cfpb Consumer Financial Protection Bureau

1700 G Street NW Washington, DC 20552

January 15, 2013

VIA Electronic Mail: [redacted]

Michael A. Carpenter
President and Chief Executive Officer
Ally Financial Inc.
[redacted]

Barbara Yastine
President and Chief Executive Officer
Ally Bank
[redacted]

Dear Mr. Carpenter and Ms. Yastine:

The Consumer Financial Protection Bureau's (CFPB) Office of Fair Lending and Equal Opportunity is considering whether to recommend public enforcement action against Ally Financial, Inc. and Ally Bank (collectively, "Ally") for potential violations of the Equal Credit Opportunity Act (ECOA), 15 U.S.C. §§1691-1691f, and whether to recommend that the CFPB refer Ally to the Department of Justice (DOJ) pursuant to Section 706(g) of the ECOA for a pattern or practice of discrimination in violation of Section 701(a) of the ECOA.

The Office of Fair Lending has preliminarily concluded that Ally may have violated the ECOA and its implementing regulation, Regulation B, 12 C.F.R. pt. 1002, by discriminating on the basis of race and national origin in the pricing of loans in its indirect automobile financing business. The CFPB's analysis of Ally's automobile financing markup focused on the interest rate difference between each borrower's contract rate and Ally's buy rate.[1] The CFPB analyzed the amount of markup in approximately [redacted] booked loans at Ally Financial and Ally Bank over the period from April 1, 2011 to March 31, 2012.[2] Based on the preliminary results, we are concerned with the following disparities in markup:

- Statistically significant disparities in markup of 29 basis points on average between similarly situated African Americans and Non-Hispanic Whites on non-subvented loans.

- Statistically significant disparities in markup of 20 basis points on average between similarly situated Hispanics and Non-Hispanic Whites on non-subvented loans.

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[1] The buy rate is the price that Ally sets based on the credit characteristics of the borrower, the characteristics of the vehicle financed, loan term, loan amount and channel. It may also include any pricing exceptions granted by Ally to automobile dealers in individual transactions.

[2] Approximately one-quarter of these loans were booked pursuant to "subvention" or special pricing programs, which typically include discounted buy rates and may constrain markup. We analyzed subvented and non-subvented loans separately. In addition, our analysis of subvented loans excluded loans with a zero buy rate because it appeared that no markup was permitted on such loans.

* Statistically significant disparities in markup of 21 basis points on average between similarly situated Asian/Pacific Islanders and Non-Hispanic Whites on non-subvented loans.

* Statistically significant disparities in markup of 22 basis points on average between similarly situated African Americans and Non-Hispanic Whites on subvented loans.

* Statistically significant disparities in markup of 14 basis points on average between similarly situated Hispanics and Non-Hispanic Whites on subvented loans.

In general, the only limitation that Ally imposes on dealer markup is capping the maximum amount of markup. This cap depends on loan term and, for borrowers assigned to the two lowest credit tiers, Ally's proprietary credit-tier assignment. However, even when we considered the factors that can directly affect markup, the disparities remained substantial.

The observed markup disparities appear to have resulted from a combination of Ally's policies and practices, including Ally's policy of allowing automobile dealers to mark up Ally's risk-based buy rate and compensating them for those markups, as well as the limited nature of Ally's controls and monitoring.

The indirect auto loan data set provided by Ally to the CFPB does not contain information on the race or ethnicity of applicants. In order to evaluate pricing outcomes, the CFPB assigned race and ethnicity probabilities to applicants by employing a proxy methodology that combines geography-based and name-based probabilities to form a joint probability.[3] These joint race and ethnicity probabilities were then used directly in our models to estimate race and ethnicity disparities.[4]

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[3] The geography-based probability is constructed based on 2010 Census demographic information associated with an applicant's reported address information. The name-based probability is constructed based on 2000 Census demographic information associated with an applicant's surname. Geography- and surname-based probabilities are combined using the methodology described in Elliott et. al., "Using the Census Bureau's Surname List to Improve Estimates of Race/Ethnicity and Associated Disparities," *Health Services and Outcomes Research Methodology*, Sept. 2009.

[4] In order to evaluate the robustness of our results, we also generated disparity estimates using alternative methods of assigning race and ethnicity. First, we used threshold rules that assign an application to a given racial or ethnic group by determining whether the probability associated with each classification meets or exceeds one of three thresholds (70%, 80%, and 90%). *See generally* McCaffrey and Elliott, "Power of Tests for a Dichotomous Independent Variable Measured with Error," *Health Research and Educational Trust*, June 2008. The disparity estimates did not vary materially when the models used race and ethnicity assignments based on the threshold rules instead of the probabilities directly. Second, we estimated disparities using geography-based and surname-based probabilities alone rather than jointly; the disparity estimates were consistent with those associated with the use of the joint probabilities.

You may submit a written statement setting forth any reasons of fact, law, or policy why Ally believes the CFPB should not refer this matter to the DOJ or take any corrective action against Ally. Any facts presented or factual assertions relied upon by Ally in the written statement must be made under oath by someone with personal knowledge of such facts. The written statement must be submitted on 8.5 by 11 inch paper, double spaced, in at least 12-point type, and no longer than 40 pages, and must be received no later than January 29, 2013. To ensure timely delivery, any submission should be e-mailed to me. Please inform me by no later than January 22, 2013, whether Ally will be making a submission.

Please note that although the Office of Fair Lending is considering whether to recommend that the CFPB refer Ally to the DOJ pursuant to Section 706(g) of ECOA, a referral does not deprive the CFPB of authority to take independent corrective action. Thus, the CFPB's referral of a matter to the DOJ pursuant to the ECOA would be in addition to the CFPB's independent supervisory and enforcement authority. If referred, the CFPB will consult with the DOJ to coordinate any respective actions, as appropriate.

Please be advised that the CFPB may use information contained in any submission as an admission, or in any other manner permitted by law, in connection with CFPB enforcement proceedings or otherwise.

Until this matter is resolved, Ally must retain all documents and records, including electronically stored information, that are in Ally's custody, possession, or control, that relate to the preliminary findings outlined herein and/or the CFPB's fair lending examination of Ally that began on September 10, 2012. In addition, pursuant to Regulation B, 12 C.F.R. § 1002.12, until the CFPB notifies you otherwise, that section's 25-month record retention requirement is extended to the final disposition of this matter.

This letter is only meant to describe generally the procedures used by the CFPB. This letter does not create or confer upon any person any substantive or procedural rights or defenses that are enforceable in any manner.

If you have any questions, please contact me by email at [redacted] or by phone at [redacted].

Sincerely,

Brian Kreiswirth

Brian Kreiswirth
Office of Fair Lending and Equal Opportunity
Consumer Financial Protection Bureau

Cc: [redacted]