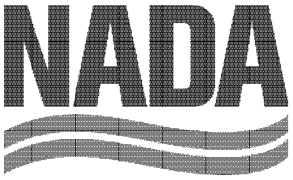

June 1, 2020

Federal eRulemaking Portal

Comment Intake
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, D.C. 20552

Re: Request for Information, Docket No. CFPB-2020-0013

The National Automobile Dealers Association (NADA)[1] and the National Association of Minority Automobile Dealers (NAMAD)[2] submit the following comments to the Consumer Financial Protection Bureau (CFPB or Bureau) in response to its Request for Information (RFI) to assist the Taskforce on Federal Consumer Financial Law (Taskforce) with "making recommendations on harmonizing, modernizing, and updating the federal consumer financial laws."[3] While motor vehicle dealers engaged in indirect vehicle financing transactions are not subject to the jurisdiction of the CFPB,[4] they can be affected by CFPB actions pertaining to finance sources to which dealers assign retail installment sale and lease contracts, and they remain subject to the laws that the CFPB administers. Accordingly, NADA and NAMAD recognize the importance of – and fully support – the Taskforce's desire to inform its review of federal consumer financial laws and would welcome the opportunity to continue to provide input throughout this process. NADA and NAMAD also encourage the Taskforce to coordinate closely with the federal agencies with regulatory and/or enforcement authority over motor vehicle dealers as it pertains to federal consumer financial laws and regulations that govern indirect vehicle financing transactions.[5]

The Taskforce's desire to identify efficient markets that are "fair, transparent, and competitive" so as to allow consumers to make informed choices that are not undermined by unlawful acts and

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[1] NADA represents more than 16,000 franchised automobile and truck dealers in all 50 states who sell, finance, and lease new and used motor vehicles and engage in service, repair, and parts sales. A significant portion of NADA's members are small businesses as defined by the Small Business Administration. Prior to the pandemic, NADA's members collectively employed over 1.1 million people nationwide.

[2] NAMAD represents approximately 1,100 franchised automobile dealers that are owned and operated by ethnic minorities. NAMAD's objective is to pursue the meaningful presence and participation of minority businesses and diverse employees across all aspects of the automotive economic sector, including: (i) increasing the number of minority-owned dealerships in communities across America; (ii) advocating workplace and supplier diversity in the automotive manufacturing environment; and (iii) supporting minority engagement in the automotive retail sales and service sectors. NAMAD is committed to developing strategic relationships and advocating for the advancement of business policies and practices that ensure diversity and economic parity remain a priority in all aspects of the American automotive industry.

[3] 85 Fed. Reg. 18,214–18,217 (Apr. 1, 20120).

[4] 12 U.S.C. § 5519.

[5] *See* 12 U.S.C. § 5519(c).

practices clearly is an appropriate baseline from which to measure whether, and to what extent, modifications to existing federal consumer financial laws and regulations are warranted. In addition, the Taskforce's recognition that unfunded mandates create costs which must be worth the benefits they produce is equally important in promoting a regulatory regime that produces meaningful, sensible, and sustainable benefits for consumers.

With regard to the indirect vehicle financing market, this optional form of financing has and continues to function efficiently to the benefit millions of consumers at all credit levels.[6] The time-tested Truth In Lending Act (TILA) disclosure regime has since its inception provided consumers with the most relevant information for understanding the cost of credit and comparing competing credit offers.[7] Coupled with the robust competition that exists in the indirect vehicle financing market, consumers have been – and continue to be – provided both clarity and choice regarding their financing options. They also benefit from other factors that impose market discipline, including the ability to refinance the terms of their credit contract at virtually no cost should they obtain financing at above market rates. Auto dealers and their finance sources operate in this environment while subject to the full array of federal and state consumer protection laws and regulations, most of which can be enforced by both governmental entities and through private rights of action.[8]

Notwithstanding these favorable factors, there are several areas of consumer finance law that could be improved by providing greater clarity, reducing unnecessary burdens, and eliminating inefficiencies. These comments briefly describe the following such areas: (i) the implementation of section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protect Act (Dodd-Frank Act), (ii) the benefits of developing a fair lending safe harbor, (iii) the need to simplify the delivery of adverse actions notices, (iv) consumer protections related to the use of data, (v) the benefits and potential of consumer financial education, and (vi) measuring consumer financial

