Ally Term Sheet and Talking Points

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CMS

- Lower the caps by 100 bps;
- Conducting regular analyses of both dealer-specific and portfolio-wide loan pricing data for potential disparities on a prohibited basis resulting from dealer markup and compensation policies;
  - Analysis should not have any controls
- Commencing prompt corrective action against dealers, including restricting or eliminating their use of dealer markup and compensation policies or excluding dealers from future transactions, when analysis identifies unexplained disparities on a prohibited basis;
  - Matched Pair File review should not be conduct to disprove progressive action
- Promptly remunerating affected consumers when unexplained disparities on a prohibited basis are identified either within an individual dealer's transactions or across the indirect lender's portfolio.
  - Portfolio-wide
    - If disparity is <5, then no remuneration is necessary
    - If disparity is ≥5 but <10, then you must consult with the Bureau as to appropriate action and at a minimum, you must remunerate any disparities at the dealer level that are ≥10
    - If disparity is ≥10 then remunerate consumers proportionally
  - Dealer-wide
    - In discretion of institution, unless noted above.

Talking Points

- We acknowledge that the proposed enhancements to your Dealer Monitoring Program address a number of our concerns expressed in previous meetings.
- We would like to have further discussion regarding several areas of the Dealer Monitoring Program.
  - While you have certainly limited your controls with the proposed enhancements, we do not think the either the dealer specific or portfolio wide analysis should include any controls.
  - We agree that you should contact dealers earlier prior to the matched pair analysis. We also believe that the dealer corrective action should occur without matched pair analysis.
  - We agree that consumer remuneration is appropriate if sufficient evidence indicating difference in rate spreads caused by discrimination. We believe that consumer remuneration is appropriate as follows (see above).

Non-discretionary dealer compensation

- Within one year from the consent order, Ally will eliminate dealers' discretion to increase the interest rate of its auto loans and adopt a non-discretionary dealer compensation structure.
- Ally will submit for non-objection to the Regional Director setting forth a structure that is consistent with the following principles:
- The Bureau, may in its discretion extend this one year period upon a showing that such movement would reduce Ally's market share significantly
- In the event that Ally's market share declines by more than 20% for more than 3 months following the shift, Ally may apply to the Bureau to modify this order.

Economic Damage ~~Calculations~~

I. Scope and Timing

A. Economic Damages will cover all auto loans originated between April 1, 2011 to December 31, 2013 (*Date T*).

B. Remediation for loans originated between April 1, 2011 and March 31, 2012 shall be completed within 30 days of a federal district court's approval of the this Consent Order. Remediation for loans originated between April 1, 2013 and December 31, 2013 shall be completed within 30 days of the court's approval of this Consent Order or February 14, 2014, whichever is later.

II. Disparities and Economic Damages Calculation

A. For each protected class, the average disparity will be calculated using the proportional method (i.e., using probabilities directly in the estimation model) based on the BISG probability proxies. Aside from the BISG probabilities, the model should contain no other controls. Average disparities will be estimated separately by period – 4/1/2011 to 3/31/2012, 4/1/2012 to 3/31/2013 and 4/1/2013 to 12/31/2013. Hereinafter, "PC" refers to protected classes that show material and significant disparity in a period.

B. Using the disparity estimates from II.A, the amount of *Total Economic Damages as of Date T* will be calculated as follows.

1. For every borrower whose BISG probabilities of being one or more of the PCs are greater than zero -

a. Construct an *adjusted contract rate* by subtracting the estimated disparity from the borrower's contract rate. If the borrower has positive BISG probabilities for multiple PCs, calculate an adjusted contract rate for each PC.

b. Construct *adjusted loan amounts* by allocating the borrower's loan amount to different PCs proportional to the borrower's BISG probabilities.

c. For each *adjusted loan amount*, calculate the *total difference in payments* using the contract rate vs. the *adjusted contract rate*, between the time of origination and *Date T*.

d. Sum the *total difference in payments* for each PCs to get the borrower's damages.

2. In the event that a borrower prepaid or defaulted on a loan before *Date T*, calculated damages as of the prepay or default date. If a loan was sold before *Date T*, calculate damages for the full term of the loan.

3. *Total Economic Damages as of Date T* = sum of damages for all borrowers.

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Future Economic Damages

1. Compensation for damages that continues from *Date T* to the end of the loan term will be done through a reduction in contract rate.

Emotional Distress Damages and Civil Money Penalty

1. Ally shall pay $30 million CMP.
2. Emotional Distress Damages shall be $175 / PC borrower.

- ~~Calculate total liability through the present date for all borrowers with a probability greater than zero of being in a protected class based on actual Ally loan data regarding the current status of all loans~~
  - ~~Calculation of amount of liability:~~
    - ~~The disparity should be calculated annually from Apr. 1, 2011-Mar. 31, 2012; Apr. 1, 2012-Mar.31, 2013; Apr. 1, 2013-Dec. 31, 2013~~
    - ~~Construct an adjusted contract rate, netting out the full estimated disparity for a given prohibited basis: (adjusted contract rate) = (actual contract rate) – (estimated disparity)~~
    - ~~Construct an adjusted amount financed, allocating the fraction of dollars to a prohibited basis based on the probability of assignment: (adjusted amount financed) = (amount financed)*(probability of assignment to a prohibited basis)~~
    - ~~Calculate the difference between payment stream using the adjusted amount financed (in 2) based on~~
      - ~~Actual contract rate~~
      - ~~Adjusted contract rate (adjusted for the full disparity)~~
  - ~~Calculating the extent of liability:~~
    - ~~Loans that are still held: calculate liability through present date~~
    - ~~Loans that were paid off early: calculate liability based on period held~~
    - ~~Loans that have expired terms: calculate liability for full life of the loan~~
    - ~~Loans in default: calculate liability up through default~~
    - ~~Loans that were sold: calculate liability for full life of the loan~~
- ~~Calculate expected damages~~
  - ~~Calculate total liability based on same method as above, except do not adjust for actual life of the loan~~

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Comment [SW1]: Emotional distress in this context doesn't make a lot of sense to me. Could we just shift the whole thing to CMP?

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