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20 UNITED STATES DISTRICT COURT
21 FOR THE CENTRAL DISTRICT OF CALIFORNIA

22 UNITED STATES OF AMERICA,

23 Plaintiff,

24 v.

25 TOYOTA MOTOR CREDIT
26 CORPORATION,

27 Defendant.

CIVIL ACTION NO. CV 16-725

28 CONSENT ORDER

1 **I. INTRODUCTION**

2 This Consent Order is submitted jointly by the parties for the approval of and
3 entry by the Court. The Consent Order resolves the claims of the United States, based
4 on a joint investigation by the United States through the Civil Rights Division of the
5 Department of Justice (“DOJ”) and the Consumer Financial Protection Bureau
6 (“Bureau”), that Toyota Motor Credit Corporation (“Toyota”) allegedly engaged in a
7 pattern or practice of conduct in violation of the Equal Credit Opportunity Act
8 (“ECOA”), 15 U.S.C. §§ 1691-1691f, by permitting dealers to charge higher interest
9 rates to consumer auto loan borrowers on the basis of race and national origin.

10 There has been no factual finding or adjudication with respect to any matter
11 alleged by the United States. The parties have entered into this Consent Order to avoid
12 the risks, expense, and burdens of litigation and to resolve voluntarily the claims in the
13 United States’ Complaint of Toyota’s alleged violation of ECOA.

14 **II. BACKGROUND**

15 Toyota is the largest captive auto finance company in the United States, as of the
16 second quarter of 2015. Toyota holds a 5.2% share of the overall auto loan market based
17 on originations, making it the fifth largest auto lender overall.

18 On April 25, 2013, the DOJ and the Bureau initiated a joint investigation under
19 ECOA of Toyota’s pricing of automobile loans or retail installment contracts. In its
20 Complaint, the United States alleges that between January 1, 2011 and the present,
21 Toyota engaged in a pattern or practice of discrimination on the basis of race and
22 national origin in violation of ECOA based on permitting the interest rate “dealer
23 markup”—the difference between Toyota’s buy rate and the contract rate—paid by
24 African-American and Asian and/or Pacific Islander borrowers who received automobile
25 loans funded by Toyota.

26 The United States sets forth in its Complaint the allegations and claims of a
27 pattern or practice of discrimination in violation of ECOA. Toyota neither admits nor
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1 denies the allegations and claims of a pattern or practice of discrimination in violation of
2 the ECOA as set forth in the United States' Complaint. Under the provisions of this
3 Consent Order, Toyota agrees to implement policies and procedures designed to ensure
4 that the dealer markup on automobile retail installment contracts is negotiated in a
5 nondiscriminatory manner consistent with ECOA and the Compliance Plan. In addition,
6 Toyota will compensate certain African-American and Asian and/or Pacific Islander
7 borrowers.

8 **III. TOYOTA'S STATEMENT**

9 Toyota asserts that throughout the period of time at issue in this proceeding and to
10 the present, it has treated all of its customers fairly and without regard to impermissible
11 factors such as race or national origin. Toyota enters this settlement solely for the
12 purpose of avoiding contested litigation with the Department of Justice, and instead to
13 devote its resources to providing fair and industry-leading services to its customers.

14 The United States' allegations relate to amounts added to Toyota's risk-based buy
15 rate, referred to in this Consent Order as "dealer markup," which compensates auto
16 dealers for originating automobile loans. In most cases, Toyota does not originate
17 automobile loans; instead, it purchases loans originated by dealers.¹ Toyota does not
18 determine the amount of the dealer markup, but it does limit the amount of markup that
19 may be added per transaction.

20 Toyota affirmatively asserts that it has treated all of its customers without regard
21 to race or national origin, and that its business practices have promoted and achieved
22 fairness across all customer groups. Furthermore, Toyota has not been informed that the
23 United States contends Toyota or any of its employees engaged in any intentional
24 discrimination or disparate treatment of minorities.

25
26 ¹ In the state of Ohio, Toyota is licensed as a direct lender and customers sign
27 contracts directly with Toyota rather than with a dealer.

1 **IV. DEFINITIONS**

2 The following definitions apply to this Consent Order:

3 a. “Affected Consumers” include African-American and Asian and/or Pacific
4 Islander consumers who entered into a non-subvented retail installment contract with
5 Toyota during the period from January 1, 2011 through the date Toyota completes
6 implementation of the chosen option pursuant to paragraph 2, below.

7 b. “Board” means Toyota’s duly-elected and acting Board of Directors.

8 c. “Compliance Oversight Committee” means Toyota’s Compliance Oversight
9 Committee as it may be constituted, namely by the individuals holding the following
10 titles: (1) Chief Executive Officer, (2) Chief Financial Officer, (3) Executive Vice
11 President and Treasurer. The Compliance Committee shall consist of not less than three
12 (3) members, and shall report directly to the Board. Within twenty (20) days of the
13 Effective Date, the Board shall provide in writing to the DOJ and the Fair Lending
14 Director (as defined in paragraph g below) the name of each member of the Compliance
15 Committee. In the event of any change of membership, the Board shall submit the name
16 of any new member in writing to the DOJ and the Fair Lending Director (as defined in
17 paragraph g below).

