



NATIONAL AUTOMOBILE DEALERS ASSOCIATION  
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**Legal & Regulatory Group**

October 8, 2015

Chief FOIA Officer  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

Re: Freedom of Information Act Request

Dear CFPB FOIA Officer:

This is a request under the Freedom of Information Act (FOIA).

I request that a copy of the following documents be provided to me:

- 1) The following CFPB documents identified in the September 17, 2015 *American Banker* article by Rachel Witkowski entitled “CFPB Overestimates Potential Discrimination, Documents Show”:
  - a) The document(s) quoted and/or referred to in the following paragraph:

“The agency’s methodology ‘is valid and reasonable under the circumstances here, and although there may be some risk of overestimating disparities, the alternative presents an equal (and perhaps greater) risk of underestimating disparities and thus consumer harm,’ Patrice Ficklin, assistant director of the CFPB’s Office of Fair Lending, stated in a memo to agency officials written in April 2013”;
  - b) The document(s) quoted and/or referred to in the following paragraph:

“During settlement discussions with Ally, CFPB also significantly raised its estimate of the harm to consumers based on its own method. The agency had initially calculated that Ally’s policy caused more than 213,000 minorities to receive higher rates than white borrowers, totaling more than \$41 million in possible direct damages. The initial analysis the CFPB used to identify disparity figures was ‘with no controls,’ such as ‘characteristics of the vehicle, and the timing, location, and structure of the deal,’ according to documents”;
  - c) The document(s) referred to in the following paragraph:

“If the agency accounted for controls such as those Ally argued for, the amount of consumer harm would be much lower, just \$5.3 million in damages to consumers – 13% of the CFPB’s calculation, agency staff noted in one memo”;

d) The document(s) that contain the words “emotional distress” as referred to in the following sentence:

“Ultimately, however, the CFPB nearly doubled its own initial estimate of damages to \$80 million to include other factors that are not direct damages, such as ‘emotional distress’”;

e) The document(s) quoted and/or referred to in the following paragraph:

“If Ally did not get approval, it ‘could have a material adverse effect on Ally’s business, resulting in operations, and financial position,’ CFPB officials said in an October 2013 memo directed to and signed by the agency’s director, Richard Cordray”;

f) The document(s) quoted and/or referred to in the following paragraph:

“‘In order to convert to a financial holding company, [Ally Financial] and its bank subsidiary must, among other requirements, be considered well-managed under the BHCA [Bank Holding Company Act]. As such Ally may be strongly inclined to reach a timely and robust resolution of this matter if it can potentially result in [Ally Financial] successfully converting to a financial holding company,’ CFPB staff said in the memo to Cordray. ‘Recent discussions with Ally on October 3 in which Ally expressed a strong willingness to settle this matter quickly are consistent with this analysis’”;

2) The following CFPB documents identified in the September 24, 2015 *American Banker* article by Rachel Witkowski entitled “The Inside Story of the CFPB’s Battle Over Auto Lending”:

a) The document(s) quoted and/or referred to in the following paragraph:

“‘The purpose of this meeting is to continue our discussion around a market-tipping settlement that would resolve the discriminatory disparities caused by dealer markup by eliminating markup at many major auto lenders,’ said a memo from officials in preparation for a briefing with CFPB Director Richard Cordray and 19 senior officials on May 20, 2013”;

b) The document(s) quoted and/or referred to in the following paragraph:

“‘Seventy-nine percent of consumers who finance with the dealership are unaware that the interest rate on their auto loan is able to be marked up by the dealer,’ CFPB officials wrote in a 2012 charter setting up the working group, citing figures from a study by the Center for Responsible Lending. ‘Each annual cohort of auto finance consumers pays an estimated \$25.8 billion in interest rate markup over the lives of their loans’”;

c) The document(s) quoted and/or referred to in the following paragraph:

“By April 4, 2013, CFPB officials had a meeting with Cordray to discuss how best to eliminate discrimination. One option on the table was to ‘affirmatively pursue the eliminating’ of dealer price discretion. Other options were to continue to encourage lenders to boost compliance management or move to a flat-fee system or an alternative compensation structure. In that memo, officials clarified internally that they were not necessarily trying to end dealer markup”;

d) The document(s) quoted and/or referred to in the following paragraph:

“But later that same month, CFPB officials once again target the dealer markup, suggesting to use a ‘market-tipping settlement that would resolve the discriminatory disparities caused by dealer markup by eliminating markup at many major auto lenders,’ said an April 24, 2013, memo”;

e) The document(s) quoted and/or referred to in the following paragraph:

“‘First, the legal authority for all of the potential rulemakings is unclear given our lack of authority over dealers,’ the memo said. ‘Second, the bureau would face considerable pressure from external groups if it sought to regulate or ban the practice of markup itself – pressure that should not be underestimated. The rule could be perceived as an attempt to circumvent our lack of regulatory authority over auto dealers, and that presents both legal and political risks that our rule could be overturned by a court or by Congress’”;

f) The document(s) quoted and/or referred to in the following paragraph:

“‘It is possible that disclosing or eliminating dealer markup would create more transparent pricing, and thereby improve competition,’ officials said in an April 4, 2013, memo. ‘It is worth noting, however, that if markup were eliminated, it is not entirely clear how the market would respond. Dealers would undoubtedly seek to replace the revenue stream, and the ultimate impact to consumers is unknown’”; and

g) The document(s) that contain the words “robust refinance market” as referred to in the following sentence:

“During that time, CFPB officials also considered doing a push to educate consumers to at least check their interest rate or promote a ‘robust refinance market’ or more innovative direct loan deliveries.”

In order to help you determine my status for the applicability of any fees, I am requesting these documents for a commercial purpose.

If there are any fees for searching for or copying the documents, I am willing to pay fees for this request up to a maximum of \$1,000. If you estimate that the fees will exceed this limit, please contact me.

If you have any questions about processing this request, you may call me during business hours at (703) 821-7040.

Sincerely,

[Original signed]

Paul D. Metrey  
Vice President, Regulatory Affairs  
& Chief Regulatory Counsel, Financial Services, Privacy, and Tax