

REFORMING CFPB INDIRECT AUTO FINANCING GUIDANCE ACT

NOVEMBER 9, 2015.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1737]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1737) to nullify certain guidance of the Bureau of Consumer Financial Protection and to provide requirements for guidance issued by the Bureau with respect to indirect auto lending, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

Introduced by Representative Guinta, H.R. 1737, the “Reforming CFPB Indirect Auto Financing Guidance Act,” repeals the Consumer Financial Protection Bureau’s (CFPB’s) Bulletin 2013–02 titled Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act, which was published on March 21, 2013. H.R. 1737 also requires the CFPB to follow a transparent process when issuing subsequent auto finance guidance.

BACKGROUND AND NEED FOR LEGISLATION

Bulletin 2013–02 provides guidance to indirect auto lenders regarding fair lending risk under the Equal Credit Opportunity Act

(ECOA).¹ While this bulletin does not purport to offer guidance to auto dealers, which are explicitly exempted from CFPB regulation under the Dodd-Frank Wall Street Reform and Consumer Protection Act,² it nevertheless raises significant concerns that the CFPB is flouting this statutory limitation because the bulletin’s practical effect is to regulate dealers. Furthermore, the bulletin raises concerns among auto lenders because it asserts that ECOA allows for a “disparate impact” theory of liability in which a lender may be held liable for discrimination where a facially neutral lending practice disparately impacts minority borrowers, even where the lender did not intend to discriminate against them. 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. Although the CFPB maintains that its bulletins are non-binding 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. By issuing guidance which it knows will induce actionable reliance, the Bureau attempted to force lenders to require dealers to adopt a “flat fee” compensation model. In doing so, the Bureau seeks to regulate companies over which it has no statutory authority, and without even providing the due process afforded regulated companies under the Administrative Procedure Act.

What makes the CFPB’s apparent disregard of its jurisdictional limitations even more problematic is the weakness of its statistical “proof” that auto dealers have engaged in discriminatory lending. First, the CFPB does not have verifiable evidence that borrowers are minorities or other protected classes—it is illegal for auto dealers to collect such information. The CFPB “determined” borrowers’ race, ethnicity, and gender, among other factors, by reviewing their names and making conclusions using Bayesian probability, also known as a “proxy methodology”—in other words, the CFPB made what it believed to be good guesses based on a number of assumptions. Second, the extension of disparate impact theory, which began in employment discrimination cases and was later applied to housing discrimination cases, is problematic in the context of ECOA and auto lending. The theory requires one to assume that any statistically significant difference in interest rates paid by borrowers of different races, genders, or other protected characteristics must be the result of discrimination. However, there potentially exist a number of non-discriminatory explanations for certain groups paying higher interest rates than others—for example, different car model preferences, dealership locations, socio-economic factors, and financial sophistication.

On June 20, 2013, 35 Members of the House of Representatives wrote the CFPB seeking “all studies, analysis, and information it relied upon in developing its guidance document” and “the full set

¹ See http://files.consumerfinance.gov/f/201303_cfpb_march_Auto-Finance-Bulletin.pdf.

² See Dodd-Frank Section 1029.

of details concerning its disparate impact methodology,” including the proxies it used, the factors held constant, the metric used to measure pricing disparities, and the numerical threshold at which a pricing disparity constitutes an ECOA violation. Over a year later, and only after continuous pressure from Congress and industry stakeholders, the CFPB released a white paper detailing its disparate impact methodology for ascertaining fair lending liability for indirect auto lenders.³ The white paper described the CFPB’s methodology for assessing disparate impact liability.

The CFPB’s methodology has drawn significant criticism, including by the American Financial Services Association, which commissioned Charles River Associates (CRA) to review the Bureau’s white paper. The CRA study, which was released on November 19, 2014, found significant flaws in the CFPB’s proxy methodology.⁴ Based on 8.2 million vehicle contracts originated in 2012 and 2013, the study showed that the CFPB’s proxy method overestimates minorities by as much as 41 percent, which calls into question the reliability of the CFPB’s results. On the heels of the publication of the CRA study, industry stakeholders vociferously called for the CFPB to review its testing methodology, correct any errant bias, and release the findings of its revised methodology for public review before pursuing further action on the matter.

