



AUTO ALLIANCE
DRIVING INNOVATION®



**American International
Automobile Dealers®**



July 19, 2016

Dear Senator:

We, the undersigned organizations which represent businesses that make, sell, finance, auction and service vehicles are writing to express our strong support for S. 2663, the “Reforming CFPB Indirect Auto Financing Guidance Act.” This bill, introduced by Sen. Moran (R-KS), would rescind the Consumer Financial Protection Bureau’s (CFPB) 2013 auto finance guidance that could lead to limits on a consumer’s ability to receive a discounted auto loan from a dealer. Also the legislation would require the CFPB to engage in an open and transparent process when issuing future auto finance guidance. H.R. 1737, the House companion bill to S. 2663, overwhelming passed the House by a bipartisan vote of [332-96](#), including 88 Democrats, on November 18, 2015.

Access to affordable credit is essential to the vehicle industry and its customers, and the ability of a dealer to discount credit is often necessary to sell the vehicle. Since 2013, the CFPB has pressured finance sources to limit a dealer’s ability to discount credit based on a deeply flawed method for measuring lender compliance with the Equal Credit Opportunity Act (ECOA). Industry stakeholders have tried, unsuccessfully, to work with the CFPB to preserve discounted auto loans by proposing a Department of Justice (DOJ) model that effectively manages fair credit risk while allowing discounts for legitimate business reasons.

Senate action on S. 2663 is necessary to ensure the CFPB follows a fact and data-based approach. The CFPB’s attempt to eliminate the consumer-friendly practice of a dealer discounting credit has been sought not by rule, but by guidance and non-public enforcement actions. This guidance was issued *without* any public comment, consultation with CFPB’s sister agencies (including those that Congress authorized to regulate auto dealers), or transparency. Indeed, by the CFPB’s own admission, the agency did *not* study the impact of its guidance on

consumers. This lack of process is problematic because the CFPB's attempt to eliminate dealer discounts threatens to raise credit costs and push marginally creditworthy consumers out of the vehicle financing market.

S. 2663 would require the CFPB to follow an open process prior to issuing any new guidance related to indirect auto financing, including: (1) providing notice and a period for public comment; (2) making public any studies, data, and analyses upon which the new guidance is based; (3) consulting with the Federal Reserve Board, the Federal Trade Commission and the Department of Justice; and (4) studying the costs and impacts of such guidance to consumers and women-owned, minority-owned, veteran-owned, rural, and small businesses.

S. 2663 is purely a process bill. It does not intrude on the CFPB's structure, jurisdiction, or authority, nor does it direct a result. The House Financial Services Committee minority report accompanying H.R. 1737 stated that "H.R. 1737 does not alter regulated entities' obligations under the Equal Credit Opportunity Act (ECOA) or the CFPB's examination or enforcement activity pursuant to ECOA." Proponents of this legislation take fair credit laws very seriously, and the bill protects these laws and their enforcement to safeguard equal opportunity in vehicle financing.

In 2013, Sens. Rob Portman (R-OH) and Jeanne Shaheen (D-NH) led a bipartisan group of 22 Senators (11 Republicans and 11 Democrats) in a [letter](#) to the CFPB which raised questions and urged the CFPB to be more transparent regarding its auto finance guidance. Unfortunately, three years later, the CFPB has failed to meaningfully address critically important issues raised in this letter and twelve other letters from Congress to the CFPB requesting transparency and additional information on this issue.

The CFPB has not pursued – even though it actively considered - a transparent rulemaking process, instead opting to employ its “compliance bulletin” and a “market tipping consent order” to further its goal of eliminating dealer discounts. Through internal CFPB documents, Congress has learned that the CFPB decided to pursue enforcement actions and a compliance bulletin to move the market. In doing so, the CFPB avoided public analysis of its assumptions, findings, and directed market changes, and it enabled the agency to skirt Congress' express prohibition on its exercise of any form of authority over auto, recreation vehicle, and motorcycle retailers engaged in indirect financing activities (Sec. 1029(a) of Dodd-Frank).

The open and transparent process required by S. 2663 would provide a framework for the industry to adopt a DOJ fair credit model, which effectively meets the CFPB's stated objective of addressing fair lending risks, and without preventing consumer discounts for legitimate business reasons. When Congress created the CFPB, surely it did not intend the agency to use its power to stop vehicle retailers from offering consumers discounts.

Keeping auto financing competitive is not only warranted, it is essential for the vehicle industry and its customers. That is why this legislation easily passed the House, and why the Senate should pass S. 2663.

We respectfully ask you to vote for S. 2663. Thank you for your consideration.

Sincerely,



Peter Welch
President, National Automobile Dealers
Association



Mitch Bainwol
President and CEO, Alliance of Automobile
Manufacturers



Chris Stinebert
President and CEO, American Financial Services
Association



Phil Ingrassia
President, The National RV Dealers Association



Steve Jordan
CEO, National Independent Automobile Dealers
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Frank Hugelmeyer
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Cody Lusk, AIADA
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Frank Hackett
CEO, National Auto Auction Association



Tim Buche
President and CEO, Motorcycle Industry Council