18 d. “Dealer Discretion” means the entire range of dealer deviation from
19 Toyota’s risk-based buy rate, whether exercised by increasing or decreasing the buy rate,
20 such as by altering the interest rate or buying down the rate. “Dealer Discretion” does
21 not include Toyota’s discretion to modify the buy rate. “Dealer Discretion” does not
22 include a dealer’s buying down of the buy rate with respect to all consumers to the extent
23 such special offers are clearly advertised to all consumers.

24 e. “Effective Date” means the date on which the Consent Order is approved
25 and entered by the Court.

26 f. “Executive Officers” means collectively the senior management of Toyota
27 Motor Credit Corporation, including but not limited to its Principal Executive Officer(s),
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1 Principal Financial Officer(s), Chief Risk Officer(s), Treasurer(s), Group Vice President
2 of Sales, Marketing and Product Development, and its Chief Compliance Officer(s).

3 g. "Fair Lending Director" means the Assistant Director of the Office of Fair
4 Lending and Equal Opportunity for the Bureau, or his/her delegate.

5 h. "Non-objection" means written notification to Toyota that there is not an
6 objection to a proposal by Toyota for a course of action. In the event the DOJ or the Fair
7 Lending Director object to any proposed action by Toyota, the DOJ and the Fair Lending
8 Director shall direct Toyota to make revisions, and Toyota shall make the revisions and
9 resubmit the proposed action within thirty (30) days. Upon notification to Toyota of
10 non-objection, Toyota must implement the course of action within thirty (30) days unless
11 otherwise specified. Toyota cannot make any changes to the course of action without
12 obtaining written notification to Toyota that there is not an objection to Toyota's
13 proposed change.

14 i. "Related Consumer Action" means a private action by or on behalf of one
15 or more consumers or an enforcement action by another governmental agency brought
16 against Toyota based on substantially the same facts as described in the Complaint.

17 j. "Relevant Period" means the period from January 1, 2011 through February
18 2, 2016.

19 k. "Toyota" means Toyota Motor Credit Corporation, and its successors and
20 assigns.

21 **V. INJUNCTIVE RELIEF**

22 1. Consistent with this Consent Order, Toyota and its officers, agents,
23 servants, employees, and attorneys who have actual notice of this Consent Order,
24 whether acting directly or indirectly, are enjoined from engaging in any act or practice
25 that discriminates on the basis of race or national origin in any aspect of Dealer
26 Discretion in the pricing of automobile loans in violation of ECOA, 15 U.S.C.
27 § 1691(a)(1), and Regulation B, 12 C.F.R. Part 1002.

1 **A. Dealer Compensation Policy**

2 2. Toyota shall implement a dealer compensation policy conforming with one
3 (1) of the three (3) options detailed below. If a non-objection of the DOJ and the Fair
4 Lending Director is required in a chosen option, Toyota shall submit the policy for non-
5 objection within thirty (30) days of the Effective Date. Toyota shall implement the
6 chosen option within the later of (a) one hundred and eighty (180) days of the Effective
7 Date, or (b) thirty (30) days of obtaining any required non-objection. Toyota shall not
8 implement any revised dealer compensation policy until obtaining all non-objections of
9 the DOJ and the Fair Lending Director required by the chosen option.

10 **Option One:**

11 a. Toyota will limit Dealer Discretion in setting the contract rate to one
12 hundred and twenty-five (125) basis points for retail installment contracts with terms of
13 sixty (60) months or less, and one hundred (100) basis points for retail installment
14 contracts with terms greater than sixty (60) months. Toyota is not precluded from
15 including in its compensation policies an additional nondiscretionary component of
16 dealer compensation consistent with applicable laws and subject to the non-objection of
17 the DOJ and the Fair Lending Director. Toyota may provide entirely nondiscretionary
18 dealer compensation to some dealers (consistent with subparagraph h of Option Three,
19 described below) while it provides discretionary compensation to other dealers
20 consistent with Option One, so long as all loans purchased from a particular dealer are
21 compensated using only one of the two compensation systems.²

22 ² Consistent with the definition of “Dealer Discretion,” Toyota is not
23 precluded from maintaining policies to reduce its risk-based buy rate based on standard,
24 non-discretionary factors. Any such modifications, or “standard modifiers,” based on
25 such policies must be documented and applied to all qualifying consumers. Similarly,
26 Toyota is not precluded from maintaining policies to reduce its risk-based buy rate based
27 on competitive offers (*e.g.*, a valid, dealer documented, competitive offer from another
28 financing source) when it is necessary to retain the customer’s transaction. Any such
29 modifications, or “competitive modifiers,” based on such policies shall be documented
30 by identifying, within Toyota’s systems, the institution offering the competitive rate and
31 the rate offered. Toyota’s dealer compensation policies shall not vary when Toyota

