The Leadership Conference on Civil and Human Rights

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May 7, 2018

Oppose S.J. Res. 57, the CRA Resolution of Disapproval on Auto Lending Guidance

Dear Representative:

On behalf of The Leadership Conference on Civil and Human Rights, I urge you to oppose S.J. Res. 57, the Congressional Review Act (CRA) resolution to repeal the Consumer Financial Protection Bureau's (CFPB) guidance on indirect auto financing. The immediate purpose of this resolution is to undermine the ability of the CFPB to enforce laws against racial and ethnic discrimination in auto lending, which is highly troubling in itself, but it also aims to expand the reach of the CRA well beyond what Congress intended. **We plan to include your position on S.J. Res. 57 in our voting records for the 115th Congress.**

For at least the past two decades, financial services regulators have been aware of widespread racial and ethnic discrimination in the auto finance marketplace. The CFPB is the first and only regulator to directly address this discrimination by focusing on its underlying cause: dealer interest rate markups, in which car dealers receive a substantial bonus from lenders for increasing the interest rate on car loans, going above the rates for which borrowers otherwise qualify. Specifically, car dealers contact lenders during the course of sales to see who will be willing to buy loans. Lenders respond by sending dealers the interest rates they will accept based on the borrower's risk profile, also called the "buy rate." But the dealer can then add as much as 2-2.5 percent to the buy rate and keep some or all of the difference as compensation. To give a sense of scale, the Center for Responsible Lending (CRL) estimated that consumers who took out car loans in one year would pay as much as $25 billion in additional interest over the lives of their loans due to these markups.

In the mid-1990s, a series of lawsuits were filed against the largest auto finance companies in the country alleging racial and ethnic discrimination. The data from those lawsuits showed that borrowers of color were twice as likely to have their loans marked up, and paid markups twice as large as similarly situated White borrowers with similar credit ratings.

Because of that history, and with more recent data showing continued discrimination, the CFPB issued guidance in 2013 informing indirect auto lenders that they can ensure compliance with the Equal Credit Opportunity Act by paying compensation to dealers in ways that do not involve manipulations of the interest rate. For lenders that chose to continue allowing dealers to engage in interest rate markups, the guidance recommends other steps they can take to ensure that discrimination does not occur.

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In short, the CFPB's guidance acknowledges something we have known for a long time: pricing discretion leads to discrimination. The CFPB's enforcement work with the Department of Justice, accordingly, has netted over $176 million in restitution and penalties against several lenders. Even after these actions, a January 2018 report by the National Fair Housing Alliance provides compelling evidence that auto lending discrimination remains an ongoing problem.

By eliminating the CFPB's guidance, S.J. Res. 57 aims to undermine the ability of the CFPB to fight racial and ethnic discrimination, something that has no place in our lending markets. Congress should be applauding the CFPB's guidance, not trying to repeal it.

S.J. Res. 57 attempts to undermine not only civil rights enforcement, but also the CFPB more broadly. While it is certainly the role of Congress to set broad policy goals, as it did with the passage of the Equal Credit Opportunity Act and Dodd-Frank, the whole point of establishing the CFPB was to allow the details of those policies to be worked out in a process that is less vulnerable to the political manipulation and regulatory inaction that we witnessed in the years before the 2008 financial crisis, and to give consumers a stronger voice than they have before Congress or regulatory agencies. Attempts by Congress to micromanage complicated policy details only serve to undermine the very core of Dodd-Frank's consumer reforms, and they strengthen the hand of those who opposed the creation of the CFPB all along.

Finally, S.J. Res. 57 represents an unprecedented and unwise use of the CRA procedure. The law was intended to allow Congress to block the implementation of new agency rules before their impact is felt – not guidances that have been in place for years.

For these reasons, I urge you to oppose S.J. Res. 57. If you have any questions, please contact Rob Randhava, Senior Counsel, at (202) 466-3311.

Sincerely,

Vanita Gupta
President & CEO