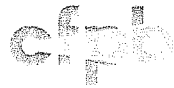




Indirect Auto Loan Discrimination: Ally Consumer Remuneration

Office of Fair Lending and Equal Opportunity



Consumer Financial
Protection Bureau

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Recap: how will we identify recipients?

- **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 but 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.

Recap: 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 very limited uptake rate such that many victims will not get damages
 - However, DOJ reports opt-in rates of 70-80%, with substantial resource deployment (including, *e.g.*, overseeing 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

Recap: proposed tiered approach for Ally

- 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.

Update: DOJ's response to the three-tiered approach

- DOJ is firmly against employing the Tier 1 opt out.
 - DOJ's position is that we eliminate Tier 1 (opt out) and provide remuneration based on Tiers 2 (opt in) and 3 (borrowers self-identify).
 - DOJ's main concern is that non-Hispanic White consumers will receive checks unless we require written verification of eligibility.
- Based on this concern, DOJ is considering requiring all eligible consumers to verify their identity under penalty of perjury.
 - This would likely require each consumer to affirm his/her protected basis, Ally account number, vehicle details, loan origination date, etc.

Our Options in Responding to DOJ

- **Option 1:** Push back at senior levels against DOJ's proposal and advocate employing the three-tiered approach the CFPB previously proposed
 - The CFPB's approach is likely to result in checks sent to more affected consumers, but likely will result in checks being sent to some non-Hispanic White consumers who fail to opt out.
- **Option 2:** Accept the DOJ's position and remunerate consumers based on a two-tiered approach involving opt-in mailings and self-identification.
 - This approach minimizes the possibility that checks will be sent to non-Hispanic White consumers, but is likely to result in fewer payments to eligible consumers.
 - Requiring verification of eligibility under penalty of perjury will likely reduce uptake rate, but may limit payment to non-Hispanic Whites.

CFPB and DOJ approaches, compared

- **CFPB approach:**
 - Assuming we employ an 80% BISG threshold for opt outs and a 50% BISG threshold for opt ins, we estimate:
 - **61.2 - 72.5%** (██████████) of eligible minority consumers* will receive checks, depending on uptake rate and based on certain assumptions**
 - **5.0%** (██████) of the initial opt-out notices will go to non-Hispanic White consumers. If ineligible consumers do not opt out, they will receive a check.
 - If we employ a 90% BISG threshold for opt outs and a 50% BISG threshold for opt ins, we estimate:
 - **54.1 - 70.5%** (██████████) of eligible minority consumers will receive checks, depending on uptake rate and based on certain assumptions**
 - **2.8%** (██████) of the initial opt-out notices will go to non-Hispanic White consumers. If ineligible consumers do not opt out, they will receive a check.
- **DOJ Approach:** if we adopt DOJ's proposed limitation to opt ins and use a 50% BISG threshold, we estimate:
 - **15.2 - 60.7%** (██████████) of eligible minority consumers will receive checks, depending on uptake rate and based on certain assumptions**
 - Absent false verifications, no ineligible consumers will receive checks
- **Consent Orders:** identify \$80 million in damages and approximately 235,000 affected consumers. Because the DOJ's approach will likely result in lower uptake rates, it will be more difficult to exhaust the fund if we don't allow opt-out above 80%.

*Eligible minority consumer means: (1) an actual African-American, Asian / Pacific Islander, or Hispanic consumer (as self-reported by either opt in or opt out); (2) with a combined BISG probability of at least 50% of being any of the three protected classes; who paid more than the non-Hispanic White average for an auto loan that Ally purchased during the period from April 2011 through December 2013.

