JEB HENSARLING, TX , CHAIRMAN

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

MAXINE WATERS, CA, RANKING MEMBER

March 7, 2014

The Honorable Richard Cordray
Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Dear Director Cordray:

I am writing you regarding the Bureau's March 21, 2013 bulletin entitled "Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act." As you are no doubt aware, this bulletin has raised significant and ongoing concerns among the public, auto dealers, lenders, and Members of Congress.

On May 28, 2013, 13 Democratic members of the Financial Services Committee wrote you requesting information about the methodology the Bureau of Consumer Financial Protection has adopted to determine whether fair lending violations exist in indirect auto lending. Specifically, these Members sought to know "the method the Bureau is using to identify different groups of consumers, the factors it is holding constant to ensure its findings of pricing differentials are attributable to a consumer's background, and the numerical threshold at which the Bureau determines that disparate impact is present." In your June 20, 2013 response to these Members, you stated "Our agency is committed to being open and transparent in all appropriate circumstances, including in our review of indirect auto lending." However, you ignored the Members' specific request for information regarding the regression analysis the Bureau employs to isolate non-discriminatory variables affecting buy rate and dealer markup differentials, and the threshold triggering liability.

On June 20, 2013, Representative Bachus and 34 other House Republican Members, including 27 members of the Financial Services Committee, wrote a letter to the Bureau specifically requesting "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 exist (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." In your August 2, 2013 response to these Members, you stated "Our agency is committed to being open and transparent, including in our review of indirect auto lending." However, you provided these Members only cursory information concerning the sources of data informing the Bureau's surname and geocode racial proxy methodology, and ignored entirely the remainder of their request, stating only that "in our analysis we consider analytical controls which are appropriate to each particular case in reviewing data to determine whether a specific policy results in disparities" and that "we typically look to whether there is a statistically significant basis point disparity in the dealer markups received by the prohibited basis group as compared to the control group."

On September 24, 2013, Representative Bachus wrote you again regarding the Bureau's compliance bulletin, noting that he considered your response to his previous letter to be very general, and specifically sought your detailed response to sixteen separate requests, including your identification of "each control the Bureau applies to its analysis of the amount of dealer participation paid by different groups of consumers to ensure that the consumers who are being compared are 'similarly situated'" and a "description in quantitative terms (i.e., a number) what the Bureau has determined is the statistically significant basis point disparity applicable to each prohibited basis group that it has examined using its disparate impact methodology." In your November 4, 2013 response, you stated only that "each supervisory examination or enforcement investigation is passed upon the particular facts presented by the entity under review" and that "[b]ecause of this case-by-case determination we cannot identify each control that we apply in the analysis to ensure that borrowers are similarly situated."

On October 30, 2013, 22 United States Senators, including eleven Democrats and eleven Republicans, wrote you seeking "complete details concerning the statistical methodology the Bureau employs to determine whether disparate impact is present in an auto creditor's portfolio, including: (1) the quantitative degree of accuracy that applies to that methodology for each group of consumers the Bureau has examined; (2) a complete list of any analytical controls the Bureau considers to ensure that consumers being compared are similarly situated; and (3) the numerical basis point threshold at which the Bureau concludes that statistically significant pricing disparities exist for each group of consumers that the Bureau has examined." These Senators noted that "a bipartisan majority of the House Financial Services Committee recently asked for information about the CFPB's methods and analysis used to justify the March 21 guidance. Unfortunately, the Bureau has not provided complete responses to several of the questions presented by our House colleagues. Given your statements that the CFPB will operate as a transparent and data-driven agency, we request that the data used to support the March 21 guidance be made public." In your November 4, 2013 response to these Senators, you again discussed the Bureau's surname and geocode racial proxy methodology, but did not reveal the quantitative degree of accuracy of the Bureau's methodology, nor did you disclose the analytical controls or numerical threshold sought by the Senators. Instead, you again stated that "in our analyses we consider analytical controls which are appropriate to each particular entity" and that "the Bureau makes case-by-case assessments of whether to pursue supervisory or enforcement activity in response to statistically significant disparities."

