

United States Senate

WASHINGTON, DC 20510-2602

November 12, 2013

INTERNET:
<http://baucus.senate.gov>

Mr. Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552

Dear Director Cordray:

I write to express concerns about a recent Consumer Financial Protection Bureau (CFPB) guidance bulletin that is relevant to auto dealers in my state and across the country. The guidance, issued on March 21, 2013, addresses compliance with the fair lending requirements of the Equal Credit Opportunity Act (ECOA) for indirect auto lenders in contracts with auto dealers. Unfortunately, the guidance does not adequately convey to auto lenders how they can satisfy CFPB that their practices are not discriminatory. Guidance is particularly necessary to fully describe the process by which CFPB determines that an auto dealer practice has a disparate impact on a group, even though the practice does not appear to be discriminatory on its face.

First, I stand with auto dealers in Montana in supporting reasonable and effective policies to protect consumers from unlawful lending practices and discrimination. The CFPB has an important responsibility to ensure that consumers have robust legal protections while ensuring that credit markets can function fairly and efficiently. That responsibility includes ensuring that market participants, in this case auto dealers and lenders, have adequate information to comply with laws and regulations.

The March 21 fair lending guidance bulletin explains that indirect auto lenders are responsible to comply with ECOA requirements in many common auto financing situations. Specifically, indirect lenders may be liable for methods of compensating an auto dealer if that method results in discrimination under the legal doctrines of disparate treatment or disparate impact. The guidance bulletin goes on to encourage indirect lenders to put safeguards in place. One example suggested in the guidance is to abandon the practice of allowing auto dealers to negotiate retail margin with the consumer, but instead require a flat fee per transaction.

The guidance is directed to advise the policies and practices of indirect auto lenders, but it clearly has implications for all parties to these contracts, including auto dealers and consumers. Because of the wide implications of the March 21 guidance, it would have been advisable for CFPB to seek public comment before issuing the guidance bulletin. However, CFPB still has an opportunity to consult with stakeholders and provide more complete guidance on how indirect lenders and auto dealers can ensure compliance with ECOA in a way that does not unduly disrupt industry practices.

Montana auto dealers strongly oppose unlawful discrimination, and it is not too much to ask for the CFPB to provide greater context and transparency to this issue. This is particularly important for smaller dealers. I call on CFPB to meaningfully engage auto dealers and have a productive dialogue that will give appropriate guidance to all parties. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Max Baucus", written over a horizontal line.

Max Baucus
U.S. Senator