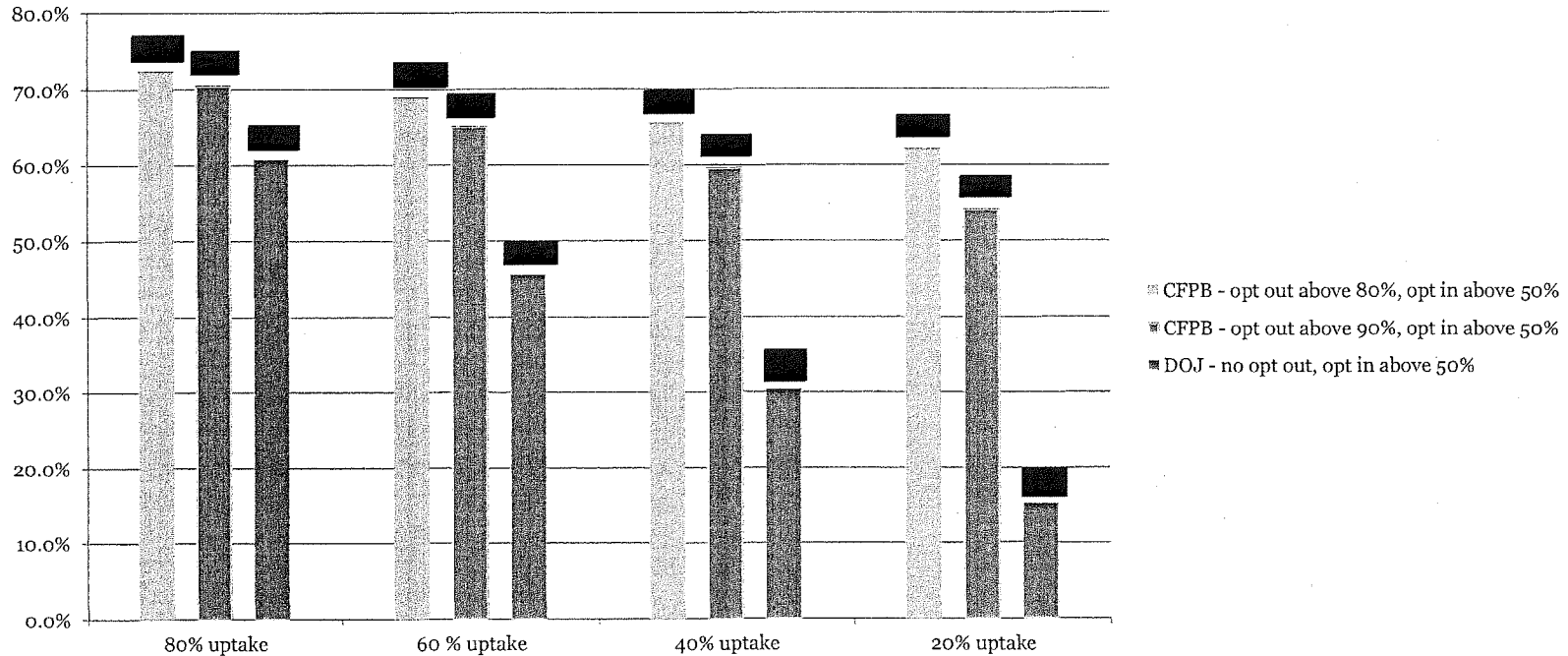
**Assumes a 0% opt out and that opt-ins will range from 20% to 80%, with the lower figures representing a 20% opt in and the higher figures representing an 80% opt in. DOJ obtained 70-80% opt in for recent mortgage discrimination cases based on significant resource deployment. Actual response rates may be different, and some consumers who receive a check may not cash the check. These figures do not consider checks mailed to individuals who self-identify as eligible without receiving a mailing (Tier 3). Note that if we use a 50% lower threshold for opt ins, 24.1% of eligible minority consumers will not receive a mailing. The number of checks mailed to eligible minority consumers increases by approximately 3.8%, at the most, by reducing the lower threshold to 40%. The estimated numbers of eligible minority consumers are based on extrapolations from the Ally consent order, which approximates 235,000 affected consumers.



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Appendix

Class members receiving checks, depending on uptake



How to read this table:

Uptake rate: The uptake rate is a percentage based on the number of opt-in notices that consumers return divided by the total number of opt in forms mailed. For consumers that receive an opt-in notice, we will only send a check to the consumer after we receive a completed opt in. As such, the percentage of checks actually cashed may be lower than the percentage of opt ins.

Percentages and numbers : reflect the estimated eligible minority consumers receiving checks. Actual results may be different. Percentages are based on analyzing data for the exam period (see slide #11) and rely on the same assumptions described in slide #7. Estimated numbers of eligible minority consumers extrapolate from exam period data based on a multiplier and the approximately 235,000 affected consumers identified in the Consent Orders. Numbers are rounded to the nearest thousand.

Eligible minority consumer means: (1) an **actual** African-American, Asian / Pacific Islander, or Hispanic consumer (as self-reported by either opt in or opt out); (2) with a combined BISG probability of at least 50% of being any of the three protected classes; who paid more than the non-Hispanic White average for an auto loan that Ally purchased during the period from April 2011 through December 2013.



Threshold Data in Ally

Confidential and Pre-Decisional :: Prepared at the direction of counsel :: Contains Confidential Supervisory Information								
Ally - loan counts, estimated minority counts, White non-Hispanic counts by range of probability of assignment for non-subvented loans								
Range of probability of assignment - minority*	Number of observations (loans)				Estimated minority* loans			
	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 ** Data represents period from April 2011 through March 2012

▪ How to read this chart:

- **Blue highlighted Cells:** If we set the threshold at 90%, [redacted] individuals will be contacted and OR estimates that [redacted] of these individuals will be a minority and [redacted] (2.8% of borrowers) will not.
- **Vertical Sum of Boxed Cells:** If we set the threshold at 50%, [redacted] individuals will be contacted and OR estimates that of these individuals [redacted] will be a minority and [redacted] (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%.

