

## [Banking and Finance Law Daily Wrap Up, CONSUMER FINANCIAL PROTECTION BUREAU—Senate votes for auto lending guidance rollback, \(Apr. 18, 2018\)](#)

Banking and Finance Law Daily Wrap Up

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The U.S. Senate has voted to proceed on a Congressional Review Act (CRA) resolution to rescind the Consumer Financial Protection Bureau's 2013 Auto Lending Guidance. The measure, S. J. Res. 57, was sponsored by Sen. Jerry Moran (R-Kan), and [passed](#) by a 51-47 vote.

The joint resolution of disapproval would apply to the Bureau's guidance entitled "Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act." At issue is a 2013 guidance document on "indirect auto loans" issued by the CFPB. An indirect loan is financing offered to a consumer through an automobile dealer, instead of directly from a consumer's bank or credit union (see [Banking and Finance Law Daily](#), March 26, 2018).

**Beyond Bureau's authority.** Senate Majority Leader Mitch McConnell (R-Ky) spoke on the Senate floor in support of the measure, [stating](#) that the measure "will protect consumers from a brazen attempt by the past director of the Consumer Financial Protection Bureau to stretch his authority and interfere in the auto industry." According to McConnell, "one thing Dodd-Frank got right was protecting auto dealers from meddling by the CFPB," but despite that, federal regulators "bypassed standard review and public comment periods for federal regulations, and instead issued guidance that would regulate auto dealers' ability to negotiate loan terms with their customers."

According to a [statement](#) issued by Sen. Jerry Moran (R-Kansas), a co-sponsor of the measure, Congress specifically prohibited the Bureau from regulating auto dealers in the Dodd-Frank Act. However, in 2013, without going through the customary rulemaking and public input processes, the CFPB published the bulletin, which Moran stated "threatens auto dealers' ability to negotiate the terms of these loans with their customers and has been used to sanction auto financing companies." Moran stated that the resolution of disapproval provides Congress "the opportunity to reverse this overreaching rule to return a sense of stability to the auto marketplace, ultimately providing a path to lower costs for all car purchasers."

**Discrimination in auto lending.** Senator Elizabeth Warren (D-Mass) spoke out against the resolution. [According](#) to Warren, the CFPB's guidance helps stop discrimination in auto lending by ensuring auto lenders comply with the Equal Credit Opportunity Act. She stated that the Senate "is now on the verge of voting to make it harder to stop discrimination in auto lending."

According to Warren, "a lot of auto dealers and auto lenders don't like the CFPB's guidance," and "discrimination in auto lending is alive and well." Warren stated that the CFPB issued the guidance to ensure compliance with the Equal Credit Opportunity Act. Auto lenders "could institute more rigorous oversight of their auto financing process to get rid of these discriminatory practices. Or they could stop using the dealer reserves that facilitated these discriminatory practices, and just pay dealers a flat fee per loan instead."

House Financial Services Committee Chairman Jeb Hensarling (R-Texas) also commented on the Senate's actions, [applauding](#) the Senate for "standing up for the rule of law." According to Hensarling, the CFPB's guidance on auto lending was an example of "the danger that comes from allowing federal regulators to side step the will of Congress." He accused the Bureau of abusing and exceeding its legal authority in regulating auto dealers, and stated that the guidance "failed to afford due process to regulated companies under the Administrative Procedures Act."

**Industry response.** The American Bankers Association sent a [letter](#) to the Senate members, expressing support for the resolution. According to the ABA's letter, signed by Executive Vice President for Congressional Relations And Political Affairs James C. Ballentine, the CFPB made statements at the time of issue that indicate that the Bulletin was intended "to provide lenders with fair lending compliance "guidance" in situations when lenders permit automobile dealers flexibility to set automobile loan interest rates." However, the ABA stated that in practice the Bulletin was "applied as far more than guidance, asserting with regulatory effect, highly controversial legal theories and methodologies to allege that banks and finance companies that purchase motor vehicle installment sales contracts may be liable under the Equal Credit Opportunity Act (ECOA) for purported, but undemonstrated racial disparities in the interest rates that the automobile dealers charged consumers."

Ballentine pointed out that the Bulletin was issued without the opportunity for public comment and that the regulatory and asserted that the enforcement uncertainty caused by the Bulletin "has caused many banks to exit or curtail their indirect auto lending."

According to advocacy group Native American Financial Services Association, Congress could test the limits of the CRA by repealing this 2013 guidance. The NAFSA [described](#) how the Senate is alleging that a recent report by Government Accountability Office in December 2017 opens the guidance to repeal under the CRA. The GAO found that the guidance functioned like an agency rule and therefore is subject to Congressional review.

Consumer advocacy group Public Citizen stated that the Senate vote sets a "dangerous" deregulatory precedent by targeting for the first time, "nonbinding guidance documents, which agencies can amend or withdraw quickly and easily." The [statement](#) contends that the resolution "stretches the CRA far beyond its original intent, allowing Congress to overturn regulatory protections that have been in place for years or even decades. The CRA never was intended to be used against older, settled rules."

Companies: American Bankers Association; Native American Financial Services Association; Public Citizen

LegislativeActivity: BankingFinance CFPB DoddFrankAct EqualCreditOpportunity FedTracker Loans