Indirect Auto Loan Discrimination: Ally Consumer Remuneration

Office of Fair Lending and Equal Opportunity

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Goals

- Provide background on the different available options for distributing consumer remuneration in the pending indirect auto lending matters (see Slides 3-5)

- Recommend approach for identifying harmed borrowers for Ally consent order (see Slide 6)

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How can you identify recipients?

- **Option 1 - Proportional Method**: Provide damages to individuals proportional to their probability of being in a protected class

  - Results in many more individuals receiving payment, although setting a minimum monetary award would constrain the number of victims identified (*e.g.*, minimum damages amount of $100 would largely cap distribution to those who are at least 20% likely to be in a protected class)

  - Consistent with the proportional method we used to establish liability, which identifies more protected class borrowers than alternative methods

  - However, damages will go to many non-Hispanic White borrowers; this method may result in more false positives than other methods because, in the lower minority thresholds, many of the individuals are not protected class members

  - Most actual protected class victims will not be fully compensated because they will only have a proportion of their harm addressed

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How can you identify recipients? (cont.)

- **Option 2 - Threshold Method**: Provide full damages to individuals who meet a specified threshold of their probability of being in a protected class (*e.g.*, greater than 50% probability of being African American)

  - Key Tradeoff: As you lower the threshold, you include more victims, and increase the proportion of non-Hispanic Whites

  - Used in at least one DOJ case, which calculated disparities using threshold method

  - The higher you set the threshold, the fewer individuals you will identify as victims, resulting in either leftover funds or overcompensating identified victims (below a zero markup). To identify the same number of individuals as the estimated number of victims, threshold must be set fairly low (*e.g.*, 30-40%).

  - The higher the threshold, the smaller the percentage of those receiving compensation who are non-Hispanic White. Regardless of the threshold, damages will go to non-Hispanic White borrowers; if combined with verification methods, may limit risks.

  - Must specify whether the threshold is based on the probability of being in a particular protected class (and account for the possibility that individuals may meet the threshold of multiple protected classes), or the combined probability of being in any one of the three protected classes

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Threshold Method: how can you verify protected class membership?

- **Option 1 - Opt-out Forms**: consumers receive remuneration unless they opt out

    - Because we expect few opt-outs, we should send notices only to consumers with a strong probability of being in a protected class (*e.g.*, consumers who have 50% or more probability of being Black)

    - Provides some protection from criticism that we are giving damages to non-Hispanic White borrowers, but it may not be useful in filtering out non-Hispanic White borrowers

    - Concern that industry will not want to implement

- **Option 2 - Opt-in Forms**: consumers must opt in to get remuneration

    - Provides strong protection from criticism that we are giving damages to non-Hispanic White borrowers; could be sent to all consumers or only borrowers with a strong probability of being in a protected class

    - Anticipate limited uptake rate such that many victims will not get damages

        - However, DOJ reports opt-in rates of 70-80%, but this was with substantial resource deployment (including, *e.g.*, overseeing attorney outreach by 73 USAOs).

    - Concern that industry will not want to implement, particularly in supervisory context

- **Option 3 - No verification:** consumers receive remuneration without verifying identity

    - More efficient and less costly; likely maximizes take-up

    - Risks critique that the CFPB is remunerating non-Hispanic White borrowers

    - The DOJ will likely strongly oppose

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Proposed Tiered Approach for Ally

- We recommend that the Bureau employ the **threshold approach** with a combined **opt-in/opt-out** approach:

  - Tier 1: Send direct mailings and allow opt out above high threshold (*e.g.*, borrowers with >80% likelihood of being a minority). Although two mailings are contemplated, eligible borrowers need only cash a check to receive remuneration.

  - Tier 2: Send direct mailings and require opt in for mid-range probabilities (*e.g.*, borrowers with 40-80% likelihood of being a minority). Eligible borrowers must respond before receiving a check.

  - Tier 3: Allow other borrowers to self-identify

    - Spectrum of possibilities ranging from reliance on website, to including advertising via radio or newspaper, to mailing individualized postcards.

- Fair Lending and Research will make a final recommendation for the precise thresholds and the identification methods in Tier 3, after consultation with Supervision and Justice.

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Appendix

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Threshold Data in Ally

|	Number of observations (loans)				Estimated minority* loans			
	Confidential and Pre-Decisional :: Prepared at the direction of counsel :: Contains Confidential Supervisory Information							
Ally - loan counts and estimated minority counts by range of probability of assignment for non-subvented loans								
Range of probability of assignment - minority*	Markup = 0	Markup > 0		Total	Markup = 0	Markup > 0		Total
		Markup <= White average	Markup > White average			Markup <= White average	Markup > White average	
0%-10%								
10%-20%								
20%-30%								
30%-40%								
40%-50%								
50%-60%								
60%-70%								
70%-80%								
80%-90%								
90%-100%								
* Minority probability is the sum of the probabilities of being Black, Asian/Pacific Islander, and Hispanic								

- How to read this chart:

  - **Blue highlighted Cells**: If we set the threshold at 90%, ▮▮▮ individuals will be contacted and OR estimates that ▮▮▮ of these individuals will be a minority and ▮▮▮ (the difference; 2.8% of borrowers) will not.

  - **Vertical Sum of Boxed Cells**: If we set the threshold at 50%, ▮▮▮ individuals will be contacted and OR estimates that of these individuals ▮▮▮ will be a minority and ▮▮▮ (the difference; 14% of borrowers) will not.

    - OR estimates that 24.1 % of affected borrowers will not receive a mailing as a result of this approach. The percentage of borrowers not receiving a mailing decreases to 19.3% if we lower the threshold to 40%.

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Related Questions

- How is remuneration in the supervisory context different than remuneration in the Ally enforcement matter?
  - The Ally Consent Order has the CFPB identifying borrowers and an independent administrator distributing remuneration, whereas the anticipated supervisory MOUs contemplate the institutions identifying borrowers and distributing funds, with CFPB oversight
- What does remuneration in the context of CMS look like?
  - Unlike the retrospective relief discussed above, the same institution must have an effective fair lending compliance management system that must address consumer harm prospectively and without Bureau oversight (through immediate account credits, etc.)
- Factors to consider include:
  - Ease of application (and required resources)
  - Ease of monitoring
  - Limited discretion to ensure consistency of approach
  - Propriety of seeking racial/ethnic verification

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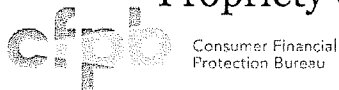
Related Questions

- How do you calculate individual consumer damages?

    - Damages include both direct and indirect damages

    - Affected borrowers who paid more than the non-Hispanic white average are harmed and therefore eligible for damages

    - As to direct damages, harmed borrowers will receive (a) a minimum of the difference between the total payment stream of their loan with their actual interest rate and the total payment stream of their loan with their interest rate reduced by the applicable identified disparity (b) and a maximum of the difference between the total payment stream of their loan with their actual interest rate and the total payment stream of their loan with no markup.

    - Specific damages: both indirect and direct can only be determined once the pool of identifiable harmed borrowers is identified.