(footnote cont’d on next page)

1 include in all credit offers that the dealer extends to customers (“Standard Dealer
2 Participation Rate”), such that:

- 3 A. The Standard Dealer Participation Rate cannot exceed one
4 hundred and twenty-five (125) basis points for retail installment
5 contracts with terms of sixty (60) months or less, and one hundred
6 (100) basis points for retail installment contracts with terms
7 greater than sixty (60) months.
8 B. Toyota may allow dealers to include a single, set lower dealer
9 participation rate than the Standard Dealer Participation Rate for
10 particular loan types and/or channels or for all loans purchased
11 from a particular dealership.
12 C. Toyota may allow dealers to include a lower dealer participation
13 rate than the Standard Dealer Participation Rate based on a lawful
14 exception pursuant to the fair lending policies and procedures as
15 set forth below, and subject to the dealer’s agreement to abide by
16 the policies and maintain required documentation.

17 ii. To the extent Toyota allows exceptions to the Standard Dealer
18 Participation Rate, to ensure consistency with the requirements of ECOA, Toyota shall
19 establish policies and procedures for those exceptions subject to the non-objection of the
20 DOJ and the Fair Lending Director. The DOJ and the Bureau recommend that the
21 policies and procedures for such exceptions include the following elements:

- 22 A. Granting Exceptions: Policies and procedures that specifically
23 define the circumstances when Toyota allows downward
24 departures from the Standard Dealer Participation Rate.
25 B. Documenting Exceptions: Policies and procedures that require
26 on a loan-by-loan basis, documentation appropriate for each
27 specific exception that is, at a minimum, sufficient to
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1 effectively monitor compliance with the exceptions policies.
2 Such documentation should be sufficient not only to explain
3 the basis for granting any exception to the Standard Dealer
4 Participation Rate, but also to provide details and/or
5 documentation of the particular circumstances of the exception.

6 C. Record Retention: Policies and procedures for documentation
7 retention requirements that, at a minimum, comply with the
8 requirements of Regulation B.

9 e. Toyota will develop and maintain a compliance management system to
10 monitor dealer compliance with setting contracts at the Standard Dealer Participation
11 Rate and any exceptions thereto to ensure they comply with the conditions for exceptions
12 to the Standard Dealer Participation Rate. This will include:

- 13 i. Training dealers on Toyota's exceptions policies and procedures;
- 14 ii. Regular monitoring of dealers' exceptions to the Standard Dealer
15 Participation Rate, including documentation of those exceptions;
- 16 iii. Periodic audits for compliance with all policies and procedures
17 relevant to granting exceptions to the Standard Dealer Participation Rate and to test for
18 and identify fair lending risk; and
- 19 iv. Appropriate corrective action for a dealer's noncompliance with
20 Toyota's exceptions policies and procedures, culminating in the restriction or elimination
21 of dealers' ability to exercise discretion in setting a consumer's contract rate or exclusion
22 of dealers from future transactions with Toyota.

23 f. Toyota will maintain general compliance management systems reasonably
24 designed to assure compliance with all relevant federal consumer financial laws,
25 including ECOA. With respect to monitoring Dealer Discretion for compliance with
26 ECOA, Toyota, in addition to the monitoring set forth in paragraph (e)(iv) above, must,
27 at a minimum:

1 i. Send annual notices to all dealers explaining ECOA, stating Toyota's
2 expectation with respect to ECOA compliance, and articulating the dealer's obligation to
3 price retail installment contracts in a non-discriminatory manner.

4 ii. Monitor for compliance with Dealer Discretion limits.

5 g. Toyota shall submit data on its indirect auto lending portfolio to the DOJ
6 and the Fair Lending Director, at their request, no less often than semiannually for
7 analysis and monitoring.

8 **Option Three:**

9 h. Toyota will maintain policies that do not allow dealers any discretion to set
10 the contract rate subject to the non-objection of the DOJ and the Fair Lending Director.

11 i. Toyota will maintain general compliance management systems reasonably
12 designed to assure compliance with all relevant federal consumer financial laws,
13 including ECOA. This will include Toyota sending annual notices to all dealers
14 explaining ECOA, stating Toyota's expectation with respect to ECOA compliance, and
15 articulating the dealer's obligation to price retail installment contracts in a non-
16 discriminatory manner.

17 j. Toyota will not have to review or remunerate for prohibited basis disparities
18 in dealer markup resulting from Dealer Discretion in setting the contract rate, because
19 there is no such discretion. Toyota will not have to maintain a compliance management
20 system to monitor dealer exceptions because dealers do not have such discretion.

