

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

September 17, 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 of Consumer Financial Protection's March 21, 2013 enforcement bulletin entitled "Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act." As you know, no fewer than 89 Members of Congress, on both sides of the Capitol and both sides of the political aisle, have written to you over the past year requesting detailed information regarding the Bureau's so-called "disparate impact" methodology.¹ We both agree that invidious discrimination is illegal and businesses that break the law should be held accountable. However, unless or until the Bureau makes its "disparate impact" methodology public, the American people cannot be assured of the integrity of the Bureau's fair lending enforcement process. Moreover, in order to best serve consumers, indirect auto lenders need to be able to understand the legal rules of the road. Continuing to deny these lenders the essential information with which to build compliance systems could make them less likely to extend financing to some borrowers, which could limit competition and make it harder or more expensive for Americans around the country to purchase an automobile.

I understand that the Bureau may soon propose a rule defining larger participants in the indirect auto lending market, which would empower the Bureau to supervise such lenders. It would be inappropriate for the Bureau to finalize its proposed rule or subject a company to

¹ The following Members of Congress have written you: Rep. Terri A. Sewell, Rep. David Scott, Rep. Joyce Beatty, Rep. Daniel T. Kildee, Rep. Lacy Clay, Rep. Patrick Murphy, Rep. John K. Delaney, Rep. Gary C. Peters, Rep. Bill Foster, Rep. Ed Perlmutter, Rep. Denny Heck, Rep. Kyrsten Sinema, Rep. Gregory W. Meeks, Rep. Jeb Hensarling, Rep. Spencer Bachus, Rep. Shelley Moore Capito, Rep. Gary Miller, Rep. Lynn A. Westmoreland, Rep. Scott Garrett, Rep. Randy Neugebauer, Rep. Patrick T. McHenry, Rep. John Campbell, Rep. Peter T. King, Rep. Edward R. Royce, Rep. Michelle Bachmann, Rep. Stevan Pearce, Rep. Blaine Leutkemeyer, Rep. Bill Huizenga, Rep. Sean P. Duffy, Rep. Robert Hurt, Rep. Michael G. Grimm, Rep. Steve Stivers, Rep. Stephen Fincher, Rep. Marlin A. Stutzman, Rep. Mick Mulvaney, Rep. Dennis A. Ross, Rep. Robert Pittenger, Rep. Ann Wagner, Rep. Garland "Andy" Barr, Rep. Tom Cotton, Rep. Keith Rothfus, Rep. Tom Latham, Rep. Jack Kingston, Rep. Steve King, Rep. Mark Meadows, Rep. Steve Stockman, Rep. George Holding, Rep. Walter Jones, Rep. Tom Marino, Rep. Alcee L. Hastings, Rep. Bill Posey, Rep. Ileana Ros-Lehtinen, Rep. Corrine Brown, Rep. John L. Mica, Rep. Jeff Miller, Rep. Mario Diaz-Balart, Rep. Debbie Wasserman Schultz, Rep. Theodore E. Deutch, Rep. Richard B. Nugent, Rep. Ron DeSantis, Rep. Lois Frankel, Rep. Joe Garcia, Rep. Colleen Hanabusa, Rep. David N. Cicilline, Rep. Frederica S. Wilson, Sen. Jeff Merkley, Sen. Rob Portman, Sen. Jeanne Shaheen, Sen. David Vitter, Sen. Heidi Heitkamp, Sen. Pat Roberts, Sen. Amy Klobuchar, Sen. Kelly Ayotte, Sen. Kay Hagan, Sen. Deb Fischer, Sen. Mark Begich, Sen. John Thune, Sen. Joe Manchin, Sen. Richard Burr, Sen. Mark Pryor, Sen. Jerry Moran, Sen. Joe Donnelly, Sen. Mike Crapo, Sen. Bill Nelson, Sen. Jeff Sessions, Sen. Mary Landrieu, Sen. Rand Paul, Sen. Mazie Hirono, and Sen. Max Baucus.

enforcement based solely on that company's failure to comply with the reinterpretation of law embodied in the Bureau's March 21, 2013 enforcement bulletin without first providing lenders and the public at large with the information necessary to comply with the Bureau's dictates.

