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**From:** McClintic, Howard [McClintH@ctc.com]  
**Sent:** 4/20/2018 9:55:42 PM  
**To:** [REDACTED] Ex. 6 [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8e5cafd35ee842ecb3d96d25c2d7dfc2-rgolden124@aol.com]; Alex Beehler [REDACTED] Ex. 6; Charles Rigler (Charles.Rigler@charleskochinstitute.org) [Charles.Rigler@charleskochinstitute.org]; grizzle@grizzleco.com [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=607f0c9ada1547d0b72901f88202889c-grizzle@grizzleco.com]; Mike Holmes (MikeHolmes@lignite.com) [MikeHolmes@lignite.com]; Jason Bohrer (JasonBohrer@lignite.com) [JasonBohrer@lignite.com]  
**Subject:** Senate votes to kill consumer bureau auto-lending restrictions

Many of us will remember our discussions of the 1996 Congressional Review Act at the US Chamber— the trigger was pulled this week in the Senate -- historic!  
[https://www.uschamber.com/sites/default/files/9.7.17 -  
\\_testimony\\_to\\_senate\\_hsgac\\_subcommittee\\_on\\_hearing\\_on\\_permit\\_streamlining\\_and\\_fpisc.pdf](https://www.uschamber.com/sites/default/files/9.7.17_-_testimony_to_senate_hsgac_subcommittee_on_hearing_on_permit_streamlining_and_fpisc.pdf)

<https://www.politico.com/story/2018/04/18/senate-votes-to-kill-consumer-bureau-auto-lending-restrictions-492328?cid=apn>

## Senate votes to kill consumer bureau auto-lending restrictions

By ZACHARY WARBRODT  
04/18/2018 01:30 PM EDT

The Senate on Wednesday moved to eliminate a 2013 consumer protection measure intended to combat discrimination in auto lending, marking an expansive new use of its power to kill federal regulations.

The lawmakers voted 51-47 to gut the Consumer Financial Protection Bureau's guidance, which Republicans attacked as harmful to auto dealers and lenders. The House is expected to pass the measure soon, and President Donald Trump will likely sign it.

The consequences of the vote will ripple beyond the confines of the CFPB, which is already on a deregulatory path under the leadership of Mick Mulvaney, Trump's White House budget chief.

**It was the first time the Senate has used its authority under the 1996 Congressional Review Act to strike down an action taken by an agency years ago, instead of just within the narrow window prescribed by the law. The move also marked a broadening of how Congress has generally used the Review Act to include regulatory guidance and not only formal agency rules that were recently issued.**

"It's important for Congress to reassert its role in policymaking from the executive branch," said Sen. Jerry Moran (R-Kan.), who introduced the bill that would undo the regulation. Consumer advocates warn that the maneuver could expose decades of regulatory actions to being struck down by Republicans and Trump.

The CFPB guidance that Republicans targeted Wednesday outlines safeguards that lenders should follow to address racial discrimination by auto dealers, which often have a say in the terms for car loans because they facilitate financing for car buyers.

GOP lawmakers argued that it was unfair to dealers and the finance industry and underwent a flawed drafting process.

"If this rule stands, banks, credit unions and finance companies holding nearly \$1.1 trillion in outstanding loans will needlessly face significant liability and the ability of auto dealers to play a valuable role by matching buyers and lenders will be diminished," Senate Banking Chairman Mike Crapo (R-Idaho) said.

Republicans employed a fast-track procedure that allowed them to sidestep a filibuster by Democrats, who have generally resisted efforts to chip away at the bureau and fought attempts to repeal anti-discrimination regulations.

Sen. Joe Manchin (D-W. Va.) was the lone Democrat to vote in favor of the rollback, though others in his party were on the fence until shortly before the first procedural vote on the bill Tuesday.

Manchin said he didn't see evidence in his state of a problem with discrimination by auto dealers.

"I have a great relationship with all the car dealers back in the state of West Virginia, and I have checked with every one of them," Manchin said in an interview. "If I thought that any one of them — and these are people I've known all my life — would ever discriminate against anybody, for any reason whatsoever, I would have been coming after them. I've never had a complaint on that, never once."

The turnout by Democrats was in stark contrast to last month, when 17 members of the caucus voted for an even more wide-ranging bank deregulation bill that exposed them to aggressive, personal attacks from the left.

Progressives kept a close eye on the vote Wednesday to gauge whether they had sufficiently scared Democrats away from supporting more rollbacks of financial regulations.

Opponents of the bill warned of long-lasting impacts on federal regulation in the wake of the vote.

While Republicans under Trump have used the Congressional Review Act to overturn more than a dozen rules, the Senate broke new ground by using the law to undo a federal agency guidance document that had not gone through formal rulemaking procedures.

Agencies often issue informal guidance to advise businesses and other stakeholders about how laws and rules are being interpreted. In this case, Republicans said the CFPB went beyond simply clarifying its view on existing law.

Sen. Pat Toomey (R-Pa.), who orchestrated the effort, was able to bring the CFPB guidelines under the scope of the Review Act by asking the Government Accountability Office to determine that they amounted to a “rule” for the purposes of the law.

The GAO determination in December opened a brief window for Republicans to undo the guidance, thanks to time-limited fast-track authority under the Congressional Review Act that allowed them to escape a filibuster by Democrats.

The Republicans could reset the clock on other agency actions from past years that weren’t submitted to Congress as formal rules by asking the GAO to make the same determination.

Democrats and consumer advocates warned that the maneuver set a **dangerous precedent** that could put a wide universe of regulatory actions at risk and have a lasting impact on how agencies craft rules.

**“They can go back 20 years,”** said Sen. Sherrod Brown of Ohio, the top Democrat on the Senate Banking Committee.

Republicans argued they were keeping the federal bureaucracy accountable. In the case of the CFPB, they said the bureau did not follow Administrative Procedure Act requirements to take formal notice and comment in a significant regulatory action. They also said the bureau is legally prohibited from regulating auto dealers. The guidance was addressed to lenders that fall under the CFPB's jurisdiction.

Some of the Democrats who opposed the rollback co-sponsored a 2008 bill that would have blocked a directive from the Center for Medicare and Medicaid Services that, like the CFPB guidance, was not crafted under the formal rulemaking requirements of the APA.

The Senate didn’t pass the bill, but Republicans used it this week to bolster their case.

“The use of the Congressional Review Act to repeal a guidance is well-established,” Toomey said. “It is consistent with any plain reading of the law. It is consistent with the intent of the authors at the time. Congress has attempted to do so in the past. Democrats have attempted to do it.”

Unlike 2008, when Democrats were fighting a Republican president, the GOP Wednesday has a clear path to roll back regulations thanks to control of Congress and the White House.

Toomey said there was “no evidence” that the floodgates of repeal would be opened as critics warned this week. But he added that “any guidance, in fact any rulemaking, I think ultimately should be subject to congressional review because, after all, it’s our authority in the first place that is used to generate it.”

Consumer advocates warn that the maneuver could expose decades of regulatory actions to being struck down by Republicans and Trump.

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