April 17, 2018

Key Vote YES on the Indirect Auto Lending CRA Resolution of Disapproval, S.J.Res. 57

On behalf of our activist community, I urge you to contact your senators and ask them to vote YES on the Indirect Auto Lending CRA Resolution of Disapproval, S.J.Res. 57. This resolution would provide for congressional disapproval of a March 2013 guidance document issued by the Consumer Financial Protection Bureau (CFPB). This guidance document was issued by the CFPB to intentionally circumvent the regular agency rule-making process in order to counter existing law and give the CFPB regulatory power over auto dealers.

The CFPB was created as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") passed in 2010 as a response to the financial crisis of 2007. Included in Dodd-Frank was an explicit exemption for auto dealers from regulation by the CFPB. Section 1029 of the law states that "the Bureau may not exercise any rulemaking, supervisory, enforcement or any other authority, including any authority to order assessments, over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both."

However, in 2013, the ever-unaccountable CFPB decided that it wanted this power for itself, despite the fact that the law that created the Bureau itself expressly prohibits such regulation. As the Chairman of the Senate Committee on Banking, Housing, and Urban Affairs Sen. Mike Crapo (R-Idaho) said on the Senate floor yesterday, the CFPB "used the back door of auto financing" to create a "rule masquerading as guidance" to allow for the Bureau to regulate auto dealers. Such regulation of auto dealers by the CFPB would only result in fewer and more expensive options for consumers when purchasing vehicles.

In issuing guidance instead of making a rule, the CFPB ignored regular agency process and closed the door to the standard process outlined in the Administrative Procedures Act. Standard rule-making procedure requires a level of accountability and transparency, including notice of the impending rule and a public comment period, allowing for thorough evaluation of the rule.

As the sponsor of the resolution, Sen. Jerry Moran (R-Kan.) said on the Senate floor yesterday, the Government Accountability Office agreed that the result of the guidance issued was the same as the outcome of a rule, and therefore should have gone through the rulemaking process. Undoubtedly, this process would have revealed that the proposed rule circumvents existing law prohibiting CFPB regulation of auto dealers, and that the method used by the CFPB in attempting to do so by using an anti-discrimination law was a front for an obvious power-grab.

The passage of this CRA would do nothing to change the prohibition against discrimination in the Equal Credit Opportunity Act that the guidance cites. It would simply roll back the gross regulatory overreach of the CFPB in claiming for itself -- behind closed doors and a screen of smoke -- a power that Congress, in the law that created the CFPB, explicitly banned the CFPB from having. As Sen. Moran said, the CFPB "had to work its magic to find a way to regulate auto dealers." Good governing is done through accountable and transparent processes, not magic.

For these reasons, I urge you to contact your senators and ask them to vote YES on the Indirect Auto Lending CRA Resolution of Disapproval, S.J.Res. 57. FreedomWorks will count the vote for S.J.Res. 57 on our 2018 Congressional Scorecard. The scorecard is used to determine eligibility for the FreedomFighter Award, which recognizes Members of the House and Senate who consistently vote to support economic freedom and individual liberty.

Sincerely,

Adam Brandon
President, FreedomWorks