I last wrote you on March 7, 2014 to specifically request that you provide the information sought by the other Members of Congress to the Financial Services Committee. When we met the following week, you offered to make this information available for review by Committee staff *in camera* at Bureau headquarters. While I accepted your offer, my staff made clear to your staff that acceptance in no way limited or waived the Committee's right to full, unconditional production of any and all records responsive to my request, and that the Committee may still decide after its *in camera* review that additional information must be provided by the Bureau. A bipartisan staff review of certain documents *in camera* occurred at Bureau headquarters on March 28, 2014. Following this review, my staff requested copies of all documents provided at the review. While the Bureau did produce such copies on April 28, 2014, you advised me via cover letter that:

"Some of these documents may contain confidential information of the Bureau, including confidential information that pertains to its supervisory and law enforcement activities. The Bureau's regulations, *see* 12 C.F.R. § 1070.40 et seq., prohibit recipients of the CFPB's confidential information from further disclosing the information either orally or in writing, except in specified circumstances, without first obtaining the prior permission of the CFPB's General Counsel. The enclosed information also may be subject to disclosure restrictions set forth in other Federal laws and/or regulations, the confidential business information of third parties, and/or material protected by the attorney work-product doctrine. We therefore respectfully request that the Committee prevent any disclosure that would cause an unwarranted invasion of privacy or harm to the interests secured by the laws and policies protecting these documents. Although some of the materials included in this production may implicate the Bureau's confidentiality interests, we are providing these materials to you without forgoing those interests now or in the future, and with the understanding that they are subject to the protections afforded by House and Committee rules."

To be clear, the Committee did not accede to the Bureau's privilege claims – which do not rest against a congressional committee in any event – and did not waive any of its constitutional prerogatives. Nor is the Committee bound by the Bureau's regulations. Nevertheless, the Committee has proceeded in good faith with the expectation that the Bureau would, as a matter of basic transparency and accountability, make public in full detail the manner by which the Bureau purports to assess so-called "disparate impact" liability under the Equal Credit Opportunity Act with respect to indirect auto lenders. Regrettably, that expectation has not been met.

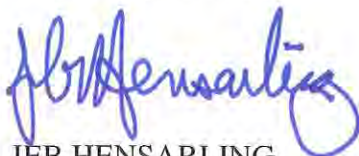
You indicated in testimony before the Committee on June 18, 2014 that the Bureau is "working on a white paper on the proxy methodology...that we expect to have out later this

summer.” To ensure that this forthcoming white paper conveys meaningful information to the public, the Committee demands that it include, at a minimum, the following information:

1. A complete analysis of the Bureau’s legal support for applying the “disparate impact” theory of liability to indirect auto lenders under the Equal Credit Opportunity Act;
2. A complete explanation of the process by which the Bureau’s Supervision, Enforcement, and Fair Lending division identifies, prioritizes, and selects indirect auto lenders for ECOA examination, including an explanation of factors that may be considered in its risk-based prioritization process;
3. A complete explanation of the process by which the Bureau selects loan file samples for fair lending analysis, including all controls employed by the Bureau to ensure that samples are random and representative;
4. A complete description of all policies and procedures governing the Bureau’s pre-examination information requests, on-site examinations, and off-site analysis;
5. A complete quantitative analysis of the predictive accuracy of the “Bayesian Improved Surname Geocoding” (BISG) process by which the Bureau assigns race and gender proxies to auto loan applicants, including the threshold for determining that an applicant is a member of a protected class and the results of applying the BISG process to representative control groups where the race or ethnicity and sex are known;
6. Any formulas or computer code employed by the Bureau to generate BISG proxies for race, ethnicity, and sex;
7. Any formulas or computer code employed by the Bureau to run regression analyses;
8. A description of the number of and types of standard deviations sufficient to support a finding of discrimination;
9. A complete list of all factors, other than a borrower’s creditworthiness, that the Bureau acknowledges may affect, influence, or introduce error into observed disparities in dealer rate spreads; and
10. A complete explanation of the process by which the Bureau determines whether observed disparities are statistically significant.

Any questions about this letter should be directed to Brian Johnson of the Committee staff at 202-225-7502.

Yours Respectfully,



JEB HENSARLING
Chairman

cc: The Honorable Maxine Waters