Before the
CONSUMER FINANCIAL PROTECTION BUREAU
Washington, DC

Auto Finance Data Project
Docket No. CFPB-2024-0004

Comments
Of

Center for Responsible Lending
Consumer Federation of America
Consumers for Auto Reliability and Safety
Consumer Reports
National Association of Consumer Advocates
National Consumer Law Center, on behalf of its low-income clients
UnidosUS

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I. Introduction

These comments are submitted by Center for Responsible Lending, Consumer Federation of America, Consumers for Auto Reliability and Safety, Consumer Reports, National Association of Consumer Advocates, National Consumer Law Center, on behalf of its low-income clients, and UnidosUS. We applaud the efforts of the Consumer Financial Protection Bureau ("CFPB" or "Bureau") to improve the collection and dissemination of relevant auto finance data as part of its efforts to monitor the auto finance market for risks to consumers. We appreciate the opportunity to comment on the Bureau's expansion of its data collection efforts to include a broader range of marketplace participants.

Auto finance, and cars in general, have an enormous impact on most households.[1] Transportation, largely in the form of private vehicles, is the second largest expense for U.S. households.[2] Auto credit is currently the largest source of non-housing consumer debt in the United States.[3] Yet publicly available data is minimal and often excludes important portions of the marketplace and important details of the transactions—details that reveal the performance of the credit market in allowing consumers to affordably and safely buy a car, as well as risks to consumers. The existing publicly available data is highly aggregated, limiting its usefulness to understand a marketplace with thousands of creditors, tens of thousands of originating dealers, and many different business models.

Much of the available information comes from credit reporting agencies, which, while having access to large portions of the market, often do not have access to key categories of the market such as many "buy here pay here" (BHPH) auto dealers/finance providers and some smaller, subprime, finance companies. These market participants, while underweighted in the available data, have a large impact on many consumers, especially those with lower incomes, those that are credit challenged, and consumers of color.

The CFPB's initial Auto Finance Data Pilot Project included market monitoring orders to nine large auto finance entities. While gathering and disseminating more detailed granular data from larger market participants can capture broad sections of the marketplace and will be enormously valuable, it fails to capture important areas and aspects of the marketplace, some of which may present greater risks to consumers. In its notice and request for comment the Bureau states that it proposes to continue to collect data from creditors that originate more than 20,000 auto finance transactions and begin to collect data annually from those originating between 500 and 20,000.[4] We support the Bureau's continuation and expansion of its data collection project.

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[1] For more extensive discussion of the importance of cars and the credit market that enables the purchase of cars as well as consumer risks see our previous comments regarding the CFPB's initial Auto Finance Data Pilot project, Consumer Groups Comments regarding Enhancing Public Data on Auto Lending, Docket No. CFPB-2022-0075 (Dec. 19, 2022), available at: https://www.nclc.org/wp-content/uploads/2022/12/coalition-comments-CFPB-Auto-Finance-Data-Gaps-2022.pdf.

[2] Economic News Release, U.S. Bureau of Labor Statistics, Consumer Expenditures – 2022 (Sept. 2023), available at: https://www.bls.gov/news.release/cesan.nr0.htm.

[3] As of the fourth quarter of 2023. Federal Reserve Bank of New York, Center Microeconomic Data, Household Credit and Debt Report (Q4 2023) (downloaded March 20, 2024) at https://www.newyorkfed.org/microeconomics/hhdc.

[4] 89 Fed. Reg. 4,281 (Jan. 23, 2024) (notice and request for comment).

