



NATIONAL AUTOMOBILE DEALERS ASSOCIATION
Office of Legislative Affairs
412 First Street, S.E. • Washington, D.C. • 20003
202 •547• 5500

May 12, 2010

Dear Senator:

RE: Response of the National Automobile Dealers Association to NAACP Letter of May 11, 2010 (the “NAACP Letter”)

At the National Automobile Dealers Association (NADA), we take very seriously any statement issued by the NAACP because of the organization’s history of providing positive contributions to important public policy debates. We appreciate this opportunity to provide some additional perspective to the matters discussed in the NAACP Letter in opposition to the Brownback Amendment to S. 3217, since we condemn illegal and discriminatory practices.

At the outset, it is extremely important to note that the NAACP Letter is premised upon allegations and outdated data from the National Consumer Law Center (“NCLC”) that, even according to the NCLC, “may not reflect current practices” in auto finance. With regard to the specific concerns raised in the NAACP Letter, we ask you to consider the following:

1. The type of discriminatory activity alleged in the NAACP Letter was addressed and settled under current Federal law. Footnote 1 of the NAACP Letter cites a May 4, 2010 statement of the National Consumer Law Center (the “NCLC statement”). The NCLC statement is based on obsolete sales data (ranging from January 1994 to September 2003) prepared several years ago by plaintiffs’ experts in class action lawsuits brought against finance companies alleging disparate impact in auto lending. During those lawsuits, serious questions were raised about the legitimacy of the statistical analyses that formed the basis of the claims made. However, regardless of the quality of these data or analyses, class action settlement agreements fully addressed the allegations that gave rise to the lawsuits. These settlements with auto lenders imposed caps on the amount of dealer compensation in the indirect lending model. The auto lenders involved in these lawsuits enforce these caps on dealers via contractual terms. In fact, the NCLC statement itself acknowledges that the data cited “**may not reflect current practices** because the settlements, which are expiring, limit discretionary markups” (emphasis added). Moreover, the strong competitive forces that are the hallmark of the vehicle finance marketplace also operate to keep dealer compensation well below these caps. *In sum, the information upon which the NAACP Letter is predicated does not support the call for additional regulation of auto dealers.*

2. The Brownback Amendment, if enacted, would not alter any existing Federal laws that have been used to attack the type of discriminatory activities referenced in the NAACP Letter. Auto lenders were the parties to the class action settlements, not auto dealers, and those auto lenders would be subject to the new Consumer Financial Protection Bureau (“CFPB”) authority even with the enactment of the Brownback Amendment. Moreover, the referenced class action lawsuits were brought under the Equal Credit Opportunity Act, and that law would

continue to apply to auto dealers as well as auto finance companies if the Brownback Amendment is passed. *Consequently, the Brownback Amendment in no way threatens the continuation of rate caps (which are routinely used in the industry, including by finance sources that had nothing to do with the litigation).*

3. The Brownback Amendment, if enacted, would empower the new CFPB to regulate buy-here-pay-here auto dealers. While not addressed in the NAACP Letter, this fact is critically important to the current debate. Many of the anecdotal abuses cited by the consumer groups occur at buy-here-pay-here dealerships, which would be regulated directly by the CFPB. The Brownback Amendment is not ambiguous on this point. Any dealership that is functioning like a bank and funding the loan directly to the consumer will be covered, even if the Brownback Amendment is adopted. In this way, the finance source of every auto loan, whether a bank, credit union, finance company, or auto dealer, would be subject to CFPB authority. *As a result, the Brownback Amendment ensures that the CFPB will be fully empowered to attack problems in the buy-here-pay-here industry.*

4. The specific language of the Brownback Amendment contradicts the NAACP's statement that "exempting auto dealers from the jurisdiction of the Consumer Financial Protection Bureau would result in consumers losing important protections...." The Brownback Amendment does not remove any of the protections that consumers are afforded under current law. Rather, the Brownback Amendment expressly preserves existing Federal and state laws that afford consumer protection and govern dealer-assisted financing (e.g., Equal Credit Opportunity Act, Truth In Lending Act, Federal Consumer Leasing Act, Fair Credit Reporting Act, Gramm Leach Bliley Act, Federal Trade Commission Act)¹. Just like the Campbell Amendment that was passed as part of the House financial reform bill, the Brownback Amendment would ensure that all auto loans are regulated by the proposed CFPB, while the business practices of motor vehicle dealers would continue to be regulated by the Federal Reserve, the Federal Trade Commission, and the 50 state consumer protection agencies. This distinction is important because auto dealers are retailers, not bankers.

In addition to providing our views on the Brownback Amendment, we would like to reiterate NADA's strong support for *dealership ethics* and for *full compliance with the extensive federal, state, and local laws* governing their businesses. Predatory lending and discriminatory practices are illegal. NADA condemns any such activities and believes that anyone engaging in these activities should be held fully accountable. (NADA publishes a Code of Ethics for dealers and their employees, available at: <http://www.nada.org/Publications/CodeOfEthics/Guide.htm>) In this regard, a top priority for NADA is *training and educating dealership employees* with respect to both their compliance obligations and high ethical principles and standards. NADA provides continuing education and compliance assistance through publications, seminars, workshops, and webinars.

¹ The Brownback Amendment specifically states: "Nothing in this section shall be construed to modify, limit, or supersede the rulemaking or enforcement authority over motor vehicle dealers that could be exercised by any Federal department or agency on the day before the date of enactment of this Act."

NADA Response to NAACP Letter
May 12, 2010

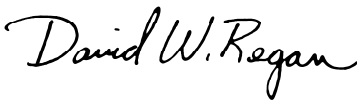
Moreover, for several years, NADA has been a leader in *financial literacy*, helping to educate consumers about the vehicle financing process. The two most prominent examples are discussed below.

Americans Well-informed on Automobile Retailing Economics (AWARE): In 2005, NADA was one of the founding members of this coalition, which helps consumers navigate the vehicle financing process. AWARE supports a robust website that contains a significant amount of accessible, easy-to-read information for consumers who are thinking about financing an auto purchase or leasing a vehicle. The site is available at www.autofinancing101.org and offers content in both English and Spanish. AWARE is made up of automotive industry leaders that have joined together to educate consumers about vehicle financing.

Understanding Vehicle Financing is a 10-page brochure that is designed to help car buyers learn about dealership financing and evaluate their financial situation before financing or leasing a new or used vehicle. The brochure — produced by NADA and the American Financial Services Association Education Foundation (AFSAEF), in cooperation with the Federal Trade Commission (FTC) — is available at www.ftc.gov/bcp/edu/pubs/consumer/autos/aut04.pdf.

In conclusion, while we respectfully disagree with the NAACP's letter, we take seriously their concerns and appreciate the opportunity to provide additional information about this important matter. Additionally, we welcome the opportunity to work with the NAACP on matters related to financial literacy. As always, we will discuss this matter with Senators and staff to address any concerns discussed above or any other aspect of the Brownback Amendment, because the dealer-assisted finance model increases convenience and competition for consumers seeking affordable transportation.

Sincerely yours,



David W. Regan
Vice President, Legislative Affairs



Ivette E. Rivera
Executive Director, Legislative Affairs