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[6] In 2019, franchised and independent motor vehicle dealers engaged in 46 million new and used vehicle deliveries to consumers. NADA, IHS Market, and Automotive News Data Center. For new vehicle deliveries, consumers chose optional dealer financing in 54.4% of the transactions and optional dealer leasing in 29.8% of the transactions. The remaining 15.8% of new vehicle transactions were either financed through a direct lender or cash transactions. For used vehicle deliveries, consumers chose optional dealer financing in 70.6% of the transactions and optional dealer leasing in 2.2% of the transactions. The remaining 27.2% of used vehicle transactions were either financed through a direct lender or cash transactions. J.D. Power PIN Data. This reflects the extent to which optional dealer financing satisfies a critically important market need, and it provides perspective on the extent to which the limited number of anecdotal reports of alleged misconduct by indirect vehicle financing creditors and lessors reflects general market conditions.

[7] Regrettably, the strides the federal government has made in promoting consumer understanding of the cost of credit and its expression as a yearly rate using the term "Annual Percentage Rate" or "APR" is being undermined by federal and state laws and proposals to institute a so-called "All-In APR" cap or threshold. These measures pull into a concept that is intended to only reflect the cost of credit items which are unrelated to the cost of credit and thereby distort its meaning and educational value to consumers.

[8] At the federal level alone, this includes such sweeping statutes as the Equal Credit Opportunity Act, TILA, Consumer Leasing Act, Fair Credit Reporting Act (including the duties and restrictions imposed by the Fair and Accurate Credit Transactions Act of 2003), Gramm Leach Bliley Act, Telephone Consumer Protection Act, Controlling the Assault of Non-Solicited Pornography and Marketing Act, and Federal Trade Commission (FTC) Act. In addition to federal regulations that implement these statutes, the FTC has issued several regulations such as the Used Car Rule, 16 C.F.R. Part 455, that further regulate market conduct.

protection in the marketplace. This is not an exhaustive list of areas that could be addressed but rather focuses on several key issues.

Section 1071

The RFI recognizes that statutory and regulatory changes create costs and prudently inquires into "where a change in the rules would provide the greatest marginal benefits relative to the marginal costs."[9] While this consideration should routinely be applied by federal agencies to prospective new rules or rule changes, it is particularly pertinent to the rulemaking the CFPB and Board of Governors of the Federal Reserve (FRB) will conduct to implement section 1071 of the Dodd-Frank Act[10] for financial institutions subject to their respective jurisdiction.

Section 1071 imposes on financial institutions a series of new requirements and restrictions involving the collection, itemization, redaction, reporting, and retention of demographic information related to credit applications submitted by small, women-owned, and minority-owned businesses. This provision threatens to impose enormous and potentially unworkable challenges on many financial institutions, including motor vehicle dealerships, which far exceed the benefits it is designed to produce. This concern was expressed in the following excerpt from comments that NADA and NAMAD jointly submitted to the CFPB in response to its 2017 Request for Information on the small business lending market:[11]

> "The foregoing requirements would present for smaller financial institutions compliance challenges that far exceed those contained in any of the many new federal regulatory mandates that these entities have had to implement in recent years.... They also are contained in a statute that exposes these businesses to significant litigation exposure for violations, including private rights of action.[12] These conditions could have the perverse effect of making financial institutions less likely to extend credit to the intended beneficiaries of section 1071 and thereby frustrate – not support – the purpose of this enactment.
>
> As noted above, the unfortunate and ironic nature of this mandate is that, unlike many consumer protection mandates that require agencies to balance the need to protect consumers against the need to avoid overburdening businesses, section 1071 imposes extraordinary burdens that reach the very small, women-owned, and minority-owned financial institutions that it was designed to benefit. And, while one can speculate that section 1071 could result in expanded access to credit for *some* of these entities, it will certainly impose enormous burdens and create liability exposure for *all* of these entities. This is a balance which does not favor the imposition of these duties on smaller financial institutions."

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[9] 85. Fed. Reg. at 18,215.
[10] 15 U.S.C. § 1691c-2.
[11] Docket No. CFPB-2017-0011. The NADA/NAMAD comments currently are available at https://beta.regulations.gov/document/CFPB-2017-0011-0599.
[12] 15 U.S.C. § 1691e.