A data set built by the CFPB can and should address many of the current deficiencies in our knowledge of the auto finance marketplace through better and more available auto credit data. In order to create a robust data set that allows for better understanding of the market and its trends the CFPB should:

- Collect information that reflects the broad array of credit transactions and creditors, including Buy-Here-Pay-Here, smaller subprime, and regional financing entities;

- Include finance entities that originate fewer than 500 auto finance transactions per year and other entities that hold auto related debt;

- Collect specific data from BHPH dealers;

- Collect data from other entities that hold auto debt;

- Ensure that the data collected is publicly available and usable in as granular a condition as possible, and is updated on a regular basis;

- Collect data about lease transactions that allows the analysis of the consumer market risks created by the leasing market; and

- Consider ways to collect data about consumer demographics, including race, ethnicity, age, gender, and other characteristics.

II. Comments and Recommendations

There is a desperate need for improved, publicly available data regarding auto finance. While there is a wealth of useful information gathered and maintained by financial institutions and other market participants, few provide this information to other entities and little is publicly available. As such, the public, consumer advocates, policymakers, regulators, enforcement entities, academics and even some market competitors themselves lack access to data that would help them understand the markets, identify risks to consumers from specific consumer financial products or services, and follow developments, all of which would help to create a more competitive, safe, and fair marketplace.

A. The Bureau should collect information that reflects the broad array of credit transactions and creditors, including BHPH, smaller subprime, and regional financing entities.

There are thousands of different entities that hold consumer auto debt, including banks, credit unions, large captive non-bank entities, smaller and regional finance companies, BHPH dealers, and more. These entities present different risks to consumers and need to be understood and monitored. Medium and smaller entities often have different ways of doing business and may present greater risks to consumers.

The relationship between finance entities and car dealers varies greatly. Some pay dealers a premium in the form of a markup or reserve while others purchase most of the auto credit they hold from dealer/originators at below face value. Often the financing entity will have a complex arrangement with dealers, governing the price that the financing entity will pay for the dealer's retail installment sales contracts. Some require the inclusion of products such as Vendor Single Interest (VSI) insurance for which the consumer is charged.

The CFPB's initial Auto Finance Data Pilot Project included market monitoring orders to nine large auto finance entities. While the information gathered from these will be enormously valuable, the lack of inclusion of a variety of auto related creditors fails to provide a clear picture of many areas of auto finance and the consumer risks associated with them. The CFPB should expand the variety of entities from which it collects data to include, as it proposes, all auto financing entities that originate 500 or more transactions per year. In addition, as discussed in the next section, it should expand the data collection further to include smaller entities as well.

B. The Bureau should include financing entities that originate fewer than 500 auto finance transactions per year.

In its notice and request for comment the Bureau proposes to continue to collect data from creditors that originate more than 20,000 auto finance transactions and begin to collect data annually from those originating between 500 and 20,000. As stated above, we strongly support the continued collection of data from large entities and the expansion of data collection beyond large entities.

We also recommend the Bureau collect data from market participants that engage in fewer than 500 transactions. BHPH dealers in particular often participate in fewer than 500 transactions per year and present particular risks to consumers. In its 2020 Buy-Here, Pay Here Trends Market Perspectives,[5] SGC Certified Public Accountants with the participation of the National Alliance of Buy Here, Pay Here Dealers ("NABD") and National Independent Automobile Dealers Association (NIADA) as well as data from NCM Associates, looked at the "best performing" BHPH dealers. For the years 2018-2020 the NCM BHPH dealers averaged 573 transactions per year while the NIADA averaged 860 transactions per year. These averages are barely above the lower limit of those that the CFPB proposes to include in its data collection.

It is very important to gather information from a range of BHPH dealers. BHPH dealers operate differently and have different incentives than many other auto finance entities. Gathering and disseminating data specific to these transactions is vitally important to understanding the auto finance marketplace as a whole. It is especially important when looking at some of the most vulnerable consumers, including those with lower incomes, poor credit scores, thin credit files, or other credit challenges that disproportionally engage in BHPH transactions. This includes consumers who believe themselves to be more credit challenged, whether they are in fact or not.

