H.R. 1737—Reforming CFPB Indirect Auto Financing Guidance Act (Guinta, R-NH)

CONTACT: Jennifer Weinhart, 202-226-0706

FLOOR SCHEDULE:

Scheduled for consideration on November 18, under a structured rule.

TOPLINE SUMMARY:

H.R. 1737 would nullify the Consumer Financial Protection Bureau (CFPB) bulletin 2013-02, the Indirect Auto Lending and Compliance with Equal Credit Opportunity Act, and would amend the Consumer Financial Protection Act of 2010 to provide requirements for guidance issued by the CFPB pertaining to indirect auto lending.

COST:

The Congressional Budget Office (CBO) estimates that enacting H.R. 1737 would not affect the federal budget.

CONSERVATIVE CONCERNS:

There are no substantive concerns.

- **Expand the Size and Scope of the Federal Government?** No.
- **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:

H.R. 1737 would nullify the CFPB's Bulletin 2013-02, giving it no force or effect. This bill would also amend the Consumer Financial Protection Act of 2010 to require that when proposing or issuing guidance pertaining to indirect auto financing, the CFPB must: (1) allow for public notice and comment; (2) make data and analysis for the guidance publicly available, within the restrictions of the Freedom of Information Act; (3) consult with relevant federal authorities; and (4) conduct a study on the costs and impacts of the guidance on women and minority owned business and on small businesses.

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 bulletin 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 socio-economic differences. Charles River Associates performed an independent analysis of the bulletin, and found that the CFPB's flawed methodology caused them to overestimate minorities by up to 41%.

The committee report can be found here.

AMEDNMENTS:

1. Sewell (D-AL): This amendment would clarify that this legislation does not apply to CFPB guidance that is not primarily related to indirect auto financing.
2. Gosar (R-AZ): This amendment would ensure that veteran-owned businesses are considered in the study pertaining to costs and impacts required by this legislation.
3. Smith (R-MO): This amendment would require the CFPB to conduct a study on the costs and impacts to rural consumers and businesses of any guidance related to indirect auto financing.

OUTSIDE GROUPS:

National Automobile Dealers Association

COMMITTEE ACTION:

H.R. 1737 was introduced on April 13, 2015 and was referred to the House Committee on Financial Services, where it was ordered reported by the yeas and nays, 47-10, on July 29, 2015.

ADMINISTRATION POSITION:

A Statement of Administration Policy can be found here.

CONSTITUTIONAL AUTHORITY:

According to the sponsor, Congress has the power to enact this legislation pursuant to Article I, Section 8, Clause 18: The Congress shall have Power. . . . To make Laws which shall be necessary and proper for carrying into

Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

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.*