

June 12, 2018

Via Hand Delivery

William Rainer, Chairman of the Board
Scott Powell, President and CEO
Santander Consumer USA Holdings Inc.
c/o Office of the Secretary
1601 Elm Street, Suite 800
Dallas, Texas 75201

Dear Mr. Rainer and Mr. Powell:

As organizations working to end discriminatory practices that harm women, people of color, immigrants, and other protected classes, we are writing to express our concern about indirect vehicle lending by Santander Consumer USA Holdings Inc. (“Santander Consumer”) that could have a discriminatory impact on groups of the company’s borrowers. Indirect vehicle lending comprises the vast majority of Santander Consumer’s business.

We, the undersigned, believe that in addition to harming consumers, the racially disparate impact of indirect vehicle lending creates risks to the company’s reputation and exposes the company to potential legal liability. For the reasons described below, we urge you to not only implement the AFL-CIO Reserve Fund’s stockholder proposal requesting the Company produce a report on the risk of racial discrimination in vehicle lending; but also to take additional steps, outlined below, to prevent racial discrimination against borrowers.

As you are well aware, the Equal Credit Opportunity Act prohibits discrimination in all forms of lending, including vehicle lending. However, discriminatory vehicle lending practices continue against borrowers of color. For example, a recent matched pair testing investigation by the National Fair Housing Alliance found discrimination in indirect vehicle lending. Borrowers of color who has better credit profiles than White borrowers were more likely to receive fewer and higher cost pricing options in vehicle loans, as well as to face other types of discriminatory treatment.¹ Research by the Center for Responsible Lending also has found that African American, Hispanic, and Asian borrowers would benefit substantially by lenders’ switching to a flat fee vehicle financing system.²

¹ Rice, Lisa and Erich Schwartz, Jr. *Discrimination When Buying A Car: How the color of your skin can affect your car-shopping experience*. National Fair Housing Alliance. 11 January 2018. pp. 4-5. <http://nationalfairhousing.org/wp-content/uploads/2018/01/Discrimination-When-Buying-a-Car-FINAL-1-11-2018.pdf>

² Delvin Davis and Chris Kukla, *Road to Nowhere: Car Dealer Interest Rate Markups Lead to Higher Interest Rates, Not Discounts*, November 2015; Delvin Davis, *Non-Negotiable: Negotiation Doesn’t Help African Americans and Latinos on Dealer-Financed Car Loans*, January 2014.

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A wide range of regulatory proceedings suggest that Santander Consumer's internal controls may not be sufficient to ensure fair access to credit for the company's consumers.

For example:

- *Equal Credit Opportunity Act Investigation by the CFPB*

In 2015, the Consumer Financial Protection Bureau ("CFPB") referred its findings that the company had overcharged groups legally protected by the Equal Credit Opportunity Act to U.S. Department of Justice, resulting in an investigation that Santander Consumer resolved in 2017 pursuant to a confidential agreement with the CFPB.³

- *GAP Coverage and Loan Deferral Investigation by the CFPB*

Beginning in February 2016, the CFPB issued a series of civil investigative demands to Santander Consumer regarding its marketing of Guaranteed Auto Protection ("GAP") coverage and loan deferral disclosure practices.⁴ GAP coverage is a key element of dealer add-on product marketing that has been alleged to have a discriminatory impact.⁵ A report issued in July 2017 by the AFL-CIO and the National Employment Law Project also noted instances of Santander Consumer customers' loans being extended without any contact with the customer.⁶

- *DOJ Enforcement Action Over Alleged SCRA Violations*

In 2015, Santander Consumer entered into a consent order with the Department of Justice to repay over \$9.4 million to resolve claims that the company had violated the Servicemembers Civil Relief Act by improperly repossessing motor vehicles from servicemembers.⁷

³ Santander Consumer USA Holdings Inc. 2018 Form 10-K filing with the Securities and Exchange Commission. p. 124. <http://d18rn0p25nwr6d.cloudfront.net/CIK-0001580608/1b391e5a-2f15-403d-a423-2c777389b2b7.pdf>

⁴ Ibid.

