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# CFPB Auto Dealer Regulation Overturned

AUTOMOBILE  
BY BOB BANDI

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On May 21, 2018, President Donald Trump signed a resolution of disapproval effectively reining in the ability of the Consumer Finance Protection Bureau (CFPB) to punish auto dealers for what the CFPB perceived as discriminatory lending practices. The resolution of disapproval, written by Senators Pat Toomey, R-Pennsylvania, and Jerry Moran, R-Kansas, used the Congressional Review Act to reverse guidance set by the CFPB in 2013. The guidance was seen by detractors, including the National Auto Dealers Association (NADA), as an attempt to eliminate auto dealers' ability to discount financing for consumers.

NADA had vehemently opposed the guidance from the outset. It argued that, among other things, (1) the research suggesting that auto dealers' lending practices are discriminatory was flawed, and (2) the ability of dealers to offer discounted financing actually benefits consumers. First, NADA pointed out that there is no way to determine if dealers' lending practices are discriminatory, because auto dealers are prohibited by law from asking applicants questions about race or ethnicity. In its review of loan applications, the CFPB was forced to guess about applicants' race or ethnicity based on addresses and surnames.

Another point that NADA made was that the CFPB was seeking to eliminate the dealer mark-up that dealers earn when providing consumer financing. Dealers are typically able to negotiate a finance charge with lending institutions, and then charge a stepped-up interest rate when providing financing to their customers. The difference represents profit to the dealerships. The CFPB's solution is to require dealers to charge a flat fee. NADA argued that the CFPB solution would eliminate dealers' incentive to use the institution that charged the most competitive rate, which would serve to drive up rates paid by consumers.

While this is good news for the auto industry, consumer advocates worry that this change will lead to unfair lending practices among dealers. Consumer advocates point to several studies, including one conducted by the CFPB, which found that minority customers often paid higher interest rates on their auto loans. As an example, advocates point to a joint study between the CFPB and the U.S. Department of Justice, in which Ally Financial was ordered to repay \$80 million to borrowers.

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