

[H.R.1737, Reforming CFPB Indirect Auto Financing Guidance Act](#)

FLOOR SITUATION

On Wednesday, November 18, 2015, the House will consider [H.R. 1737](#), the Reforming CFPB Indirect Auto Financing Guidance Act, under a [structured rule](#). H.R. 1737 was introduced on April 13, 2015 by Rep. Frank Guinta (R-NH) and was referred to the Committee on Financial Services, which ordered the bill reported by a vote of 47 to 10 on July 29, 2015.

SUMMARY

H.R. 1737 nullifies a bulletin published by the Consumer Financial Protection Bureau (CFPB) that provides guidance to lenders who finance automobiles through a dealership in compliance with the Equal Credit Opportunity Act (ECOA). The bill also directs the CFPB, when proposing new guidance on this topic, to provide for public notice and to make all studies, data, and analyses used in developing the guidance publically available.

BACKGROUND

On March 21, 2013, the CFPB released Bulletin 2013-02 titled "Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act" in an attempt to provide guidance to auto lenders for compliance with the Act.¹ However, the CFPB is explicitly prohibited from regulating auto dealers by the Dodd-Frank Wall Street Reform and Consumer Protection Act.² According to the Committee, although the bulletin does not purport to offer guidance to auto dealers, its "practical effect is to regulate dealers."³

"Furthermore, the bulletin raises concerns among auto lenders because it asserts that ECOA allows for a "disparate impact"⁴ theory of liability in which a lender may be held liable for discrimination

¹ See [CFPB Bulletin 2013-02](#)

² See [Dodd-Frank Section 1029](#), page 281.

³ See [House Report 114-329](#) at 2.

⁴ "Disparate Impact" is a doctrine that states that a policy may be considered discriminatory if it has a disproportionate "adverse impact" against any group based on race, national origin, color, religion, sex, familial status, or disability when there is no legitimate, non-discriminatory business need for the policy.

where a facially neutral lending practice disparately impacts minority borrowers, even where the lender did not intend to discriminate against them.⁵

“The bulletin advises that, in order to avoid liability under ECOA, financial institutions having indirect lender relationships with auto dealers should either impose controls on dealer compensation policies or forbid dealers from charging retail interest rates on consumer auto loans altogether.⁶

“Although the CFPB maintains that its bulletins are nonbinding guidance, it is simultaneously aware that such guidance must be taken seriously by market participants, because just the cost of being subjected to a CFPB investigation, even if it does not result in a CFPB enforcement action, is enormous. Accordingly, the bulletin is tantamount to regulation, except without public notice or opportunity for comment.”⁷

On June 25, 2015, in a 5 to 4 decision, the U.S. Supreme Court announced in *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*, that the disparate impact clause in the Fair Housing Act (FHA) is constitutional, thereby allowing lawsuits based on disparate impact liability claims relating to the FHA.⁸

On July 14, 2015, the CFPB and the Justice Department announced they had reached a settlement with Honda to “change its pricing and compensation system to substantially reduce dealer discretion and minimize the risks of discrimination, and [to] pay \$24 million in restitution to affected borrowers.” The CFPB claimed that “Honda’s past practices resulted in thousands of African-American, Hispanic, and Asian and Pacific Islander borrowers paying higher interest rates than white borrowers for their auto loans, without regard to their creditworthiness.”⁹

COST

The Congressional Budget Office (CBO) [estimates](#) enacting H.R. 1737 would not affect the federal budget. Because enacting the bill would not affect direct spending or revenues, pay-as-you-go procedures do not apply.

AMENDMENTS

1. Rep. Paul Gosar (R-AZ)—The [amendment](#) ensures that the costs and impacts to any veteran-owned business are included in the study required by this bill for any future auto financing guidance put forth by the CFPB.
2. Rep. Jason Smith (R-MO)—The [amendment](#) requires that CFPB, before issuing guidance on indirect auto financing, should also conduct a study on the cost and impacts such guidance to rural consumers and businesses.

⁵ See [House Report 114-329](#) at 2.

⁶ Id.

⁷ Id.

⁸ <http://www.scotusblog.com/case-files/cases/texas-department-of-housing-and-community-affairs-v-the-inclusive-communities-project-inc/>

⁹ See CFPB Press Release, “CFPB and DOJ Reach Resolution with Honda to Address Discriminatory Auto Loan Pricing,” July 14, 2014.

3. Rep. Terri Sewell (D-AL)—The [amendment](#) clarifies that nothing in this bill shall be construed to apply to guidance issued by the Bureau of Consumer Financial Protection that is not primarily related to indirect auto financing.

STAFF CONTACT

For questions or further information please contact [John Huston](#) with the House Republican Policy Committee by email or at 6-5539.