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Re: Enhancing Data in Auto Financing

Dear Colleagues:

Thank you for the opportunity to share our concerns about the ongoing and longstanding need for more data about auto financing. The undersigned organizations have a long history of advocating for consumer protections in auto sales and finance, particularly as they affect low-income and consumers of color. Despite auto loans being the top source of non-mortgage debt in our nation and of special importance to low and moderate income households, the public lacks access to uniform, objective data about auto financing that would serve to educate regulators, legislators, and policymakers about important trends and inform necessary action.[1]

We strongly supported the Bureau's "Auto Finance Data Pilot" and issuance of orders to nine lenders using its market monitoring authority under Section 1022(c)(4) of the Dodd-Frank Act. We also supported the Bureau's request to Office of Management and Budget (OMB) seeking approval for its "Auto Finance Data Project" to expand and continue its auto data collection. We write now to emphasize the critical nature of (1) providing as much information as possible from the data the Bureau has already obtained through the Data Pilot, and (2) continuing and expanding this data collection and regular public dissemination of information in the future.

I. Auto Finance Data Pilot

The Data Pilot has resulted in the collection of data from larger participants including banks, finance companies, and captive lenders related to 33 million finance contracts which were originated and/or serviced between 2018 and 2022. The data includes information about the origination, some unique auto lending variables (such as direct vs. indirect contracts, dealer markups and add-ons), and servicing and collection information. What is most potent about this data set is that it is unique – there is no other comparable source of information available about auto finance. Most other sources of information about auto finance are based upon data

[1] The other two comparable debt sources in our country have standardized data collection and access, allowing for well-informed policy and regulatory decisions. Mortgage information is available through the Home Mortgage Disclosure Act (https://www.consumerfinance.gov/data-research/hmda/), and student loan data is available through the National Student Loan Data System (https://nsldsfap.ed.gov/login).

gathered and held by private companies and often published by the auto finance industry itself and are therefore proprietary and lack objectivity and transparency. Most are highly aggregated and designed for use by investors and as such are often more focused on performance in the aggregate rather than the experience of individual consumers. They often use data from credit reporting entities and therefore lack insight into significant parts of the marketplace, such as smaller deep subprime finance companies and buy-here-pay-here dealers that are less likely to participate in credit reporting.

The Bureau's report, Negative Equity in Auto Lending, serves as a powerful contrast to information currently available about this topic. The Negative Equity report provides concrete, precise data related to:

- Repossession probabilities (those with negative equity were more than twice as likely to be referred to repossession within two years),
- Monthly payment comparisons (26-27% higher monthly payment for those with negative equity),
- Loan-to-value and payment-to-income ratios (average LTV ratio was 119%, and average PTI ratio was nearly 10%), and
- Vehicle pricing (nearly 25% of consumers with lower priced vehicles financed negative equity).

Compare this with the Edmunds[2] Used Vehicle Report from Q4 2023[3], an industry generated report from proprietary data that includes a section about negative equity but only discusses the increased incidence of negative equity trade-ins and average pricing information without any more specific detail. This and other sources of data that are currently available are simply not comparable to the level of detail in the Negative Equity report and therefore not as useful or informative. Further, many current data sources have a competitive incentive to only release information that is helpful to their own business interests, and purchasing data (where it can actually be purchased) can be prohibitively expensive for researchers, advocates, and policymakers.

We therefore urge the Bureau to continue to provide reports and information gleaned from the Data Pilot, and, in addition to the information identified in our prior comments[4], we specifically request that the Bureau publish data related to:

[2] Edmunds was cited in a comment to the CFPB's Nov. 17, 2022 "Enhancing Public Data on Auto Lending" Federal Register notice as a comparable source of auto finance information. *See* https://www.regulations.gov/comment/CFPB-2022-0075-0035.

[3] Available at https://static.ed.edmunds-media.com/unversioned/img/industry-center/press/lp-promos/2023-q4-edmunds-used-vehicle-report.pdf

[4] *See* comment of Nat'l Consumer Law Ctr., et al. in response to the Bureau's "Enhancing Public Data on Auto Lending," dated Dec. 20, 2022, available at https://www.regulations.gov/comment/CFPB-2022-0075-0036, and in response to the Auto Finance Data Project information collection request, 89 Fed. Reg. 4281, dated March 26, 2024, available at https://www.regulations.gov/comment/CFPB-2024-0004-0004.

1. **Military servicemembers**. The Bureau has published data regarding the impact of auto finance on servicemembers, noting that younger servicemembers tend to purchase and finance vehicles soon after joining the military, and carry more debt than their civilian peers. Younger servicemembers may lack sophistication about the car buying process, which is one of the most complex financial transactions individuals will ever face. Financing practices directly impact our national security by jeopardizing the financial readiness of servicemembers and their families. We would urge the Bureau to publish data regarding servicemembers based on its requests for the military status of the borrowers and co-borrowers and information about the borrower's source of income.

