United States Senate
WASHINGTON, DC 20510

October 30, 2013

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

Dear Director Cordray:

We write to express concerns regarding the process by which the Consumer Financial Protection Bureau ("CFPB" or "Bureau") has issued guidance that could curtail a pro-competitive feature of the indirect vehicle financing market and to request greater transparency for the Bureau's activity related to this matter.

As you know, indirect vehicle financing is an optional method in which an auto dealer arranges financing for a consumer from a third-party lender, such as a bank, credit union, or other financing source. The dealer typically is compensated for this service by negotiating its retail margin with the consumer. This compensation is capped by contract. This system provides consumers with the opportunity to determine if dealers can "meet or beat" the best financing rate that the consumer can secure from other creditors, which frequently results in consumers obtaining a lower cost of credit than is otherwise available to them.

On March 21, 2013, the Bureau issued a fair lending guidance bulletin widely interpreted as pressuring lenders to eliminate or severely limit an auto dealer's discretion to negotiate competitive financing for their customers, and instead encourage lenders to compensate auto dealers through "a different mechanism… such as a flat fee per transaction." As acknowledged in the guidance bulletin, the CFPB is attempting to bring about this change through a "disparate impact" theory of liability under the Equal Credit Opportunity Act ("ECOA"). Although ECOA does not mandate or even address flat fees, the Bureau's guidance bulletin suggests this change because of its concern that permitting negotiation over a consumer's interest rate creates a "significant risk" of "pricing disparities on the basis of race, national origin, and potentially other prohibited bases."

We support the Bureau's desire to eliminate any unlawful lending practices and are committed to ensuring that credit markets function competitively and efficiently for all consumers. Although the CFPB has alleged that "disparate impact" discrimination is present in the indirect auto financing market, the Bureau has yet to explain its basis for this assertion. Nor has the Bureau released the complete statistical methodology it employs for determining whether disparate impact is present in an auto lender's portfolio and the extent to which it has considered how the practical effect of its guidance will affect competition in the auto loan marketplace.

To promote greater transparency and help ensure that the Bureau issued its fair lending guidance to auto lenders in a proper manner that is consistent with sound public policy, we request that the Bureau:

(i) Provide 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 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;

(ii) Identify the full range of the Bureau's coordination with the Board of Governors of the Federal Reserve and the Federal Trade Commission prior to March 21, 2013, concerning its fair lending guidance to auto lenders;

(iii) Explain the Bureau's decision to avoid the Administrative Procedures Act rulemaking process and instead seek to bring about this market change via a guidance bulletin;

(iv) Explain why the Bureau did not afford the public an opportunity to comment on the content of the guidance or its potential effect on the marketplace; and

(v) Describe whether, and to what extent, the Bureau conducted a cost-benefit analysis into how an industry adoption of flat fees as a mechanism to compensate dealers for arranging financing would affect the cost of credit for consumers, including those at the lower end of the credit spectrum.

We note 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.

We would appreciate your reply to this letter within 30 days of its receipt. Thank you in advance for your cooperation.

Rob Portman
U.S. Senator

Jeanne Shaheen
U.S. Senator

David Vitter
U.S. Senator

Heidi Heitkamp
U.S. Senator

Pat Roberts
U.S. Senator

Amy Klobuchar
U.S. Senator

Kelly Ayotte
U.S. Senator

Kay Hagan
U.S. Senator

Deb Fischer
U.S. Senator

Mark Begich
U.S. Senator

John Thune
U.S. Senator

Joe Manchin
U.S. Senator

Richard Burr
U.S. Senator

Mark Pryor
U.S. Senator

Jerry Moran
U.S. Senator

Joe Donnelly
U.S. Senator

Mike Crapo
U.S. Senator

Bill Nelson
U.S. Senator

Jeff Sessions
U.S. Senator

Mary Landrieu
U.S. Senator

Rand Paul
U.S. Senator

Mazie Hirono
U.S. Senator