

SUPPORT REFORMING CFPB INDIRECT AUTO FINANCING GUIDANCE ACT

BACKGROUND

In March of 2013, the Consumer Financial Protection Bureau (CFPB) issued guidance to indirect auto lenders stating that the long-standing practice of discretionary pricing of auto financing at the dealer level may have an unintentional but still unlawful “disparate impact” on protected classes of consumers. The CFPB did this without studying the impact of their guidance on the \$905 billion auto lending business to consumers and to the market. The CFPB advised indirect lenders that “eliminating dealer discretion” – the ability of dealerships to discount the interest rate they offer their customers – would limit the lenders’ exposure to being sued by the CFPB for unintentional discrimination. The CFPB guidance is an attempt to pressure auto finance sources into changing the way they compensate dealers to a “flat fee” that dealers cannot discount for their customers. This action eliminates a dealer's ability to “meet or beat” another sources finance rates and could result in higher cost to the consumer.

Legislation has passed the House of Representatives to roll back the CFPB’s guidance in this area. H.R. 1737, *the Reforming CFPB Indirect Auto Financing Guidance Act* (introduced by Cong. Frank Guinta (R-NH) and Cong. Ed Perlmutter (D-CO)) received strong bipartisan support with a vote of 332 – 96 when considered on the House floor in November of 2015. Senator Jerry Moran (R-KS) has introduced companion legislation (the exact same bill), S. 2663, in the Senate.

In November of 2014, the Charles River Associates release a study of the CFPB's proxy methodology and found it “conceptually flawed in its application and subject to significant bias and estimation error.” The study also found that the variations in dealer reserve were “largely explained after appropriately considering the relevant market complexities and adjusting for proxy bias and error.”

POSITION

AIADA and its dealer members **THANK** those Members of the House that supported H.R. 1737, the *Reforming CFPB Indirect Auto Financing Guidance Act*. Additionally we **SUPPORT** S. 2663 introduced by Sen. Jerry Moran and encourage the Senate to consider the legislation. AIADA also supports efforts to bring the CFPB under the Congressional oversight and appropriations process. AIADA also opposes any effort to remove the dealer exemption from the CFPB and further expand their authority.

MORE ABOUT THE ISSUE

- AIADA strongly opposes any form of discrimination in auto lending.
- During the debate of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Congress voted to limit its own oversight of the CFPB. By structuring the CFPB with very limited oversight, Congress eliminated the normal system of checks and balances. AIADA strongly believes the CFPB should be brought back into the traditional checks and balances system, including bringing this agency under the regular appropriations and oversight process for the first time since being established.
- H.R. 1737 and S. 2663 requires transparency should the CFPB issue auto finance guidelines. The 2013 guidance issued by the CFPB on auto financing was done so with no prior notice, public comment, public hearing or transparency. The legislation also requires the CFPB to study the impact on consumers, minority-owned businesses and small businesses of its guidance.
- The National Automobile Dealers Association launched an optional program designed to strengthen a dealer's ability to comply with fair credit laws while preserving the competitive benefits of dealer-assisted financing, The Fair Credit Compliance Policy and Program. AIADA and the National Association of Minority Automobile Dealers joined with NADA in their announcement of the plan and continue to support NADA’s efforts on this program.