In addition to information about characteristics of finance contract originations for servicemembers and how those characteristics may pertain to certain outcomes (including delinquencies, repossessions and continued debt collection), servicemembers are eligible for protections under the Military Lending Act (MLA) and the Servicemembers Civil Relief Act (SCRA). We encourage the Bureau to provide information about the MLA's 36% rate cap requirements, particularly as it pertains to calculating add-ons and other fees for products like credit insurance in the APR calculation, the MLA's prohibition against military allotments, and prepayment penalties. The SCRA requires auto finance creditors to apply a 6% rate cap when servicemembers with an existing loan notify the creditor about being called to active duty, and information about creditors' compliance with these provisions through modification requests would also be useful. We encourage the Bureau to coordinate with the Department of Defense, the Department of Justice and other governmental agencies that monitor this conduct on behalf of servicemembers.

2. **Add-ons.** Expensive add-ons are often sold at incredibly high prices while providing little to no value to the purchaser, and data about add-ons across the marketplace is extremely limited.[5] We urge the Bureau to publish information from the Data Pilot about the widely varying costs of common products, such as VIN etching, GAP products, service contracts, and others, as well as how the costs relate to the profile of the borrower. The Bureau should also evaluate the relationship of add-ons to the origination and performance of finance contracts, as they often increase the cost of financing by thousands of dollars. We encourage the Bureau to relate these findings about costs and outcomes to the geographic location of the borrower as much as possible, such as by the zip code of the borrower and the original dealer.

Certain add-ons are ostensibly offered to protect the consumer's interest in the financing transaction (such as GAP), or the creditor's interest (such as VSI). The Bureau should publish data about the extent to which the costs of these add-ons are recovered for the consumer's benefit in situations when financing is paid off early such as through a prepayment or repossession. We would also welcome data that compares the incidence and costs of add-on's (like GAP) in direct

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[5] National Consumer Law Center, Auto Add-ons Add Up: How Dealer Discretion Drives Excessive, Inconsistent, and Discriminatory Pricing (Oct. 11, 2017) Analyzing a large national data set, this report shows what dealers actually pay for automobile add-ons versus what they charge consumers, and it exposes how the arbitrary and inconsistent pricing of these optional products fosters discriminatory pricing.

vs. indirect lending. A prime example is the cost of GAP, which dealers often inflate to receive a substantial kickback in an indirect financing arrangement, but is often much cheaper when purchased directly from the finance company in a direct lending arrangement or an insurance company.

3. **Repossessions**. A repossession begins an entire second life cycle for a debt that follows a consumer for many years with devastating consequences. The Bureau's Data Pilot includes a wealth of information about repossessions (and "voluntary surrenders"), and we look forward to a fulsome report about these practices.

Our December 2022 comments included a special focus on repossessions and the urgent need for data about many aspects of this conduct,[6] including information about the calculation of amounts owed before a vehicle is repossessed, the timing of repossession activity during the course of the loan, different methods of repossession (i.e., electronic, license plate reader, harassment techniques, etc.), and general statistics about repossession and how those relate to origination characteristics (i.e., high or low correlation of repossessions with certain finance contract characteristics).

We asked for information about consumers who are able to cure their default before repossession or reinstate during or after the repossession process in addition to redemptions after repossession. The Bureau does not appear to have requested this more nuanced information in the Data Pilot, and instead asks about the date that a repossession was canceled or an account was redeemed. We urge the Bureau to obtain this information in future data collection efforts, as it is an important mechanism that can shield consumers from unnecessary and overly aggressive repossessions that deprive them of their access to a vehicle which is often critical to maintain employment in order to make their payments. Researchers and policymakers would benefit from data that contributes to the understanding of the usefulness of a right to cure, whether from state requirements or included in the retail installment contract even if not required. Auto financing practices that prioritize taking vehicles over successful consumer outcomes contribute to a crippling treadmill of debt.

We also asked for information about opaque repossession sales, deficiency balance obligations and outcomes, and credit reporting outcomes. We urge the Bureau to also publish the information it obtained about the fees and costs associated with a repossession, including a comparison of the fees charged to a consumer with those actually incurred by the finance company (or paid to third parties), and an analysis of how those fees correspond to repossession sale and deficiency balance outcomes and calculations.

