
NATIONAL AUTOMOTIVE FINANCE ASSOCIATION

Federal Legislative Update

Fort Worth, Texas

June 3, 2010

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Consumer Financial Protection

- House passes financial reform package (HR 4173)
- Senate passes a different bill (S 3217)
- Conference begins next week to work out the differences in the two bills
- Expect a bill on the President's desk by July 4

House Bill

- Provides for the CFPB (Consumer Financial Protection Agency)
- Stand alone independent agency
- Run by a single Director for first 2 years (appointed by the President, confirmed by the Senate), then
- Five-member commission (appointed by the President, confirmed by the Senate)

House Bill

- Funding

- Fees from regulated persons (non-depository institutions must pull their own weight), plus
- 10% of the Federal Reserve's total system expenses

House Bill

- Grants sweeping consumer protection powers to the CFPB.
- Exempts auto dealers, community bankers and credit unions, as well as manufactured housing dealers and insurance companies, **except** for those providing credit, mortgage or title insurance.

House Bill

- Establishes the Consumer Financial Protection Oversight Board, comprised of:
 - The heads of the federal banking agencies,
 - The HUD Secretary,
 - The chairman of the state banking representatives to the FFIEC, plus
 - 5 members from among experts in the fields of
 - consumer protection,
 - fair lending and civil rights,
 - representatives of depository institutions that primarily serve underserved communities, or
 - representatives of communities that have been significantly impacted by higher-priced mortgage loans

House Bill

- CFPA takes over all existing federal consumer financial protection rulemaking and enforcement
- Has power to exempt products and services, as well as classes of providers
- Existing federal agencies have backstop enforcement authority
- If CFPA determinations conflict with a prudential agency's determination, the regulated entity may request a joint statement from the prudential agency and the CFPA, resolving the conflict
- Appeal procedure available

House Bill

- Specific authority to restrict mandatory pre-dispute arbitration agreements
- Registration process for non-depository institutions
- Can access tax records for fee assessment purposes
- Must conduct examinations of non-depository institutions

House Bill

- May prohibit unfair, deceptive and/or abusive acts or practices.
- Abusive act or practice:
 - Must be reasonably likely to result in a consumer's inability to understand the terms and conditions of a financial product or service or to protect their own interests in selecting or using a financial product or service; and
 - The widespread use of the act or practice is reasonably likely to contribute to instability and greater risk in the financial system.

House Bill

- Prohibited Acts:
 - Unlawful to advertise, market, offer, sell, enforce, or attempt to enforce, any term, agreement, change in terms, fee, or charge in connection with a consumer financial product or service that is not in conformity with CFPB statute, or regulations or orders issued by the Director, or to engage in any unfair, deceptive, or abusive act or practice
 - Unlawful to fail or refuse to pay any fee or assessment imposed by the CFPB, to fail or refuse to permit access to or copying of records, to fail or refuse to establish or maintain records, or to fail or refuse to make reports or provide information to the CFPB, or
 - Unlawful to knowingly or recklessly provide substantial assistance to another person in violation of the CFPB provisions, or any regulation prescribed or order issued by the CFPB

Senate Bill

- Provides for the CFPB (Consumer Financial Protection Bureau)
- Independent bureau housed in the Federal Reserve
- Run by a single Director (appointed by the President, confirmed by the Senate) for a 5 year term
- Director can be removed only for inefficiency, neglect of duty, or malfeasance in office

Senate Bill

- Funding
 - Funding in an amount determined by the Director
 - Limited (ultimately) to 13% of the Federal Reserve's operating expenses.

Senate Bill

- Grants sweeping consumer protection powers to the CFPB.
- Does not exempt auto dealers, although Senate conferees have received non-binding instructions to advocate for House exemption

Senate Bill

- CFPB takes over all existing federal consumer financial protection rulemaking and enforcement
- Has power to exempt products and services, as well as classes of providers
- Existing federal agencies have backstop enforcement authority
- If CFPB determinations conflict with a prudential agency's determination, the regulated entity may request a joint statement from the prudential agency and the CFPB, resolving the conflict
- Appeal procedure available

Senate Bill

- The Bureau may take any action within its authority to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service

