

March 25, 2024

Comment Intake
Consumer Financial Protection Bureau
Attention: PRA Office
1700 G Street NW
Washington, DC 20552

**Re: *Auto Finance Data Project, Docket No. CFPB–2024–0004, OMB Control
Number: 3170–00XX***

To Whom it May Concern:

The American Bankers Association,¹ American Financial Services Association,² America’s Credit Unions,³ Consumer Bankers Association⁴, and U.S. Chamber of Commerce⁵ (the “Associations”) write in regard to the Consumer Financial Protection Bureau’s (CFPB) Paperwork Reduction Act request for comment regarding its proposed new information collection titled “Auto Finance Data Project.” Congress enacted the Paperwork Reduction Act (PRA) to ensure that, when a federal agency collects information from the public, the information collection provides practical benefit to the agency and minimizes the burden on respondents. As such, the Associations urge the CFPB to abandon the new information collection because: (1) the CFPB lacks the legal authority to collect the information; and (2) the CFPB grossly underestimates the burden of the information collection.

¹ The American Bankers Association (ABA) is the voice of the nation’s \$23.7 trillion banking industry, which is composed of small, regional and large banks that together employ approximately 2.1 million people, safeguard \$18.8 trillion in deposits and extend \$12.5 trillion in loans.

² Founded in 1916, the American Financial Services Association (AFSA) is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

³ America’s Credit Unions is the voice of consumers’ best option for financial services. We represent our nation’s nearly 5,000 federally and state chartered credit unions that collectively serve nearly 140 million consumers with personal and small business financial service products. America’s Credit Unions delivers strong advocacy, resources, and services to protect, empower and advance credit unions and the people they serve. We advocate for responsible legislative policies and regulations so credit unions can efficiently meet the needs of their members and communities.

⁴ The Consumer Bankers Association (CBA) is the only national trade association focused exclusively on retail banking. Established in 1919, the association is a leading voice in the banking industry and Washington, representing members who employ nearly two million Americans, extend roughly \$3 trillion in consumer loans, and provide \$270 billion in small business loans.

⁵ The Center for Capital Markets Competitiveness’s (CCMC) mission is to advance America’s global leadership in capital formation by supporting diverse capital markets that are the most fair, transparent, efficient, and innovative in the world. CCMC advocates on behalf of American businesses to ensure that legislation and regulation strengthen our capital markets allowing businesses—from the local flower shop to a multinational manufacturer—to mitigate risks, manage liquidity, access credit, and raise capital.

I. Summary of Proposed Data Collection

As required by the PRA,⁶ the CFPB has published a notice and request for comment regarding a proposal to collect annually a set of data from lenders that originate greater than 20,000 auto loans in the previous calendar year (Notice).⁷ The Bureau states that the data collection would mirror the Auto Finance Data Pilot (“Auto Finance Data Pilot” or “Data Pilot”).⁸ In the Data Pilot, nine lenders were compelled by the CFPB using its market monitoring authority in Section 1022(c)(4) of the Dodd-Frank Wall Street and Consumer Protection Act (Dodd-Frank Act)⁹ to provide a substantial amount of data for all financing originated or serviced over a five-year period.¹⁰ The data included, but is not limited to, the following:

- the total price of the vehicle,
- all fees,
- any voluntary products,
- all the loan terms,
- the dealer reserve amount,
- both the loan-to-value and payment-to-income ratios,
- the brand of vehicle,
- whether the vehicle was new or used,
- information on the dealer,
- information on the borrower such as credit score and income,
- the military status of the borrower,
- information on the co-borrower,
- information on whether the loan was paid off,
- whether the vehicle was repossessed,
- and any information about that repossession, and
- consumer complaints.

The CFPB also proposes to collect annually a more limited data set from lenders that originated greater than 500 loans and fewer than 20,000 loans in the previous calendar year. These lenders would be required to submit information on the number of vehicles repossessed and the number of loan modifications.

However, the CFPB’s notice does not include the survey instrument to be used in this newly proposed collection. Instead, the Bureau simply states that the collection will mirror the Data Pilot. The lack of access to the survey instrument for this new information collection significantly impedes the Associations’ ability to offer comments and address the questions posed by the CFPB in the Notice.

⁶ 44 U.S.C. § 3501 *et seq.*

⁷ 89 Fed. Reg. 4281-82 (Jan. 23, 2024), <https://www.govinfo.gov/content/pkg/FR-2024-01-23/pdf/2024-01230.pdf>.