21 **VI. ROLE OF THE BOARD OF DIRECTORS**

22 3. Except for the data required by subparagraph c of Option One and
23 subparagraph g of Option Two, the Board or the Compliance Oversight Committee must
24 review all submissions (including plans, reports, programs, policies, and procedures)
25 required by this Consent Order prior to submission to the DOJ and the Fair Lending
26 Director.

27 4. Although this Consent Order requires Toyota to submit certain documents
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1 for review or non-objection by the DOJ and the Fair Lending Director, the Board will
2 have the ultimate responsibility for proper and sound oversight of Toyota and for
3 ensuring that Toyota complies with Federal consumer financial law and this Consent
4 Order.

5 5. In each instance in this Consent Order that requires the Board or the
6 Compliance Oversight Committee to ensure adherence to, or perform certain obligations
7 of Toyota, the Board or the Compliance Oversight Committee must:

8 a. Authorize and adopt whatever actions are necessary for Toyota to fully
9 comply with this Consent Order;

10 b. Require timely reporting by management to the Board or the Compliance
11 Oversight Committee on the status of compliance obligations; and

12 c. Require timely and appropriate corrective action to remedy any failure to
13 comply with the Board or the Compliance Oversight Committee directives related to this
14 Section.

15 6. Until the termination of this Consent Order, Toyota's Compliance
16 Oversight Committee of its Board shall be responsible for monitoring and coordinating
17 Toyota's adherence to the provisions of this Consent Order. In accordance with the
18 Compliance Oversight Committee's Charter, the Committee shall meet at least four
19 times a year, and shall maintain minutes of its meetings.

20 **VII. MONETARY PROVISIONS**

21 **A. Settlement Fund**

22 7. Within thirty (30) days of the Effective Date, Toyota shall deposit into an
23 interest-bearing escrow account nineteen million nine hundred thousand dollars
24 (\$19,900,000), for the purpose of providing redress to Affected Consumers who were
25 overcharged during the Relevant Period as required by this Section. Toyota shall
26 provide written verification of the deposit to the DOJ and the Bureau within five (5)
27 business days of depositing the funds described in this paragraph. This, plus any amount
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1 added pursuant to paragraph 8 below, will constitute the Settlement Fund. Any interest
2 that accrues will become part of the Settlement Fund and will be utilized and disposed of
3 as set forth herein. Any taxes, costs, or other fees incurred by the Settlement Fund shall
4 be paid by Toyota.

5 8. Based upon a determination made by the DOJ and the Fair Lending
6 Director as to additional redress to Affected Consumers during the period from the
7 Effective Date to the date Toyota completes implementation of the option chosen
8 pursuant to paragraph 2, Toyota shall deposit an additional amount of up to two million
9 dollars (\$2,000,000) into the Settlement Fund, in an amount set by the DOJ and the Fair
10 Lending Director, such that the total amount of redress for Affected Consumers is up to
11 twenty-one million nine hundred thousand dollars (\$21,900,000). The determination of
12 the DOJ and the Fair Lending Director shall be based on a portfolio-wide analysis of
13 retail installment contract pricing data for disparities on a prohibited basis resulting from
14 Toyota's dealer compensation policy from the period from the Effective Date to the date
15 Toyota completes implementation of the chosen option pursuant to paragraph 2, and
16 reflect the same methods and controls the DOJ and the Bureau applied in their analyses
17 described in paragraphs 21-22 of the Complaint.

18 9. Within thirty (30) days of the Effective Date, Toyota shall identify a
19 proposed Settlement Administrator ("Administrator"), who shall be subject to the non-
20 objection of the DOJ and the Fair Lending Director. Within forty-five (45) days of an
21 Administrator's selection, Toyota shall, subject to the non-objection of the DOJ and the
22 Fair Lending Director to its terms, execute a contract with the Administrator to conduct
23 the activities set forth in paragraphs 11 through 19. Toyota shall bear all costs and
24 expenses of the Administrator. The Administrator's contract shall require the
25 Administrator to comply with the provisions of this Consent Order as applicable to the
26 Administrator and shall require it to work cooperatively with Toyota, the DOJ, and the
27 Bureau in the conduct of its activities, including reporting regularly and providing all
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1 reasonably requested information to the DOJ and the Fair Lending Director. The
2 contract with the Administrator shall require the Administrator to comply with all
3 confidentiality and privacy restrictions applicable to the party who supplied information
4 and data to the Administrator.

5 10. In the event that the DOJ or the Fair Lending Director have reason to
6 believe that the Administrator is not materially complying with the terms of the contract
7 with the Administrator, they shall provide written notice to Toyota detailing the
8 noncompliance. Within fourteen (14) days, Toyota shall present for review and
9 determination of non-objection a course of action to effectuate the Administrator's
10 material compliance with the terms of the contract with the Administrator.

