

S. 2663: Reforming CFPB Indirect Auto Financing Guidance Act

Myths vs Facts – March 14, 2016

Myth

S. 2663 would "condone discrimination in auto lending, and would stop the Consumer Financial Protection Bureau (CFPB) from taking action against discriminatory practices in auto lending."

Auto dealers get a "substantial bonus" from lenders for increasing the interest rate above that for which the borrower otherwise qualifies.

The process established under S. 2663 is "convoluted" and would "tie the CFPB's hands."

Facts

- Any suggestion that support of S. 2663 condones discrimination is unfair, baseless, and wrong.
 - S. 2663 is a process bill; it does not impact or amend the Equal Credit Opportunity Act (ECOA).
 - The bill would in no way prohibit, disrupt or affect the enforcement of any fair credit laws by the CFPB, or any other agency.
 - The Congressional Budget Office noted in its cost estimate "the bill would not affect the underlying statute or regulations to implement it, the Bureau can continue to enforce the ECOA without the bulletinⁱ," something even the primary opponent of S. 2663 admits.ⁱⁱ
 - To bolster ECOA compliance, the trade associations representing franchised auto dealers developed a fair credit compliance program based on a Department of Justice model that addresses fair credit risk but still allows dealers to discount rates for consumers.
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- A finance source gives dealers a "maximum contract rate". Unlike a bank or a credit union, dealers currently have the flexibility to discount a rate for consumers and often do so to beat a consumer's competing offer from a bank. The compensation a dealer receives is the retail margin for the cost of arranging the loan, not a "bonus" or "overcharge."
 - The Washington Post recently debunked the Center for Responsible Lending's claim that dealer compensation "cost consumers \$26 billion a year." The Post found that CRL's conclusions were based on misapplied, unexplained, and false data and gave the claim 4 Pinocchios – their maximum rating a "Whopper" of a false statement.ⁱⁱⁱ
 - The CFPB wants to eliminate a dealer's ability to discount credit but fails to acknowledge "legitimate business reasons," such as budget constraints, which explain why a dealer may discount an interest rate.
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- The process established under S. 2663 is simple, open and transparent, and consistent with OMB's practices on agency guidance documents.^{iv}
 - The bill does not direct any particular result; it merely allows for public participation and transparency.
 - The bill's requirements just add appropriate safeguards to the CFPB guidance and are much less rigorous than an APA rulemaking. For example, the CFPB decides the length of a public comment period.

Myth

The enforcement actions against auto lenders are proof of wrongdoing.

The CFPB auto finance guidance is being unfairly singled out. No other guidance is being similarly treated.

Facts

- CFPB enforcement actions are forcing lenders to settle based on information and analysis the CFPB knows to be flawed. One undisputed study found that the CFPB's proxy methodology had errors of 41%. The CFPB admits errors of nearly 20%.^v
 - The CFPB is a powerful regulator with tremendous leverage over lenders. For example, three days after one lender's consent order with the CFPB, the Federal government approved its application to become a financial holding company, enabling the bank to continue offering insurance products it would have otherwise been forced to discontinue.^{vi vii}
 - The CFPB is taking these actions without considering the impact on buyers. However well intentioned, the CFPB's policy will have the effect of reducing or eliminating discounts buyers can get on their car loans.
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- Democratic authors of S. 2663/H.R. 1737 carefully drafted the bill to narrowly focus only on the CFPB auto finance guidance. Previously Democratic members of the House Financial Services Committee objected to a bill last Congress (H.R. 4811) that would have affected all CFPB guidance as being overbroad.
 - In this instance, the CFPB is trying to make new policy and reinterpret existing law using guidance.
 - Recent release of internal CFPB documents confirms that the Bureau is using the auto finance guidance as a means to change the auto lending market and avoid the rulemaking process.^{viii}

ⁱ Congressional Budget Office. (2015, October 14). [Cost Estimate: H.R. 1737 Reforming CFPB Indirect Auto Financing Guidance Act.](#)

ⁱⁱ Even the primary opponent of H.R. 1737 concedes that "Rescinding the guidance does not change laws barring discrimination." Letter to Congress regarding H.R. 5403 (the identical bill to H.R. 1737 last Congress.) Center for Responsible Lending, October 2014.

ⁱⁱⁱ Kessler, Glenn. (2015, May 5). [Warren's false claim that 'auto dealer markups cost consumers \\$26 billion a year'.](#) *The Washington Post*.

^{iv} Office of Management and Budget, Executive Office of the President. (2007). [Final Bulletin for Agency Good Guidance Practices.](#) *Federal Register*, 72(16), 3432-2440.

^v [Washington's Latest Bank Heist.](#) (2015, April 6). *The Wall Street Journal*.

^{vi} According to the Wall Street Journal, "Standard & Poor's Ratings Services... warned it would potentially lower the company's ratings if it failed to secure financial holding company status." An Ally official stated that "[n]o investor publically was going to invest in us unless we got financial holding company status. And we could not do that without coming to terms with the CFPB." Johnson, Andrew R. (2013, December 23). [Ally Receives Fed Approval for Financial Holding Company Status.](#) *The Wall Street Journal*.

^{vii} [Washington's Latest Bank Heist.](#) (2015, April 6). *The Wall Street Journal*.

^{viii} Witkowski, Rachel (2015, September 29). [Lawmakers Give CFPB's Cordray Earful Over Auto Lending Crackdown.](#) *American Banker*.