⁸ Landau, Richard, Chris Kukla, and Ashwin Vasani. “Our Auto Finance Data Pilot.” Consumer Financial Protection Bureau, February 23, 2023. <https://www.consumerfinance.gov/about-us/blog/our-auto-finance-data-pilot/>.

⁹ Public Law 111-203, §1022, 124 Stat. 1982 (2010).

¹⁰ Because the CFPB requested information on loans serviced in the past five years, the data request actually went back 14 years in some instances.

II. The CFPB Lacks the Legal Authority to Collect the Information.

The CFPB ought to withdraw the Notice because its market monitoring provisions do not furnish the authority for conducting this proposed collection, the collection will result in the unlawful gathering and analyzing of personally identifiable financial information, and the collection contravenes numerous provisions of the PRA.

A. *The CFPB's market monitoring provisions do not provide the CFPB with the authority to conduct this proposed data collection.*

The Notice begins with a breathtaking misstatement of the Bureau's authority. The Bureau claims the freestanding authority, and even the duty, to "monitor[] for risks to consumers in the offering or provision of consumer financial products or services." But in fact, Congress created no such authority. Rather, the Bureau's monitoring authority exists "in order to support its rulemaking and other functions."¹¹ The Bureau does not have a freestanding authority (let alone duty) to monitor for putative risks to consumers; instead, it may employ the information collection tools of 12 U.S.C. § 5512(c) in pursuit of the exercise of its other authorities. The Bureau is not a research institute; it exists to safeguard consumers, and its data collection must be in service of that goal. Courts have been perfectly clear that a general authority, such as the CFPB's monitoring authority, does not confer power to take any action whatsoever so long as it is "reasonably related to the purposes of the enabling legislation."¹² Rather, the CFPB needs to point to a particular statutory authority the exercise of which its contemplated collection would assist.

The contrary position, that the Bureau may collect data unrelated to its own rulemaking, enforcement, and other activities, would give the Bureau nearly unbounded discretion to demand data. But courts have rejected the notion that general agency authorities confer power to collect whatever information might be of interest to the agency at a given moment in time.¹³

To be sure, as the Bureau pointed out in its Auto Finance Data Pilot orders, 12 U.S.C. § 5511(c)(3) states that one of the Bureau's "functions" is "collecting, researching, monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets." But this statement, found amid other precatory statements of purposes and objectives in § 5511, does not confer authorities on the Bureau. We know this because another "function" listed in 12 U.S.C. § 5511(c) is "issuing rules, orders, and guidance" – yet Congress did not rely on this provision to confer rulemaking authority on the Bureau, instead giving that authority in § 5512. Section 5511 should therefore not be interpreted to give the Bureau authorities in pursuit of which information collections may be carried out.

Moreover, Congress typically mandates extensive data collections through precise language in legislative acts. Notably, the Dodd-Frank Act, from which the Bureau derives its market monitoring authority, includes specific provisions authorizing comparable comprehensive data collections. For instance, § 1071 of the Dodd-Frank Act amended the Equal Credit Opportunity

¹¹ 12 U.S.C. § 5512(c).

¹² *Colo. River Indian Tribes v. Nat'l Indian Gaming Comm'n*, 466 F.3d 134, 139 (D.C. Cir. 2006).

¹³ *See NYSE LLC v. SEC*, 962 F.3d 541, 546, 555 (D.C. Cir. 2020).

Act (ECOA), compelling financial institutions to gather and report annually to the CFPB 13 data points concerning credit applications by women-owned, minority-owned, and small businesses.¹⁴ Additionally, the Dodd-Frank Act amended the Home Mortgage Disclosure Act (HMDA), broadening the spectrum of data points lenders must collect and report annually to the CFPB, now totaling 48.¹⁵ These congressionally sanctioned collections are considerably smaller in scope than the 120 data points sought in the proposed collection. It is implausible that Congress, through vague “market monitoring” language, intended to endorse the expansive data collection presently proposed by the CFPB.

The Bureau has not so much as suggested any other authorities the data it seeks to collect here could help it to exercise. Nor is it possible to imagine what those authorities could be. Absent an authority in service of which the Bureau may invoke its market monitoring tools, the information collection is inappropriate. At the very least, the Bureau should withdraw the current Notice and release another that details the authorities pursuant to which it seeks to use its market monitoring tools, so the public may comment on the potential information collection.

