

RE: Senate Counteroffer Does Not Exclude Auto Dealers from the CFPB

The section of the Senate Counteroffer entitled “Exclusion for Auto Dealers” does not exclude auto dealers from regulation by the Bureau of Consumer Financial Protection (CFPB). For the reasons outlined below, NIADA urges you to ask your Members of Congress to reject the Senate Counteroffer and accept the House Offer with respect to dealer-assisted financing.

The Senate Counteroffer authorizes the CFPB to regulate auto dealers. Sec. 1029(a)(2) of the Senate Counteroffer states that the CFPB “may exercise rulemaking authority with respect to a person described in paragraph (1) [i.e., auto dealers].” This language would give CFPB authority to promulgate rules affecting dealers pursuant to the Fair Credit Reporting Act, the Federal Consumer Leasing Act, the Equal Credit Opportunity Act, and the Gramm-Leach-Bliley Act. Granting the CFPB explicit rulemaking authority over dealers pursuant to four major statutes is not an “exclusion for auto dealers”.

The Senate Counteroffer unnecessarily and dramatically expands the regulatory power of the Federal Trade Commission to regulate auto dealers specifically. Despite the characterization of the Senate Counteroffer as a “narrow” proposal, the language injects at the last minute an extremely controversial proposal to eliminate congressionally-imposed safeguards (Magnuson-Moss) on the use of the far-reaching powers of the Federal Trade Commission. The Senate Counteroffer expressly repeals, with respect to auto dealers, a statute that Congress enacted to curtail persistent regulatory abuses at the FTC.

In sharp contrast to the House Offer, the text of the Senate Counteroffer was not publicly available until AFTER the Senate conferees voted. As a result, the consequences of this legislation, both intended and unintended, have not been analyzed.

The completely-vetted House Offer protects consumers while preserving accessible and affordable credit for millions of motor vehicle buyers. Under the House Offer:

- Every finance source (national banks, local banks, credit unions, and auto finance companies) for every auto loan will be directly regulated by the new Consumer Financial Protection Bureau.
- Every dealership that funds and services auto loans to consumers (buy-here-pay-here dealers) will be directly regulated by the new agency.
- Every auto title lender will be directly regulated by the new agency.
- Every auto dealership arranging financing will still be covered by multiple Federal and state consumer protections statutes administered by agencies including the Federal Reserve, the FTC, and the State Attorneys General.

The House Offer has been approved repeatedly by bipartisan votes in the House and the Senate.

- First, proponents of the auto dealer exclusion (the Campbell amendment) prevailed in the House Financial Services Committee by a bipartisan vote of 47-21;
- Second, an amendment to nullify the auto dealer provision on the House floor was withdrawn due to a lack of support;
- Third, the Senate passed by a 60-30 vote the Brownback Motion to Instruct – containing the exact language of the current House Offer; and
- Fourth, an amendment by Rep. Gutierrez in conference committee to overturn the dealer provision was defeated by a vote of 9-10.

The Conferees should accept the House Offer. The Senate Counteroffer runs counter to the stated position of a majority of both the House and the Senate, while the House Offer is a carefully and narrowly crafted exclusion that protects consumers while keeping auto credit accessible and affordable. **Please urge your Members of Congress to reject the Senate Counteroffer regarding the auto dealer provision, as it would not exclude a single auto dealer from CFPB jurisdiction, despite assertions to the contrary. If the Senate Counteroffer prevails, the nation’s auto dealers will be forced to oppose final passage of the conference report to H.R. 4173.**