Fortunately, section 1071 contains a mechanisms for preventing the disproportionate burden it would impose on smaller financial institutions, which is its grant of authority to the Bureau[13] and to the FRB[14] to "exempt any financial institution or class of financial institutions from the requirements of this section."[15] This authority should be exercised with regard to these financial institutions.

Fair Lending Safe Harbor

Promoting competition and protecting consumers are inter-related and essential goals that should provide the framework for the regulatory improvements the Taskforce will consider and recommend to the Bureau director. One significant action that would achieve these goals, provide clarity to market participants and the federal agencies that oversee their operations, and reduce unnecessary burdens and liability exposure would be for the Taskforce to recommend the establishment of a safe harbor for ECOA compliance for creditors that faithfully adopt and implement the elements of the *NADA/NAMAD/AIADA Fair Credit Compliance Policy and Program* (*Fair Credit Compliance Program*).[16]

As explained below, our associations strongly condemn credit and any other form of invidious discrimination and believe the *Fair Credit Compliance Program* provides a viable mechanism for protecting against its occurrence in the marketplace.

The *Fair Credit Compliance Program* was established and presented to motor vehicle dealers by the three national trade associations representing franchised automobile dealers (NADA, NAMAD, and AIADA) in January 2014 as an optional framework for complying with ECOA.[17] It is modeled on – but more robust than – a carefully considered and thoughtful approach to fair credit compliance that the Department of Justice (DOJ) developed and included in consent orders with two automobile dealerships in 2007 to resolve allegations of ECOA violations.[18]

The *Fair Credit Compliance Program's* basic approach to ECOA compliance is to establish guidelines for determining the amount of dealer participation a dealership will earn for arranging and originating credit contracts that the dealership assigns to a third-party finance source.[19] Each adopting dealer establishes its own standard dealer participation rate which it includes in credit

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[13] 15 U.S.C. § 1691c-2(g).
[14] 12 U.S.C. § 5519(c); 15 U.S.C. § 1691b(f).
[15] Indeed, the FRB exercised this authority in 2011 for motor vehicle dealers subject to its jurisdiction until it issues final rules to implement section 1071. 76 Fed. Reg. 59,237 – 59,239 (Sep. 26, 2011).
[16] AIADA is the American International Automobile Dealers Association, which is a national trade association representing the nation's 9,500 international nameplate automobile franchises.
[17] The *Fair Credit Compliance Program* and other explanatory materials are available at www.nada.org/faircredit.
[18] The consent orders currently are available at www.justice.gov/archive/usao/pae/News/2007/aug/pacificoorder.pdf and www.justice.gov/sites/default/files/crt/legacy/2010/12/15/springfield_order.pdf.
[19] While the central component of the *Fair Credit Compliance Program* addresses the pricing of consumer credit, the program applies to all aspects of ECOA compliance. *See* Sections I.b and II.

offers to consumers.[20] The dealer is permitted to discount that rate if a pre-determined, legitimate business reason unrelated to the consumer's background is present in the transaction. Examples include the presence of a more competitive financing offer or a monthly budget constraint. Any such discount must conform to certain guidelines, be documented and reviewed by a senior dealership official who is not involved in the transaction to ensure it comports with these guidelines, and the document must be retained by the dealership.

The *Fair Credit Compliance Program* is administered by a Program Coordinator who conducts extensive program training and oversight and reports to the dealership's board of directors. It carries out the dealership's Fair Credit Compliance Policy which establishes and explains the dealership's commitment to laws prohibiting unlawful discrimination and its nontolerance for discriminatory, morally repugnant behavior. The policy is prominently displayed to consumers.

The *Fair Credit Compliance Program* is widely recognized as an effective mechanism for promoting pricing consistency while allowing consumers to benefit from appropriate pricing flexibility.[21] This has led several federal agencies and other groups to identify the program or certain elements of it as an appropriate approach to ECOA compliance.[22]

Identifying the faithful adoption and implementation of the elements of the *Fair Credit Compliance Program* as constituting a safe harbor for ECOA compliance would further the

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[20] Dealer participation, also known as "dealer reserve," refers to the dealer's participation in (i.e., its portion of) the contract interest rate that the customer pays to finance the purchase of a vehicle from the dealer in an indirect vehicle financing transaction. It is the difference between the retail rate (i.e., the Annual Percentage Rate) and the wholesale rate (also known as the "buy rate") at which a finance source buys the retail installment sale contract from the dealer. Finance sources typically compensate dealers for arranging and originating financing with the customer subject to parameters established by the finance source.