B. If approved, the collection would result in the unlawful gathering and analyzing of personally identifiable financial information.

The proposed collection is also unlawful because it would violate 12 U.S.C. § 5512(c)(4)(C)’s bar on the Bureau “gathering or analyzing the personally identifiable financial information of consumers.” As detailed in the above list, the Bureau will be collecting an immense amount of information about the personal finances of millions of Americans. Due to the exhaustive and meticulous nature of the collection, the Bureau could readily discern the identities of individual Americans linked to each account subject to reporting. For instance, that any two borrowers with the same income and the same credit score have originated a loan on the same date in the same zip code for the same brand of automobile is (to put it mildly) unlikely.

The Bureau has not said whether this information would be made public or not. A publicly accessible database encompassing all this information would facilitate the relatively effortless identification of borrowers, especially in specific regions. By coupling zip codes with details such as whether the vehicle is new or used, the origination date, and the brand, neighbors could easily locate each other. This scenario is particularly conceivable for less common or collector vehicles. Consequently, individuals could access sensitive data such as the borrower’s income and credit score.

Moreover, a comprehensive public database containing all the requested information would also unveil each financial institution's proprietary underwriting models. Armed with both loan pricing details and borrower information, it would be easy to reverse engineer the credit models employed by each institution.

The Bureau cannot save the collection by instructing reporting entities to remove names and addresses from their productions, for the granularity of the collected data makes it easy enough to identify individual Americans without names or addresses. True, the CFPB may lack access to data

¹⁴ Public Law 111-203, §1071, 124 Stat. 2056.

¹⁵ *Id.* §1094, 124 Stat. 2097.

that would allow it to take the final step of matching particular people to the financial profiles the data it seeks would allow it to build—though again, it may well have access to such data. But the Bureau’s own regulations recognize that information may qualify as personally identifiable even if it lacks names and addresses. For instance, under the Bureau’s regulations an account number qualifies as personally identifiable, even in the absence of the name or address of the person who owns the account.¹⁶ If such account numbers are personally identifiable, then so surely is the highly unique information that the CFPB plans to demand about each account.

Before moving forward with the proposed collection, the CFPB must explain what it will do with the data as a whole and how it will analyze the data, and what precautions it will take to ensure this data is protected or otherwise kept secure so to not create the potential for consumers to be re-identified. For example, the Bureau went to great pains to evaluate the privacy risks of previous data collections. We are highly concerned about the risks of this data being made public given it is personally identifiable. Providing data in the aggregate would help to protect consumers and still fulfill the CFPB’s purported information gathering goal.

C. The proposed collection is unnecessary for the proper performance of the functions of the CFPB and lacks practical utility.

In order to obtain OMB clearance under the PRA, a government agency must certify (and furnish a supporting record for such certification) that each information collection submitted is “necessary for the proper performance of the functions of the agency, and that the information possesses practical utility.”¹⁷ Additionally, the Bureau has authority to require only those disclosures that are “*necessary* for the Bureau to fulfill the monitoring, assessment, and reporting responsibilities imposed by Congress.”¹⁸

Remarkably, the Bureau has failed to explain in the Notice the rationale behind its necessity for this substantial volume of information or the specific issue it aims to address through this data collection. During the Data Pilot, some the nine lenders submitted nearly a hundred million lines of data going back as far as 14 years. To date, the CFPB has not disclosed any public information or reports regarding the Data Pilot, nor has it justified the need to broaden the scope of mandatory filers. This further underscores the argument that the annual collection of such an exorbitant and intrusive volume of data is superfluous for the CFPB to carry out its duties. Certainly, the requirement to generate extensive amounts of such extraneous data will only divert entities from supplying focused data that could genuinely benefit the Bureau.

For example, what will the CFPB do with the borrower’s zip code? Why does the CFPB ask for complaints when it already has its own complaint database? How could the date of origination help the Bureau determine if borrowers face undue risk? And what value does the truncated VIN add, except to allow easier identification of individual buyers (contrary to the Bureau’s enabling statute¹⁹)? In fact, the proposed collection request is doubly deficient in that some of these

¹⁶ See 12 C.F.R. § 1016.3(q)(2)(ii).

¹⁷ 44 U.S.C. § 3506(c)(3)(A).

¹⁸ 12 U.S.C. § 5512(c)(4)(B)(ii) (emphasis added).

¹⁹ 12 U.S.C. 5512(c)(4)(C)

apparently unnecessary fields are precisely those that pose the highest risk of facilitating personal identification of buyers, a topic discussed in further detail above.