HEARINGS

The Committee on Financial Services’ Subcommittee on Financial Institutions held a hearing examining matters relating to H.R. 1737 on April 15, 2015.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on July 28, 2015 and July 29, 2015, and ordered H.R. 1737 to be reported favorably to the House without amendment by a recorded vote of 47 yeas to 10 nays (recorded vote no. FC–55), a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole record vote in committee was a motion by Chairman Hensarling to report the bill favorably to the House without amendment. The motion was agreed to by a recorded vote of 47 yeas to 10 nays (Record vote no. FC–55), a quorum being present.

³http://files.consumerfinance.gov/f/201409_cfpb_report_proxy-methodology.pdf. The Bureau’s proxy method is known as the Bayesian Improved Surname Geocoding method, or BISG.

⁴http://www.afsaonline.org/news_and_publications/vehicle_finance_study.cfm.

Record vote no. FC-55

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Waters (CA)		X	
Mr. King (NY)	X			Mrs. Maloney (NY)		X	
Mr. Royce	X			Ms. Velázquez		X	
Mr. Lucas	X			Mr. Sherman	X		
Mr. Garrett	X			Mr. Meeks		X	
Mr. Neugebauer	X			Mr. Capuano		X	
Mr. McHenry	X			Mr. Hinojosa	X		
Mr. Pearce	X			Mr. Clay			
Mr. Posey	X			Mr. Lynch		X	
Mr. Fitzpatrick	X			Mr. David Scott (GA)	X		
Mr. Westmoreland	X			Mr. Al Green (TX)		X	
Mr. Luetkemeyer	X			Mr. Cleaver			
Mr. Huizenga (MI)	X			Ms. Moore		X	
Mr. Duffy	X			Mr. Ellison		X	
Mr. Hurt (VA)	X			Mr. Perlmutter	X		
Mr. Stivers	X			Mr. Himes		X	
Mr. Fincher	X			Mr. Carney			
Mr. Stutzman	X			Ms. Sewell (AL)	X		
Mr. Mulvaney	X			Mr. Foster	X		
Mr. Hultgren	X			Mr. Kildee	X		
Mr. Ross	X			Mr. Murphy (FL)	X		
Mr. Pittenger	X			Mr. Delaney	X		
Mrs. Wagner	X			Ms. Sinema	X		
Mr. Barr	X			Mrs. Beatty	X		
Mr. Rothfus	X			Mr. Heck (WA)	X		
Mr. Messer	X			Mr. Vargas	X		
Mr. Schweikert	X						
Mr. Guinta	X						
Mr. Tipton	X						
Mr. Williams	X						
Mr. Poliquin	X						
Mrs. Love	X						
Mr. Hill	X						
Mr. Emmer	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 1737 will provide for the regulation of the auto loan industry pursuant to methodologically sound principles by (1) repealing the CFPB's Bulletin titled "Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act" (Bulletin 2013-02) and (2) requiring that the CFPB formulate any future guidance addressing the same subject based on public input after releasing the data and analysis supporting the proposed guidance, and after conducting a study on the costs and impacts of the proposal to consumers and women-owned, minority-owned, and small businesses.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington DC, October 14, 2015.

Hon. JEB HENSARLING,
Chairman, Committee on Financial Services, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1737, the Reforming CFPB Indirect Auto Financing Guidance Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 1737—Reforming CFPB Indirect Auto Financing Guidance Act

H.R. 1737 would nullify a bulletin published by the Consumer Financial Protection Bureau (CFPB) that provides guidance to lenders who agree to finance the purchase of an automobile through a dealership in compliance with the Equal Credit Opportunity Act. The bill also would direct the CFPB, when proposing new guidance on this topic, to follow certain procedures to provide for public notice and to make all studies, data, and analyses used in developing the guidance available to the public.

Based on information from the CFPB, CBO expects the agency would not prepare a replacement bulletin if H.R. 1737 were enacted. Because the bill would not affect the underlying statute or regulations to implement it, the Bureau can continue to enforce the Equal Credit Opportunity Act without the bulletin. Therefore, 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.

Enacting the bill would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four 10-year periods beginning in 2026.

H.R. 1737 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Susan Willie. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 1737 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee states that no provision of H.R. 1737 establishes or re-authorizes a program of the Federal Government known to be du-

plicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(k) of H. Res. 5, 114th Cong. (2015), the Committee states that H.R. 1737 contains no directed rulemaking.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This Section cites H.R. 1737 as the “Reforming CFPB Indirect Auto Financing Guidance Act”

Section 2. Nullification of auto lending guidance

This section states that Bulletin 2013–02 of the Bureau of Consumer Financial Protection (published March 21, 2013) shall have no force or effect.

