

April 16, 2018

Majority Leader McConnell  
317 Russell Senate Office Building  
Washington, D.C. 20510

Minority Leader Schumer  
322 Hart Senate Office Building  
Washington, D.C. 20510

Dear Majority Leader McConnell and Minority Leader Schumer:

We, the undersigned civil rights and consumer advocacy organizations, ask you to oppose S.J. Res. 57, the Congressional Review Act (CRA), introduced by Senator Jerry Moran (R-KS), intended to undo the Consumer Financial Protection Bureau's (CFPB or Consumer Bureau) Indirect Auto Lending Guidance, published over five years ago. This resolution is the latest in a series of attempts to chill federal efforts to end widespread unlawful discrimination. Discrimination in the auto lending market is well-documented and results in people of color paying more for years to finance a car purchase. This CRA would also set the dangerous precedent of undoing long-standing federal agency guidance—an expansion of the use of the Congressional Review Act, and certainly beyond its original purpose of narrowly reviewing regulations soon after they were enacted.

The Consumer Bureau's 2013 indirect auto lending guidance put auto lenders on clear notice that the Equal Credit Opportunity Act (ECOA) makes them liable for discriminatory pricing on auto loans they acquire from auto dealers. ECOA makes it illegal for a creditor to discriminate in any aspect of a credit transaction on the basis of race or other protected bases; indirect auto lenders are creditors under ECOA.

Discrimination in auto lending has long been widespread, and a significant culprit is the discretionary dealer mark-up. Three-fourths of all consumers use a loan to purchase a car, and 80% of auto loans are financed through the auto dealer. The auto dealer may provide that financing directly or it may facilitate indirect financing by an indirect third-party lender. In indirect auto financing, the dealer usually collects basic information regarding the applicant and uses an automated system to forward that information to several prospective indirect auto lenders. The indirect auto lender establishes a "buy rate" for the customer. The dealer can then add as much as 2-2.5% to the buy rate and keep some or all of the difference. These mark-ups have been found to add over \$25 billion to the total loan cost of auto loans made over the course of one year.

The discriminatory impact of this discretionary practice has been researched and documented, time and again. In the mid-1990s, a series of lawsuits were filed against the largest auto finance companies based on data showing that that borrowers of color were twice as likely to have their loans marked up and paid markups twice as large as similarly situated white borrowers with similar credit ratings. The CFPB's own investigations found that borrowers who identified as African American, Latino, and Asian/Pacific Islander paid between 20 and 36 basis points more for their loans than similarly situated white borrowers, adding between \$150 and \$300 in additional interest over the life of those consumers' loans.

We have seen the evidence that enforcement against auto lending discrimination has resulted in real benefits to wronged borrowers of color. As a result of its investigations, the Consumer Bureau, jointly with the Department of Justice, took enforcement action against Ally Financial, Honda, Fifth Third Bank, and Toyota, which resulted in restitution to wronged borrowers of over \$140 million. These lenders also agreed to adjust their pricing models by limiting the amount of their dealer mark-ups--real evidence of progress in the fight against a discriminatory lending practice. Of note, the 2013 guidance also explains that lenders can address fair lending risk by paying compensation to dealers in ways other than allowing them to mark up the interest rate.

Discrimination in auto lending continues to be a very real problem. In early 2018, a study conducted by the National Fair Housing Alliance (NFHA) paired white and non-white testers to visit auto dealerships and shop for the same car within 24 hours of each other. The study found that, more often than not, the *better qualified* non-white applicant was offered higher cost pricing options than the *less qualified* white applicant, resulting in those non-white borrowers paying on average \$2,662 more than the white borrowers over the life of the loan.<sup>1</sup> Additionally, NFHA found that 75% of the time, white testers were offered more financing options than non-white testers. These statistics further prove the need for continued vigilant enforcement against violations of ECOA, as well as clear expectations for industry like the 2013 guidance provides.

Auto loans are the third most prevalent form of debt among U.S. residents after home and student loans. Discrimination in auto lending contributes to credit access disparities and to the racial and ethnic wealth gap. This CRA would send the wrong message to the auto industry and to the American people.

In addition, CRA has never been used to undo longstanding guidance, and it was not intended to be used this way. Permitting CRAs to undo longstanding guidance opens the door to regulatory uncertainty across the federal regulatory environment and across a range of U.S. markets as a result.

We urge you to oppose S.J. Res. 57 and keep the federal government's commitment to rooting out racial discrimination clear.

Thank you for your consideration. If you have any questions please do not hesitate to contact Cheye-Ann Corona, Senior Policy Associate with the Center for Responsible Lending, at [Cheye-Ann.Corona@responsiblelending.org](mailto:Cheye-Ann.Corona@responsiblelending.org) or 202-349-1888.

Sincerely,

Allied Progress

American Federation of State, County, and Municipal Employees

---

<sup>1</sup> National Fair Housing Alliance, Discrimination When Buying A Car: How the Color of Your Skin Can Affect Your Car-Shopping Experience. January 2018. <http://nationalfairhousing.org/wp-content/uploads/2018/01/Discrimination-When-Buying-a-Car-FINAL-1-11-2018.pdf>

Americans for Financial Reform  
Arkansans Against Abusive Payday Lenders  
California Reinvestment Coalition  
Center for Responsible Lending  
Color of Change  
Consumer Federation of America  
Consumers Union  
Impact Fund  
Lawyers' Committee for Civil Rights Under Law  
NAACP  
NAACP Legal Defense and Educational Fund, Inc.  
NACA - Ohio State Chair  
National Association for Equal Opportunity in Higher Education (NAFEO)  
National Association of Social Workers  
National CAPACD  
National Community Reinvestment Coalition  
National Consumer Law Center (on behalf of its low income clients)  
National Fair Housing Alliance (NFHA)  
National Urban League  
Public Citizen  
Public Good Law Center  
Public Justice Center  
Texas Appleseed  
The Leadership Conference on Civil and Human Rights  
U.S. PIRG  
UnidosUS  
United Church of Christ

CC: Members of Senate Banking and Senator Jerry Moran