11 11. The contract with the Administrator shall require the Administrator, as part
12 of its operations, to establish cost-free means for Affected Consumers to contact it,
13 including an email address, a website, a toll-free telephone number, and means for
14 persons with disabilities to communicate effectively. The contract with the
15 Administrator shall require the Administrator to make all reasonable efforts to provide
16 effective translation services to Affected Consumers, including but not limited to
17 providing live English and foreign-language-speaking operators to speak to Affected
18 Consumers who call the toll-free telephone number and request a live operator, and
19 providing foreign language interpretations and translations for communications with
20 Affected Consumers.

21 12. The DOJ and the Fair Lending Director shall request from Toyota
22 information and data the DOJ and the Fair Lending Director reasonably believe will
23 assist in identifying Affected Consumers and determining any monetary and other
24 damages, including but not limited to a database of all retail installment contracts booked
25 by Toyota during the period from January 1, 2011 to the date Toyota completes
26 implementation of the chosen option pursuant to paragraph 2, and all data variables the
27 DOJ and the Bureau obtained during their investigation. Within thirty (30) days of the
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1 date Toyota completes implementation of the chosen option pursuant to paragraph 2,
2 Toyota shall supply the requested information and data.

3 13. The DOJ and the Fair Lending Director shall jointly provide to the
4 Administrator and Toyota a list of retail installment contracts with consumers that the
5 DOJ and the Fair Lending Director have determined are eligible to receive monetary
6 relief pursuant to this Consent Order after receipt of all the information and data they
7 requested pursuant to paragraph 12. The total amount of the Settlement Fund shall not
8 be altered based on the number of listed retail installment contracts.

9 14. Within thirty (30) days after the date the DOJ and the Fair Lending Director
10 provide the list of retail installment contracts referenced in paragraph 13, Toyota will
11 provide to the DOJ, the Fair Lending Director, and the Administrator the name, most
12 recent mailing address in its servicing records, Social Security number, and other
13 information as requested for the primary borrower and each co-borrower (if any) on each
14 listed retail installment contract (“Identified Borrowers”). Such information and data
15 shall be used by the DOJ, the Bureau, and the Administrator only for the law
16 enforcement purposes of implementing the Consent Order. The total amount of the
17 Settlement Fund shall not be altered based on the number of Identified Borrowers.

18 15. After receipt of all the information required to be provided by paragraph 14,
19 the DOJ and the Fair Lending Director shall provide Toyota and the Administrator with
20 the initial estimate of the amount each Identified Borrower will receive from the
21 Settlement Fund. No individual, agency, or entity may request that any court, the DOJ,
22 the Bureau, Toyota, or the Administrator review the selection of Identified Borrowers or
23 the amount to be received. The total amount of the Settlement Fund shall not be altered
24 based on the amounts that Identified Borrowers receive.

25 16. The contract with the Administrator shall require the Administrator to adopt
26 effective methods, as requested by the DOJ and the Fair Lending Director, to confirm the
27 identities and eligibility of Identified Borrowers and provide to the DOJ and the Fair
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1 Lending Director a list of Identified Borrowers whose identities and eligibility have been
2 confirmed (“Confirmed Borrowers”) within two hundred and seventy (270) days from
3 the date the DOJ and the Fair Lending Director provide the information described in
4 paragraph 15.

5 17. Within sixty (60) days after the date the Administrator provides to the DOJ
6 and the Fair Lending Director the list of Confirmed Borrowers, the DOJ and the Fair
7 Lending Director shall provide to the Administrator a list containing the final payment
8 amount for each Confirmed Borrower. The total amount of the Settlement Fund shall
9 not be altered based on the number of Confirmed Borrowers or the amounts they receive.
10 No individual, agency, or entity may request that any court, the DOJ, the Bureau,
11 Toyota, or the Administrator review the final payment amounts.

12 18. The contract with the Administrator shall require the Administrator to
13 deliver payment to each Confirmed Borrower in the amount determined by the DOJ and
14 the Fair Lending Director as described in paragraph 17 within forty-five (45) days. The
15 contract with the Administrator shall also require the Administrator to further conduct a
16 reasonable search for a current address and redeliver any payment that is returned to the
17 Administrator as undeliverable, or not deposited within six (6) months.

18 19. The contract with the Administrator shall require the Administrator to
19 maintain the cost-free means for consumers to contact it described in paragraph 11 and
20 finalize distribution of the final payments described in paragraphs 17 and 18 within
21 twelve (12) months from the date the DOJ and the Fair Lending Director provide the list
22 of final payment amounts to the Administrator in accordance with paragraph 17.
23 Confirmed Borrowers shall have until that date to request reissuance of payments that
24 have not been deposited.

25 20. The details regarding administration of the Settlement Fund set forth in
26 paragraphs 9 through 19 can be modified by agreement of the DOJ, the Fair Lending
27 Director, and Toyota. Payments from the Settlement Fund to Confirmed Borrowers
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1 collectively shall not exceed the amount of the Settlement Fund, including accrued
2 interest.

