

One Minute Memo[®]



CFPB Pursuing ECOA Claims Against Auto Lenders Based on Dealer Conduct

Continuing its efforts to attempt to force lenders to police third parties over whom it has no jurisdiction, the Consumer Financial Protection Bureau (CFPB) has threatened to bring lending discrimination claims against several banks based on interest-rate markups made by automobile dealers with whom they have done business. Car dealers typically utilize an indirect lending model in which they negotiate and enter into loan contracts with consumers before they assign them to lenders for a fee which often is based on a markup of the lender's offered interest rate. The CFPB is taking the position that banks may violate the Equal Credit Opportunity Act through these fee arrangements and/or based on their failure to control the pricing practices of the dealers who originate their loans. The Equal Credit Opportunity Act is an area of focus for the CFPB in the auto lending area, as confirmed by Assistant Director Richard Hackett in remarks at an automobile dealers conference held in Florida earlier this month.

Automobile dealers are not subject to the CFPB's supervisory and enforcement authority because they successfully lobbied Congress to exclude them from the ambit of the Dodd-Frank Act. Industry suspicions that the CFPB will attempt to indirectly police auto dealers (over whom it has no jurisdiction) by pursuing banks and automobile finance companies (over which it does have jurisdiction) appear to be well-founded. Given the CFPB's current stance, auto lenders should consider a review of their ECOA compliance.

By: *David M. Bizar*, *Scott M. Pearson* and *Jonathan W. Lent*

David M. Bizar and *Scott M. Pearson* are co-chairs and *Jonathan W. Lent* is an associate in Seyfarth's Consumer Financial Services Litigation practice group. If you would like further information, please contact your Seyfarth attorney, David M. Bizar at dbizar@seyfarth.com, Scott M. Pearson at spearson@seyfarth.com or Jonathan W. Lent at jlent@seyfarth.com.