DOJ and CFPB Team Up to Take on Auto and Mortgage Lenders

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The CFPB and the Department of Justice (DOJ) are joining forces to pursue damages and penalties against consumer lenders for violation of the Equal Credit Opportunity Act (ECOA) in pricing consumer loans. In a December 20 Consent Order representing the largest federal loan discrimination settlement in history, the DOJ and CFPB ordered Ally Bank to refund $80 million to consumers allegedly damaged by discriminatory auto loan pricing, and to pay an additional $18 million in penalties. On December 23, the DOJ and CFPB jointly filed a complaint and proposed Consent Order against National City Bank in a Pennsylvania District Court requiring PNC Bank, as successor to National City Bank, to establish a $35 million settlement fund for African-American borrowers allegedly affected by discriminatory mortgage loan pricing. ECOA prohibits discrimination by creditors in credit transactions based on race, sex, national origin, age, and other factors. It defines a "creditor" as including "assignees of original creditors who participate in the decision to extend, renew, or continue credit," and "all persons participating in the credit decision." **The statute does not require a showing of intent to discriminate, but rather, may be established if a creditor's policies result in disparate impact—often demonstrated solely by statistical analysis—with respect to protected classes of individuals.** Joint investigations by the two agencies, which share enforcement authority for ECOA violations, into Ally Bank and National City's lending practices and use of statistical analyses resulted in their findings of illegal loan pricing disparities based on race and national origin. Ally Bank, as an indirect auto lender (it purchases loans originated by auto dealers), is considered by the Bureau to be a "creditor" under the ECOA because it participates in the evaluation of credit applicants and sets dealer buy rates for the contracts. When lenders permit dealers to mark up contract interest rates and compensate the dealer for the marked up rate, the CFPB considers that participation in a credit decision under the ECOA. The Ally Bank Order was based on a finding that this practice resulted in higher interest rates charged to African-American, Hispanic, and Asian Pacific Islander borrowers. The finding was based primarily on a statistical analysis of loans using zip codes and names published by the Census Bureau as a proxy for determining whether borrowers were within the protected classes, notwithstanding the potential for obtaining inaccurate information by using such proxies. The National City Order decision, which

followed a two-year investigation by the CFPB of lending practices to evaluate compliance with fair lending laws, was also built on the Bureau's finding of statistically significant discriminatory pricing disparities of retail mortgage loans and National City's lending practices based on race and national origin. These actions reflect the CFPB's focus on fair lending practices, and examination of lenders using statistical analyses, including proxy analysis,
to find and impose sanctions for
ECOA violations.

Related Practices

Consumer Finance