

Congress of the United States
House of Representatives
Washington, DC 20515

June 20, 2013

Ms. Patrice Ficklin
Assistant Director
Office of Fair Lending and Equal Opportunity
Consumer Financial Protection Bureau
1700 G Street Northwest
Washington, D. C. 20552

Dear Ms. Ficklin:

We are writing with concern regarding "guidance" that the Consumer Financial Protection Bureau (CFPB) issued on March 21, 2013 to indirect auto lenders on the requirements for compliance with the fair lending provisions of the Equal Credit Opportunity Act. We are all strongly opposed to any discrimination in lending. However, it is highly concerning that the agency is issuing such significant new directives without affording the public a proper opportunity to comment on its methodology and analysis for determining whether discrimination has occurred and without addressing the effect of its directives on consumer financing and choice in the intensely competitive auto lending market.

The CFPB's guidance appears to stem from the concept of "disparate impact" and focuses on whether a finance source's policy for compensating dealers for arranging financing for consumers results in pricing disparities on a prohibited basis. Because allegations of disparate impact do not involve any intentional conduct, but instead consist solely of statistical analysis of past transactions, it is essential that the model used for this purpose have a very high degree of accuracy and demonstrated reliability. To allow Congress to evaluate the statistical model that the CFPB used to justify the new directives, we request that the agency provide us with the full set of details concerning its statistical disparate impact methodology, including (i) the proxies used to determine the background of consumer credit applicants; (ii) the factors held constant to isolate the applicant's background as the sole reason for any alleged pricing disparity; (iii) the metric used to measure whether pricing disparities exists (e.g., basis points, the dollar amount of the finance charge, etc.); and (iv) the numerical threshold at which it was determined that a pricing disparity on a prohibited basis constitutes an ECOA violation.

The guidance states that indirect auto finance sources should "ensure that they are operating in compliance with ECOA" by either (1) imposing a series of controls on the consumer's ability to negotiate with the dealer to determine the amount the dealer earns for arranging financing for the consumer; or (2) simply eliminating the consumer's ability to negotiate with the dealer altogether and instead compensating dealers through another mechanism such as a "flat fee per transaction." The controls strike us as onerous and unrealistic, and restricting consumer choice is highly problematic. We request that the CFPB forward all studies, analysis, and information it relied upon in developing its guidance

document. Of special interest is any analysis done on the impact of the directives on the auto financing marketplace, such as higher costs for consumers seeking auto credit or the possibility that lower-income car buyers may be pushed out of the credit market entirely. In addition, we request that the CFPB detail (i) the extent of its coordination with the federal agencies that Congress granted authority to implement and enforce ECOA as it relates to motor vehicle dealers (the Board of Governors of the Federal Reserve and the Federal Trade Commission) prior to issuing its March 21 fair lending guidance, and (ii) why the standard rulemaking process, which contains important safeguards for the public, apparently was not utilized.

In sum, it appears to us that a loss to consumers would occur if the CFPB uses its supervisory and/or enforcement authority to weaken the intense competition that results from the ability to negotiate with the dealer to obtain financing terms that are more competitive than the best terms the consumer can secure from any other source. It is troubling that the agency has initiated this process without a public hearing, without public comment, and without releasing the data, methodology, or analysis it relied upon to support such an important change in policy. The public purpose is always best served by complete transparency and accountability in regard to the manner in which decisions are made by their government agencies.

We look forward to reviewing this information and would appreciate your response within 30 days of the receipt of this letter.

Thank you for your consideration.

Sincerely,



Spencer Bachus
Chairman Emeritus
Committee on Financial Services



Shelley Moore Capito
Chairman
Subcommittee on Financial
Institutions and Consumer Credit



Gary Miller
Vice Chairman
Committee on Financial Services



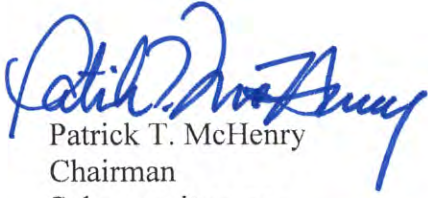
Lynn A. Westmoreland
Committee Whip
Committee on Financial Services



Scott Garrett
Chairman
Subcommittee on
Capital Markets and GSEs



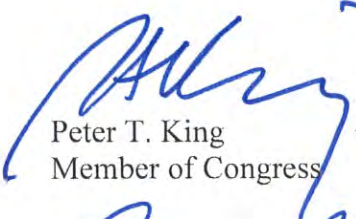
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Chairman
Subcommittee on Housing
and Insurance