We note that this objection holds even if the Bureau does (contrary to our argument above) possess freestanding monitoring authority, for the proposed collection is patently unnecessary at many points for the exercise of such a freestanding authority. Annual, loan-level information spanning over 120 data points is not necessary for the Bureau to engage in market monitoring – that could be done via aggregate reporting and on a less frequent basis. The date of origination, the zip code of the borrower, the truncated VIN, and many other features simply cannot be helpful to the Bureau in learning anything about consumer risk in the auto lending market. Even if this data would be in some measure useful, it certainly is not *necessary* for the CFPB to attain its statutory goals. But necessity is the threshold Congress set for CFPB collections under § 5512(c)(4)(B)(ii), and the CFPB should honor it.

Furthermore, a significant portion of the data would lack “practical utility,” as it would not allow for comparisons across entities, thereby failing to provide the Bureau with the basis for drawing meaningful conclusions. The auto finance market is a diverse market with very different companies serving different populations. These diverse institutions cannot be easily compared. For example, an independent auto finance company that serves borrowers with subprime credit scores cannot be compared to a bank serving primarily customers with prime credit scores.

Another factor contributing to the incomparability of this data collection is the variance in how lenders interpret and utilize identical terms. For example, the term “value” within “loan-to-value” may represent the Kelley Blue Book value for one lender, while for another lender, it could denote the amount the consumer paid. Unlike data obtained during supervisory exams, where ample opportunity exists for discussion and clarification, the lack of uniformity in the requested data significantly diminishes its usefulness. These discrepancies further diminish the dataset’s utility.

In a blog post announcing the Auto Finance Data Pilot,²⁰ the CFPB explained why it is proceeded with the pilot. However, those reasons do not justify the massive collection of information the Bureau is now proposing. For example, the CFPB says that currently available data is not broken down by whether the consumer secures financing directly with a lender or indirectly through a dealer. However, the Bureau doesn’t explain why such information is necessary. The Bureau also notes that the use of different definitions and terms in various data sources leads to data quality issues, but this collection request doesn’t solve that issue.

D. The proposed collection is unnecessarily duplicative of information otherwise reasonably accessible to the agency.

In order to obtain OMB clearance under the PRA, a government agency must certify (and furnish a supporting record for such certification) that each information collection submitted “is not unnecessarily duplicative of information otherwise reasonably accessible to the agency.”²¹ As detailed below, much of the information requested in this proposed data collection is already

²⁰ See Landau, Richard, Chris Kukla, and Ashwin Vasani. “Our Auto Finance Data Pilot.” Consumer Financial Protection Bureau (Feb. 23, 2023), <https://www.consumerfinance.gov/about-us/blog/our-auto-finance-data-pilot/>.

²¹ 44 U.S.C. § 3506(c)(3)(B).

available to the CFPB through existing government and public reports and through its examination of supervised entities. The use of these sources would allow the Bureau to obtain the data it seeks through less expensive and more efficient means.

As noted in our comment²² to the CFPB in 2022, a plethora of information about auto loans is currently available to the CFPB, including:

1. The Federal Reserve’s G.19 report includes quarterly data with the number of new motor vehicle loans, along with the amount of outstanding motor vehicle loans.
2. The Federal Reserve’s G.20 report includes monthly data on both new and used car interest rates, maturity, and amount financed. It also includes data on outstanding receivables for both motor vehicle loans and leases.
3. The Federal Reserve’s Financial Accounts of the U.S. – Z.1 includes data on transactions and levels of financial assets and liabilities, by sector and financial instrument; full balance sheets, including net worth, for households.
4. The Securities and Exchange Commission (SEC) requires loan-level information to be disclosed when financial institutions offer asset-backed securities (ABS). As most auto loans are securitized, this information covers a significant portion of the market. Furthermore, several organizations already track and summarize this information, including S&P Global,²³ Fitch Ratings,²⁴ and SIFMA,²⁵ along with many others.
5. News outlets cover the industry in great detail, especially Cox Automotive Market Insights and Outlook,²⁶ Automotive News,²⁷ and Auto Finance News.²⁸
6. Data and analytics reports from a multitude of sources, including: Black Book, Experian Auto Count, TransUnion Auto Lending Solutions, Equifax Automotive Infosys Automotive, Big Wheels Auto Finance Data, JD Power, Agora Data, Genpact, Defi Solutions, LexisNexis Risk Solutions, Fortune Business Insights, Moody’s Analytics Auto

²² “Comment from Credit Union National Association,” (Dec. 20, 2022), <https://www.regulations.gov/comment/CFPB-2022-0075-0035>.