[21] Were the program confined to fixed, non-discountable offers of credit, consumers would be deprived of obtaining more affordable credit pricing that is unrelated to their background.

[22] In addition to the two 2007 DOJ actions upon which the program is based, see, for example (i) Option One, Footnote 3, and Option Two of Section VI (Remedial Action) of the CFPB's July 2015 Consent Order with American Honda Finance Corporation (currently available at https://files.consumerfinance.gov/f/201507_cfpb_consent-order_honda.pdf); (ii) Option One, Footnote 4, and Option Two of Section VI (Remedial Action) of the CFPB's September 2015 Consent Order with Fifth Third Bank (currently available at https://files.consumerfinance.gov/f/201509_cfpb_consent-order-fifth-third-bank.pdf); (iii) Section V (Fair Lending Program) of the FTC's May 2020 Stipulated Order for Permanent Injunction and Other Equitable Relief with Bronx Honda (currently available at www.ftc.gov/system/files/documents/cases/bronx_honda_stipulated_final_order_liberty_chevrolet.pdf); and (iv) currently pending American Bar Association (ABA) Resolution 117B submitted by the ABA Section of Civil Rights and Social Justice, Section of State and Local Government Law, and Commission on Homelessness and Poverty urging federal, state, local, territorial and tribal governments, in part, to "adopt laws and policies that promote the adoption of an enhanced nondiscrimination compliance system for a vehicle loan or a flat percentage for dealer compensation" (emphasis added) and whose Report in support of the resolution explicitly recognizes the *Fair Credit Compliance Program* as an enhanced nondiscrimination compliance system ("The promotion of an enhanced nondiscrimination compliance system, as voluntarily promoted in the Fair Credit Compliance Policy & Program through the National Association of Minority Automobile Dealers (NAMAD), the National Automobile Dealers Association (NADA), and the American International Automobile Dealers, can be an effective way to ensure a rigorous review of exceptions to a flat-percentage fee in order to provide robust processes for fair pricing of dealer markups to all consumers in a nondiscriminatory manner.").

Taskforce's goals of promoting clarity and harmonization and reducing unnecessary burden and litigation risk.[23] Currently, there is disagreement among commentators about the theories of liability that exist under ECOA as it relates to this asset class, which has caused assignee creditors to institute a series of extensive and costly prophylactic measures to protect against claims of disparate impact discrimination. The value of the *Fair Credit Compliance Program* is that it protects against discrimination under any theory (and thus does not require resolution of this issue) and, with regard to motor vehicle dealers who have faithfully adopted and implemented the program, it eliminates the need for assignees to measure for the presence of disparate impact discrimination. This is for the simple and compelling reason that, when properly executed, there is no unexplained pricing differential to measure. Every consumer has either paid a standard dealer participation rate (which, by definition, is the same for every consumer) or has paid a lesser dealer participation rate for a documented, legitimate business reason (which is excluded from the calculation of average dealer participation amounts paid by different groups of consumers). While assignee creditors would still need to monitor motor vehicle dealers to ensure the program is faithfully executed, it would greatly streamline their existing compliance burden and the uncertainty regarding their compliance responsibilities without compromising consumer protection. Indeed, the consumer benefits that flow from this program would be enhanced as its rate of adoption would be increased by the safe harbor protection it would afford to dealer and assignee creditors.

Of course, this exercise would require coordination with the federal agencies that oversee motor vehicle dealers engaged in indirect vehicle financing.[24] However, this mechanism presents a solid opportunity to significantly improve the administration of ECOA in the indirect vehicle financing marketplace.

Adverse Action Notices

As noted above, the RFI prudently inquires into areas of the law involving ambiguity and uncertainty that would "benefit significantly from increased clarity and harmonization…."[25] Another area that is in need of such improvement is the statutory and regulatory regime that applies to the delivery of adverse action notices to consumers who apply for and are denied credit in the indirect vehicle financing market.

The ambiguity confronting indirect vehicle financing creditors and their customers centers on the application of two overlapping statutes (the Fair Credit Reporting Act (FCRA) and ECOA), the involvement of multiple creditors to which vehicle financing applications are presented, and the potential consequences of not delivering an adverse notice when required by federal law.