3 21. Toyota will not be entitled to a set-off, or any other reduction, of the
4 amount of final payments to Confirmed Borrowers because of any debts owed by the
5 Confirmed Borrowers. Toyota also will not refuse to make a payment based on a release
6 of legal claims or account modification previously signed by any Confirmed Borrowers.

7 22. All money in the Settlement Fund not distributed to Confirmed Borrowers
8 shall be distributed by the Administrator to one or more organizations that provide
9 services, including credit counseling, financial literacy, and other related programs,
10 targeted to African-American or Asian and/or Pacific Islander borrowers (“Qualified
11 Organization”). Before selecting the Qualified Organization(s), Toyota will (1) obtain
12 proposals from the Organization(s) on how the funds will be used consistent with the
13 above-stated purpose, and (2) submit selected proposals from the Organization(s), and
14 the proposed amount of funds each Organization would receive, to the DOJ and the
15 Bureau within thirty (30) days of the date that the Administrator completes the delivery
16 of the payments under paragraph 18. The DOJ shall consult with the Bureau in
17 providing its non-objection to Toyota’s proposal and shall respond to Toyota’s proposal
18 within thirty (30) days of the submission. Toyota and the DOJ, in consultation with the
19 Bureau, may request modification of an Organization’s proposal before approving the
20 Organization(s). Qualified Organization(s) must not be affiliated with Toyota, Toyota’s
21 parent, or any affiliated entity of Toyota’s parent.

22 23. The parties shall obtain the Court’s approval of the selection of the
23 Qualified Organization(s) and the amount to be distributed to each Qualified
24 Organization prior to distribution as provided by paragraph 22. Within fifteen (15) days
25 after the DOJ’s non-objection to the Qualified Organization(s), the parties shall move the
26 Court to authorize the distribution of the funds. The parties shall provide the Court with
27 information regarding how the Qualified Organization(s) meet the requirements set forth
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1 in paragraph 22.

2 24. Within one (1) year after the funds are distributed and every year thereafter
3 until the funds are exhausted, Toyota shall require each Qualified Organization to submit
4 to Toyota a report detailing that funds are utilized for the purposes identified in
5 paragraph 22. Toyota shall submit those reports to the DOJ and the Bureau within thirty
6 (30) days of receiving them. For any Qualified Organization that does not provide such
7 a report, Toyota shall require that the funds be returned to the Administrator for
8 redistribution to the other Organization(s) approved to receive funds.

9 **B. Additional Monetary Provisions**

10 25. In the event of any default on Toyota's obligations to make payment under
11 this Consent Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue
12 on any outstanding amounts not paid from the date of default to the date of payment, and
13 will immediately become due and payable.

14 26. Toyota must relinquish all dominion, control, and title to the funds paid to
15 the fullest extent permitted by law and no part of the funds may be returned to Toyota.

16 27. Under 31 U.S.C. § 7701, Toyota, unless it already has done so, must furnish
17 to the DOJ and the Fair Lending Director its taxpayer identifying numbers, which may
18 be used for purposes of collecting and reporting on any delinquent amount arising out of
19 this Consent Order.

20 28. Within thirty (30) days of the entry of a final judgment, consent order, or
21 settlement in a Related Consumer Action, Toyota must notify the DOJ and the Fair
22 Lending Director of the final judgment, consent order, or settlement in writing. That
23 notification must indicate the amount of redress, if any, that Toyota paid or is required to
24 pay to consumers and describe the consumers or classes of consumers to whom that
25 redress has been or will be paid.

1 **VIII. ADMINISTRATIVE PROVISIONS**

2 **A. Reporting Requirements**

3 29. Toyota must notify the DOJ and the Bureau of any development that may
4 affect compliance obligations arising under this Consent Order, including but not limited
5 to, a dissolution, assignment, sale, merger, or other action that would result in the
6 emergence of a successor company; the creation or dissolution of a subsidiary, parent, or
7 affiliate that engages in any acts or practices subject to this Consent Order; the filing of
8 any bankruptcy or insolvency proceeding by or against Toyota; or a change in Toyota's
9 name or address. Toyota must provide this notice, if practicable, at least thirty (30) days
10 before the development, but in any case no later than fourteen (14) days after the
11 development.

12 30. Within ten (10) business days of the Effective Date, Toyota must:

13 a. Designate at least one telephone number and email, physical, and postal
14 address as points of contact, which the DOJ and the Bureau may use to communicate
15 with Toyota regarding this Consent Order;

16 b. Identify all businesses for which Toyota is the majority owner, or that
17 Toyota directly or indirectly controls, by all of their names, telephone numbers, and
18 physical, postal, email, and Internet addresses;

19 c. Describe the activities of each such business, including the products and
20 services offered, and the means of advertising, marketing, and sales.

21 d. Toyota must report any change in the information required to be submitted
22 under this Section (paragraphs 29 to 31) as soon as practicable, but in any case at least
23 thirty (30) days before the change.

