

The Proposed Bureau of Consumer Financial Protection – Summary of the Adverse Impacts on Small Business Automobile Dealers

If S. 3217 becomes law in its current form, it would create a new Bureau of Consumer Financial Protection that would have broad and unprecedented authority to regulate dealer finance operations. While small business dealers are not banks, they would be covered under the Bureau because of the bill's expansive definition of "consumer financial product or service." Below is a summary of what this new legislation would mean for franchised dealers.

The Bureau Would Have New, Overly Broad and Unprecedented Powers - The Bureau would be granted sweeping authority to prohibit "unfair, deceptive, or abusive" acts or practices.¹ Since such terms as "unfair" or "abusive" are subjective, this new authority in reality is an open-ended grant of power for this new bureau to change or outlaw any business practice related to auto finance. For example, using this power, the Bureau could deem some part of the dealer's role in arranging financing as "unfair" and therefore could prohibit commission for finance managers, or eliminate any compensation dealers receive when they help facilitate auto loans.

Moreover, *since no one in the Bureau would be directly accountable to the public*, dealers and their customers who would be hurt by new regulations will be largely powerless to stop any proposed action the Bureau is determined to undertake. Under S. 3217, the Bureau can simply propose a rule, take public comment, and ban *any* dealer finance-related practice. And because the judgment of a federal agency is accorded wide deference by the courts, overturning a rule by the Bureau would be extremely difficult.

The Legislation Could Allow Intrusive Examinations - S. 3217 gives the BCFP power to conduct bank-like examinations of auto dealers.² Auto dealers will have to register with the BCFP³ and be subject to produce "reports" and submit to "examinations on a periodic basis."⁴ The "principals, officers, directors or key personnel" of covered dealerships may also be required to undergo background checks by the government.⁵

Under S. 3217, every auto dealer would be regulated, and those auto dealers who are "a larger participant of a market" would also be subject to supervisory examinations. No one knows how many dealers will be subject to these intrusive examinations, as the bill leaves it to the BCFP to define what is a "market" and who is a "larger participant."⁶

Conclusion – The Bureau's vast power could impose costly, complex and unnecessary regulation for small businesses. If some or all auto dealerships cease to offer dealer-assisted financing, the decrease in competition will result in consumers paying higher rates or, in many cases, failing to secure financing, despite being creditworthy. Senators are urged to support the Brownback Amendment to ensure that small business auto dealers and auto consumers are not unnecessarily swept into "Wall Street" reform.

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¹ Sec. 1031(a)

² Sec. 1024(b)

³ Sec. 1024(b)(7)

⁴ Sec. 1024(b)(1)

⁵ Sec. 1024(b)(7)(D)

⁶ Sec. 1024(a)(1)(B)