

## Oppose Discrimination in Auto Lending: Vote “NO” on CRA S.J. Res. 57

April 2018

### Overview

Congressional Review Act S.J. Res. 57 seeks to nullify the Consumer Financial Protection Bureau’s 2013 guidance addressing indirect auto lending. This guidance describes auto lenders’ responsibility, established by the Equal Credit Opportunity Act, to avoid discriminatory lending practices.

### Dealer mark ups lead to discrimination

Auto lender policies typically provide that when a consumer finances a car purchase through an auto dealer, the dealer has the discretion to increase the interest rate offered by the lender and keep some or all of the difference as compensation—this is referred to as the “dealer markup.”

Past data and the recent settlements show that the practice is racially discriminatory.

- ✓ In the mid-1990s, a series of lawsuits were brought against the largest auto finance companies for alleged discrimination. The data from those cases showed that African-American and Latino car buyers were more likely to have their interest rates marked up than similarly-situated white borrowers, and those who did had their interest rates marked up more than white borrowers.
- ✓ The Consumer Bureau’s investigations also found that borrowers who identified as African American, Latino, and Asian/Pacific Islander paid between 20 and 30 basis points more for their loans than similarly situated white borrowers, adding between \$200 and \$300 in additional interest over the life of those consumers’ loans.
- ✓ Based on its investigations, the Consumer Bureau, jointly with the Department of Justice, took enforcement actions against Ally Financial, Honda, Fifth Third Bank, and Toyota, which provided for restitution to wronged borrowers of over \$140 million.

### Discrimination in auto lending continues to be a very real problem.

A recent study by the National Fair Housing Alliance (NFHA) paired white and non-white testers to visit auto dealerships and shop for the same car within 24 hours of each other. More often than not, the better qualified non-white applicant was offered higher cost financing options than the less qualified white applicant, resulting in those non-white borrowers paying on average \$2,662 more than the white borrowers over the life of the loan.

### Polling shows Americans understand and reject unfairness when they see it.

A 2015 poll using both Republican and Democratic firms found that, by a 3 to 1 margin, the public strongly supports CFPB action to crack down on discriminatory auto lending practices. Support crosses demographic and political lines.

### The CFPB’s guidance gives dealers and lenders clarity about their responsibilities under existing law.

In March 2013, the CFPB issued guidance to remind lenders who buy auto loan contracts that discretionary markups expose them to fair lending risks under the Equal Credit Opportunity Act. The CFPB advised that lenders can address the fair lending risk by replacing the markup model with a compensation system that carries less fair lending risk.

### The Congressional Review Act has never been used to undo guidance, and this would set a dangerous precedent.

The CRA has never been used to undo agency guidance, and it has never been used to undo longstanding agency actions, like the CFPB’s auto lending guidance issued over five years ago. Doing so sets a dangerous precedent across all federal agencies, which have issued thousands of guidances over the years.

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