[5] 2020 Year in Review Market Perspectives, Buy-Here, Pay Here Trends Market Perspectives 2020, BHPHdealermag.com, June 2021, available at: https://www.sgcaccounting.com/Resources/BHPHBenchmarks2020.pdf

The CFPB has noted that subprime auto finance transactions typically involve higher delinquency rates: "between 25 percent and 40 percent" of borrowers were delinquent for finance company and buy-here-pay-here (BHPH) borrowers.[6] BHPH dealers' incentives may be less aligned with consumer successful outcomes than many other types of auto finance. Defaults and repossessions may actually be more beneficial to BHPH dealers than a consumer's successful completion of all the required payments. BHPH transactions often involve sizable down payments for lower cost cars that often represent an immediate break-even or even an outright profit for the dealer. The inventory at BHPH dealers is often made up of vehicles that have previously been sold to other consumers and repossessed.[7] Defaults and repossessions may provide a tax advantage to some dealers. BHPH dealers may make more money from multiple repossessions and sales of the same vehicle than they would from the successful completion of a single financing of a single vehicle over the same period of time.

Unfortunately, many existing data sets either largely exclude BHPH or under-represent BHPH, and therefore exclude data about some of the most financially vulnerable consumers. Where BHPH data is available, it is often aggregated with different sectors of the marketplace.

In order to capture information about this important sector of the market, the CFPB should set a threshold lower than 500 transactions per year—either generally, or at least for BHPH dealers. In addition, as discussed in the next subsection, the Bureau should make sure to capture data points that are necessary to obtain a full understanding of this market sector.

C. **The Bureau should collect specific data from BHPH dealers.**

We urge the Bureau to craft its data collection for the BHPH market to take into account the many unique features, and the particular risks, of that market. Our specific recommendations are detailed below.

1. Dealer vehicle cost and down payment

BHPH dealers are often attempt to obtain a down payment equal to or in excess of the cost to the dealer of the vehicle sold. For the years 2018-2020 for BHPH dealers analyzed by NCM sold vehicles with an average actual cash value, including reconditioning, of $6,572, while receiving on average $6,190 in cash per transaction and financing on average $11,532. For those same years NIADA Benchmark BHPH dealers sold vehicles with an average actual cash value, including reconditioning, of $6,486, while receiving on average $6,242 in cash per transaction

[6] Jasper Clarkberg, Jack Gardner, and David Low, Data Point: Subprime Auto Loan Outcomes by Lender Type Data Point No. 2021-10, CFPB (Sept. 2021), available at: https://files.consumerfinance.gov/f/documents/cfpb_subprime-auto_data-point_2021-09.pdf.

[7] For an enlightening explanation of the BHPH industry, see L.A. Times, Ken Bensinger, A Vicious Cycle in the Used Car Business: Sign, Drive, Default, Repossess and Resell—That's the Game at Buy Here Pay Here Dealerships,Oct. 30, 2011, *available at* http://articles.latimes.com. *See also* Mark McDonald, Used Cars: When Does an $8,000 Vehicle Cost $21,000?, Car and Driver, Feb. 28, 2021, *available at* https://www.caranddriver.com.

and financing on average $12,202.[8] BHPH salespersons' commissions are often based upon the down payment amount rather than the sales price of the vehicle. This means that any subsequent payment is profit and that BHPH dealers can repossess a vehicle without worrying about losing money on an unsuccessful credit transaction. In order to understand this dynamic, it is important for the CFPB to collect have information about the cost of the vehicle to the dealer and the amount of any down payment.

2. Resale of vehicle to different buyers

Many BHPH dealers rely heavily on repossessed cars to provide inventory for their lot.[9] Understanding the source of the vehicle that is the subject of BHPH financing is important to understand the transaction and the incentives of various parties. The CFPB's data request should include information that tracks resale history of repossessed vehicles.

