



S.J. Res. 57 - A joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by Bureau of Consumer Financial Protection relating to "Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act" (as engrossed) (Sen. Moran, R-KS)

CONTACT: [Jennifer Weinhart](#), 202-226-0706

FLOOR SCHEDULE:

Expected to be considered on May 8, 2018 under a closed [rule](#).

TOPLINE SUMMARY:

S.J. Res. 57 would use the [Congressional Review Act](#) to provide for the disapproval of the rule submitted by Bureau of Consumer Financial Protection (CFPB) relating to "[Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act](#)."

COST:

A Congressional Budget Office (CBO) estimate is not available.

CONSERVATIVE CONCERNS:

There are no substantive concerns.

- **Expand the Size and Scope of the Federal Government?** No, the Joint Resolution would disapprove of a burdensome regulation.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

Car buyers often choose to finance their vehicle purchases through indirect financing available from auto dealerships, who act as intermediaries for financial institutions underwriting the financing. Auto dealers will often discount their interest rates to remain competitive with other dealerships and can also receive incentive payments from the financial institutions for securing more favorable financing terms.

The CFPB's new guidelines assert that dealer-adjusted interest rates create a fair credit risk because it is possible that dealer activity may be considered discriminatory on a disparate impact basis. In order to correct for this presumed discrimination, the guidelines for lenders would alter the way dealers are compensated. These guidelines would eliminate flexibility in setting rates for auto dealers, resulting in consumers having fewer choices in both lending and in terms of accepting non-financing tradeoffs in negotiating a vehicle purchase.

The CFPB guidelines are not technically guidance to dealers, who are explicitly outside of CFPB's jurisdiction. However, in practice the guidelines are effectively regulating dealer activities. They assert that the [Equal Credit and Opportunity Act \(ECOA\)](#) provides for a "disparate impact" theory of liability in which a lender could be held liable for discrimination if minority borrowers are negatively impacted, even if no discrimination was intended. The guidance goes on to state that in order to avoid ECOA liability, financial institutions having indirect lender relationships with auto dealers should either forbid dealers from charging interest rates all together, or impose controls over dealer compensation policies, effectively forcing dealers to adopt a "flat fee." Many are concerned that although this is not binding guidance, in issuing it, the CFPB is inducing actionable reliance, regulating where they have no authority.

Many are also concerned that the CFPB has no proof that auto dealers are engaged in discriminatory lending, as dealers legally cannot collect information like race or ethnicity. Moreover, a disparate impact claim would have to assume that differences in interest rates paid by borrowers of different races or genders are a result of their protected class status, when there are a number of other, non-discriminatory reasons for differing interest rates, including car model differences, dealership locations, and socioeconomic differences.

While the CFPB assumed the bulletin was outside the scope of the CRA because it was non-binding, a [GAO opinion](#) issued in December of 2017 found that while the guidance was non-binding, it is subject to the CRA because it "advises the public prospectively of the manner in which the CFPB proposes to exercise its discretionary power." Because federal agencies must submit copies of proposed rules to Congress before said rules go into effect, coupled with the GAO's finding that the CFPB bulletin now constitutes a rule, means the 2013 guidance is subject to the CRA.

Congress previously [passed](#) legislation nullifying Bulletin 2013-02 on November 18, 2015. A past legislative bulletin can be found [here](#).

The [Congressional Review Act](#) provides an expedited legislative process for Congress to disapprove of administrative rules through joint disapproval resolutions. Regulations issued by executive branch departments and agencies, as well as issued by independent agencies and commissions, are all subject to CRA disapproval resolutions. In [order](#) for a regulation to take effect, the issuing agency must produce a report to Congress. Generally, Congress then has 60 days to pass a resolution of disapproval under the CRA. However, this timeline is shifted in circumstances when rules are submitted to Congress within 60 legislative days of adjournment. Regulations that are successfully disapproved of will then either not go into effect or will be looked at as if they have not gone into effect. The CRA also prevents any new regulation that is substantially similar to a disapproved regulation from being promulgated in the future, absent action from Congress. Rules must be disapproved of on a rule-by-rule basis, and must be disapproved of in their entirety.

Under the CRA process, if a joint resolution is introduced in the Senate within the permitted time period and the resolution is not reported from committee on a timely basis, 30 Senators may petition to bring the resolution to the floor. This resolution would not be subject to the filibuster. When debate commences, the Senate must fully consider the resolution before moving on to any other business, with only 10 hours of debate. Finally, enactment of a joint resolution under the CRA would require a majority vote in each chamber and a Presidential signature.

GROUPS IN SUPPORT:
[FreedomWorks](#) (Key Vote)

[Competitive Enterprise Institute](#) (Statement of Action)

COMMITTEE ACTION:

S.J. Res. 57 was introduced on April 17, 2018, and was passed in the Senate on April 18, 2018, by a [vote](#) of 51-47.

ADMINISTRATION POSITION:

A Statement of Administration Policy is not yet available.

CONSTITUTIONAL AUTHORITY:

A Constitutional Authority Statements is not provided.

NOTE: *RSC Legislative Bulletins are for informational purposes only and should not be taken as statements of support or opposition from the Republican Study Committee.*