



The Dud-Funk Act – My Predictions

Unlike the empty talking heads on ESPN and TMZ, we were good at nicknames in college.

The empty talking heads rely on a tired, formulaic nickname method...first initial of first name and first syllable of last name. Unfortunately, you hear it all the time now and it is so predictable. Jennifer Lopez becomes JLo. Alex Rodriguez is ARod.

We were much more creative. There were 12 of us in a dorm suite. We all had nicknames bestowed on us by the group. On the first night together after a “get acquainted” party, one of our suitemates put on his pajamas. Weird enough that he had PJs, but worse yet, the PJs had the attached feet at the bottom of the legs. He was forever known as “Bootsie.”

Therefore, I refuse to nickname the Dodd-Frank Act (DFA) as the DFrank Act. I think I will call it the Dud-Funk Act. I believe it to be a dud of a bill and will cast a funk as it is promulgated.

Dud-Funk basics

The act creates a bureau whose charter is to oversee financial institutions. Last year the auto industry lobbied heavily to gain an exception under the Dud-Funk Act. In the end, dealers who sell *and* service vehicles were exempted from direct oversight

But not so fast, my friends. That does not mean that franchised auto dealers can simply ignore the DFA and the bureau. The consumer advocates who will essentially compose the makeup of the bureau likely have long memories and will find ways to impose their will on auto dealers through regulating the third party lenders and the various federal laws that dealers must comply with. This agency also has the power to create new laws for our industry.

Consumer advocates hate...

Since the consumer advocates appear to be in charge here, it is important to understand

what they hate (After all, that is what they will likely try to legislate):

- Consumer advocates hate spot deliveries.
- Consumer advocates hate dealer reserve.
- Consumer advocates hate perceived abusive practices, especially against military personnel and sub-prime customer.
- Consumer advocates hate identity theft.

They will legislate what they hate

My predictions of what we can expect to affect the industry in the coming year:

- The bureau will create a new law that escalates today's Unfair and Deceptive Practices Act to Unfair, Deceptive and Abusive Practices Act.
- It will attempt to regulate dealers through the third-party lenders that dealers sell contract to
- In those areas that the bureau does not have direct oversight of auto dealers, it will empower the FTC and states' attorneys general to impose its will on auto dealers.

My predictions

This time next year, if the bureau starts oversight on time, I believe the way our industry operates will change. Some of these changes could include:

- Bye-bye to yield spread premium, hello to flat fees.
- Spot delivery is so 1990s, thank goodness for technology to provide almost-instant credit decisions.
- A thorough review of the products sold in F&I, forget about selling antennae replacement coverage.
- More regulations deputizing dealers in the fight against identity theft, better know who you are selling to.
- Heightened scrutiny on potentially abusive practices such as spot deliveries gone bad, payment packing and sub-prime acquisition fees, time to review your processes.

What to do

At the risk of being an “I told you so”, one possible defense against running afoul of regulatory and plaintiffs' bar focus is to have a structured approach on how you sell and finance the vehicles you sell.

Some of the tips loyal readers have read over the years include:

- Review your policies and processes and reduce them to writing in a policy and procedure manual.
- Train your employees on your processes and obtain signed acknowledgements.
- Develop and implement a defensible payment quoting methodology that is consistently applied.
- Start shifting your focus in F&I to product sales and away from a reliance on dealer reserve.
- Establish max or standard pricing for F&I products.
- Firm up your processes in subprime and military sales.

As much fun as I make of the Dud-Funk Act and the expensive, overbearing oversight it will likely involve, it is no joke that it will become a reality. Now is the time to start preparing for what is to come.

Continued good luck and good selling. 

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