ECOA requires creditors to deliver an adverse action notice to credit applicants against whom adverse action is taken. The notice must contain a statement of the specific reasons for the

[23] 85 Fed. Reg at 18,216 (Question 12).
[24] For this group of creditors, Regulation B, which implements ECOA, is promulgated by the FRB and enforced by the FTC and DOJ.
[25] 85 Fed. Reg at 18,216 (Question 12).

adverse action or generally disclose the applicant's right to such a statement and the person from whom or the office from which such statement may be obtained.[26]

FCRA requires persons to provide an adverse action notice to consumers against whom adverse action is taken in certain circumstances including when it is based in whole or in part on information contained in a credit report. The notice must contain the consumer's credit score, certain information that provides context to the credit score, and general information pertaining to the consumer reporting agency that furnished the credit report forming the basis of the adverse action.[27]

The breadth of these overlapping responsibilities sets the stage for – and indeed leads to – significant duplication and, in turn, consumer confusion when applied to credit applications received by motor vehicle dealers engaged in indirect vehicle financing.

When a consumer submits a credit application to a motor vehicle dealer, the dealer typically submits the application to multiple finance sources to determine whether, and on what credit terms, each is willing to take assignment of a retail installment sale contract with the applicant. If it denies the application, the finance source sends an adverse action notice containing the required ECOA and FCRA information. If none of the finance sources are willing to take assignment of the credit contract, the dealer also may send an adverse action notice although its reasons for the denial likely will differ from those of the finance source.[28]

In the case of the finance source, the denial reason will reflect the results of its underwriting analysis. However, in the case of the dealer, the denial reason usually is different because the dealer typically does not repeat – and is not equipped to perform – the underwriting analysis conducted by the finance source. Rather, the dealer's reason for denying credit will simply pertain to the unwillingness of any finance source to take assignment of the credit contract.

This may cause confusion for consumers as they receive different notices from the dealer and finance sources who have received their credit application. One way to mitigate this confusion would be to limit the requirement to issue an adverse action notice to the entities that conduct underwriting. This is consistent with the intent of the statutes (as this provides the consumer the greatest educational value regarding the reason for the credit denial) and could be accomplished by clarifying that there is no requirement for a dealer which forwards a credit application to a finance source for review to issue an adverse action notice.[29] As with other indirect vehicle

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[26] 15 U.S.C. § 1691(d).
[27] 15 U.S.C. § 1681m(a).
[28] There is debate as to whether a dealer who forwards a credit application to one or more finance sources which does not result in an offer of credit to the consumer is required to issue an adverse action notice. In an abundance of caution, many dealers issue adverse action notices in these circumstances even though finance sources issue their own notices.
[29] The FRB and FTC confronted the multi-creditor situation in the Risk-Based Pricing Rule, where they developed a Rule of Construction requiring the initial creditor (and not the assignee creditor) to issue to the consumer either a risk-based pricing notice or a credit score disclosure exception notice (which is the notice typically issued by dealers). 16 C.F.R. § 640.6(b); 12 C.F.R. § 1022.75(b). However, the situation involving these notices is different

financing issues, this would require coordination with federal agencies with oversight over motor vehicle dealers.

Use of Consumer Data

The RFI also inquires into "current and future-looking topics regarding the protection and use of consumer data."[30]

Several steps are needed to better protect consumer data and promote the goals of expanding consumer access, increasing transparency and market competition, and ensuring clear and comprehensive disclosures to avoid deception. NADA has identified a range of suggestions and recommendations in this regard in response to various regulatory and legislative requests and other data-related inquiries.[31] We would urge the Bureau to consider this input, with a particular focus on:

a) the reasons why automotive data (including, in many cases, auto finance-related data) is unique and should be treated differently by regulators;[32]
b) the ways that consumer expectations regarding the use of personal and financial information –
   (i) have evolved (particularly since the enactment of the Gramm Leach Bliley Act (GLB)),[33] and

