

No Carve-Outs for Auto Dealers

Auto dealers are heading to Capitol Hill seeking a special carve-out from the “Restoring American Financial Stability Act of 2010” (S. 3217), which aims to put an end to the reckless practices of Wall Street and the abusive and discriminatory tactics by finance companies of all stripes. In their search for a loophole, auto dealers claim that the bill will restrict affordable car loans and result in a hike in fees.¹ However, their arguments ignore key facts about the bill and how new rules governing consumer finance would work. It is time to set the record straight.

The auto dealers say: We “will be urging senators to support an amendment offered by Senator Sam Brownback, R–KS., which would prevent the proposed Bureau of Consumer Financial Protection [CFPA] from over-regulating Main Street dealerships that had nothing to do with last year's credit meltdown.”

Get the facts: A key feature of S. 3217 is to consolidate the consumer protections currently scattered across several federal agencies under one roof by creating a Consumer Financial Protection Agency (CFPA). The CFPA would be charged with monitoring the financial marketplace and structured to react quickly to new tricks, scams, and abuses. In the case of auto dealers, the CFPA would not regulate the sale of the car or financing when the borrower obtains their financing from their bank or credit union. Dealers would only be subject to regulation—as they are now—when they affect the terms and conditions of auto loans. Even then, the bill will not impose onerous new rules, regulations, or supervision but will merely give the CFPA the authority that the Federal Trade Commission (FTC), the primary regulator of most auto dealers, currently possesses: to address unfair or abusive lending practices wherever they occur.

A majority of dealer profits are derived not from the sale of the car itself but rather from their finance and insurance departments. As in the mortgage industry, some predatory or abusive financing practices have occurred.² Auto dealers are consistently the top source of consumer complaints to the Better Business Bureau and state and local consumer protection agencies. If those abuses spread nationwide, the CFPA would be able to adopt new rules and auto lenders and their partner dealers would comply the same way they abide by requirements set forth in the Truth in Lending Act.

The auto dealers say: “Including auto dealers in the Wall Street reform bill is redundant. The Federal Trade Commission, the Federal Reserve and state consumer protection agencies already effectively govern dealer-assisted financing and that would not change.”

Get the facts: Under S. 3217, the CFPA will be given the authority to identify unfair and predatory lending trends nationwide. In the event that the CFPA acts to protect consumers, only the largest auto dealers would come under its jurisdiction. Smaller auto lenders and dealers

¹ All quotes from auto dealers are taken directly from the media advisory issued by the National Auto Dealers Association, April 26, 2010.

² 2009 F&I Statistics, F&I Management & Technology, Dec. 30, 2008, at 28, stating, “After experiencing slight declines in 2005, F&I’s contribution recaptured some ground in 2006 and continued to rise in 2007 and 2008, representing more than half of total profits. Lower gross margins on the sale of new units has helped increase the importance of F&I contributions. Source: CNW Market Research.”

would be required to comply with consumer protection regulations issued by the CFPA, but the FTC would continue to function as their regulator. The rule-writing power that the Federal Reserve currently has would simply be transferred to the CFPA. This would eliminate unnecessary overlap in regulatory efforts while consolidating like functions into one agency.

The auto dealers say: We “are highly concerned that the [CFPA], as currently proposed in the Senate's Wall Street reform package, would adversely affect a customer's ability to buy a car or truck. Over-regulation and additional fees would limit credit options, raise interest rates, and hurt the 17,000 small neighborhood businesses selling cars and trucks - and the hometown jobs they provide.”

Get the facts: The CFPA will already have authority to address auto lending by auto finance companies, banks, and credit unions. Giving it authority to address abuses in auto dealer lending will protect consumers from hidden surcharges and give them better information so they can choose the lending option that is best for them. As described above, very few—if any—auto dealers will be regulated by the CFPA directly. Therefore, smaller auto dealers are unlikely to experience new regulatory burdens that would influence the price of credit.

In fact, rather than limit credit options, the CFPA will level the playing field by reining in the hidden fees and abusive tactics that currently result in families being overcharged. Banks, credit unions, and nonprofit lenders with low-cost car loans often lose customers to the high pressure sales tactics employed by dealers with a profit motive to push customers into accepting increased car payments, extended warranties, or add-ons, which have been shown to cost customers \$1.1 billion every year.³ Moreover, research and court cases have uncovered troubling patterns of discriminatory markups in auto dealer pricing.⁴

What we say: To be successful, the CFPA must be created with the authority to regulate all consumer transactions. Exemptions will only create loopholes for unethical players to hide from laws that aim to protect hardworking families. S. 3217 seeks to create consumer protection for the future, not to address the problems of the past. We should not create a hole in the CFPA’s authority over consumer lending or wait for auto financing to rise to the level of the mortgage crisis before we give an agency jurisdiction to stop abuses when they occur. Auto lending is a \$350 billion dollar business, second only to mortgage lending in size, but subject to much less oversight and accountability. In the wake of the worst economic recession in generations, millions of families are struggling to keep pace with their credit card, car loan, and mortgage payments. Now is the right time to lay the groundwork for a strong financial system that will help families save and build wealth rather than line the pockets of predatory lenders.

³ Carolyn Hayden and Sheela Cooper, *Disclosure and Transparency in the Automobile Finance Industry: A Call for Action* (Baltimore, MD: The Annie E. Casey Foundation, 2009), <http://www.opportunitycars.com/documents/documents/DisclosureandTransparencyintheAutomobileFinanceIndustry.pdf> (accessed April 27, 2010).

⁴ Analyses have shown that Latinos pay higher used car loan rates than other borrowers, Black women pay more than Black men, and all pay more than Whites. See Consumer Federation of America, “Hispanic Americans Pay Higher Used Car Loan Rates,” news release, September 22, 2008, [http://www.americasaves.org/elements/www.americasaves.org/File/Hispanic%20America%20Saves%20Tele%20PR%209-22-08\(1\).pdf](http://www.americasaves.org/elements/www.americasaves.org/File/Hispanic%20America%20Saves%20Tele%20PR%209-22-08(1).pdf) (accessed April 28, 2010); and Ian Ayres, *Pervasive Prejudice? Unconventional Evidence of Race and Gender* (Chicago, IL: University of Chicago Press, 2001).