3. Data about repossessions

BHPH dealers frequently engage in repossession and the threat of repossession. They will use the easy threat of electronic repossession to force consumers to make payments. Some dealers repossess so many cars that they are described as repossession mills. The repossessions provide their inventory, and multiple repossessions and sales of the same vehicle can produce greater profit than one sale to consumer who pays off the vehicle in full.

Understanding what is happening when repossessions take place or are threatened is vital to understand the BHPH sector of the marketplace. BHPH data regarding repossessions should include:

- Total of payments made by each buyer
- Total of payments made by all the buyers for each vehicle which is sold multiple times
- Use of electronic repossession to compel payment
- Use of electronic repossession to recover vehicle
- Number of repos by consumer and by vehicle

D. The Bureau should collect data from other entities that hold auto debt.

In addition to including entities that finance fewer than 500 vehicles a year, the Bureau should expand its data collection initiative to include other entities that hold auto debt. Some of the largest risks to consumers come when auto related debt is assigned from finance entities to debt buyers or reassigned back to dealers.

[8] 2020 Year in Review Market Perspectives, Buy-Here, Pay Here Trends Market Perspectives 2020, BHPHdealermag.com, June 2021, available at: https://www.sgcaccounting.com/Resources/BHPHBenchmarks2020.pdf

[9] *See* L.A. Times, Ken Bensinger, A Vicious Cycle in the Used Car Business: Sign, Drive, Default, Repossess and Resell—That's the Game at Buy Here Pay Here Dealerships (Oct. 30, 2011), *available at* http://articles.latimes.com.

Debt buyers often hold debt from auto purchases after the security interest has ended through repossession, destruction of the collateral, or other occurrences. Car dealers often repurchase auto finance transactions from finance entities pursuant to recourse agreement if the consumer's payments become delinquent. Such agreements are especially common among some subprime finance entities. More traditional finance entities may more commonly use and invoke such agreements for transactions that do not meet the finance entity's underwriting guidelines.[10]

These transactions can hold enormous importance for consumers. They are risky for consumers and more likely to fail. These creditors often do not participate in credit reporting, so data obtained from credit reporting agencies may not include these transactions. Even when they do, very little information is publicly available about these transactions. Debt buyers and dealers to whom credit contracts are reassigned should therefore be included in this data collection initiative.

E. The CFPB should ensure that auto finance data collected by the Bureau is publicly available and usable in as granular a condition as possible, and is updated on a regular basis.

Auto finance data gathered by the CFPB or otherwise required to be reported should be made publicly available to the greatest extent possible. The CFPB has used its authority to gather and analyze data in the financial sector, and it has brought much transparency to the marketplace since its inception. Auto finance is a notable outlier here, in that little information is gathered as a matter of course, and even less information is readily available to the public.

It is a tremendous improvement to expand the data which the CFPB obtains about auto finance in order to monitor the auto finance market for risks to consumers. Much of the focus of existing, publicly available data on auto finance performance is limited to matters such as delinquencies and net loss levels and does not provide sufficient information about the impact of these occurrences on families. Issues like repossession sale outcomes, and subvented interest rates provided when manufacturers use financing as a means of encouraging sales all significantly affect the consumer's experience, but are not reflected in available data, much less in data which is aggregated. Without the ability to review granular, individual-level data and specific originators, add-ons, demographics and the like, aggregate data may actually show largely "successful" extensions of credit while hiding these negative consumer experiences.

There is also enormous value in providing the data to the public.[11] While aggregated information is useful, there are numerous entities that would benefit from the ability to review and analyze

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[10] *See* The Changing Landscape of Indirect Automobile Lending, FDIC Supervisory Insights, Summer 2005, last updated July 26, 2023, available at: https://www.fdic.gov/regulations/examinations/supervisory/insights/sisum05/sisummer2005-article04.html.