24 31. Within one hundred and eighty (180) days of the Effective Date, and every
25 one hundred and eighty (180) days thereafter until the termination of this Consent Order,
26 Toyota must submit to the DOJ and the Fair Lending Director an accurate written
27 Compliance Progress Report, which has been approved by the Board or the Compliance
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1 Oversight Committee. Each Report shall provide a complete account of Toyota's actions
2 to comply with each requirement of the Consent Order during the previous six (6)
3 months, an objective assessment of the extent to which each quantifiable obligation was
4 met, an explanation of why any particular component fell short of meeting its goal for
5 the previous six (6) months, and any recommendation for additional actions to achieve
6 the goals of the Consent Order.

7 **B. Order Distribution and Acknowledgment**

8 32. Within thirty (30) days of the Effective Date, Toyota must deliver a copy of
9 this Consent Order to each of its Board members and Executive Officers.

10 33. Until the termination of this Consent Order, Toyota must deliver a copy of
11 this Consent Order to any business entity resulting from any change in structure referred
12 to in Section A and any future Board Members and Executive Officers before they
13 assume their responsibilities.

14 34. Toyota must secure a signed and dated statement acknowledging receipt of
15 a copy of this Consent Order, ensuring that any electronic signatures comply with the
16 requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.*, within thirty (30) days of
17 delivery, from all persons receiving a copy of this Consent Order pursuant to this
18 Section.

19 **C. Recordkeeping**

20 35. Toyota must create, or if already created, must retain until the termination
21 of this Consent Order the following business records:

22 a. All documents and records necessary to demonstrate full compliance with
23 each provision of this Consent Order, including but not limited to, reports submitted to
24 the DOJ and the Fair Lending Director and all documents and records pertaining to
25 redress, as set forth in Section VI above;

26 b. All documents and records pertaining to the Monetary Provisions and
27 administration, described in Section VII above; and

1 c. All written consumer complaints related to Toyota's retail installment
2 contracts alleging discrimination by Toyota (whether received directly or indirectly, such
3 as through a third party), and any responses to those written complaints or requests.

4 36. All business records created or retained pursuant to this Section shall be
5 retained at least until the termination of this Consent Order, and shall be made available
6 upon the DOJ's or the Fair Lending Director's request to DOJ representatives or Bureau
7 representatives, respectively, within sixty (60) days of a request.

8 **D. Modifications to Non-Material Requirements**

9 37. Toyota may seek a modification to non-material requirements of this
10 Consent Order (*e.g.*, reasonable extensions of time and changes to reporting
11 requirements) by submitting a written request to the DOJ and the Fair Lending Director.

12 38. The DOJ may, in its discretion, modify any non-material requirements of
13 this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting
14 requirements) if the DOJ determines good cause justifies the modification. Any such
15 modification by the DOJ must be in writing.

16 **E. Notices**

17 39. Unless otherwise directed in writing by a DOJ or a Bureau representative,
18 all submissions, requests, communications, consents, or other documents relating to this
19 Consent Order shall be in writing and sent by overnight courier (not the U.S. Postal
20 Service) as follows:
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1 To the DOJ:
2 Chief
3 Housing and Civil Enforcement Section
4 Civil Rights Division
5 U.S. Department of Justice
6 1800 G Street NW, Suite 7002
7 Washington, DC 20006
8 Attn: DJ 188-12C-46, *United States v. Toyota Motor Credit Corporation*
9 By contemporaneous email to marta.campos@usdoj.gov

10
11 To the Fair Lending Director:
12 Fair Lending Director
13 Consumer Financial Protection Bureau
14 ATTENTION: Jane M.E. Peterson
15 1625 Eye Street, N.W.
16 Washington, DC 20006

17 The subject line shall begin: *In re Toyota Motor Credit Corporation*, File No.
18 2016-CFPB-0002, dated February 2, 2016; or
19 By first-class mail to the below address and contemporaneously by email to
20 Jane.Peterson@cfpb.gov:

21 Fair Lending Director
22 Consumer Financial Protection Bureau
23 ATTENTION: Jane M.E. Peterson
24 1700 G Street, N.W.
25 Washington, DC 20552

26 The subject line shall begin: *In re Toyota Motor Credit Corporation*, File No.
27 2016-CFPB-0002, dated February 2, 2016.

1 To Toyota:

2
3 Matthew L. Biben

4 Partner

5 Debevoise & Plimpton LLP

6 919 Third Avenue

7 New York, NY 10022

8 Tel.: (212) 909-6606

9 Fax: (212) 909-6836

10 mbiben@debevoise.com

11
12 **F. Other Provisions**

13 40. Except as provided in paragraphs 41 and 43, the provisions of this Consent
14 Order do not bar, estop, or otherwise prevent the DOJ, or any other governmental
15 agency, from taking any other action against Toyota.

