

[Banking and Finance Law Daily Wrap Up, TOP STORY—House votes to roll back CFPB auto lending guidance, \(May 9, 2018\)](#)

Banking and Finance Law Daily Wrap Up

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The House of Representatives has voted to use Congressional Review Act (CRA) authority to repeal indirect auto lending guidance issued by the Consumer Financial Protection Bureau. S.J. Res. 57 passed the House by a [vote](#) of 234-175. Speaker of the House Paul Ryan (R-Wis) released a [statement](#) on the passage of S.J. Res. 57, which marks the 16th time this Congress has used the CRA. "Today's vote will bring change and make things easier for consumers and businesses alike within the auto lending marketplace. By rescinding this guidance—which was issued without consideration of the adverse effects on consumers—we are building on our efforts to ensure onerous, unnecessary regulations no longer interfere with the growing economy," stated Ryan.

2013 guidance. The vote applies to the Bureau's 2013 guidance entitled "Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act" ([CFPB Bulletin 2013-02](#)). An indirect loan is financing offered to a consumer through an automobile dealer, instead of directly from a consumer's bank or credit union. According to a [Statement of Administration Policy](#), the CFPB bulletin limits the ability of auto dealers to offer auto loans to their customers.

The CFPB issued the guidance to ensure compliance with the Equal Credit Opportunity Act and to institute more rigorous oversight of the automobile financing process to eliminate discriminatory practices. However, Section 1029 of Dodd-Frank forbids the Bureau from regulating auto dealers. In addition, the bulletin was not issued pursuant to notice-and-comment rulemaking, and as a result, it was issued without allowing public comment. Some auto dealers feel that it threatens their ability to negotiate the terms of loans with their customers and that the guidance has been used to sanction auto financing companies.

Floor debate. House Financial Services Committee Chairman Jeb Hensarling (R-Texas) [stated](#) that "consumers are being hurt." He also pointed out that the CFPB didn't engage in rulemaking, and issued the guidance without notice and comment. Hensarling criticized the CFPB, stating that "They couldn't come up with any data of this purported violation of the Equal Credit Opportunity Act" and pointed out that auto dealers by law cannot keep records on the race of their customers. Instead of using data, Hensarling stated that the Bureau "guessed" by using zip code information and consumers' last names. He referred to analysis by the Wall Street Journal showing that credit worthy borrowers could have to pay up to \$586 more for their auto loans as a result of the guidance.

Maxine Waters (D-Calif), Ranking Member of the Committee on Financial Services, [spoke](#) on the floor of the House in opposition of the resolution, stating that the guidance "was issued to provide clarity to indirect auto lenders and protect auto loan borrowers from discrimination."

Waters said the auto lending industry is a "market where discriminatory practices have been well documented" and that the Bureau "has levied more than \$140 million in fines and penalties against lenders for engaging in discriminatory auto lending practices." She referenced an investigation by the National Fair Housing Alliance found that 62 percent of the time, "high qualified minority borrowers seeking purchase and financing options for a car received more costly pricing options than less qualified white borrowers received for the same vehicle." According to the report, "less qualified" white borrowers were presented with more financing options 75 percent of the time.

Reaction. Representative Steve Pearce (R-NM) issued a [statement](#) after the vote, accusing the Bureau of using "questionable reasoning to extend jurisdiction over the automobile dealer industry, even though they're

specifically prohibited from doing so." Pearce stated that the guidance "blatantly ignored due process for businesses and imposed regulations on an industry that relies on competition."

[According](#) to Rep. Lee Zeldin (R-NY) "By cutting off the ability of auto lenders to provide discounted auto loans to their customers, the CFPB harms so many low- and lower middle-income borrowers who are seeking auto loans, the same people they are claiming to protect." Representative Claudia Tenney (R-NY) also voted for the resolution, [stating](#) that it will fix an "overstep" by the CFPB, and will result in more leasing options for consumers. Tenney accused the Bureau of eliminating auto dealer flexibility to discount interest rates offered to consumers and stated that the rollback will enable an auto dealer to help a customer with a difficult credit history purchase a car with a reasonable interest on the loan.

MainStory: TopStory BankingFinance CFPB ConsumerCredit DoddFrankAct EqualCreditOpportunity Loans