



## CENTER FOR CAPITAL MARKETS COMPETITIVENESS

### **JUST the FACTS: How and Why are Non-Financial Businesses Still Regulated by the Consumer Financial Protection Bureau?**

**Proponents of the proposed CFPB say they do not intend to regulate non-financial merchants, retailers, and service providers. But, unfortunately, the bill still does.**

1) Merchants, retailers, doctors, dentists, plumbers, butchers and others are covered if they “extend credit” and the credit is (1) subject to a finance charge, or (2) payable in more than 4 installments (Section 1027 (a)(ii)).

2) As Chairman Dodd pointed out, only those not “engaged significantly” in offering or providing this type of payment flexibility are exempt from the full regulatory authority (including filing reports and being subject to inspections and enforcement) of the new agency.

3) But, there is no definition of “engaged significantly” in the bill. So, for example, if an orthodontist allows 70% of his or her patients to pay in six or twelve installments – is that “significant” to the practice? If an electrician allows 50% of his or her customers to pay in installments, is that significant to his or her business? What about a lawn service that charges interest to any of its customers who don’t pay in 30 days – is that significant?

4) The point is, non-financial businesses that had NOTHING to do with the financial crisis should not be in this bill AT ALL. We shouldn’t be debating which orthodontists’ extension of credit is “significant.” Orthodontists, dentists, florists, electricians, plumbers, auto dealers, and the thousands of other retailers, merchants, and other non-financial businesses should not be covered in the first place. (Chairman Dodd says that the question is whether the orthodontist is a “significant financial player.” But that is not what the bill says; it asks about the significance of the credit in light of the orthodontist’s own business.)

5) Chairman Dodd says: “Section 1027 of the Wall Street reform bill makes clear that folks for whom extending a line of credit is incidental to their business won’t be covered.” Again, that isn’t what the bill says. Let’s take a closer look at Section 1027. Here is a subsection of the bill that precedes the one quoted by Chairman Dodd:

(A) IN GENERAL.—Except as provided in subparagraph (B), and subject to subparagraph (C), the Bureau may not exercise any rule making, supervisory, enforcement, or other authority under this title with respect to a merchant, retailer, or seller of nonfinancial goods or services who—

(i) extends credit directly to a consumer, in a case in which the good or service being provided is not itself a consumer financial product or service (other than credit described in this subparagraph), exclusively for the purpose of enabling that consumer to purchase such nonfinancial good or service directly from the merchant, retailer, or seller.

So far, so good. If the bill meant what Chairman Dodd says – that all “incidental” credit is not covered – the provision would stop there. But it doesn’t; what (A) grants, (B) takes away:

(B) APPLICABILITY.–Subparagraph (A) [the exemption above] does not apply to any credit transaction or collection of debt, other than as described in subparagraph (C), arising from a transaction described in subparagraph (A) –

(iii) in which the merchant, retailer, or seller of nonfinancial goods or services regularly extends credit and the credit is

(I) subject to a finance charge; or

(II) payable by written agreement in more than 4 installments.

So the bill *does* cover this group of merchants, retailers, and sellers. And, what is paragraph C? That is where “significant” comes in.

(C) LIMITATION.–Notwithstanding subparagraph (B), the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority under this title with respect to a merchant, retailer, or seller of nonfinancial goods or services that is not engaged significantly in offering or providing consumer financial products or services.

The only retailers and other Main Street businesses that are exempt are those that meet the “significant” test, as it is defined sometime in the future by the CFPB Director. Not much assurance for the orthodontist, or any other retail business.

6) So, let’s review. You are regulated, unless you are not, unless you are, unless you are not.

7) And even if some retailer managed to make its way through these provisions and qualify for the exemption, that isn’t the end of the story. The bill (in Section 1036) creates brand new liability for “any person” violating the statute or the bureau’s regulations or for doing something that in hindsight is claimed to be “unfair” or “deceptive” or “abusive.” That’s “any person”, not just those who meet the definitions we’ve been discussing. These lawsuits can be brought by a state attorney general, based entirely on his or her interpretation of these vague terms, for civil penalties and class action-type damages. Even if you think you’re out, you’re not.

8) This problem can be easily solved by clearly defining who is IN and making it equally clear who is OUT.

9) The only real question is, WHY hasn’t this been FIXED?