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from the situation involving adverse action notices based on both the timing and the content of the respective notices. The timing for risk-based pricing notices or credit score disclosure exception notices is pre-consummation (16 C.F.R. §§ 640.4(c)(2) and 640.5(e)(3); 12 C.F.R. §§ 1022.73(c)(2) and 1022.74(e)(3)), which is when the consumer is interacting with the motor vehicle dealer, and its unique content is accessible from a credit report that may be accessed by dealers as well as finance sources. In contrast, adverse action notices are sent post-credit denial, when finance sources have already received and reviewed the credit application, and only finance sources are in a position to explain the basis of their underwriting review. In addition, assignee creditors already issue adverse action notices, so clarifying that there is no obligation for a dealer to issue an additional adverse action notice when it forwards the credit application to a finance source for review would not impose a new duty or burden on finance sources. Rather, it would serve the important function of simplifying and providing to the consumer the most relevant explanation of the adverse action.

[30] 85 Fed. Reg. at 18,216 (Questions 7-10).

[31] *See, e.g.,* NADA's: (i) Comments in response to the FTC's proposed amendments to the GLB Safeguards Rule ("Safeguards Comments"), currently available at www.regulations.gov/document?D=FTC-2019-0019-0046; (ii) Comments to the FTC in response to the "FTC's Approach to Privacy," which includes NADA's embedded Comments to the Department of Commerce and the National Telecommunications and Information Administration (NTIA)("NTIA Comments"), currently available at www.regulations.gov/document?D=FTC-2018-0098-0082; (iii) Comments in response to the FTC-National Highway Traffic Safety Administration Connected Car Workshop ("Connected Car Comments"), currently available at www.ftc.gov/system/files/documents/public_comments/2017/05/00038-140613.pdf; and (iv) letter to the Senate Banking, Housing, and Urban Affairs Committee ("Senate Letter"), currently available at www.banking.senate.gov/imo/media/doc/Data%20Submission_National%20Automobile%20Dealers%20Association%20(NADA)1.pdf).

[32] *See e.g.*, Connected Car Comments, Senate Letter, and NTIA Comments at 8-9.

[33] *See e.g.,* Safeguards Comments at 6-10.

(ii) differ in the automotive financing market due to the connected car, franchise and captive relationships, and the paramount need for cybersecurity in the automotive context; and

c) the need for expansive consumer education[34] and choice with respect to automotive (including auto finance) consumer data.

These submissions also address the issue of a federal data breach law or regulation and outline some of the undue burdens under GLB.

Similar questions to those in the RFI related to consumer privacy and control involving FinTech companies arise in the motor vehicle dealership context with respect to access to data by dealership service providers. Specifically, questions concerning seamless and secure third-party integration and the anticompetitive effects of artificial controls on such integration in the motor vehicle dealer context have recently been addressed by several states through the enactment of legislation[35] and are the subject of ongoing nationwide litigation and other regulatory inquiries. We would welcome a discussion on these (and other consumer protection issues related to data) as FinTech data integration and access questions have also arisen in the automotive context, and because we believe that seamless, secure, and transparent data integration is critical to ensuring consumer control and promoting market competition.

Consumer Financial Education

The RFI also asks "What is the optimal mix of regulation, enforcement, supervision, and consumer financial education for achieving the Bureau's consumer protection goals?"[36]

The most effective approach to protecting consumers is to educate them, as it empowers consumers to leverage competition in the marketplace to their benefit without imposing unnecessary costs on businesses that may ultimately be borne by consumers. To the extent consumers are unable to make these choices due to a market failure, regulation may be necessary, but it should only be utilized when the market failure is the result of a systemic abuse that cannot adequately be addressed by supervision and/or enforcement. To do otherwise creates the imposition of additional burdens and costs on large numbers of businesses whose conduct has not frustrated the efficient operation of the marketplace or otherwise caused consumer harm. Indeed, relying on such a blunt instrument to protect consumers when more targeted options are available represents imprudent public policy as it draws no distinction between – and imposes the same level of compliance duties on – honest and dishonest businesses (with the likely and unfortunate result that only the honest businesses will end up absorbing the costs to comply with the new duties).

