November 16, 2016

The Honorable Mitch McConnell
Majority Leader
United States Senate
S-230, The Capitol
Washington, DC 20510

The Honorable Harry Reid
Minority Leader
United States Senate
S-221, The Capitol
Washington, DC 20510

Dear Leader McConnell and Leader Reid:

On behalf of our members and the 1.1 million people they employ, I am writing to request your support in the bipartisan effort to rescind the Consumer Financial Protection Bureau's (CFPB's) flawed 2013 guidance that would eliminate consumer discounts on auto financing at dealerships. We respectfully urge the Senate to pass legislation (S. 2663) this year which would cancel the CFPB's flawed guidance.

Enactment of S. 2663 is necessary because the CFPB has refused to consider good faith offers to address fair credit concerns. During the past three years, the retail automotive industry repeatedly has asked the CFPB to consider a Department of Justice (DOJ)-based program designed specifically to mitigate fair credit risks at dealerships. Despite these numerous efforts by the industry, the CFPB has refused to accept the DOJ-based solution and remains committed to eliminating or reducing consumer discounts for credit in the showroom. Moreover, multiple discussions among industry representatives and CFPB officials have failed to resolve the issue and no further discussions are planned.

Access to affordable credit is essential to the auto industry and retail customers, and the ability of a dealer to discount credit is often necessary to meet customers' needs. Through the 2013 guidance, the CFPB is attempting to eliminate pro-competitive consumer discounts in the $1 trillion auto financing market. When issuing the guidance, the CFPB provided for no public comment, used flawed statistics, and failed to analyze the impact of the guidance on consumers.

The House rejected the CFPB's current approach by a bipartisan, veto-proof margin**.** On November 18, 2015, the House passed H.R. 1737 (the House companion bill to S. 2663), the "Reforming CFPB Indirect Auto Financing Guidance Act," by a vote of 332-96 (including 88 Democrats).

On March 10, Sen. Moran (R-KS) introduced S. 2663. During CFPB oversight hearings on April 5 and 7 conducted by the Senate Banking Committee, committee members from both sides of the aisle expressed support for protecting affordable auto financing and highlighted concerns about the adverse effects of the CFPB's guidance on consumers.

On July 7, a House amendment to suspend the CFPB's indirect auto lending guidance for one year was added to the FY 2017 Financial Services appropriations bill (Sec. 1218 of H.R. 5485) by a bipartisan floor vote of 260-162. As noted in the report to H.R. 5485 (H. Rept. 114-624 , p. 51), "*The Committee is concerned the Bureau's recent actions related to auto lending are reducing competition, regulating auto dealers—over which the Bureau has no jurisdiction—and raising costs to consumers.*"

The CFPB based its auto finance policy on claims that discounted interest rates create a fair credit risk; however, a nonpartisan study of the CFPB's policy found that the agency's methodology was prone to significant errors and ignored legitimate business factors that can affect finance rates (e.g., beating a competing rate). The CFPB knew of these flaws yet failed to correct them.

The nation's auto dealers are committed to adhering to fair credit laws, as demonstrated by the voluntary creation and implementation of a fair credit compliance program based entirely on a Department of Justice model. This program effectively manages fair credit risk while preserving discounts on credit for legitimate business reasons, such as meeting consumer budget constraints and competing offers. **We respectfully urge the Senate to protect consumers by ensuring that S. 2663 is included as part of final legislation approved by Congress this year so that auto financing remains competitive and affordable.**

Sincerely,

Peter K. Welch

President

cc: The Hon. Richard C. Shelby, Chairman, Senate Committee on Banking, Housing and Urban Affairs
The Hon. Sherrod Brown, Ranking Member, Senate Committee on Banking, Housing and Urban Affairs
Members of the Senate Committee on Banking, Housing and Urban Affairs

Attachments:

S. 2663 Bill Text

Myths and Facts

II

114TH CONGRESS
2D SESSION

S. 2663

To nullify certain guidance of the Bureau of Consumer Financial Protection and to provide requirements for guidance issued by the Bureau with respect to indirect auto lending.

IN THE SENATE OF THE UNITED STATES

MARCH 10, 2016

Mr. MORAN introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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A BILL

To nullify certain guidance of the Bureau of Consumer Financial Protection and to provide requirements for guidance issued by the Bureau with respect to indirect auto lending.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Reforming CFPB Indirect Auto Financing Guidance Act".

SEC. 2. NULLIFICATION OF AUTO LENDING GUIDANCE.

Bulletin 2013–02 of the Bureau of Consumer Financial Protection (published March 21, 2013) shall have no force or effect.

SEC. 3. GUIDANCE REQUIREMENTS.

Section 1022(b) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5512(b)) is amended by adding at the end the following:

"(5) GUIDANCE ON INDIRECT AUTO FINANCING.—In proposing and issuing guidance primarily related to indirect auto financing, the Bureau shall—

"(A) provide for a public notice and comment period before issuing the guidance in final form;

"(B) make available to the public, including on the website of the Bureau, all studies, data, methodologies, analyses, and other information relied on by the Bureau in preparing such guidance;

"(C) redact any information that is exempt from disclosure under paragraph (3), (4), (6), (7), or (8) of section 552(b) of title 5, United States Code;

"(D) consult with the Board of Governors of the Federal Reserve System, the Federal

Trade Commission, and the Department of Justice; and

"(E) conduct a study on the costs and impacts of such guidance to consumers and women-owned, minority-owned, veteran-owned, and small businesses, including consumers and small businesses in rural areas.".

