

# United States Senate

WASHINGTON, DC 20510

December 6, 2018

The Honorable Joseph Simons  
Chairman  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Chairman Simons:

Senate Joint Resolution 57, which used the Congressional Review Act (CRA) to nullify the Consumer Financial Protection Bureau's (CFPB) auto lending guidance, has introduced regulatory uncertainty about how to meet fair lending obligations and raises questions as to how federal regulators will enforce the law and address discrimination under the Equal Credit Opportunity Act (ECOA). Since some, including new leadership at the CFPB, argue that the CRA both applies to agency guidance and prohibits regulatory agencies from issuing guidance that is "substantially the same" as that disapproved under the CRA, the CFPB's ability to provide creditors' guidance for compliance with ECOA is now in question. Acknowledging the Federal Trade Commission's (FTC) authority over the business practices of automobile dealers, we write to request a detailed explanation of how the FTC plans to uphold its responsibility and enforce ECOA in indirect automobile lending in this uncertain environment.

The Dodd-Frank Act made important changes to ECOA, giving the CFPB rulemaking and enforcement authority for implementing ECOA. However, under Dodd-Frank, the FTC retained its authority to enforce ECOA and Regulation B. In your 2018 report to the CFPB regarding FTC enforcements activities under the ECOA and Regulation B, you note that "the Commission has been coordinating certain law enforcement, rulemaking, and other activities with the CFPB." However, we are unaware of the FTC bringing any ECOA cases in the last decade or more. Now, with the questions surrounding the CFPB's ability and willingness to provide guidance to creditors on Indirect Auto-Lending, it is imperative that the FTC use its oversight to police and deter discrimination in dealer markups.

There are a myriad of ways that minority car purchasers are harmed by discriminatory and predatory practices. Auto finance companies allow dealers' discretion to mark up interest rates and keep much of the markup for themselves. This discretion often means that consumers with the same credit risk can pay dramatically different interest rates, depending on how much the

dealer marks up the interest rate for that particular customer. Dealers also have broad discretion in pricing add-ons for individual consumers or pricing cars.

Evidence suggests that in cases where the dealer representative has broad discretion to price interest rates, add-ons, or cars, minorities often pay more than similarly situated white consumers. Analyses by Professor Ian Ayers<sup>[2]</sup> of the Yale Schools of Law and Management and Professor Mark A. Cohen<sup>[3]</sup> of Vanderbilt University's School of Management have demonstrated the contrasting effect on African-Americans of larger and more frequent interest rate markups when compared to white consumers of equal creditworthiness. In addition, recent paired testing in Virginia by the National Fair Housing Alliance <sup>[4]</sup> showed that more qualified non-white applicants were often offered higher-cost financing options than less qualified white applicants—resulting in an average of \$2,662 more paid by nonwhite borrowers over the life of the loan. A separate analysis of 1.8 million car sale transactions involving almost three million add-on products found that inconstant pricing for the same add-ons leads to further pricing disparities, with Hispanics charged higher markups than non-Hispanics.<sup>[1]</sup> Minorities also experience discrimination in the price of cars themselves.<sup>[2]</sup>

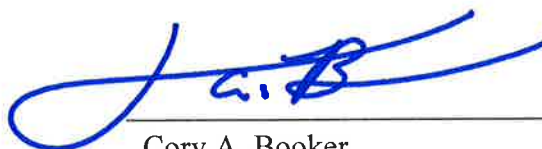
As you know, the CFPB is indicating that the agency will curtail enforcement actions against auto lending discrimination. Though we believe the CRA's language prohibiting an agency from taking actions that are "substantially the same" is unconstitutional, we believe this unfortunate reality makes it imperative for the FTC to improve its enforcement actions and aggressively police predatory practices at car dealerships.

Thank you for your consideration. We look forward to hearing from the FTC on how it plans to uphold its responsibilities and prevent discrimination in auto lending.


Sincerely,



Kirsten Gillibrand  
United States Senator

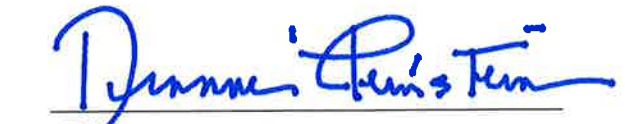


Cory A. Booker  
United States Senator




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Elizabeth Warren  
United States Senator




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Dianne Feinstein  
United States Senator



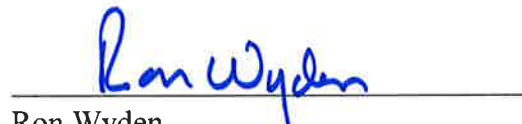
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Richard Blumenthal  
United States Senator



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Kamala Harris  
United States Senator



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Ron Wyden  
United States Senator