probability. To ensure that the full amount of the settlement fund is distributed to eligible borrowers who are participating in the settlement, the final amount of direct and indirect damages each harmed consumer will receive can only be determined once the pool of eligible borrowers who wish to participate is identified.

Affected consumers have until October 24, 2015 to opt-in or opt-out of the settlement as applicable. The Bureau and the Department of Justice will jointly provide to the administrator and Ally a list of each eligible consumer's final payment amount. We anticipate that the full amount of the settlement fund will be distributed to affected consumers.

We have enclosed the Statement of Work executed between Ally and the administrator, Heffler Claims Group; progress reports submitted by Heffler[6]; a sample of the mailing sent to opt-out borrowers; a sample of the mailing sent to opt-in borrowers; and an eligibility request form. The Bureau would be happy to provide a staff briefing to discuss the information and documents we are providing today. The enclosed document may contain confidential information of the Consumer Financial Protection Bureau. 12 C.F.R. 1070.40 et seq. prohibits recipients of the Bureau's confidential information from further disclosing the information either orally or in writing, except

[4] http://www.consumerfinance.gov/blog/ally-settlement-administrator-will-contact-eligible-borrowers-soon/.

[5] https://www.autofinancesettlement.com.

[6] We are happy to explain the calculations underlying Heffler's progress reports should you request a briefing.

in specified circumstances, without first obtaining the prior permission of the Bureau. The document may also be subject to disclosure restrictions set forth in other Federal laws, including but not limited to the Freedom of Information Act, 5 U.S.C. § 552, the Trade Secrets Act, 18 U.S.C. § 1905, the Procurement Integrity Act, 41 U.S.C. §2102, and the Privacy Act of 1974, 5 U.S.C. § 552a. The Bureau therefore requests that the Committee protect this information from any disclosure that would cause an unwarranted invasion of privacy or harm to any of the interests served by the law and policy prohibiting the public release of these documents. We are providing these materials to you without waiving applicable protections and will assert those protections to keep sensitive information from being disclosed without appropriate authorization.

Should you have any additional questions, please contact me or have your staff contact Catherine Galicia in the Bureau's Office of Legislative Affairs. Mrs. Galicia can be reached at [redacted]

Sincerely,

Richard Cordray
Director

cc: The Honorable Maxine Waters, Ranking Member, Committee on Financial Services