IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO.
	)	
v.	)	
	)	
ALLY FINANCIAL INC.	)	
and ALLY BANK,	)	
	)	
Defendants.	)	
	)	

COMPLAINT

1. The United States of America brings this action against Ally Financial Inc. and Ally Bank (collectively, "Ally") for discriminating against thousands of African-American, Hispanic, and Asian/Pacific Islander borrowers across the United States who have obtained loans from Ally to finance automobiles. The discrimination is caused by Ally's policy and practice that allows dealers to include markups in the interest rates on automobile loans in a hidden manner not based on the borrower's creditworthiness or other objective criteria related to borrower risk. The United States brings this action to enforce provisions of the Equal Credit Opportunity Act (ECOA), 15 U.S.C. §§ 1691-1691f, and its implementing regulation, Regulation B, 12 C.F.R. Part 1002.

2. Between April 2011 and the present, this system caused approximately 100,000 African-American borrowers, 125,000 Hispanic borrowers, and 10,000 Asian/Pacific Islander borrowers to pay Ally higher interest rates for their automobile loans than non-Hispanic white ("white") borrowers because of their race or national origin and not based on their creditworthiness or other objective criteria related to borrower risk. The average African-American victim was obligated to pay over $300 more during the term of the loan because of

discrimination, and the average Hispanic and Asian/Pacific Islander victim was obligated to pay over $200 more during the term of the loan because of discrimination.

3. Ally is one of the largest automobile lenders in the United States. In 2012, Ally was the leading funder of automobile loans through franchised dealers in the United States among lenders not owned by an automobile manufacturer. Since April 2011, Ally funded nearly three million loans through over 12,000 automobile dealers nationwide. During the first nine months of 2013, Ally funded more than $20 billion in automobile loans. Ally Bank is also one of the nation’s twenty-five largest banks, with more than $90 billion in assets.

4. Ally sets an interest rate for each loan it approves based on the consumer’s creditworthiness and other objective criteria related to credit risk. From at least April 2011 and continuing to the present, Ally has maintained a specific policy and practice that allows automobile dealers to then mark up that risk-based interest rate in ways that are not connected to the consumer’s creditworthiness or other objective criteria related to borrower risk.

5. Ally typically retains a portion of the profits earned from this interest rate markup and pays the remainder to dealers. As a result, Ally’s policy and practice creates financial incentives for dealers to mark up borrowers’ interest rates above those established based on the consumer’s creditworthiness or other objective criteria related to borrower risk.

6. From at least April 2011 and continuing to the present, Ally has not provided adequate constraints or monitoring across its portfolio of loans to prevent discrimination from occurring through charging markups despite knowing or having reason to know that its policy and practice of allowing dealers to mark up consumers’ interest rates creates a substantial risk of discrimination. Ally conducted no monitoring of markup disparities until March 2013, and its monitoring since then has been entirely inadequate.

7. As a result of Ally’s dealer markup and compensation policy and practice and its lack of compliance monitoring, African-American, Hispanic, and Asian/Pacific Islander borrowers paid higher interest rates for their automobile loans than white borrowers, not based

on creditworthiness or other objective criteria related to borrower risk, but because of their race and national origin.

8. The United States brings this lawsuit to hold Ally accountable for its serious violations of law and to remedy the substantial and widespread harmful consequences of its discriminatory lending policy and practice.

9. This Court has jurisdiction pursuant to 15 U.S.C. § 1391e(h) and 28 U.S.C. § 1345. Venue is proper in this District under 28 U.S.C. § 1391.

PARTIES

10. The United States is authorized to initiate a civil action in federal district court whenever a matter is referred to the Attorney General pursuant to 15 U.S.C. § 1691e(g) or the Attorney General has reasonable cause to believe that a pattern or practice in violation of the ECOA has occurred. 15 U.S.C. § 1691e(h).

