



**LEGISLATIVE ALERT**

**January 31, 2014**

## **NIADA Responds to CFPB's Semi-Annual Report to Congress**

This week, CFPB Director Richard Cordray submitted his semi-annual report to the House Committee on Financial Services (the same committee that gave us Dodd-Frank and Cash for Clunkers) to update on the bureau's activities.

In response to the Director's report, NIADA submitted the following comments for the record to the same committee.

[See below to view NIADA's comments to the House Committee on Financial Services.](#)

At Your Service,

A handwritten signature in blue ink, appearing to read "Steve Jordan".

Steve Jordan  
Executive Vice President  
NIADA

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### **About NIADA**

The National Independent Automobile Dealers Association (niada.com) has represented the used motor vehicle industry since 1946. NIADA assists its members in becoming more successful and is the industry's legislative representative for protecting dealer and consumer interests. The association consistently generates valuable industry education and information, along with services and benefits designed to prepare members for an ever-changing marketplace. As a consumer-friendly association, automotive consumer information can be found at [autoconsumer.tv](http://autoconsumer.tv).



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Mr. Chairman and Members of the House Financial Services Committee, my name is Steve Jordan, Executive Vice President of the National Independent Automobile Dealers Association (“NIADA”) headquartered in Arlington, Texas. On behalf of the Association, I appreciate the opportunity to submit this statement for the record regarding the Committee’s January 28th hearing on the Consumer Financial Protection Bureau (“CFPB”).

The NIADA represents more than 17,000 members who are connected to the automobile industry in some form or fashion, but primarily independent dealers who own dealerships across America that are not affiliated with a manufacturer.

They are businessmen and women who subscribe to the NIADA Code of Ethics that emphasizes honor, integrity and fair dealing. More than 40 percent of these dealers have been in business for more than 20 years, and almost 50 percent have five or fewer employees. They are the small car store that survives in the best of times and the worst of times because they are a part of their communities as fathers, mothers, Better Business Bureau members, Chamber of Commerce members, city councilmen, school board members, churchgoers, youth organization sponsors and coaches, and task force members who look for ways to make our cities and our towns better places to live.

The passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010 and the creation of the Consumer Financial Protection Bureau (“CFPB”) drastically changed the regulatory landscape for those engaged in the financial services industry. Not only did the CFPB become a new cop on the beat, it became a cop with significant power and virtually limitless resources.

At the time of the Dodd-Frank debate, NIADA voiced concerns about the structure and budget of the CFPB, which was unlike other agencies in Washington, D.C., and vastly different than the agency automobile dealers were most accustomed to dealing with: the Federal Trade Commission (“FTC”). Unlike the FTC which has five commissioners from both political parties each with an equal vote on how the Commission will conduct business, all power of the CFPB is vested in one director appointed by the President.

Moreover, because the CFPB’s budget is ensconced in the Federal Reserve, it not subject to the appropriations process. This effectively precludes Congressional oversight of the Bureau’s finances and operations. Additionally, one could even argue that the CFPB is not subject to

Presidential oversight. The primary fear that results from vesting all authority in one director and giving that individual financial latitude without any real restraint is that the CFPB will function in a shroud of secrecy and drift from its statutory mandate with an undue burden of influence from unchecked consumer advocates.

In fact, reviewing the Bureau's actions as it relates to the automotive financing industry, NIADA believes that the CFPB's perfunctory efforts have not statistically identified any meaningful automotive finance related problem that would merit additional enforcement or oversight outside of the current myriad of federal laws and regulations to which auto finance companies and dealers must abide.

In an effort to justify its existence and the redundancies of federal regulatory oversight in which it now sits, the CFPB has not adequately created a need for itself in the automotive finance space and as such is attempting to create a problem where none exists. In March 2013, the CFPB released a guidance document to lenders engaged in indirect auto lending (i.e. dealer assisted financing.) The document purports to provide guidance about compliance with the Equal Credit Opportunity Act ("ECOA") to those lenders that engage in dealer-assisted financing where the dealer is permitted to adjust the interest rate at which the lender is willing to buy the contract. The CFPB asserts these compensation policies create significant risk that pricing disparities will result based on race, national origin, or other factors that violate the ECOA; an assumption that has not been proven through consumer complaints. Without disclosing their methodologies, the CFPB suggests that these practices will result in a negative "disparate impact" to consumers in a protected class and that "disparate impact" can only be proven by a statistical evaluation of past credit transactions.

The CFPB's guidance document additionally suggests that a flat fee compensation model for financing profit would alleviate this concern. NIADA categorically rejects the concept of a flat fee as a way to assuage any attempts to adhere to the ECOA. In fact, the CFPB boldly goes so far as to instruct consumers to pay a flat fee, as if markup is illegal on its face. (See, <http://www.consumerfinance.gov/askcfpb/727/what-buy-rate.html>).