Senate Bill

- Abusive act or practice must:
 - materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or
 - take unreasonable advantage of—
 - a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
 - the inability of the consumer to protect his/her interests in selecting or using a consumer financial product or service; or
 - the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

Senate Bill

- Prohibited Acts: Unlawful for any person—
 - To—
 - advertise, market, offer, or sell a consumer financial product or service not in conformity with the CFPB law or applicable rules or orders issued by the Bureau;
 - enforce, or attempt to enforce, any agreement with a consumer (including any term or change in terms in respect of such agreement), or impose, or attempt to impose, any fee or charge on a consumer in connection with a consumer financial product or service that is not in conformity with the CFPB law or applicable rules or orders issued by the Bureau; or
 - engage in any unfair, deceptive, or abusive act

Senate Bill

- Prohibited Acts: Unlawful for any person—
 - to fail or refuse, as required by Federal consumer financial law, or any rule or order issued by the Bureau thereunder—
 - to permit access to or copying of records;
 - to establish or maintain records; or
 - to make reports or provide information to the Bureau; or
 - knowingly or recklessly to provide substantial assistance to another person in violation of the provisions of the CFPB law, or any rule or order issued thereunder

National Usury Rate

- S. 500 introduced in February, 2009 by Sen. Durbin
 - Companion House Bill (HR 1608)
- Senate bill referred to Committee on Banking, Housing, and Urban Affairs
- House bill referred to House Committee on Financial Services

National Usury Rate

- Amends TILA to establish a maximum “fee and interest rate” of 36%
- “Fee and Interest Rate” includes all charges that are payable, incident to, ancillary to, or as a condition of the credit extension
 - Examples: annual fees, late fees, NSF fees, finance charge, credit insurance premiums, and charges for ancillary products sold in connection with the credit transaction

National Usury Rate

- Broad scope
 - Although amends TILA, proposed legislation adopts ECOA definition of a “creditor”
 - Any person who regularly extends credit; any person who regularly arranges for credit; or any assignee of an original creditor who participates in the credit decision
- Maximum usury rate applies to any extension of credit to a consumer

National Usury Rate

- Limited exclusions from the “fee and interest rate”
 - Preliminary qualifier: credit transaction must be payable in at least 3 installments over at least 90 days
- “Fee and interest rate” doesn’t include:
 - Participation fee of \$30 or 5% of a credit limit, not to exceed \$120;
 - Late fee as authorized by State law, not to exceed \$20 per late payment or \$20 per month; or
 - NSF fee, not to exceed \$15.

National Usury Rate

- Any amount that exceeds the 36% rate limit is void and cannot be enforced
- A person that violates the rate limit or seeks to enforce an agreement that violates the rate limit is subject to:
 - 1 year in prison; and
 - A fine that is the greater of 3 times the accrued debt associated with the transaction or \$50,000

Arbitration

- Several pending bills that would prohibit arbitration clauses in consumer transactions
- Intend to narrow the scope of when arbitration may be enforced
 - Only commercial disputes
- Specifically targets arbitration clauses in agreements that are executed before a dispute arises

Arbitration

- S. 931 amends the Federal Arbitration Act; referred to Judiciary Committee
 - Appears to have the most support among the three bills
- Creates new chapter that renders pre-dispute arbitration agreements invalid and unenforceable
- Applies to any consumer dispute
- Courts will determine whether prohibition applies
 - Arbitrators will not determine whether dispute is subject to arbitration

Arbitration

- HR 1020 amends the Federal Arbitration Act; referred to Committee on Commercial and Administrative Law
- Adds definitions for employment dispute, consumer dispute, and franchise dispute
 - Consumer dispute: A dispute between an individual who acquires property, services, money, or credit for personal, family, or household purposes and the seller
- Pre-dispute arbitration agreements that require arbitration of consumer disputes are invalid and unenforceable

Arbitration

- HR 991 amends TILA; referred to House Committee on Financial Services
- Applies to any consumer transaction or consumer contract
 - Personal and real property
- Any written provision to resolve a controversy arising out of, or related to, the transaction or contract that requires binding arbitration is not enforceable and is treated as an unfair and deceptive trade practice under federal or state law

Questions & Answers

Questions?

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