4. **Payments exchanged between dealers and finance companies**. The relationship between the original creditors of these finance contracts, auto dealers, and their assignees, finance

[6] The information requested pertains to calculation of amounts owed, timing of repossessions, methods of repossession, general statistics, use of the right to cure, reinstatement and redemption, repossession sales, and credit reporting.

entities, directly impacts consumer outcomes by injecting pricing variables. We urge the Bureau to publish information about parts of these relationships that have eluded comprehensive analysis due to tightly guarded “proprietary” agreements and contractual relationships. The use of interest rate markups has a tremendous impact on both the performance of auto finance and the lives of consumers. Subprime auto finance often involves finance entities buying retail installment sales contracts from dealers at below face value or else pay an “acquisition fee” to the assignee when the RISC is sold. For some, the amount paid by the assignee to the dealer is reduced by amounts described as “dealer reserve.” Other finance entities reduce the amount paid by the assignee to the dealer by deducting amounts described as "loss reserve." Some impose an “increased risk charge.” Some have complex agreements where various amounts are retained by the assignee with some of them released to the dealer if the consumer pays in full. By necessity dealers raise the price of vehicles to cover these costs.

The Bureau should publish information about the payments and credits exchanged between the dealer and assignee, the dealer interest rate markups and dealer reserve amounts, how those amounts vary based on the geographic location of the borrower and other borrower profile characteristics, and how those amounts correlate to consumer outcomes.

II. <u>Continued, Expanded Data Collection</u>

The Bureau requested authority from OMB to continue its Data Pilot collection activity on an annual basis from lenders that originate greater than 20,000 auto loans in the previous calendar year, and a reduced set of data from lenders that originate greater than 500 and fewer than 20,000 loans in the previous year. In addition to our March 2024 comments, we urge the Bureau to evaluate:

1. **Credit Unions**. Credit unions maintain a significant portion of auto financing, both in direct and indirect financing arrangements. Advocates have historically encouraged consumers to obtain their own auto financing at a credit union to avoid the expense and hassle of dealer-arranged financing. Some credit unions are community development financial institutions with a specific focus on providing economic access to lower income and historically disadvantaged communities. We would encourage the Bureau to compare the outcomes consumers with similar borrower profiles who obtain a direct loan from a credit union, with those who have dealer-arranged indirect loans from a credit union. The Bureau could also compare these borrower outcomes between CDFI and non-CDFI credit unions, as CDFI credit unions often welcome the opportunity to make auto financing available to credit challenged consumers through affordable loans, rather than price gouging with high interest rates and unnecessary add-on products to “protect” the creditor from default.[7]

[7] https://inclusiv.org/cdfis-lower-interest-rates-on-car-loans/

Credit unions have also been the target of enforcement actions[8] regarding their failure to refund unearned GAP coverages to consumers, and we urge the Bureau to evaluate data that reflects the incidence of these practices. Credit unions also have a reputation for cross-collateralizing debt obligations across the consumer's unrelated bank accounts, which we would encourage the Bureau to evaluate as well.

2. **Buy-here-pay-here (BHPH) dealerships**. Our December 2022 and March 2024 comments both expound upon the need for data from these dealers, where fraud and abuse frequently proliferate but often go unchecked. We urge the Bureau to expand its data collection beyond those dealers that make 500 loans or more per year, as many BHPH dealers will fall below this threshold. In addition to those comments, we note here that BHPH dealers (and other auto dealers) have a reputation for including pre-dispute arbitration clauses in their contracts, but failing to honor the terms of those agreements when faced with an arbitration demand from a consumer. Some BHPH dealers refuse to pay the fee to initiate the arbitration, despite a clear requirement in the contract or from the selected arbitration company. This has cascading problematic consequences for consumers and their access to justice through counsel, as it intentionally slows down the litigation process and impedes access to their vehicle altogether.

3. **Leasing**. Consumers have shown an increased interest in leasing vehicles, and we would urge the Bureau to evaluate this conduct as outlined in our prior comments. One reason that leasing has increased is the creation of tax credits available to entities that lease clean vehicles to consumers. Many captive lenders maintain that those benefits are passed on to consumers. Data gathered could be especially helpful to evaluate if those claims are true.

4. **Language access**. Nearly 22% of the U.S. population over the age of five speaks a language other than English at home, and, of these, 38.3% are Limited English Proficient (LEP). These consumers face significant barriers when navigating financial products, and the purchase of a car is complex even for native English speakers. Often, consumers do not understand the implications of their dealer-arranged financing until they begin making their payments to the finance company, and these concerns are amplified when there is a language barrier at the outset. We encourage the Bureau to inquire about data pertaining to LEP auto finance borrowers, including language preferences, ease of accessibility, translation efforts, and other customer service practices.

Thank you for your attention to these issues. Should you have any questions, you can contact Erin Witte at ewitte@consumerfed.org, or John Van Alst at jvanalst@nclc.org.

Sincerely,

Consumer Federation of America
National Consumer Law Center, on behalf of its low-income clients

[8] The Colorado Attorney General has secured over $ 23.5 million in refunds from auto finance companies, the vast majority of which were credit unions. https://coag.gov/gap/

Americans for Financial Reform Education Fund