With regard to consumer financial education, many additional opportunities exist for government, industry, and consumer groups to leverage their respective resources to deliver to

[34] *See, e.g.*, Connected Car Comments at 7-8 and Senate Letter.
[35] *See, e.g.*, A.R.S. §§ 28-4651–28-4655, currently available at www.azleg.gov/legtext/54leg/1R/bills/HB2418H.pdf.
[36] 85 Fed. Reg. at 18,217 (Question 22).

consumers neutral and coordinated information that can enhance their financial literacy. If such opportunities are pursued in a manner that is factual, agenda-free, and devoid of bias, then they offer enormous potential to benefit consumers.[37]

Measuring Consumer Financial Protection

The final inquiry in the RFI asks "How can we best assess the efficacy of the Federal consumer financial protections in achieving their goals?"[38]

The Taskforce will certainly benefit from a data driven approach to measuring the effectiveness of consumer financial protections. This means examining the marketplace as whole, measuring the extent of any alleged abuses, and applying perspective to anecdotes that do not demonstrate marketwide conduct. This was aptly recognized by the FTC in 2011 when it conducted a series of in-depth roundtables examining potential abuses in the motor vehicle industry.[39]

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[37] Perhaps the best example of an effort by government to work with stakeholders to educate consumers is the FRB's *Keys to Vehicle Leasing* brochure (currently available at www.federalreserveconsumerhelp.gov/~/media/files/learnmore/keysbrochure%20final.pdf).

[38] 85 Fed. Reg. at 18,217 (Question 23).

[39] *See* the FTC's Statement under "Roundtable Goals and Topics for Comment" in its Notice entitled *Public Roundtables: Protecting Consumers in the Sale and Leasing of Motor Vehicles*, 76 Fed. Reg. 14,014 – 14,017 (Mar. 15, 2011): "Of particular interest is data and empirical evidence supporting comments provided in response to this request;" the comments of then-Associate Director of the FTC's Division of Financial Practices Joel Winston at Panel 1 of the Detroit Roundtable: "And just to emphasize, what we're going to be looking for throughout this session today and future sessions is as much empirical evidence as possible. We've all heard stories and anecdotes and individual cases where consumers were mistreated in one way or another. One of the real goals of this process is to find out how prevalent those practices are. So if there are any studies, any sort of empirical data – that's something we'd be interested in seeing;" the comments of FTC Division of Financial Practices Attorney Carole Reynolds at Panel 4 of the Detroit Roundtable: "Does anyone have data on these practices occurring?;" the comments of FTC East Central Region Director John Miller Steiger at the conclusion of the Detroit Roundtable: "… And in order to get good useful answers, we need data. And I know you've heard that from us as a constant refrain, but we really do…;" the comments of FTC Division of Financial Practices Assistant Director Malini Mithal at Panel 1 of the San Antonio Roundtable: "To the extent we have any information about widespread practices, that would be helpful from the panelists" and "Has there been any kind of analysis of trends and complaints from military consumers or any kind of… statistics or any widespread practices that we have any information about?;" the comments of FTC Bureau of Consumer Protection Deputy Director Chuck Harwood at the beginning of the DC Roundtable: "We are especially interested in data and empirical information;" the comments of FTC Division of Financial Practices Attorney Robin Thurston at Panel 4 of the DC Roundtable: "And, again, if you have data or other indicators of how frequently these practices occur, that would be great;" and the comments of then-Acting Associate Director of the FTC's Division of Financial Practices Reilly Dolan at the conclusion of the DC Roundtable: "…We are looking at whatever data we can get. And I will continue to say, please give us hard facts and data. That's more persuasive than anecdotes." Additional information on the FTC Motor Vehicle Roundtables is currently available at www.ftc.gov/news-events/press-releases/2012/02/ftc-continues-seek-public-input-consumer-issues-motor-vehicle.

To the extent data is offered to suggest that problematic conduct is prevalent in the marketplace, we urge the Taskforce to carefully examine the validity of the methodology that is offered in support of the data.[40]

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We thank the Bureau for the opportunity to comment on the RFI and look forward to engaging the Taskforce further on this important initiative.

Sincerely,

/s/

Paul D. Metrey
Vice President, Regulatory Affairs
National Automobile Dealers Association

/s/

Damon Lester
President
National Association of Minority Automobile Dealers

[40] For a critique of how a public policy debate can be undermined by reliance on poor data, *see* Glenn Kessler, "Warren's false claim that 'auto dealer markups cost consumers $26 billion a year." *The Washington Post*, May 5, 2015, currently available at: www.washingtonpost.com/news/fact-checker/wp/2015/05/05/warrens-false-claim-that-auto-dealer-markups-cost-consumers-26-billion-a-year/.