Section 3. Guidance requirements

This section amends Section 1022(b) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5512(b)) to provide that when proposing and issuing guidance primarily related to indirect auto financing, the CFPB must provide opportunity for public input and make the data and analysis supporting the proposed guidance publicly available subject to certain redactions under the Freedom of Information Act. The section further provides that the CFPB must consult with other federal authorities and conduct a study on the costs and impacts of the guidance to certain groups.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

CONSUMER FINANCIAL PROTECTION ACT OF 2010

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TITLE X—BUREAU OF CONSUMER FINANCIAL PROTECTION

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Subtitle B—General Powers of the Bureau

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SEC. 1022. RULEMAKING AUTHORITY.

(a) **IN GENERAL.**—The Bureau is authorized to exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law.

(b) **RULEMAKING, ORDERS, AND GUIDANCE.**—

(1) **GENERAL AUTHORITY.**—The Director may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.

(2) **STANDARDS FOR RULEMAKING.**—In prescribing a rule under the Federal consumer financial laws—

(A) the Bureau shall consider—

(i) the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services resulting from such rule; and

(ii) the impact of proposed rules on covered persons, as described in section 1026, and the impact on consumers in rural areas;

(B) the Bureau shall consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies; and

(C) if, during the consultation process described in subparagraph (B), a prudential regulator provides the Bureau with a written objection to the proposed rule of the Bureau or a portion thereof, the Bureau shall include in the adopting release a description of the objection and the basis for the Bureau decision, if any, regarding such objection, except that nothing in this clause shall be construed as altering or limiting the procedures under section 1023 that may apply to any rule prescribed by the Bureau.

(3) **EXEMPTIONS.**—

(A) **IN GENERAL.**—The Bureau, by rule, may conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services, from any provision of this title, or from any rule issued under this title, as the Bureau determines necessary or appropriate to carry out the purposes and objectives of this title, taking into consideration the factors in subparagraph (B).

(B) **FACTORS.**—In issuing an exemption, as permitted under subparagraph (A), the Bureau shall, as appropriate, take into consideration—

(i) the total assets of the class of covered persons;

(ii) the volume of transactions involving consumer financial products or services in which the class of covered persons engages; and

(iii) existing provisions of law which are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protections.

(4) EXCLUSIVE RULEMAKING AUTHORITY.—

(A) IN GENERAL.—Notwithstanding any other provisions of Federal law and except as provided in section 1061(b)(5), to the extent that a provision of Federal consumer financial law authorizes the Bureau and another Federal agency to issue regulations under that provision of law for purposes of assuring compliance with Federal consumer financial law and any regulations thereunder, the Bureau shall have the exclusive authority to prescribe rules subject to those provisions of law.

(B) DEFERENCE.—Notwithstanding any power granted to any Federal agency or to the Council under this title, and subject to section 1061(b)(5)(E), the deference that a court affords to the Bureau with respect to a determination by the Bureau regarding the meaning or interpretation of any provision of a Federal consumer financial law shall be applied as if the Bureau were the only agency authorized to apply, enforce, interpret, or administer the provisions of such Federal consumer financial law.

(5) GUIDANCE ON INDIRECT AUTO FINANCING.—*In proposing and issuing guidance primarily related to indirect auto financing, the Bureau shall—*

(A) provide for a public notice and comment period before issuing the guidance in final form;

(B) make available to the public, including on the website of the Bureau, all studies, data, methodologies, analyses, and other information relied on by the Bureau in preparing such guidance;

(C) redact any information that is exempt from disclosure under paragraph (3), (4), (6), (7), or (8) of section 552(b) of title 5, United States Code;

(D) consult with the Board of Governors of the Federal Reserve System, the Federal Trade Commission, and the Department of Justice; and

(E) conduct a study on the costs and impacts of such guidance to consumers and women-owned, minority-owned, and small businesses.

(c) MONITORING.—

(1) IN GENERAL.—In order to support its rulemaking and other functions, the Bureau shall monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services.