16 41. The DOJ releases and discharges Toyota from all potential liability for all
17 ECOA claims of the United States Attorney General for discriminating on the basis of
18 race or national origin that have been or might have been asserted by the United States
19 Attorney General based on the practices described in the Complaint, to the extent such
20 practices occurred prior to the Effective Date, and are known to the DOJ as of the
21 Effective Date. Notwithstanding the foregoing, the practices alleged in the Complaint
22 may be utilized by the DOJ in future enforcement actions against Toyota and its
23 affiliates, including without limitation, to establish a pattern or practice of violations or
24 the continuation of a pattern or practice of violations. This release shall not preclude or
25 affect any right of the DOJ to determine and ensure compliance with the terms and
26 provisions of this Consent Order, or to seek penalties for any violations thereof.

1 42. Toyota may request to modify the compliance management program
2 required by this Consent Order (as described in the Options set forth in Section V) when
3 the modification is based upon a change in circumstances that has arisen during the
4 pendency of this Consent Order, including but not limited to any amendment to the
5 statutory or regulatory regime applicable to dealer markup and compensation policies, or
6 the adoption of a materially different dealer compensation policy by lenders comprising
7 a majority of the auto loan market as defined by retail installment contract volume. Any
8 such request to modify the compliance plan is subject to the DOJ's and the Fair Lending
9 Director's review and determination that the modified compliance management program
10 eliminates or substantially reduces Dealer Discretion, and determination of non-
11 objection.

12 43. This Consent Order will terminate three (3) years from the Effective Date,
13 unless Toyota conducts a portfolio-wide analysis, as described in this paragraph, that
14 yields dealer markup disparities based on race or national origin below the agreed upon
15 target for both African-American and Asian and/or Pacific Islander borrowers, in which
16 case the Consent Order shall terminate two (2) years after the Effective Date. The
17 analysis referenced in the previous sentence shall be a portfolio-wide analysis of retail
18 installment contract pricing data for disparities on a prohibited basis resulting from
19 Toyota's dealer compensation policy; it will analyze data for the six (6)-month period
20 beginning two hundred and fifty (250) days after Toyota implements the chosen option
21 pursuant to paragraph 2 and reflect the same methods and controls the DOJ and the
22 Bureau applied in their analyses described in paragraphs 21-22 of the Complaint, unless
23 the DOJ and the Bureau approve the use of additional controls or methodological
24 changes proposed by Toyota. The Consent Order will remain effective and enforceable
25 until such time, except to the extent that any provisions of this Consent Order have been
26 amended, suspended, waived, or terminated in writing by the DOJ. The DOJ will not
27 pursue any potential violations of ECOA against, or seek consumer remuneration from,
28

1 Toyota for conduct undertaken with respect to Dealer Discretion that is both pursuant to
2 and consistent with this Consent Order during the term of the Consent Order.

3 44. Calculation of time limitations will run from the Effective Date and be
4 based on calendar days, unless otherwise noted.

5 45. Should Toyota seek to transfer or assign all or part of its operations that are
6 subject to this Consent Order, Toyota must, as a condition of sale, obtain the written
7 agreement of the transferee or assignee to comply with all applicable provisions of this
8 Consent Order.

9 46. This Consent Order is enforceable only by the parties. No person or entity
10 is intended to be a third party beneficiary of the provisions of this Consent Order for
11 purposes of any civil, criminal, or administrative action, and accordingly, no person or
12 entity may assert a claim or right as a beneficiary or protected class under this Consent
13 Order.

14 47. Each party to this Consent Order shall bear its own costs and attorney's fees
15 associated with this litigation.


16 48. The DOJ and Toyota agree that, as of the Effective Date, litigation is not
17 "reasonably foreseeable" concerning the matters described above. To the extent that the
18 DOJ or Toyota previously implemented a litigation hold to preserve documents,
19 electronically stored information, or things related to the matters described above, it is no
20 longer required to maintain such litigation hold. Nothing in this paragraph relieves the
21 DOJ or Toyota of any other obligations imposed by this Consent Order.


22 49. To the extent that a specific action by Toyota is required both by this
23 Consent Order and any Consent Order issued by the Bureau in the administrative
24 proceeding styled *In the Matter of Toyota Motor Credit Corporation*, filed on or about
25 February 2, 2016, action by Toyota that satisfies a requirement under any such consent
26 order will satisfy that same requirement under this Consent Order.

1 The undersigned hereby apply for and consent to the entry of the Order:

2 For the United States of America:


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4 LORETTA E. LYNCH
Attorney General

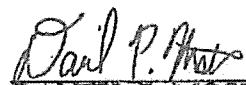
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7 EILEEN M. DECKER
8 United States Attorney
Central District of California

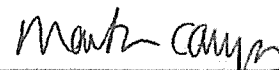
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Civil Rights Division

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11 MATTHEW L. BIBEN (pro hac vice application to be filed)
12 Partner
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