

CONSUMER FINANCIAL PROTECTION BUREAU (CFPB) AUTO FINANCE FORUM

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Statement of National Consumer Law Center (NCLC) Director of Litigation Stuart Rossman

I. NCLC Auto Finance Discrimination Litigation

1998-2007: 12 cases brought under the Equal Credit Opportunity Act (ECOA) against captive and non-captive finance banks and finance companies, representing 70% of auto loan volume at the time, alleging that the defendants established specific identifiable and uniform credit pricing systems that authorized car dealers to subjectively markup objective risk-based financing rates. The effect of this discretionary finance charge markup resulted in a widespread discriminatory impact on African American and Hispanic financing applicants in violation of the ECOA.

11 cases settled; 1 was successfully tried on the merits and subsequently settled pending appeal.

The settlements resulted, inter alia, in the establishment of rate caps that effectively eliminated the disparity between consumers in the same credit tiers, but still permitted significant markups for all consumers. Nonetheless, the remedy eliminated the subsidization of white consumers at the expense of African American and Hispanic consumer, which was the best that could be achieved under a civil rights statute. The caps sunsetted after five (5) years.

In order to prove our case, we subpoenaed the drivers' licenses from the 14 states that then included race as an identifier. Resulted in 60 million licenses. Because of the transience of the American population, people moving from state to state, the subpoenaed licenses covered statistically significant populations in 19 more states, for a total of 33 states. This race information was correlated with the loan applications obtained through discovery from the 12 companies sued. Millions of transactions were race coded, representing between 45-50% of the defendants' customers.

The statistical results of our expert analyses were compelling. In every case, in every state, persistent across every risk-based credit tier, black consumers in the aggregate were marked up almost twice as frequently as white consumer with the same credit profile and when black consumers and white consumers in the same credit tier both were marked up, the black consumer paid twice as much as the comparable white consumer. Slightly less, but still significant discrepancies were found for Hispanic consumers.

II. The Market Forces That Determine Markups Still Exist

Markups still bear no relationship to credit worthiness; in fact studies show that they increase the risk of default.

There is no transparency. Consumers do not know that markup is being added to the loan rate to which they are qualified for based on their credit profile. Nor do they know the amount of the markup—either as a matter of points added or the total cost over the life of the loan.

There also is no correlation between the points charged and the services provided, especially since the length of avg. car loans is increasing and the markups apply over the life of the note.

Competition between lenders is even greater, thereby giving dealers more leverage in dictating markups and profit margins.

The fundamental problems inherent in any compensation system that is based on discretionary markups still exist. Similar to the effects of Yield Spread Premiums on mortgage loans, whenever you incentive a dealer by providing that they will earn more if they get the consumer to agree to higher interest rates virtually guarantees that all consumers will overpay and that minority consumers will pay more than white consumers with comparable credit profiles.

III. CFPB Has An Indispensible Role

In this environment, it is incumbent that the CFPB exercise its statutorily authorized duties to monitor the auto finance industry in order to determine whether consumer or civil rights violations are occurring. Private rights of action may not be as effective an enforcement tool to insure compliance with the applicable laws as they have been in the past.

Even ten years ago there were limitations to private enforcement and what it could achieve.

Now, there are additional challenges:

- Mandatory Arbitration and Class Action Bans
- More restrictive Class Action rules
- Less access to critical information—fewer states include race as an identifying factor on their driver's licenses and we still do not have HMDA equivalent data for auto loans.

The CFPB must take the lead. Enforcement of the civil rights and consumer laws under its jurisdiction should not be left to speculation or trust nor rely upon mere statements of good faith and intent. The CFPB should investigate auto finance loans, analyze the data, scrutinize the results and, when justified, take all steps necessary to protect the legal rights of all consumers. As my colleague, Dennis Parker, has said, when it comes to issues of discrimination and abuse in the marketplace, you never can have too many cops patrolling the beat.