²³ “U.S. Auto Loan ABS Tracker: Full-Year and December 2023 Performance.” U.S. Auto Loan ABS Tracker: Full-Year and December 2023 Performance | S&P Global Ratings, <https://www.spglobal.com/ratings/en/research/articles/240213-u-s-auto-loan-abs-tracker-full-year-and-december-2023-performance-12989381>.

²⁴ “Subprime Auto ABS Performance Deterioration Likely with Downturn.” Fitch Ratings (Aug. 23, 2023), <https://www.fitchratings.com/research/structured-finance/subprime-auto-abs-performance-deterioration-likely-with-downturn-23-08-2023>.

²⁵ “US Asset Backed Securities Statistics.” SIFMA (Feb. 5, 2024), <https://www.sifma.org/resources/research/us-asset-backed-securities-statistics/>.

²⁶ Including an Auto Market Weekly summary with information on new and used vehicle prices, access to credit, and auto loan performance.

²⁷ With interactive analytics tools and downloadable reports featuring automotive sales, production, inventory, registrations, incentives, financing and vehicles in operation data.

²⁸ Whose data and analytical tools provide an in-depth look at various sectors of the auto finance industry.

Finance Risk Management Solutions, Accenture Auto Finance Consulting Services & Solutions, and Edmunds.²⁹

7. Information about government fees is available from the governments that charge those fees.

The Notice fails to explain why these sources are not adequate for the Bureau's market monitoring purposes. For example, in the blog post announcing the Auto Finance Data Pilot,³⁰ the CFPB says that there are call reports from banks, but not from non-depositories. But all of the data sources in #1 – 6 above provide information about auto loans from non-depositories. Furthermore, the Bureau notes that some data sources are prohibitively expensive. But it would be cheaper for the Bureau to buy data from all of the sources combined than to collect hundreds of millions of data points from thousands of companies. Lastly, the Bureau notes that information on repossessions is lacking. However, information about repossessions is also available in the data sources outlined in #5 and #6 above.

Additionally, under its supervisory authority, the CFPB has the ability and authority to request auto lending data from supervised institutions. Today this includes banks, credit unions, larger participants of the automobile financing market, and entities that the Bureau has reasonable cause to determine pose risks to consumers. This supervisory work informs the Bureau of trends and risks in the auto finance market and can be used to identify potential risk areas. Imposing an enormous annual data collection and reporting burden on lenders that are already subject to Bureau supervision is not only unnecessary but also unduly burdensome. The CFPB's Supervisory Highlights demonstrate the level of oversight and access to data that the CFPB already has through the supervisory process. If the CFPB be concerned about a specific company, the Bureau has supervision authority to review loan level data.

Moreover, the CFPB's data and research team, which is led by PhD social scientists that design and conduct foundational policy research on consumer finance, already has demonstrated access to the auto lending sources necessary to create reports on auto lending, including *Subprime Auto Loan Outcome by Lender Type*,³¹ *Quarterly Consumer Trends: Growth in Longer-term Auto Loans*,³² *Consumer Voices on Automobile Financing*,³³ and *Using Publicly Available Information to Proxy for Unidentified Race and Ethnicity*.³⁴ In other words, the Bureau has been able to execute

²⁹ While these require a subscription, they are hundreds of thousands of dollars cheaper than the amount of money that auto lenders would spend gathering and reporting the information requested by the CFPB. It would also save the CFPB time and money, as millions and millions of lines of data would not need to be gathered, aggregated, and analyzed.

³⁰ CFPB, Our Auto Finance Data Pilot, *supra* note 13.

³¹ Office of Research. "Subprime Auto Loan Outcomes by Lender Type." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/data-research/research-reports/subprime-auto-loan-outcomes-lender-type/>.

³² Office of Research. "Quarterly Consumer Credit Trends: Growth in Longer-Term Auto Loans." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/data-research/research-reports/quarterly-consumer-credit-trends-growth-longer-term-auto-loans/>.

³³ "Consumer Voices on Automobile Financing." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/data-research/research-reports/consumer-voices-automobile-financing/>.

³⁴ "Using Publicly Available Information to Proxy for Unidentified Race and Ethnicity." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/data-research/research-reports/using-publicly-available-information-to-proxy-for-unidentified-race-and-ethnicity/>.

its statutory obligations in supervising and examining the auto finance market without any additional burdensome and ongoing data collection.