Although the CFPB guidance document gives the appearance that discrimination is their concern, the reality of their actions, coupled with the lack of evidence and methodology disclosure, suggests the CFPB's true desire is to limit dealer profit. Specifically, that because a dealer is compensated in the form of a mark-up at their own discretion that fraud must exist. Discretion to legally and fairly earn a profit rendering financial services does not also mean that fraud exists. Discretion does not equal fraud.

From the moment the CFPB released this guidance document, industry stakeholders, including NIADA, have asked the CFPB to provide empirical evidence that this disparate impact actually exists. Moreover, NIADA and others in the industry have repeatedly asked the CFPB to reveal the statistical method it uses to determine whether "disparate impact" is present in an automotive lender's portfolio. In addition to industry demands for information behind the CFPB's conclusions, multiple members of both chambers of Congress have asked the CFPB to provide this same information. To date, the Bureau continues to withhold this critical information that

would provide the industry, Congress, and public with evidence that a meaningful consumer problem exists and that the CFPB is not in search of a problem to justify its existence.

In addition to the withholding of information, NIADA joins with others who have raised the concern that the CFPB issued this guidance document without holding any public hearing or soliciting public comment. It was not until after a bipartisan letter from 22 Senators was sent to Director Cordray did the Bureau conduct its first public forum on the matter, a full 7 months after the guidance document was issued.

The secrecy with which the CFPB is operating is either intentional or not. Neither is acceptable for any federal agency, much less for one with the wide-swath of oversight, enforcement and funding capacity as the CFPB. The CFPB expects, as they should, that the consumer be treated fairly. NIADA agrees. Consumers cannot adequately purchase or finance a car if material information is willfully withheld or misrepresented. NIADA and its dealers support this standard of open and honest dealing. But, just as that expectation is placed on a dealer or financier; it should certainly be expected of the regulators overseeing the industry.

While NIADA does not believe additional regulations and a new cop on the beat are warranted, we do believe that anything the CFPB does should be open and readily discernible. Only then, can NIADA adequately answer the question it gets more frequently than any other: “What do I need to do to comply?”

Although dealers are not subject to the CFPB’s jurisdiction, ultimately, everything the CFPB touches in the auto financing industry will affect NIADA members. To that end, NIADA will continue to engage the CFPB in the discussions that we hope will provide the Bureau with needed information about the industry so they can make informed, open decisions consistent with its statutory mandate. Moreover, when appropriate, NIADA welcomes the opportunity to work with the Bureau on initiatives that educate the public on the car buying and financing experience. This is especially true for our nation’s military personnel whom the CFPB has gone to great lengths to protect.

As we recently shared with the Senate Committee on Commerce, Science & Transportation, NIADA stands ready to use our current resources, including our education and training staff, state association directors – many of whom are veterans – and our Automotive Consumer Television Network, which is available to anyone via the Internet at <http://niadatv.com/autoconsumer/>, to address the needs of car-buying military personnel – active or retired.

In that regard we have produced a simple to understand video that explains the car-buying process for active service members or those returning to civilian life. The video, “Car Buying Tips for Military Service Members,” is available for viewing on Automotive Consumer Television, our Internet TV network providing industry information and education for consumers, as well as NIADA.TV and NIADA.com

By way of conclusion, in remarks given in November at the Auto Finance Forum, Director Cordray underscored the CFPB’s tenacity by saying,

“...if anyone is uncertain about our resolve, let me do my best to dispel that uncertainty this morning. We will make every effort to do the job that Congress has set out for us, which is to identify and root out unlawful, discriminatory lending practices, including practices that, in the words of the Supreme Court, are “fair in form but discriminatory in operation.” We intend to create a fair marketplace for all consumers. Illegal discrimination in all forms is simply wrong. No one should have to worry about having to pay more to finance a vehicle because of race, ethnicity or any other protected characteristic under federal law.”

We agree, with one exception: NIADA believes a fair marketplace already exists for all consumers in the automotive finance industry. NIADA and its members are committed to lawful and non-discriminatory practices, and we are as equally steadfast in our resolve to defend the right of automotive lenders and dealers to lawfully and fairly make a profit in collaboration with their valued customers. NIADA believes this agency has not justified their position of disparate impact in fair lending and by extension they have fallen short of their own Supreme Court litmus test of conducting practices that are “fair in form and discriminatory in operation.”

We encourage the Committee to look at fundamental structural changes to the CFPB that will provide for greater openness and accountability for the Bureau’s operations. NIADA stands ready to assist the Committee in any way we can.