NADA

National Automobile
Dealers Association

Congress Revokes Flawed CFPB Auto Finance Guidance

President Signs S.J.Res. 57 Into Law and Preserves Consumer Discounts on Auto Credit

PASSAGE OF S.J.RES. 57

Congress passed S.J.Res. 57 to revoke a flawed 2013 Consumer Financial Protection Bureau (CFPB) "guidance" that threatened to eliminate a dealer's flexibility to offer consumers discounted auto loans. The president signed the bill into law last May. NADA strongly supported S.J.Res. 57, which preserves a dealer's ability to discount credit for consumers. The CFPB attempted to change the $1.1 trillion auto loan market and limit market competition *without* prior public comment, using flawed statistics and *without* analyzing the impact of its guidance on consumers, despite the likelihood it would raise credit costs for car buyers. **Dealers are encouraged to thank those members of Congress who voted to support S.J.Res. 57 and preserve consumer discounts on auto credit.**

BACKGROUND

Most car buyers choose to finance their purchases through indirect financing at dealerships. Dealers often discount an interest rate to "meet or beat" a competitor's rate or meet a consumer's budget needs. The CFPB's 2013 guidance pressured auto lenders to eliminate or limit a dealer's ability to discount credit for consumers. By limiting market competition, the CFPB's policy would have increased the overall cost of auto loans for consumers.

The CFPB based its 2013 policy on the claim that discounted interest rates create a fair-credit risk, but a nonpartisan study of the agency's policy found significant flaws, such as a 41 percent error rate in classifying the background of a significant group of consumers. The CFPB's own review of this same group revealed a 20 percent error rate. The agency's method of identifying the background of consumers was flawed because it was based solely on a borrower's ZIP code and last name. Also, the agency ignored legitimate business factors that can affect finance rates (e.g., helping customers meet their budget needs). The CFPB knew of these serious flaws with the guidance yet failed to correct them.

KEY POINTS

- **The Government Accountability Office determined that CFPB's guidance, which attempted to make a major policy change to the auto lending market without important basic procedural safeguards, was a rule in the guise of "guidance."** By circumventing the rulemaking process, the agency attempted to avoid transparency, denied the public prior notice and comment, and sought to evade Section 1029(a) of the Dodd-Frank Act, which explicitly prohibits the CFPB from regulating auto dealers.
- **The industry strongly supports fair-lending protections and has promoted a fair-credit compliance program** based on a Department of Justice model that preserves discounts on credit for legitimate business reasons. S.J.Res. 57 does not affect fair-lending statutes or implementing regulations.
- **Preserving discounts for consumers keep auto loans accessible and affordable.** The CFPB admits it never analyzed the impact of its guidance on consumers. Subsequent analysis revealed that the guidance would lessen competition, increase auto credit costs and potentially push the marginally creditworthy out of the auto market.

STATUS

On April 18, the Senate passed S.J.Res. 57, a joint resolution introduced by Sen. Jerry Moran (R-Kan.), to disapprove the CFPB's 2013 auto finance guidance under the Congressional Review Act by a bipartisan vote of 51-47. The House passed S.J.Res. 57 by a vote of 234-175 on May 8. The president signed S.J.Res. 57 into law (Public Law 115-172) on May 21. In November 2015, the House had passed similar legislation to overturn the guidance by a vote of 332-96.

September 14, 2018