[11] See, e.g., Casey Tolan, Audrey Ash and Rene Marsh, *The nation's largest credit union rejected more than half its Black conventional mortgage applicants,* CNN, Dec. 14, 2023 (CNN analyzed data made publicly available through the Home Mortgage Disclosure Act to learn that Navy Federal Credit Union rejected more than half of its Black applicants) available at: https://www.cnn.com/2023/12/14/business/navy-federal-credit-union-black-applicants-invs/index.html.

the underlying data instead of solely reviewing reports issued by the CFPB or another government entity. Researchers and advocates would be able to perform analysis on multiple aspects of auto finance where the CFPB or another entity may not have the capacity to do so. Advocates would also benefit from having as much data as possible to review trends and educate both the public and lawmakers about positive and negative outcomes of certain practices in auto finance. If data is not made publicly available or is only available for purchase, it is unlikely that researchers and advocates would be able to conduct the kind of deep and thorough analysis that is necessary for meaningful and effective policy analysis.

Further, publicly available data should be in a useable format. An example here is information obtained through asset-backed securities filings. While this information is technically available to the public, it is not always made available in a widely usable format. It requires the purchase and use of specialized software and often requires data analysis experts to convert the data into a format which can be manipulated for research purposes. Any data that is made available to the public should be in a format that is readily useable.

Similarly, any data that is gathered and shared should be as granular as possible. There is no doubt that auto financing is a data desert, and any increase in information would be a significant benefit to the public. To that end, we would welcome increased data in any format, including aggregated data from the CFPB. However, some of the data that is already available is highly aggregated and has not proven useful to provide a realistic picture of the auto finance marketplace. Researchers cannot utilize aggregated reports to generate their own research in the same way as they could with access to the underlying data. The use of aggregated reports can also compromise the reliability of the results of studies in which they are used.[12] In order to ensure that the data which is gathered can be meaningfully evaluated, compared with other data sources, and used to produce the most reliable results possible, it should be as granular as possible.

The auto finance data which is gathered should be updated regularly, and at a minimum on a quarterly basis. An overwhelming gap in the information currently available is that there are very few sources which consistently report on the same data over periods of time. Proprietary sources especially have an incentive to report different aggregated data from one release to the next to encourage purchase of their data. For example, Experian releases a very informative quarterly report of the auto finance market, but the specific aggregated details provided often change from quarter to quarter. Even government sources are not always updated. The Bureau's Auto Loans dashboard[13] was a helpful tool but has not been updated since 2019.

The past four years would have been an extraordinary learning opportunity for market participants, but the lack of regularly updated finance data has made that impossible. The COVID-19 crisis had a tremendous impact on auto credit, and the inability to review a consistent data set before, during and after the height of the pandemic is a lost opportunity for researchers and regulators. Much of the existing research and data looks at a moment in time, rather than trends over years. In order to produce research which is reliable and accurate for regulatory

[12] For instance, any research that attempts to compare two sets of data, one of which is based on an aggregate report, would need to include caveats explaining the differences in the data sources.

[13] https://www.consumerfinance.gov/data-research/consumer-credit-trends/auto-loans/, last updated April 2019.

policymaking and enforcement, it is critical to review trends over a period of time rather than at a single moment. The average length of a retail installment sales contract for a new car is nearly 6 years long,[14] and only by tracking payments and delinquency over the full term of the credit transaction will the data provide an accurate picture of how many transactions ended successfully for the consumer.

F. The CFPB should collect data about lease transactions that allows the analysis of the consumer market risks created by the leasing market.

In its market-monitoring orders for its initial data collection pilot, issued under Section 1022(c)(1) & (4) of the Act, 12 U.S.C. §5512(c)(1) & (4),[15] the Bureau's request applied "to grants of credit for a consumer's purchase of an automobile; refinancing of such obligations (and subsequent refinancing thereof) that are secured by an automobile; automobile leases; and purchases or acquisitions of any of the foregoing obligations."

To the extent the data collection included leases it failed to gather a number of important aspects of lease transactions. The CFPB should collect data about lease transactions that allows the analysis of the consumer market risks created by the leasing market.