Even assuming the Bureau needs information that is not already available, the CFPB disregards the fact that just last year nine auto lenders produced a very large trove of data. That data should allow the Bureau to evaluate consumer risk in the auto lending market. Yet the Bureau plans to seek the same data from a much larger set of entities. If the earlier production of data was useful, then the Bureau shouldn't need to embark on a redundant request – it should tailor the proposed collection. But if the earlier production was not useful, then there is no point in repeating the collection on a larger scale.

Relatedly, the CFPB should release its report on its analysis of the data already collected before it proceeds with the proposed collection, so the public can comment on the existence of any gaps in knowledge of risk in auto lending that might remain. Absent such a report, the public must engage in guesswork to provide feedback to CFPB on the topics on which 44 U.S.C. 3506(c)(2) requires the Bureau to seek public comment.

Given the availability of the above resources and the Bureau's supervisory and examination authority, a significant portion of the information sought in this proposed collection appears to be “unnecessarily duplicative of information otherwise readily accessible to the agency.”

E. The CFPB's collection request is excessively burdensome.

In order to obtain OMB clearance under the PRA, a government agency must certify (and furnish a supporting record for such certification) that each information collection submitted “reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities.”³⁵ The Bureau has made no discernible effort to reduce the burden on respondents.

To the contrary, the collection the CFPB seeks to make is excessive and goes well beyond data needed to monitor the functioning of markets for consumer financial products and services and to identify risks to consumers. For example, as noted in the previous section, the Bureau can obtain the data it seeks by less expensive and more efficient means, including by obtaining the data requested in this new collection through existing government and public reports and through examination of supervised entities, as discussed above. Instead, the Bureau proposes a more complicated and burdensome approach.

Moreover, the Bureau fails to acknowledge the considerable burden associated with identifying, extracting, and furnishing data stored in formats that hinder easy compilation. Both larger and smaller companies encounter distinct challenges in this regard. Larger enterprises contend with a vast volume of data across multiple systems, including legacy systems stored in various formats such as electronic and paper, necessitating thorough review. Conversely, smaller companies contend with less data availability, and what data is accessible may not align with the Bureau's understanding of defined terms.

³⁵ 44 U.S.C. § 3506(c)(3)(C).

Furthermore, financial institutions may not have certain data points in a form that allows them to readily report the data. For example, while it may be possible for an auto lender to report the number of contracts with Guaranteed Asset Protection (GAP) or a vehicle warranty, dealers sell other products that the lenders may not necessarily track, or if they do, such information is not uniformly kept in an identifiable manner; for example, it may be combined into miscellaneous field(s).

Even granting for the moment CFPB's claim that it labors under ignorance of facts about the auto loan industry, it is clear that the Bureau has some information about the industry which has allowed it to fulfill its statutory responsibilities. The Bureau has no need to undertake a new comprehensive collection; rather, it should seek to fill in the "gaps" to which it refers in the Notice. But instead of filling in gaps, the Bureau threatens to demand near-comprehensive information about each auto loan made by some 4,000 covered entities representing the vast majority of the market share. The Bureau cannot even adequately assess the need for burden reduction because it so grievously misstates the burden associated with its collection, as explained in the next section.

As the Bureau cannot affirm compliance with these congressional prerequisites for information collections, it should abstain from pursuing approval for the collection. Should it proceed nonetheless, OMB ought to deny the request for approval.

III. The CFPB Woefully Underestimates the Burden of the Information Collection.

The first stated purpose of the PRA is to "minimize the paperwork burden for individuals, small businesses, . . . and other persons resulting from the collection of information by or for the Federal Government."³⁶ In that spirit, the CFPB's burden estimate is so low that it suggests that the CFPB does not understand the magnitude of the data request. The Bureau estimates 4,000 respondents (which seems correct) for an estimated total annual burden of 1,375 hours. That breaks down to about 20 minutes per respondent. As discussed further below, this estimate is off by a magnitude of 3,000. The CFPB provides no information to support this estimated burden. It does not describe any analysis or survey process that was used to develop the estimate. It simply makes a blanket assertion with no supporting details or documentation.

The CFPB must be aware through other data collection programs that this estimate is unrealistic. Through the Bureau's experience with Home Mortgage Disclosure Act (HMDA), the implementation of § 1071 rulemaking, and the Auto Finance Data Pilot, the CFPB has existing burden information available to calculate an estimate that is not completely unrealistic.³⁷

³⁶ 44 U.S.C. § 3501(1).

