

March 7, 2016

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex J)
Washington, DC 20580

Re: Auto Buyer Consumer Survey, Project No. P154800

Ladies and Gentlemen:

The American Financial Services Association¹ and the Consumer Bankers Association² (collectively, “the Trades”) appreciate the opportunity to comment on the Federal Trade Commission’s (“FTC”) auto buyer consumer survey (“Survey”). The FTC is proposing to conduct a qualitative survey of consumers who recently purchased an automobile and financed that purchase through a dealer. Through a survey research firm, the FTC intends to interview consumers about their experience in selecting, purchasing, and financing an automobile from a dealer. The interviews also will involve reviewing the consumer’s documentation from the purchase and financing.

I. The Importance of Objectivity

The Trades support consumer research and research generally. The Trades also support the general professionalism of the FTC’s work and its research staff. However, the Trades are concerned that there may be an element of bias in this Survey before it is even issued. The Federal Register notice announcing the Survey states, “Financing that is offered or arranged by dealers . . . can be a complicated, opaque process and potentially involve *unfair or deceptive practices*” [emphasis added].³ We would expect and respectfully request that the FTC research staff conduct the Survey without a preconceived notion that financing offered or arranged by dealers may possibly be unfair or deceptive, but instead begin their research with open minds and conduct the Survey in an objective manner. We believe that this request is fair, especially since only a few years ago the FTC had three roundtables and solicited comments on selling, financing and leasing motor vehicles. After gathering much information in the roundtables and comments, the FTC did not find any problems with the selling, financing, or leasing of motor vehicles.⁴ We may be especially conscious

¹ 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.

² Founded in 1919, the Consumer Bankers Association (“CBA”) is the trade association for today’s leaders in retail banking - banking services geared toward consumers and small businesses. The nation’s largest financial institutions, as well as many regional banks, are CBA corporate members, collectively holding well over half of the industry’s total assets. CBA’s mission is to preserve and promote the retail banking industry as it strives to fulfill the financial needs of the American consumer and small business.

³ “Agency Information Collection Activities; Proposed Collection: Comment Request.” 81 Federal Register 780 (Jan. 7, 2016).

⁴ The FTC roundtables, “The Road Ahead: Selling, Financing & Leasing Motor Vehicles” took place on the following dates and locations: November 17, 2011 in Washington, DC; August 2-3, 2011 in San Antonio, TX; and April 12, 2011

of the need for open minds on this issue because of recent allegations of bias against other regulatory agencies in this same area.⁵ With this background, we offer the following comments on the proposed Survey.

II. Separating Research and Enforcement

The Trades ask that the FTC specifically identify the purpose of the Survey project. The Federal Register notice announcing the Survey appears to lack clarity. For instance, Section 1, Background, of the Federal Register notice about this project uses phrases about FTC accomplishments such as “the agency has brought more than twenty-five cases in this area,”⁶ “sweep of ten actions against automobile dealers,”⁷ and “effort that yielded more than two hundred actions for fraud, deception, and other illegal practices.”⁸ Furthermore, the last sentence in the same section of the Federal Register notice that provides, “The survey is intended to inform the Commission about current consumer protection issues that may exist and that could be addressed through FTC action, including enforcement initiatives, rulemaking, or education,”⁹ does not suggest true research but rather the onset of an enforcement regime. Under the circumstances, it would be helpful if the linkage of the proposed Survey to investigation of illegal actions was explained. What the FTC might learn about potential illegal actions from a small survey of individuals, likely none of whom experienced anything illegal, is unclear.

Moreover, the Trades are concerned that the responses to the Survey could be used as an enforcement fishing expedition. The responses might allow the FTC to learn about particular areas of exposure for specific dealers or financial institutions without providing those dealers or institutions with an opportunity to respond to the information gathered until after the enforcement has commenced. To prevent this outcome and ensure that the results serve their purpose as a research tool and not a fishing expedition, we ask that the survey firm remove any information identifying either the dealer or the financial institution from the responses. Identifying information should not be included in the report or any other documents the survey firm provides to the FTC.

III. The First Step

Further, a small “qualitative research” survey would normally be the first part of a larger project in a research plan, but whether there are to be further components of this effort is not revealed. The sample size of the proposed Survey is too small for the results to be reliable, unless this Survey is part of a larger research plan. Because of the small sample size, the Survey would have to have a very large margin of error, making an analysis for statistical trends impossible. The FTC states that

in Detroit, MI. Additional information on the roundtables is available here: <https://www.ftc.gov/news-events>. The FTC’s request for comment is available here: <https://www.ftc.gov/news-events/press-releases/2012/02/ftc-continues-look-for-public-input-consumer-issues-motor-vehicle>.

⁵ For discussion, see “Unsafe at Any Bureaucracy: CFPB Junk Science and Indirect Auto Lending,” Report Prepared by the Republican Staff of the Committee on Financial Services, US House of Representatives, November 24, 2015.

⁶ 81 Federal Register 780.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ 81 Federal Register 781.

the sample will be racially diverse.¹⁰ With over fifteen races recognized by the 2010 U.S. Census, a survey of forty respondents could hardly approach racial diversity and it would be of limited use for regional analysis because at least twenty percent of the states could not have a single respondent when only forty people are interviewed.

Additionally, we are concerned that the questions themselves were not included as part of the Federal Register notice. We are concerned artfully crafted questions can be used to steer respondents toward an agenda and do not serve the purpose of obtaining objective information.

Lastly, in order to develop a complete understanding of vehicle finance, the Trades encourage the FTC to survey consumers who shopped at a dealership, but paid cash for a vehicle or found financing through a bank or credit union prior to shopping. These, or other subsets of consumers, might offer an entirely different analysis of their transaction and their experience at the dealership. For example, a consumer with a credit union check or draft for \$35,000 will likely have a much different experience to relate than a consumer who responded to a 0% financing advertisement, only to find that her credit score prevents her from obtaining the subvented rate.

IV. Specific Questions Regarding the Survey

Before proceeding with the Survey, the Trades respectfully request that the FTC provide answers to the following questions:

1. What is the reason for this qualitative research project at this time?
2. Are additional phases of this project contemplated, and if so, what and when?
3. What is the relationship between this presumably preliminary part of the project and future phases?
4. What specific questions or issues will be investigated at each stage of the project?
5. What is the relationship of questions asked to documents to be collected? If, somehow, consumers' responses and documents are to be related to some sort of enforcement regime, how will there be confidence that the experiences are accurately remembered and correct?
6. What is the purpose of purported diversity in the sample? There are enough proposed different dimensions to the proposed survey of forty or eighty individuals (credit score, race, sex) that there will be very little data for comparisons among subgroups (five or ten individuals, depending on number of interviews, in each of eight subgroups). Under the circumstances, how will the diversity be useful to the research?
7. How are results of this project to be distributed and to whom?

¹⁰ *Ibid.*

V. Conclusion

We are not concerned about estimates, or methodology in making estimates, of "Burden Hours," as required by the Paperwork Reduction Act, since the survey is voluntary (and, presumably, paid). We are much more concerned about the real burden on honest and law-abiding automobile dealerships, financing sources, and personnel if this project is not undertaken in an objective manner.

As we stated above, we encourage legitimate consumer research and applaud the general professionalism of the FTC research staff. We look forward to the FTC's answers to our questions. Please do not hesitate to contact Bill Himpler at 202-466-8616 or bhimpler@afsamail.org, or Kate Larson at 202-552-6366 or klarson@consumerbankers.com, with any questions or comments.

Sincerely,



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