Nearly a quarter of new vehicles are leased.[16] Lease transactions have a propensity to confuse consumers. Among consumer advocates there is a common saying that "leasing is fleecing." Lease transactions can allow a number of aspects of the transaction to be hidden from consumers.

Lease transactions are currently of particular importance in the case of electric and other clean vehicles as the use of leases allows for a Qualified Commercial Clean Vehicle Credit under Section 45W the Internal Revenue Code for transactions that would not meet requirements for tax credit under Section 30D, allowing credits when the consumer's income exceeds the limits of 30D and avoiding the battery and mineral component requirements of 30D. While lease transactions of clean vehicles are not subject to many of the requirements that apply to sales to consumers in order to qualify for tax credits, it is difficult to determine who is receiving the benefit of the credit- the lessor, the dealer, or the consumer.

In order to better understand the lease market the Bureau should collect, at a minimum:

i. The Payment Schedule and Total Amount of Periodic Payments as determined at origination;
ii. The gross capitalized cost, itemized, including the agreed-upon value of the vehicle as determined at origination;
iii. The capitalized cost reduction as determined at origination;

[14] Montoya Edmunds, *supra* note 22.
[15] See example of the order available at: cfpb_auto-finance-loan-1022-sample-order_2023-02.pdf.
[16] Melinda Zabritski, Experian, State of the Automotive Finance Market: Q4 2023, at 6 (Feb. 2024), available at https://www.experian.com/content/dam/noindex/na/us/automotive/finance-trends/experian-safm-q4-2023.pdf

iv. The residual value and the source of the determination of the residual value as determined at origination;
v. The amount or method of determining the amount of any penalty or charge for early termination and for default as disclosed at origination;
vi. The lessor's standards for wear and use, including mileage restrictions as disclosed at origination;
vii. The total amount payable during the entire lease term for official fees, registration, certificate of title, and license fees or taxes as disclosed at origination;
viii. Information about insurance in connection with the lease: the types and amount of coverage and the cost to the consumer if provided by the lessor as disclosed at origination;
ix. Information about third-party charges included in monthly lease payment such as service contracts, credit insurance, and GAP insurance;
x. Penalties or other charges for delinquency, default, or late payment as disclosed at origination;
xi. Any changes to disclosed amounts because a lease is a subvented lease;
xii. Payment history;
xiii. Any actual charges assessed as penalty or charge for early termination and for default;
xiv. Information about refunds for any third-party charges included in monthly lease payments such as service contracts, credit insurance, and GAP insurance;
xv. Sale information, including expenses after completion of the lease;
xvi. Information regarding actual realized values, including whether the sale price was used in the computation of an early termination charge and if so how.

G. The CFPB should consider ways to collect data about consumer demographics, including race, ethnicity, age, gender, and other characteristics.

In our previous comments regarding the CFPB's auto data collection efforts we made numerous suggestions which we would like to incorporate here by reference.[17] We would particularly urge the Bureau to work to find ways to obtain data about consumer demographics that can be associated with the data the Bureau is collecting about auto finance. The extent of discrimination across aspects of the auto sales and finance marketplace and the impact of discrimination and the disparate impact of finance policies and practice on vulnerable consumers cannot be overstated. The CFPB must monitor these aspects of auto finance and the consumer risks they pose.

[17] Consumer Groups Comments regarding Enhancing Public Data on Auto Lending, Docket No. CFPB-2022-0075 (Dec. 19, 2022), available at: https://www.nclc.org/wp-content/uploads/2022/12/coalition-comments-CFPB-Auto-Finance-Data-Gaps-2022.pdf

V. Conclusion

We very much appreciate the Bureau's focus on data collection to better understand risks to consumers and new developments in the auto finance marketplace. We urge the Bureau to continue and expand its data collection and provide public access to the data to the greatest extent possible.

Respectfully submitted, this the 25th day of March, 2024, by:

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