³⁷ In a non-CFPB example, the Securities and Exchange Commission (SEC) requires loan-level information to be disclosed for just over 100 data fields when financial institutions offer asset-backed securities (ABS). In 2014, the SEC revised its ABS rules and estimated that an auto ABS issuer would incur 2,770 hours in one-time setup costs and to provide the asset-level data for the first time.³⁷ The SEC explains further: "Based on the average number of unique sponsors in each asset class, we estimate that the total burden estimate for the initial filing of asset-level data, including the one-time setup cost to be 259,711 hours. We allocate 25% of those hours (64,928) to internal burden hours and 75% of the hours (194,783) to out-of-pocket expenses for software consulting and filing agent costs at a rate of \$250 per hour for a total cost of \$48,695,625."³⁷ (available at <https://www.sec.gov/files/rules/final/2014/33-9638.pdf>. p. 495.) As you can see, the hours estimated by the SEC to identify the data fields were in the thousands, and the reality

First, with regards to HMDA, it requires 48 data points (as compared to over 120 data points the Bureau is proposing for auto finance) and there are 136 HMDA respondents supervised by the CFPB. The CFPB estimates it takes those 136 respondents over a million and half hours and costs almost \$1.4 million to comply. While we do not think the CFPB’s estimates for HMDA accurately capture all of the burden it imposes, still, they are closer to the realm of reason than the 20 minutes the Bureau estimates for this much larger data collection.³⁸

Second, the CFPB also fails to consider the monetary compliance cost of such an undertaking, as shown through § 1071. On March 30, 2023, the CFPB published a final rule to implement § 1071. The final rule expanded on the thirteen statutorily mandated data points and requires financial institutions to collect and report 81 data fields, again, a smaller set of data points when compared to the 120 the Bureau is potentially proposing for auto finance. The ABA conducted an anonymous survey to estimate the cost of compliance with the final § 1071 rule. Respondents to the ABA survey said one-time costs would range between \$112,685 and \$7,474,186 and that ongoing compliance costs would be between \$71,944 and \$2,010,125.³⁹

Supervised lenders with experience in identifying, compiling, validating and submitting data as part of the supervisory process know that this can be a very time consuming and tedious process. Many lenders dedicate full time teams to perform this function, amounting to hundreds if not thousands of hours.

And third, several of the nine companies who were part of the pilot project indicated they spent between several hundred hours to over a thousand clarifying, compiling, reviewing, and submitting the data. At the very least, CFPB staff spent longer than 20 minutes per company engaging on the survey instrument and responding to requests for clarification. Of course, over time, the burden may be reduced as companies put programs in place to compile and submit the data. But even so, it would never be as low as the Bureau’s estimate.

Many of the Associations’ members are supervised lenders with experience in identifying, compiling, validating, and submitting data as part of the supervisory process. After reviewing the Data Pilot orders and data points, these members have identified the following activities⁴⁰ as necessary to respond to this proposed information collection, including:

is that many lenders have full time staffs dedicated to identifying, validating and submitting this information. Although the data request is less frequent, the number of data points requested in the pilot is even greater than in the ABS loan-level reporting.

³⁸ In fact, institutions hire personnel whose sole job responsibility is HMDA reporting. The reporting itself is not a singular job, but instead, comprehensive and intensive to ensure data quality and accuracy. Specifically, the HMDA process involves annual training, the initial data collection, researching/responding to questions about whether or not a loan is reportable, verification by a loan processor of accuracy and completion, data integrity audit/monitoring, input of data, geocoding, and the final scrub of data.

³⁹ Brown, Dan and Ryan, Kathleen. “The true cost of too much data”, ABA Banking Journal. <https://bankingjournal.aba.com/2024/02/the-true-cost-of-too-much-data/>, February 26, 2024.

⁴⁰ This list of activities is nearly identical to the burden activities described in the U.S. government’s guide to the Paperwork Reduction Act. See A Guide to the Paperwork Reduction Act – Burden Activities, <https://pra.digital.gov/burden/activities/> (last visited Mar. 19, 2024).

