

PUBLICATION

House Votes to Protect Indirect Auto Lending Against CFPB

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On November 18, 2015, the House of Representatives passed the Reforming CFPB Indirect Auto Financing Guidance Act by a vote of 332 to 96. Although the Act has not received much fanfare, its aim is significant: proponents hope the Act will limit the CFPB's broad authority regarding indirect auto financing. Specifically, the legislation directs the CFPB, when proposing and issuing guidance primarily related to indirect auto financing, to:

- Provide for a public notice and comment period before issuing the guidance in final form.
- Make available to the public, including on the website of the Bureau, all studies, data, methodologies, analyses and other information relied on by the Bureau in preparing such guidance.
- Redact any information exempt from disclosure under the Freedom of Information Act.
- Consult with the Board of Governors of the Federal Reserve System, the Federal Trade Commission and the Department of Justice.
- Conduct a study on the costs and impacts of such guidance to consumers and women-owned, minority-owned, veteran-owned and small businesses, including consumers and small businesses in rural areas.

The Act is being championed by both small and large banks alike, many of which have been under recent scrutiny from the CFPB for potential discriminatory auto lending practices. The CFPB is in favor of much heavier regulation within the auto lending sphere, while the lending industry has condemned this prospect. To lenders, increased regulation appears to benefit consumers but will ultimately be harmful because it reduces competition and raises the cost of credit to those who need it most: consumers. Peter Welch, the president of the National Automobile Dealers Association, said, "[t]he CFPB is clearly trying to eliminate a consumer's ability to receive a discount on [auto] credit in the showroom. It is reasonable for Congress to ask for minimal due process to protect consumers."

Many believe the Act is the lending industry's response to the CFPB and DOJ's 2013 enforcement action against Ally Bank, one of the largest indirect auto lenders in the country. In that action, the CFPB ordered Ally to pay \$80 million in damages and \$18 million in penalties for its ["discriminatory pricing system."](#) The CFPB and DOJ's investigation ultimately concluded that Ally violated the Equal Credit Opportunity Act (ECOA) by ["charging African-American, Hispanic, and Asian and Pacific Islander borrowers higher dealer markups for their auto loans than similarly-situated, non-Hispanic white borrowers."](#)

According to many critics of the CFPB, however, the 2013 enforcement action against Ally was based on flawed data mining. Some critics have specifically questioned the CFPB's use of Bayesian Improve Surname Geocoding (BISG) to retroactively determine the race of consumers who received auto loans from Ally within a certain time period. BISG works by analyzing a list of names and home addresses against data from the U.S. Census Bureau to determine a consumer's race.

The criticism surrounding the CFPB's methodology is a focal point of the Act. According to Cody Lusk, president of the American International Automobile Dealers, "the CFPB has failed time and again to fully disclose its methodology for measuring the presence of disparate impact or provide transparency in issuing

guidance to auto lenders." Many hope the Act will force the CFPB to publish the data it relies upon in any similar, future enforcement actions against indirect auto lenders.

Additionally, proponents of the Act hope it will force the CFPB to research its impact on small businesses, women-owned and minority-owned businesses, car dealerships and consumers. Said Lusk, "[the Act] is a common sense solution to a problem the CFPB has itself created by working to end dealer discounts on financing without considering the negative impact on consumers."

The Act has passed in the House and is now heading to the Senate for consideration. You can read the full text of H.R. 1737, otherwise known as the Reforming CFPB Indirect Auto Financing Guidance Act, [here](#).