

KEY POINTS IN SUPPORT OF THE BROWNBACK AMENDMENT

May 10, 2010

1. While small business automobile dealers are not banks, they would be covered under S. 3217 because of the bill's broad definition of "consumer financial product or service". What's more, the new Bureau of Consumer Financial Protection (CFPB) would not just consolidate existing authority, but would have new, overly broad and unprecedented powers with no real oversight.

- The CFPB would be granted broad and sweeping authority to prohibit "unfair, deceptive, or abusive" acts or practices.¹ Since such terms as "unfair" or "abusive" are subjective, this is an open-ended grant of power for this new bureau to limit any business practice related to auto finance. If the CFPB reduces or eliminates the ability of auto dealerships to offer dealer-assisted financing, the decrease in competition will result in consumers paying higher rates or failing to secure financing, despite being creditworthy.
- Under S. 3217, every auto dealer would be regulated by the CFPB, and those auto dealers who are "a larger participant of a market" would be subject to additional supervisory examinations. No one knows how many dealers will be subject to these intrusive examinations, as the bill leaves it to the CFPB to define what is a "market" and who is a "larger participant." The actual bill language does not support claims by Senate Banking Committee staff that auto dealers would not be subject to these supervisory requirements. Those auto dealers who are subject to the CFPB's power to conduct supervisory (bank-like) examinations² would have to register with the CFPB³ produce "reports" and submit to "examinations on a periodic basis."⁴ The "principals, officers, directors or key personnel" of covered dealerships also could be required to undergo background checks by the government.⁵
- The CFPB will have few actual checks on how it uses its broad powers. The CFPB is not subject to oversight by the Office of Management and Budget and will not have to rely on an annual appropriation from Congress for its funding. Moreover, dealers and their customers who would be hurt by new regulations will be largely powerless to stop them, because the judgment of a federal agency is given wide deference by the courts.

2. The case that small business auto dealers should be covered under the Wall Street reform bill has not been made. Auto dealers are very different from mortgage brokers, and, as the data from the credit crisis demonstrates, auto loans are sound and based on due diligence; auto loans do not pose systemic risk.

- Auto dealers, unlike mortgage brokers, have inventories, which require dealers to commit actual funds during the transaction.

¹ Sec. 1031(a)

² Sec. 1024(b)

³ Sec. 1024(b)(7)

⁴ Sec. 1024(b)(1)

⁵ Sec. 1024(b)(7)(D)

- Unlike mortgages, auto finance did not experience a subprime lending crisis and does not pose a systemic risk to the nation’s financial system.
- Throughout the entire recession, *delinquencies on auto loans never rose above one percent* – in sharp contrast to the percentage of mortgage loan delinquencies – proving that auto loans are safe and affordable for consumers even when times are tough.⁶

3. Optional dealer-assisted financing is often the most affordable financing available to our uniformed service members. Auto dealers have worked with military organizations to educate service members on financing a car through a financial literacy program, AWARE.

- Careful review of a Department of Defense letter being used to cast doubt on the Brownback Amendment reveals that the letter actually supports this new consumer agency only if it will not “limit access to legitimate products.” If the legislation currently proposed is enacted, however, the CFPB will likely issue rules that would significantly decrease auto finance competition and generally result in service members paying higher rates or failing to secure auto financing.
- The DOD letter attempts to justify the need for CFPB regulation of auto dealers by listing certain practices that are harmful to service members. However, the letter fails to mention that these practices are already illegal under current law and would remain illegal under the Brownback Amendment. Anyone engaging in those activities should be held accountable to the fullest extent of the law. Dealers are subject to extensive federal regulation and, unlike many banks, are also subject to the full range of state consumer protection statutes.
- Military base commanders already possess the power necessary to police commercial enterprises that engage in abusive behavior towards servicemen and servicewomen. Automobile dealers, many of whom employ reservists and national guardsmen and are former service members themselves, take pride in assisting and supporting our military and their families.

4. Discrimination against credit applicants based on race or gender is already illegal and anyone engaging in these activities should be held accountable. The Brownback Amendment does not in any way alter these existing laws.

- The Brownback Amendment would not amend, or in any way limit the future application of, any existing federal or state statute used to combat alleged discrimination in auto financing.
- The Brownback Amendment would have no effect on the status of any class action settlement related to auto finance. Additionally, to correct the record, past class actions of this nature were filed against auto lenders (not auto dealers) and afforded the plaintiffs full relief under current law.
- Along with NADA and many other dealer organizations, the National Association of Minority Automobile Dealers is extremely concerned about the impact that S. 3217 would have on the ability of consumers to access affordable auto credit and thus fully supports the Brownback Amendment.

⁶ TransUnion’s Trend Data

5. The Brownback Amendment helps preserve auto finance competition for consumers and levels the playing field with community banks and credit unions.

- Auto dealers advocate for the consumer in dealing with banks, credit unions and other finance sources to help sell a vehicle. This permits consumers to obtain competitive financing and, in many cases, financing that is otherwise not available to them.
- Since the finance source of every auto loan will be regulated by the CFPB, a level playing field will exist and community banks and credit unions will not be not disadvantaged.
- Contrarily, without the Brownback Amendment, consumers' auto finance options could be limited to community banks and credit unions, thereby providing an unfair competitive advantage to those entities.
- Dealer-assisted financing is optional and allows the consumer to get the best rate possible because of the dealer's multiple banking arrangements. Consumers are still free to shop for the best rate through their own bank or other finance sources.

6. Auto securitizations significantly outperformed other consumer lending asset classes (like home mortgages) that contributed to, and suffered tremendous losses from, the credit crisis due to risky lending practices.

- Dealers do not securitize auto loans on Wall Street. Finance sources that securitize auto loans, along with all other auto loan finance sources, would be fully regulated by the CFPB under the Brownback Amendment.
- Auto securitizations have held their value despite the deep recession. The claim that "prime auto loan securitizations are in trouble" is misleading. In fact, the Standard & Poor's report used to make this claim is entitled "U.S. Auto Loan ABS Ratings Performance Remains Strong As Issuance Increases in 2010."⁷
- Auto loans will not cause a Wall Street meltdown because auto finance sources lend against a depreciating asset and thus responsibly focus their underwriting on the borrower's ability to repay its obligation. This is in sharp contrast to many mortgage lenders, who focused their underwriting on speculation that homes would continue to increase in value.

Finally, auto dealers are already effectively regulated by the Federal Trade Commission, the Federal Reserve, state attorneys general and state consumer protection agencies. Under Senator Brownback's amendment, these government agencies would continue to have oversight. There is no reason the Senate Wall Street reform bill should make auto credit more expensive and thus much harder for consumers to purchase a vehicle.

For more information, please visit www.nada.org/brownback or call the NADA Legislative Office at 202-547-5500.

⁷ "U.S. Structured Finance 2010 Outlook: The Overall Market Continues to Stabilize, but CMBS Remains A Concern", found at http://www2.standardandpoors.com/spf/pdf/fixedincome/SF_2010_outlook.pdf, p. 5. Accessed May 7, 2010.