In light of your repeated insistence that the Bureau's regression analyses, analytical controls, and numerical thresholds governing its fair lending compliance investigations are dependent upon a particular lender's policies, practices, and procedures, I noted with interest the Bureau's December 19, 2013 announcement of the resolution of an enforcement action taken against Ally Financial, Inc. and Ally Bank for allegedly overcharging auto borrowers on the basis of race or national origin. On December 20, 2013, I instructed my staff to request a briefing from Bureau employees concerning the details of the Bureau's investigation and findings and the terms of the consent order. At the briefing, which occurred on January 24, 2014, your senior advisor, Mike Gordon, provided my staff with a general overview of the Bureau's Ally investigation and consent agreement. However, neither he nor your legislative affairs staff members in attendance were willing to answer specific questions posed by my staff. These questions, which were memorialized in writing shortly following the briefing, included the following:

- Per paragraph 20 on page 6 of the consent order, what were the "potential explanatory variables offered by Respondents"?
- Per paragraph 20 on page 6 of the consent order, for each variable, how did "Respondents fail to provide adequate evidence that additional variables appropriately reflected legitimate business needs"?
- Please provide the regression analysis model used by the Bureau in its Ally investigation to estimate any disparities in dealer markup on the basis of race or national origin.

In a response from your legislative affairs staff on March 4, 2014, the Bureau stated emphatically that it would not disclose the explanatory variables offered by Ally publicly and that "[t]he Bureau does not plan to make the statistical analyses conducted in Ally public or otherwise release them."

The Bureau's continued refusal to provide any details related to its disparate impact regression analyses and associated methodologies stands in stark contrast to your explicit promise to at least 48 Members of Congress to be open and transparent in the Bureau's review of indirect auto lending. By refusing to disclose this information, the Bureau has deliberately deprived indirect auto lenders of any meaningful way to tailor their company's lending practices and compliance systems so as to mitigate or eliminate the fair lending risk the Bureau asserts to be present. By refusing to disclose this information, the Bureau has also introduced unnecessary uncertainty into the auto lending market, which can only detrimentally affect consumers' access to affordable credit. Only the Bureau's increased transparency, as opposed to its pattern of obfuscation detailed above, will advance our shared goal of eliminating potential discrimination in the auto lending market.

An agency that professes to hold itself accountable to the American people should not withhold documents requested by its elected representatives in furtherance of a valid legislative purpose. To that end, please provide the following information no later than <u>March 13, 2014</u>:

1) As requested by 13 Democratic Members of Congress: "the method the Bureau is using to identify different groups of consumers, the factors it is holding constant to ensure its findings of pricing differentials are attributable to a consumer's background, and the numerical threshold at which the Bureau determines that disparate impact is present."
2) As requested by 35 Republican Members of Congress: "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."

3) As requested by Rep. Bachus: "each control the Bureau applies to its analysis of the amount of dealer participation paid by different groups of consumers to ensure that the consumers who are being compared are 'similarly situated'" and a "description in quantitative terms [] what the Bureau has determined is the statistically significant basis point disparity applicable to each prohibited basis group that it has examined using its disparate impact methodology."
4) As requested by 22 Senators: (1) the quantitative degree of accuracy that applies to that methodology for each group of consumers the Bureau has examined; (2) a complete list of any analytical controls the Bureau considers to ensure that consumers being compared are similarly situated; and (3) the numerical basis point threshold at which the Bureau concludes that statistically significant pricing disparities exist for each group of consumers that the Bureau has examined.
5) As requested by my Committee staff: (1) the potential explanatory variables offered by Respondents in the Ally case; (2) for each variable offered, the Bureau's reasons for asserting that Ally failed to provide adequate evidence that additional variables appropriately reflected legitimate business needs; and (3) the regression analysis model used by the Bureau in its Ally investigation to estimate any disparities in dealer markup on the basis of race or national origin.

With almost a year having elapsed since members of the Financial Services Committee first sought information about the Bureau's policies on indirect auto lending, further delay in providing the Committee with information needed to fulfill its oversight responsibilities is unacceptable. Accordingly, if the Bureau persists in its refusal to provide this information by the March 13 deadline, the Committee will have no choice but to consider invoking its compulsory process. Any questions about this request should be directed to Brian Johnson of the Committee staff at 202-225-7502.

Yours Respectfully,

Jeb Hensarling
Chairman

cc: The Honorable Maxine Waters
Mr. Mark Bialek, Inspector General, Federal Reserve Board and CFPB