

# United States Senate

WASHINGTON, DC 20510

COMMITTEES:  
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BANKING, HOUSING,  
AND URBAN AFFAIRS  
BUDGET  
ENVIRONMENT AND  
PUBLIC WORKS

November 19, 2013

Hon. Richard Cordray  
Director  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

Dear Director Cordray:

I appreciate the Consumer Financial Protection Bureau's (CFPB) efforts to provide guidance regarding fair lending requirements of the Equal Credit Opportunity Act (ECOA). The guidance bulletin, issued on March 21, 2013, regarding indirect auto lending and compliance with ECOA has brought forth important questions about discrimination in the extension of credit, and about the flexibility necessary to conduct legitimate, non-discriminatory automobile financing.

While the March 21 bulletin doesn't mandate flat fees from lenders to dealers for originating a loan, auto dealers in my state are concerned that this is the real consequence necessary to protect dealers from charges of discrimination. Moreover, dealers fear that such flat fees are not in the buyers' best interest. For example, dealers indicate that flexible fees allow them to "meet or beat" a competition's financing offer by cutting into their own fees.

No one should be incentivized to push a borrower into a trick-or-trap loan that is designed to explode on him or her. However – and correct me if I'm wrong – these loans do not do that. Rather, they simply give the auto dealer the ability to keep the consumer's business by negotiating the price and financing of the car within the structure of an otherwise plain vanilla auto loan.

I would appreciate it if the CFPB could do two things. First, it would be helpful to have a study of discrimination in the auto marketplace to identify the real problem. Second, until such study can shed light on policy options, please ensure that the CFPB is not in practice mandating flat fees that could potentially hurt both dealers and customers. In doing so, please explore options for addressing discrimination that maintain flexibility for an auto dealer to give the consumer the best rate possible.

Finally, the CFPB may also wish to expand its communications with auto dealers and indirect auto lenders to clarify any misconceptions that may exist regarding whether the guidance mandates any particular type of compensation model.

I appreciate the steps you have taken in recent days to begin to address some of these concerns and urge that you to continue to engage with all parties on these matters. I look forward to working with you to ensure that the issues raised in the March 21 bulletin are fully examined and understood.

Sincerely,

A handwritten signature in blue ink that reads "Jeffrey A. Merkley". The signature is stylized with a large initial "J" and a long horizontal stroke at the end.

Jeffrey A. Merkley  
U.S. Senator