11. Defendant Ally Financial Inc. is a bank holding company, incorporated in the State of Delaware with a principal place of business in the State of Michigan. Ally Financial Inc. was known as GMAC, Inc. until 2010. As of September 30, 2012, Ally Financial Inc. had $151 billion in total assets, and it is subject to examination by the Consumer Financial Protection Bureau ("CFPB").

12. Defendant Ally Bank is a subsidiary of Defendant Ally Financial Inc. Ally Bank is chartered by the State of Utah and has deposits that are insured by the Federal Deposit Insurance Corporation. As of September 30, 2013, Ally Bank had $92.1 billion in total assets, and it is subject to examination by the CFPB.

13. Both Defendants conduct their automobile lending in a coordinated and identical manner, using common policies and practices.

14. Ally funds purchases of automobiles through a model known as "indirect lending." A consumer can use one of two methods to finance an automobile purchase: (1) "direct lending" in which the consumer applies directly to the institution underwriting, setting the

terms of, and funding the loan, or (2) "indirect lending" in which the automobile dealer submits the consumer's loan application to the institution underwriting, setting the terms of, and funding the loan. In indirect lending, the loan takes the form of a "retail installment contract," which the consumer signs at the time he or she purchases the automobile. In turn, the indirect lender purchases the retail installment contract from the dealer soon after the automobile sale on terms set by the lender.

15. Although Ally has agreements with several automobile manufacturers to pay Ally in order to subsidize some or all of the interest payments in order to boost sales of the manufacturer's models, the majority of Ally's loans are made without such subsidies. Loans made without a manufacturer subsidy are known as "non-subvented loans".

16. Ally also has agreements with each of the over 12,000 individual automobile dealers. These agreements established the terms under which Ally will fund automobile loans by purchasing retail installment contracts from the dealers, including dealer compensation for arranging the loan. These agreements specify narrow circumstances in which Ally can force a dealer to repurchase a retail installment contract or reimburse Ally for loan default or prepayment.

17. Ally's agreements with automobile dealers specify that Ally will purchase only retail installment contracts that are acceptable to Ally and at interest rates specified by Ally. As part of deciding whether the loan is acceptable, Ally takes responsibility for determining the creditworthiness of each consumer. Ally's agreements also require dealers to provide consumers with a disclosure that explains that their loan application is being submitted for Ally's decision on whether or not to purchase the loan.

18. Ally's agreements with automobile dealers require that all loan applications they submit to Ally must comply with the policies, conditions, and requirements that Ally sets for dealers.

19. Both Defendants are creditors within the meaning of the ECOA, 15 U.S.C. § 1691a(e), and Regulation B, 12 C.F.R. § 1002.2(l). Both Defendants regularly participate in the decision to extend credit through taking responsibility for underwriting retail installment contracts, regularly participate in setting the terms of credit by establishing interest rates and communicating those rates to automobile dealers for inclusion in retail installment contracts, and influence credit decisions by indicating to dealers whether or not they will purchase retail installment contracts.

INVESTIGATION

20. In September 2012, the CFPB began an examination of the indirect automobile lending practices of Ally from April 1, 2011 to March 31, 2012. The examination included an evaluation of Ally's compliance with fair lending laws and regulations in its indirect automobile lending program.

21. The CFPB analyzed Ally's lending policies, procedures, and internal controls, including Ally's dealer markup and compensation policy and practice from April 2011. The Bureau also performed an analysis of Ally's loan-level data on the automobile loans Ally funded between April 1, 2011 and March 31, 2012 to test for lending discrimination.

22. After providing Ally with an opportunity to respond to the results of the CFPB's analysis, the CFPB determined it had reason to believe that Ally had engaged in a pattern and practice of lending discrimination on the basis of race and national origin in violation of the ECOA, 15 U.S.C. § 1691(a)(1). The CFPB referred Ally to the United States Department of Justice pursuant to the ECOA, 15 U.S.C. § 1691e(g), and the December 6, 2012 Memorandum of Understanding between the United States Department of Justice and the CFPB.

