NADA Responds to Consent Order Between the CFPB and Toyota Motor Credit Corp.: 

NADA fully supports our nation’s fair lending laws and the commitment of federal agencies to enforce those laws to ensure fairness in the marketplace. For those reasons, we encourage dealers to adopt the Fair Credit Compliance Policy and Program (based on a Department of Justice model) as the most effective way to manage fair credit risk while preserving the robust competition that exists in today’s auto finance marketplace.

With the Toyota Motor Credit enforcement action, the CFPB continues to:

- pressure finance sources to eliminate or constrain dealers’ ability to discount credit based on information and analysis that it knows to be flawed. For example, a study by the nonpartisan Charles River Associates found that the CFPB’s proxy methodology it uses to determine who is a member of a “protected class” overestimates the African-American population by 41 percent. The CFPB’s own “white paper” on this subject also revealed errors as high as 20 percent in estimating individuals’ ethnicity.
- use enforcement actions against lenders as a means to regulate dealers, thereby avoiding the rulemaking process which has safeguards to ensure transparency and accountability, as well as evading the dealer exemption in Dodd-Frank (Sec. 1029(a)).
- apply an undisclosed methodology. When analyzing whether any pricing disparities are related to the race of consumers, the Bureau steadfastly refuses to take into account legitimate business factors – that are unrelated to race – i.e., whether a dealer discounted the interest rate to meet a customer’s monthly budget constraint or to beat a competing offer. This misapplication of the law can produce erroneous results in the data that it uses to support its enforcement actions.
- dictate the manner and amount a dealer can discount credit without regulatory, enforcement, or supervisory jurisdiction over dealers; and
- proceed without considering the impact of its directives on consumers. Consumer interests are better served by being able to negotiate a lower interest rate. The CFPB’s actions will severely limit a dealer’s ability to reduce interest rates to accommodate a monthly budget constraint of credit challenged consumers.
Congress created the CFPB to protect consumers – and an open and transparent process is the best way to ensure that the Bureau develops policy positions that are in the consumer’s best interest. The CFPB continues to attempt to alter the $1 trillion auto lending market through guidance without any public input or consideration of the costs on consumers and small businesses.

NADA supports S. 2663, a bill that would allow the CFPB to reissue auto finance guidance with certain transparency provisions. The bill also provides for a public comment period, coordination with other regulatory agencies, and a study of the impact of the guidance on small businesses and, most importantly, consumers. The CFPB took none of these essential steps before issuing its far-reaching guidance. The House companion bill to S. 2663, H.R. 1737, passed the House on November 18 by a bipartisan vote of 332-96.