- Reviewing and understanding collection instructions, which includes ensuring that a lender’s staff understand the program and policy context to respond to the collection and to develop policies and procedures;
- Training staff and third party vendors, which includes multiple departments and staff involved in responding to the data collection on new policies and procedures, training the IT department to help them develop and/or update the technology and systems needed to respond to the data collection, and third parties (such as auto dealers) on the policies and processes they will need to follow if required to assist with the data collection;
- Designing, procuring, and operating a data reporting system, which includes updating existing compliance reporting software to include new data points not currently tracked and creating imports/exports to extract necessary data from loan origination systems;
- Importing data from different systems and aligning data into similar format, which includes creating imports to align data, importing data from systems such as a lender’s dealer tracking system, customer database, and loan application system, exporting data into compatible reports, and then uploading this compatible data into the auto lending data reporting system developed for the information collection;
- Testing and validating systems, which includes pulling reports after importing data into systems and analyzing those reports to ensure the uploaded data is translated correctly and accurately;
- Locating, gathering, and compiling necessary documentation for collection, which includes reviewing the required data fields, understanding what data is currently tracked and where it is located, identifying missing data points; and mapping to currently available data;
- Certifying the accuracy and/or reliability of information provided, which includes quality control monitoring and testing and conducting data validation review.
- Conducting legal/compliance review, which includes reviewing data required, ensuring systems builds are compliant, and building review processes;
- Conducting ongoing data management, which includes developing data management procedures, pulling and reconciling reports on an ongoing basis once those procedures have been finalized, and standardizing annual edits and internal checks; and
- Checking post-submission edits.

The Associations have provided a table in the Appendix, presenting a summary of the outcomes from a survey conducted among banks to gauge the estimated time burdens associated with completing the activities essential for this proposed data collection. This table encapsulates responses from 11 banks spanning various asset sizes, all possessing experience in responding to analogous data collections (e.g., HMDA), including the CFPB’s Data Pilot. While the constricted

comment deadline limited the extent of the survey responses, we contend that it offers a more precise depiction of the estimated burden for this proposed collection compared to the CFPB's unsupported and significantly underestimated estimation of 20 minutes.

If the Bureau proceeds with an information collection request, it should start over and propose an information collection request that: only includes aggregate information, is limited to originations going back no further than two years, is only collected every two years, avoids duplicative reporting, has consistent data fields that do not change, and a significantly reduced number of data fields.

IV. Conclusion

Based on the aforementioned reasons, the CFPB should retract the Notice and discontinue its pursuit of approval for this collection until it has unequivocally identified the appropriate authority for conducting it, ensured compliance with the PRA, and undertaken a thorough effort to accurately assess the estimated burden associated with the proposed data collection. OMB should withhold approval until these essential initial steps have been completed. The Associations stand prepared to offer insights from the auto financing market in response to any subsequent notices, adhering to a timeframe and process consistent with the PRA and the Bureau's statutory authority.

Thank you for your consideration of this request.

Sincerely,

American Bankers Association
American Financial Services Association
America's Credit Unions
Consumer Bankers Association
U.S. Chamber of Commerce

Appendix: Estimated Burden Survey Results for CFPB Auto Lending Data Collection

	<i>How many auto loans does your bank originate?</i>		
	<u>Less than 20,000</u>	<u>Greater than 20,000</u>	<u>Total Hours</u>
<i>List estimated time to complete and any associated tasks: NUMBER OF HOURS</i>			
Reviewing and understanding collection instructions.	2.5 – 8 hours	40 – 280 hours	2.5 – 280 hours
Training staff or other third parties on how to comply with the collection.	12 - 648 hours	40 – 950 hours	12 – 950 hours
Design, procurement, and operation of data collection reporting system.	40 – 528 hours	48 – 200 hours	40 – 528 hours
Import data from different systems and align data into similar format.	4 – 528 hours	80 – 240 hours	4 – 528 hours
Creating new data sources for those data points not currently tracked.	14 – 528 hours	200 – 300 hours	14 – 528 hours
Testing and validating systems.	6 – 528 hours	150 – 300 hours	6 – 528 hours
Locating, gathering, and compiling necessary documentation for collection.	60 – 528 hours	80 – 300 hours	60 – 528 hours
Certify the accuracy and/or reliability of information provided.	5 – 528 hours	80 – 150 hours	5 – 528 hours
Legal/compliance review.	40 – 176 hours	50 – 120 hours	40 – 176 hours
Standard annual edit and internal checks.	32 – 176 hours	100 – 1390 hours	32 – 1390 hours
Checking post-submission edits.	6 – 176 hours	40 – 1390 hours	6 – 1390 hours