(2) CONSIDERATIONS.—In allocating its resources to perform the monitoring required by this section, the Bureau may consider, among other factors—

(A) likely risks and costs to consumers associated with buying or using a type of consumer financial product or service;

(B) understanding by consumers of the risks of a type of consumer financial product or service;

(C) the legal protections applicable to the offering or provision of a consumer financial product or service, including the extent to which the law is likely to adequately protect consumers;

(D) rates of growth in the offering or provision of a consumer financial product or service;

(E) the extent, if any, to which the risks of a consumer financial product or service may disproportionately affect traditionally underserved consumers; or

(F) the types, number, and other pertinent characteristics of covered persons that offer or provide the consumer financial product or service.

(3) SIGNIFICANT FINDINGS.—

(A) IN GENERAL.—The Bureau shall publish not fewer than 1 report of significant findings of its monitoring required by this subsection in each calendar year, beginning with the first calendar year that begins at least 1 year after the designated transfer date.

(B) CONFIDENTIAL INFORMATION.—The Bureau may make public such information obtained by the Bureau under this section as is in the public interest, through aggregated reports or other appropriate formats designed to protect confidential information in accordance with paragraphs (4), (6), (8), and (9).

(4) COLLECTION OF INFORMATION.—

(A) IN GENERAL.—In conducting any monitoring or assessment required by this section, the Bureau shall have the authority to gather information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers.

(B) METHODOLOGY.—In order to gather information described in subparagraph (A), the Bureau may—

(i) gather and compile information from a variety of sources, including examination reports concerning covered persons or service providers, consumer complaints, voluntary surveys and voluntary interviews of consumers, surveys and interviews with covered persons and service providers, and review of available databases; and

(ii) require covered persons and service providers participating in consumer financial services markets to file with the Bureau, under oath or otherwise, in such form and within such reasonable period of time as the Bureau may prescribe by rule or order, annual or special reports, or answers in writing to specific questions, furnishing information described in paragraph (4), as necessary for the Bureau to fulfill the monitoring, assessment, and reporting responsibilities imposed by Congress.

(C) LIMITATION.—The Bureau may not use its authorities under this paragraph to obtain records from covered persons and service providers participating in consumer financial services markets for purposes of gathering or analyzing the personally identifiable financial information of consumers.

(5) LIMITED INFORMATION GATHERING.—In order to assess whether a nondepository is a covered person, as defined in section 1002, the Bureau may require such nondepository to file with the Bureau, under oath or otherwise, in such form and

within such reasonable period of time as the Bureau may prescribe by rule or order, annual or special reports, or answers in writing to specific questions.

(6) CONFIDENTIALITY RULES.—

(A) RULEMAKING.—The Bureau shall prescribe rules regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under Federal consumer financial law.

(B) ACCESS BY THE BUREAU TO REPORTS OF OTHER REGULATORS.—

(i) EXAMINATION AND FINANCIAL CONDITION REPORTS.—Upon providing reasonable assurances of confidentiality, the Bureau shall have access to any report of examination or financial condition made by a prudential regulator or other Federal agency having jurisdiction over a covered person or service provider, and to all revisions made to any such report.

(ii) PROVISION OF OTHER REPORTS TO THE BUREAU.—In addition to the reports described in clause (i), a prudential regulator or other Federal agency having jurisdiction over a covered person or service provider may, in its discretion, furnish to the Bureau any other report or other confidential supervisory information concerning any insured depository institution, credit union, or other entity examined by such agency under authority of any provision of Federal law.

(C) ACCESS BY OTHER REGULATORS TO REPORTS OF THE BUREAU.—

(i) EXAMINATION REPORTS.—Upon providing reasonable assurances of confidentiality, a prudential regulator, a State regulator, or any other Federal agency having jurisdiction over a covered person or service provider shall have access to any report of examination made by the Bureau with respect to such person, and to all revisions made to any such report.

(ii) PROVISION OF OTHER REPORTS TO OTHER REGULATORS.—In addition to the reports described in clause (i), the Bureau may, in its discretion, furnish to a prudential regulator or other agency having jurisdiction over a covered person or service provider any other report or other confidential supervisory information concerning such person examined by the Bureau under the authority of any other provision of Federal law.

(7) REGISTRATION.—

(A) IN GENERAL.—The Bureau may prescribe rules regarding registration requirements applicable to a covered person, other than an insured depository institution, insured credit union, or related person.

(B) REGISTRATION INFORMATION.—Subject to rules prescribed by the Bureau, the Bureau may publicly disclose registration information to facilitate the ability of consumers to identify covered persons that are registered with the Bureau.