23. Based on the CFPB referral, the Department of Justice has engaged in an investigation of Ally's indirect automobile lending policies, practices, and procedures, including reviewing Ally's loan-level data on the more than 1.21 million automobile loans Ally funded between April 1, 2011 and March 31, 2012.

FACTUAL ALLEGATIONS

24. To determine whether it will fund a loan, and on what terms, Ally conducts an underwriting process on each loan application submitted by one of its dealers on behalf of a consumer. As part of the underwriting, Ally uses a proprietary system of credit scoring to assign one of six credit tiers to the applicant, or applicants, receiving each loan it approves for funding.

25. From at least April 2011, and continuing to the present, Ally periodically sets a specified "buy rate" for the loans it funds. Ally determines the buy rate for each loan based on its current cost of funds plus adjustments to reflect the borrower's creditworthiness and other objective criteria related to borrower risk. These adjustments use a proprietary underwriting and pricing model to account for the consumer's credit risk, as reflected in the assigned credit tier, and also consider whether the automobile is new or used and the length of the loan. The dealers, but not the consumers, learn the buy rate. The buy rate reflects the minimum interest rate, absent a special payment to Ally from the dealer, for a non-subvented loan that Ally will fund.

26. From at least April 2011, and continuing to the present, Ally has maintained a specific policy and practice, reflected in its agreements with individual dealers, that allows dealers to mark up a consumer's interest rate above Ally's established buy rate, and that compensates dealers from the increased interest revenue to be derived from the markup . It is Ally's specific policy and practice to permit dealers to mark up the buy rate for reasons not related to the borrowers' creditworthiness or other objective criteria related to borrower risk. Ally capped the dealer markup to 250 basis points for loans with terms of 60 monthly payments or less and to 200 basis points for loans with terms of greater than 60 monthly payments or for loans to borrowers assigned to the lowest two tiers of Ally's proprietary system of credit scoring. A basis point is a percentage of the total amount of a loan, with one hundred basis points equaling one percent of the loan amount.

27. The ECOA limits the collection of self-identified race and ethnic data for automobile loans. 12 C.F.R. § 1002.5(b) (prohibiting the collection of race or national origin

data from a non-mortgage loan applicant, except in the case of a creditor's self-test for ECOA compliance). Information about the race and ethnicity of borrowers on automobile loans that Ally funded can be calculated based on public data published by the United States Census Bureau for the race and ethnicity of individuals with the same surname and for the race and ethnicity of individuals living in the same neighborhood, using a process called the Bayesian Improved Surname Geocoding (BISG) method. The BISG method builds on the fact that many surnames in the United States are predominantly associated with a particular race or ethnicity—especially for Hispanic and Asian/Pacific Islander individuals—and that many neighborhoods are segregated by race and ethnicity—especially neighborhoods where African Americans live.

28. The BISG method is recognized by social scientists, statisticians, and economists as a tested and accurate way to determine differences in experiences based on race or ethnicity for large groups of individuals for whom self-identified race and ethnicity data is not available.

29. Statistical analyses of non-subvented automobile loans Ally funded through purchasing retail installment contracts between April 1, 2011 and March 31, 2012, using the BISG method to identify race and national origin demonstrate statistically significant discriminatory pricing disparities based on race and national origin. Statistical significance is a measure of probability that an observed outcome would not have occurred by chance. As used in this Complaint, an outcome is statistically significant if the probability that it could have occurred by chance is less than 5%. During the time period covered by the analyses, Ally funded over 800,000 non-subvented loans, of which nearly 200,000 had African-American, Hispanic, or Asian/Pacific Islander borrowers or co-borrowers.

30. During the time period covered by the analyses, on average, Ally charged African-American borrowers more than white borrowers in interest rate markups not based on creditworthiness or other objective criteria related to borrower risk. The disparity was approximately 29 basis points for non-subvented loans, and it is statistically significant.

31. These disparities mean that African-American borrowers affected by the discrimination were obligated to pay, on average, over $300 more in interest than white borrowers over the life of their loans not based on creditworthiness or other objective criteria related to borrower risk.