⁵ Van Alst, John W., Carolyn Carter, Marina Levy, and Yael Shavit. *Auto Add-Ons Add Up: How Dealer Discrimination Drives Excessive, Arbitrary, and Discriminatory Pricing*. National Consumer Law Center. October 2017. p. 1. https://www.nclc.org/images/pdf/car_sales/report-auto-add-on.pdf

⁶ *Wheeling and Dealing Misfortune: How Santander's high pressure tactics hurt workers and auto loan consumers*. AFL-CIO and National Employment Law Project. July 2017. p. 13. <https://betterbanks.org/wp-content/uploads/2017/07/Wheeling-and-Dealing-FINAL1.pdf>

⁷ "Justice Department Reaches Settlement with Santander Consumer USA to Resolve Allegations Concerning Over 1,100 Illegal Car Repossessions Against Service Members." Press Release. United

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- *State Attorneys General Enforcement Actions Regarding Auto Loans*

In 2015, Santander Consumer agreed to repay \$5.4 million in refunds and waived interest to consumers as part of an Assurance of Discontinuous agreement with the Commonwealth of Massachusetts related to interest rates being charged above the maximum permitted by law due to the inclusion of GAP coverage.⁸ In March 2017, the company entered into agreements with the Massachusetts Attorney General and the Delaware Department of Justice to provide \$26 million in consumer relief to settle allegations that it had facilitated the origination of loans, in some cases made through alleged fraudulent activity, in violation of states' consumer protection laws.⁹

- *Top Recipient of Consumer Complaints Over Auto Loans*

In 2017, Santander Consumer received the most complaints related to autos of any lender in the CFPB's consumer complaint database. A total of 901 of the CFPB's 7,423 auto-related complaints concerned the company.¹⁰

For these reasons, we urge Santander Consumer to end the use of dealer interest rate markups in the company's indirect vehicle lending products. We also recommend that the company adopt a mystery shopper program by an independent third party to ensure regulatory compliance. Third, we request that you enhance transparency by publicly disclosing a summary of the company's vehicle loan data by race. Finally, we ask that you create an advisory group of stakeholders as Wells Fargo has done to solicit feedback from concerned civil society organizations.

Thank you in advance for your consideration of our request. We would be happy to schedule a meeting to discuss these issues or to provide you with additional information that might be of use to you in developing strategies to put an end to vehicle lending discrimination. Please direct your response to this letter to Brandon Rees, Deputy Director of Corporations and Capital Markets, AFL-CIO at 815 16th Street NW, Washington D.C. 20006, (202) 637-5152 or brees@aflcio.org.

States Department of Justice. 25 February 2015. <https://www.justice.gov/opa/pr/justice-department-reaches-settlement-santander-consumer-usa-resolve-allegations-concerning>.

⁸ Ha, Young. "Mass. Drivers to Receive \$5.4M in Relief on High-Interest Auto Loans," *Insurance Journal*. 9 November 2015. <http://www.insurancejournal.com/news/east/2015/11/09/387955.htm>

⁹ Fernandes, Deirdre. "Santander to pay \$26 million to settle auto-loan securitization case, Healey Says." *Boston Globe*. 29 March 2017. <https://www.bostonglobe.com/business/2017/03/29/santander-pay-million-settle-auto-loan-securitization-case-healey-says/cSdMsa6xp9J5FnPhKfddML/story.html>

¹⁰ Hoffman, William. "Mulvaney to Make Complaint Database Private as Auto Grievances Mount." *Auto Finance News*. 3 May 2018.

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Sincerely,

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Executive Director
Allied Progress

Damon Silvers
Policy Director & Special Counsel
**American Federation of Labor-Congress
of Industrial Organizations**

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Executive Director
Americans for Financial Reform

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