INTERNAL DOCUMENTS REVEAL THE CFPB'S ABUSE OF POWER RELATING TO ITS CONTROVERSIAL AUTO FINANCE GUIDANCE

Overview

Internal documents obtained by the House Financial Services Committee reveal that the Consumer Financial Protection Bureau's (CFPB) actions to eliminate or limit a dealer's ability to discount auto loans for consumers have been "misguided and deceptive." A report by the Committee stated that a "controversial statistical method" the CFPB employed to measure fair credit risk is "prone to significant error" and that the Bureau knew that there were "other factors" why dealers discount credit, but "refused to control for such factors". Despite these flaws, the CFPB used strong-arm tactics to coerce a lender "over which it had significant political leverage" and concealed "other aspects of its effort from public scrutiny.[1]

The CFPB concealed information and its flawed method from Congress. The CFPB did not provide information requested from Congress, including its controversial disparate impact testing methodology (despite 13 bipartisan Congressional letters requesting such information) because it would likely reveal the flaws and undermine its true goal of eliminating dealer discounts. As stated by the CFPB ... "[i]f we choose not to publish…our internal methodological deliberations will not be discoverable" in litigation. The CFPB later admitted that its data on one critical metric was off by 20 percent (a later study found errors of up to 41 percent)) but did nothing to correct its flawed data.

According to leaked documents, the CFPB issued "guidance" to eliminate dealer discounts because it knew the legal justification for enforcements against auto lenders in contested litigation is weak. The Bureau avoided a transparent rulemaking process in large part because, a rule would not distinguish dealer discounts from *"… similar practices that are <u>ubiquitous in retail transactions</u>."*

The internal documents reveal that the CFPB was "fully aware that credit scores and other race-neutral factor do affect" the amount of dealer discounts. CFPB staff stated in a memo to Director Cordray that "when controlling for credit tier, new/used status and loan term, the **disparities fell by approximately half**," for some consumers. The Bureau nevertheless still refused to control for these legitimate business factors when bringing enforcement actions.

The documents show the CFPB, knowing its methodology <u>would not withstand scrutiny</u>, used its power to pressure lenders to settle and change their policies. The CFPB's strategy is to fine lenders millions of dollars for "allowing" dealers to offer consumer discounts, hoping for a "market-tipping" settlement that would eliminate dealer discounts. Ally became the CFPB's primary enforcement target because of the unique leverage the government held over Ally's financial holding company application. Moreover, CFPB initially demanded that Ally no longer allow the dealers they do business with to discount credit, despite Ally saying such a policy would be **"corporate suicide"** and the Bureau having evidence that such a move would **"significantly undermine competitiveness."** As with every other similar action against an auto lender, Ally did not admit any wrongdoing and paid a large fine. In a remarkable coincidence, four days after Ally signed a consent order with the CFPB, Ally's application to obtain financial holding company status was approved.

[1] http://financialservices.house.gov/uploadedfiles/11-24-15_cfpb_indirect_auto_staff_report.pdf.

Conclusion

Leaked documents reveal that the CFPB is misapplying the law, and using data it knows to be flawed to coerce settlements. The CFPB's true goal is to use enforcement actions to "eliminate dealer [discounts] altogether." The CFPB choose not to use its rulemaking power because their methods would likely not stand up in court.

"The fundamental premise on which they [CFPB] based their case was not true and they knew that, [but] they didn't care," said former Ally CEO Michael Carpenter. "You could show them all the data on the planet. They did not care. They had an agenda."[2]

November 24, 2015 Report, "Unsafe at Any Bureaucracy: CFPB Junk Science and Indirect Auto Lending":
Press Release - http://financialservices.house.gov/news/documentsingle.aspx?DocumentID=399984
Report - http://financialservices.house.gov/uploadedfiles/11-24-15_cfpb_indirect_auto_staff_report.pdf

January 20, 2016 Report "Unsafe at Any Bureaucracy, Part II: How the CFPB Removed Anti-Fraud Safeguards to Achieve Political Goals":
Press Release - http://financialservices.house.gov/news/documentsingle.aspx?DocumentID=400194
Report - http://financialservices.house.gov/uploadedfiles/cfpb_indirect_auto_part_ii.pdf

March 15, 2016

[2] Paul Sperry, "*Bank CEO reveals how Obama administration shook him down,*" N.Y. Post, Feb. 21, 2016.