32. During the time period covered by the analyses, on average, Ally charged Hispanic borrowers more than white borrowers in interest rate markups not based on creditworthiness or other objective criteria related to borrower risk. The disparity was approximately 20 basis points for non-subvented loans, and it is statistically significant.

33. These disparities mean that Hispanic borrowers affected by the discrimination were obligated to pay, on average, over $200 more in interest than white borrowers over the life of their loans not based on creditworthiness or other objective criteria related to borrower risk.

34. During the time period covered by the analyses, on average, Ally charged Asian/Pacific Islander borrowers more than white borrowers in interest rate markups not based on creditworthiness or other objective criteria related to borrower risk. The disparity was approximately 22 basis points for non-subvented loans, and it is statistically significant.

35. This disparity means that Asian/Pacific Islander borrowers affected by the discrimination were obligated to pay, on average, over $200 more in interest than white borrowers over the life of their loans not based on creditworthiness or other objective criteria related to borrower risk.

36. From at least April 2011, and continuing to the present, in setting the terms and conditions for the automobile loans it funds, Ally accounts for individual borrowers' differences in creditworthiness and other objective criteria related to borrower risk by setting the buy rate as explained in Paragraph 25. The interest rate markups charged by Ally to consumers are separate from, and not controlled by, the adjustments for creditworthiness and other objective criteria related to borrower risk already reflected in the buy rate. No Ally policy directs dealers to consider creditworthiness or other objective criteria related to borrower risk for a second time,

after they had already been considered in setting the buy rate, in determining interest rate markups. Accordingly, the racial and ethnic interest rate markup disparities described in Paragraphs 30-35 are not adjusted for creditworthiness and other objective criteria related to borrower risk.

37. For the reasons described in Paragraph 36, it is not proper to include factors measuring creditworthiness and other objective criteria related to borrower risk in the statistical analysis of interest rate markup disparities. Nevertheless, statistical analyses of Ally's interest rate markups during the time period covered by the analyses that control—both separately and in concert through regression—for creditworthiness and risk-related factors such as credit tier, new/used status, and loan length demonstrate a similar pattern of racial and ethnic interest rate markup disparities, with the magnitude only somewhat diminished from the disparities described in Paragraphs 30-35. Thus, accounting for creditworthiness or other objective criteria related to borrower risk a second time does not explain the racial and ethnic interest rate markup disparities, even if those factors were relevant to the subjective pricing adjustments measured by interest rate markups.

38. The analysis described in Paragraph 37 that separately controls for which one of the six tiers of Ally's proprietary system of credit scoring to which Ally assigned the borrower determined that Ally discriminates most severely against those borrowers it classifies as the most creditworthy by its proprietary system of credit scoring. Ally had greater racial and ethnic interest rate disparities for borrowers in the best credit tier than in any of the other credit tiers. In other words, Ally's most qualified African-American, Hispanic and Asian/Pacific Islander borrowers with the least credit risk suffer the most discrimination.

39. Additionally, statistical regression analyses of Ally's lending data that control for multiple creditworthiness and risk-related factors such as credit tier, new/used status, and loan length, also demonstrate that the racial and ethnic disparities in interest rate markup described in Paragraphs 30-35 produced racial disparities, compared to similarly situated white borrowers, in

the annual percentage rate of interest Ally charged that cannot be explained by creditworthiness and risk-related factors. Thus, accounting for creditworthiness and risk-related factors does not explain the racial and ethnic disparities in the interest rate paid by the borrower, even if those factors were relevant to the subjective pricing adjustments measured by interest rate markup.

40. The higher markups that were charged to African-American, Hispanic, and Asian/Pacific Islander borrowers for the subject loans are a result of Ally's specific policy and practice of allowing dealers to mark up a consumer's interest rate above Ally's established buy rate and compensating dealers from that increased interest revenue.