(C) CONSULTATION WITH STATE AGENCIES.—In developing and implementing registration requirements under this

paragraph, the Bureau shall consult with State agencies regarding requirements or systems (including coordinated or combined systems for registration), where appropriate.

(8) **PRIVACY CONSIDERATIONS.**—In collecting information from any person, publicly releasing information held by the Bureau, or requiring covered persons to publicly report information, the Bureau shall take steps to ensure that proprietary, personal, or confidential consumer information that is protected from public disclosure under section 552(b) or 552a of title 5, United States Code, or any other provision of law, is not made public under this title.

(9) **CONSUMER PRIVACY.**—

(A) **IN GENERAL.**—The Bureau may not obtain from a covered person or service provider any personally identifiable financial information about a consumer from the financial records of the covered person or service provider, except—

(i) if the financial records are reasonably described in a request by the Bureau and the consumer provides written permission for the disclosure of such information by the covered person or service provider to the Bureau; or

(ii) as may be specifically permitted or required under other applicable provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.).

(B) **TREATMENT OF COVERED PERSON OR SERVICE PROVIDER.**—With respect to the application of any provision of the Right to Financial Privacy Act of 1978, to a disclosure by a covered person or service provider subject to this subsection, the covered person or service provider shall be treated as if it were a “financial institution”, as defined in section 1101 of that Act (12 U.S.C. 3401).

(d) **ASSESSMENT OF SIGNIFICANT RULES.**—

(1) **IN GENERAL.**—The Bureau shall conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law. The assessment shall address, among other relevant factors, the effectiveness of the rule or order in meeting the purposes and objectives of this title and the specific goals stated by the Bureau. The assessment shall reflect available evidence and any data that the Bureau reasonably may collect.

(2) **REPORTS.**—The Bureau shall publish a report of its assessment under this subsection not later than 5 years after the effective date of the subject rule or order.

(3) **PUBLIC COMMENT REQUIRED.**—Before publishing a report of its assessment, the Bureau shall invite public comment on recommendations for modifying, expanding, or eliminating the newly adopted significant rule or order.

* * * * *

MINORITY VIEWS

H.R. 1737 would nullify the Consumer Financial Protection Bureau's ("CFPB" or "Bureau") March 2013 bulletin ("Bulletin") that clarifies the Bureau's authority to regulate indirect auto lenders under the Equal Credit Opportunity Act ("ECOA") and that establishes its supervisory and enforcement expectations concerning indirect auto lender compliance with ECOA's fair lending requirements. In nullifying the Bulletin, H.R. 1737 seeks to impose unprecedented restrictions on the Bureau's issuance of important regulatory guidance and is unnecessary in light of the Bureau's Summer 2014 white paper explaining its methodology for identifying violations of ECOA and its implementing regulation, Regulation B.

The intent of H.R. 1737 is to send a clear message from Congress to the CFPB that lawmakers disapprove of the Bureau's recent actions to root out discriminatory practices among auto lenders. However, Members of Congress who were supportive of the creation of the CFPB and its mission believe enforcing these fair lending laws is precisely what the Bureau was designed to do. To date, the CFPB has reached settlements with several large lenders that have agreed to improve their fair lending compliance and return money to harmed consumers. The Bureau has provided thorough and timely information to Congress on these enforcement actions.

During the 113th Congress, similar legislation was proposed (H.R. 5403) and two separate inquiries from House Democrats and Republicans were made questioning the Bulletin and requesting details concerning the process that the Bureau uses to identify potential fair lending violations. The CFPB responded in Summer 2014 with a white paper responsive to the concerns raised by members that provides extensive detail into its methodology for identifying and analyzing potential fair lending violations.

The Bulletin provides important guidance on the Bureau's supervisory and enforcement expectations for indirect auto lenders. If enacted, H.R. 1737 would nullify guidance that to date has been helpful to regulated entities as they develop and refine their fair lending compliance management programs. H.R. 1737 does not alter regulated entities' obligations under ECOA or the CFPB's examination or enforcement activity pursuant to ECOA. Consequently, the practical effect of H.R. 1737 would be to nullify important information relied upon by regulated entities during a period of heightened regulatory scrutiny while also undermining indirect auto lenders' fair lending compliance management programs.

For the foregoing reasons, the Minority opposes H.R. 1737.

MAXINE WATERS.
CAROLYN B. MALONEY.
WM. LACY CLAY.
GWEN MOORE.
GREGORY W. MEEKS.