SEC. 4. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to apply to guidance issued by the Bureau of Consumer Financial Protection that is not primarily related to indirect auto financing.

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S. 2663: Reforming CFPB Indirect Auto Financing Guidance Act Myths vs Facts

Myth	Facts
S. 2663 would "condone discrimination in auto lending, and would stop the Consumer Financial Protection Bureau (CFPB) from taking action against discriminatory practices in auto lending."	• Any suggestion that support of S. 2663 condones discrimination is unfair, baseless, and wrong. • S. 2663 is a process bill; it does not impact or amend the Equal Credit Opportunity Act (ECOA). • The bill would in no way prohibit, disrupt or affect the enforcement of any fair credit laws by the CFPB, or any other agency. • The Congressional Budget Office noted in its cost estimate of the House companion bill to S. 2663 (H.R. 1737) that ''the bill would not affect the underlying statute or regulations to implement it, the Bureau can continue to enforce the ECOA without the bulletin[i]," something even the primary opponent of H.R. 1737 admits.[ii] • To bolster ECOA compliance, the trade associations representing franchised auto dealers developed a fair credit compliance program based on a Department of Justice model that addresses fair credit risk but still allows dealers to discount rates for consumers.
Auto dealers get a "substantial bonus" from lenders for increasing the interest rate above that for which the borrower otherwise qualifies.	• A finance source gives dealers a "maximum contract rate". Unlike a bank or a credit union, dealers have the flexibility to discount a rate for consumers and often do so to beat a consumer's competing offer from a bank. The compensation a dealer receives is the retail margin for the cost of arranging the loan, not a "bonus" or "overcharge." • The Washington Post recently debunked the Center for Responsible Lending's claim that dealer compensation "cost consumers $26 billion a year." The Post found that CRL's conclusions were based on misapplied, unexplained, and false data and gave the claim 4 Pinocchios – their maximum rating a "Whopper" of a false statement.[iii] • The CFPB wants to eliminate a dealer's ability to discount credit but fails to acknowledge "legitimate business reasons," such as budget constraints, which explain why a dealer may discount an interest rate.
The process established under S. 2663 is "convoluted" and would "tie the CFPB's hands."	• The process established under S. 2663 is simple, open and transparent, and consistent with OMB's practices on agency guidance documents.[iv] • The bill does not direct any particular result; it merely allows for public participation and transparency. • The bill's requirements add appropriate safeguards to the CFPB guidance and are much less rigorous than an APA rulemaking. For example, the CFPB decides the length of a public comment period.

Myth	Facts
The enforcement actions against auto lenders are proof of wrongdoing.	• CFPB enforcement actions are forcing lenders to settle based on information and analysis the CFPB knows to be flawed. One undisputed study found that the CFPB's proxy methodology had errors of 41%. The CFPB admits errors of nearly 20%.[v] • The CFPB is a powerful regulator with tremendous leverage over lenders. For example, three days after one lender's consent order with the CFPB, the Federal government approved its application to become a financial holding company, enabling the bank to continue offering insurance products it would have otherwise been forced to discontinue.[vi] [vii] • The CFPB is taking these actions without considering the impact on buyers. However well-intentioned, the CFPB's policy will have the effect of reducing or eliminating discounts buyers can get on their car loans.
The CFPB auto finance guidance is being unfairly singled out. No other guidance is being similarly treated.	• H.R. 1737/S. 2663 was carefully drafted to narrowly focus only on the CFPB auto finance guidance. Previously, Democratic members of the House Financial Services Committee objected to a bill from the last Congress (H.R. 4811) that would have affected all CFPB guidance as being overbroad. • In this instance, the CFPB is trying to make new policy and reinterpret existing law using guidance. • Recent release of internal CFPB documents confirms that the Bureau is using the auto finance guidance as a means to change the auto lending market and avoid the rulemaking process.[viii]

September 12, 2016

[i] Congressional Budget Office. (2015, October 14). Cost Estimate: H.R. 1737 Reforming CFPB Indirect Auto Financing Guidance Act.
[ii] Even the primary opponent of H.R. 1737 concedes that "Rescinding the guidance does not change laws barring discrimination." Letter to Congress regarding H.R. 5403 (the identical bill to H.R. 1737 last Congress.) Center for Responsible Lending, October 2014.
[iii] Kessler, Glenn. (2015, May 5). Warren's false claim that 'auto dealer markups cost consumers $26 billion a year'. *The Washington Post.*
[iv] Office of Management and Budget, Executive Office of the President. (2007). Final Bulletin for Agency Good Guidance Practices. *Federal Register, 72(16),* 3432-2440.
[v] Washington's Latest Bank Heist. (2015, April 6). *The Wall Street Journal.*
[vi] According to the Wall Street Journal, "Standard & Poor's Ratings Services… warned it would potentially lower the company's ratings if it failed to secure financial holding company status." An Ally official stated that "[n]o investor publically was going to invest in us unless we got financial holding company status. And we could not do that without coming to terms with the CFPB." Johnson, Andrew R. (2013, December 23). Ally Receives Fed Approval for Financial Holding Company Status. *The Wall Street Journal.*
[vii] Washington's Latest Bank Heist. (2015, April 6). *The Wall Street Journal.*
[viii] Witkowski, Rachel (2015, September 29). Lawmakers Give CFPB's Cordray Earful Over Auto Lending Crackdown. *American Banker.*