41. Ally's specific policy and practice of allowing dealers to mark up a consumer's interest rate above Ally's established buy rate and compensating dealers for those markups has continued from April 2011 to the present.

42. During this period, Ally has not required dealers to document reasons for charging markups, it has not monitored whether discrimination occurred across its portfolio of loans through charging markups, and Ally has not at all times provided detailed fair lending training to its dealers.

43. Ally conducted no monitoring for lending discrimination in interest rate markups before March 2013.

44. The fair lending monitoring system that Ally established in March 2013—after receiving notice of the CFPB's preliminary finding of discrimination—reviews for large interest rate markup disparities only within individual dealers, and only for dealers from which it buys at least five minority and five white loans during the previous six months. The monitoring program does not review company-wide disparities across its portfolio of loans, and also misses many sizeable and statistically significant within-dealer disparities. During the first round of reviews under the program, Ally identified only 21 of its over 12,000 dealers with possible markup disparities warranting further analysis, and it ultimately determined that only two dealers would be subject to any corrective action. Those two dealers were subject only to voluntary education,

which involves making the dealer aware of potential liability under the ECOA and providing voluntary training regarding the ECOA.

45. Ally's specific policy and practice are not justified by a legitimate business need that cannot reasonably be achieved as well by means that are less disparate in their impact on African-American, Hispanic, and Asian/Pacific Islander borrowers.

46. Ally knew or had reason to know that its policy and practice of allowing dealers to mark up consumers' interest rates creates a substantial risk of discrimination. Ally has not taken effective action to change the discriminatory policy and practice or to identify and compensate victims of the discrimination.

EQUAL CREDIT OPPORTUNITY ACT VIOLATIONS

47. Ally's policies and practices, as alleged herein, constitute discrimination against applicants with respect to credit transactions on the basis of race and national origin in violation of the Equal Credit Opportunity Act, 15 U.S.C. § 1691(a)(1).

48. Ally's policies and practices, as alleged herein, constitute a pattern or practice of resistance to the full enjoyment of rights secured by the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f.

49. Between April 2011 and the present, Ally has charged over a quarter of a million consumers nationwide discriminatory interest charges for automobile loans as a result of its pattern or practice of discrimination and denial of rights as alleged herein. In addition to higher direct economic costs, some of the victims of discrimination suffered additional consequential economic damages resulting from having an excessively costly loan, including possible increased risk of credit problems, default, and repossession, and other damages, including emotional distress. They are aggrieved applicants as defined in the Equal Credit Opportunity Act, 15 U.S.C. § 1691e, and have suffered injury and damages as a result of Ally's conduct.

50. Ally's policies and practices, as alleged herein, were intentional, willful, or implemented with reckless disregard for the rights of African-American, Hispanic, and Asian/Pacific Islander borrowers.

51. The ECOA empowers this Court to grant such relief as may be appropriate, including actual and punitive damages and injunctive relief. 15 U.S.C. § 1691e(h).

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court enter an ORDER that:

(1) Declares that the policies and practices of the Defendants constitute violations of the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f;

(2) Enjoins the Defendants and their agents, employees, and successors, and all other persons in active concert or participation with them, from:

a) Discriminating on the basis of race or national origin against any person with respect to any aspect of their credit transactions;

b) Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the victims of the Defendants' unlawful conduct to the position they would have been in but for the discriminatory conduct; and

c) Failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any such discriminatory conduct in the future; to eliminate, to the extent practicable, the effect of Ally's unlawful practices; and to implement policies and procedures to ensure that all borrowers have an equal opportunity to seek and obtain loans on a non-discriminatory basis and with non-discriminatory terms and conditions; and

(3) Awards equitable relief and monetary damages to all the victims of the Defendants' discriminatory policies and practices for the injuries caused by the Defendants, including direct economic costs, consequential damages, and other damages, pursuant to 15 U.S.C. § 1691e(h).

The United States pray for such additional relief as the interests of justice may require.

Dated: December 20, 2013

Respectfully submitted,

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