Patrick T. McHenry
Chairman
Subcommittee on
Oversight and Investigations



John Campbell
Chairman
Subcommittee on Domestic and
International Monetary Policy



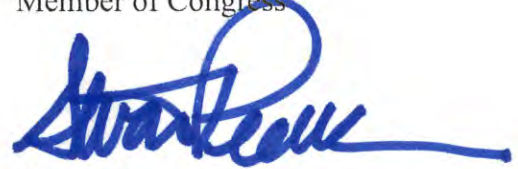
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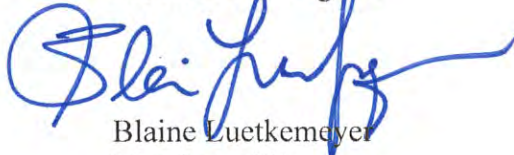
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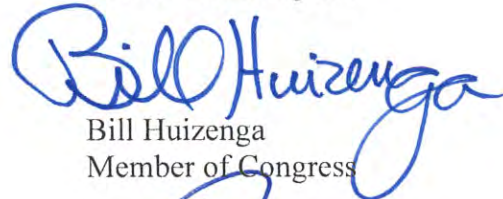
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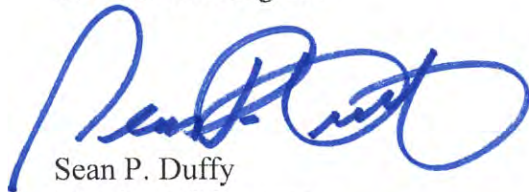
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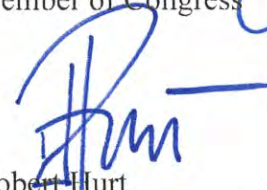
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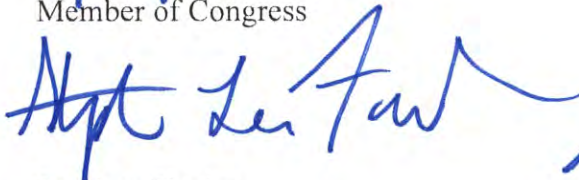
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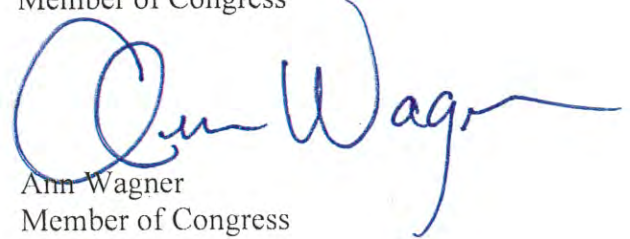


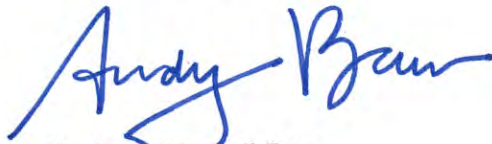
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Mick Mulvaney
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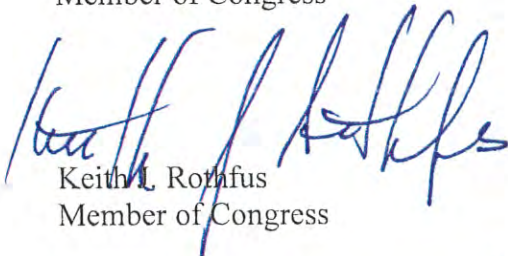

Dennis A. Ross
Member of Congress

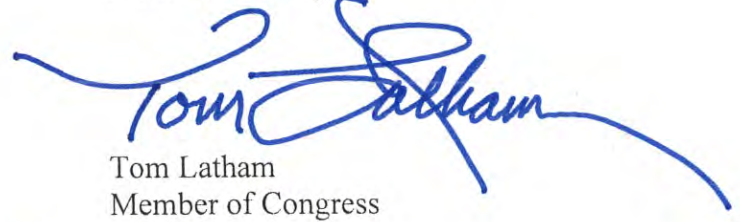

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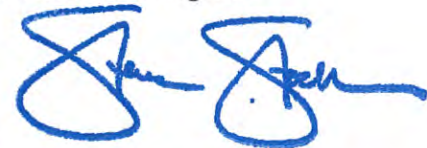

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