



CFPB, The Roadmap Forward – Part Three

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Part Three: Risk Reward Will Always be Part of the Subprime Future

L. Jean Noonan and Texas Dealer Staff

This article was originally published in the May 2021 issue of [Texas Dealer magazine](#), pages 19-20. It is the final article of an exclusive three-part series interview with Jean Noonan, member of the CFPB Taskforce on Federal Consumer Law. Parts one and two can be found in the March and April issues of *Texas Dealer*, respectively. The entire article series can be found on the [TIADA website under Knowledge Base](#).

We resume our conversation where we left off on Part Two with a question citing the Taskforce report with recommendations for improved financial protection program.

Texas Dealer: The report states “Currently, the use of alternative data is allowed, but liability concerns over its use, methods of collection, and compliance with credit reporting laws have slowed its widespread adoption by industry.” If a dealer wanted to implement the use of alternative data what would be some of your recommendations?

Jean Noonan: First, you want to be sure it is good quality data, which is reliable and accurate. Second, you want to be sure it helps you predict risk in a statistically sound way. As many as 100 million people in the U.S. lack a traditional credit history. If a dealer can get alternative payment or cash-flow information, that will be very valuable data and may enable the dealer to approve more people on better terms than would be possible without it. Alternative data is especially valuable in a second-look program. If you cannot approve a no-file or thin-file consumer, the alternative data may be especially helpful. Even if the use of alternative data turns just 10 percent of denials into deals, this is great for consumers and the dealership.

There are some pieces of alternative data that is riskier than others. The ones I described are pretty safe. If I want to use education level, not self-reported by the consumer, but from a third-party vendor, I need pretty good information on how complete it is. Sometimes it goes back just a few years. Even though I have a law degree, I might appear to have no higher education because I attended college and law school a long time ago. I also warn clients about the risks of using criminal record information, for a couple of reasons. First, it can introduce fair lending risk because African Americans and Hispanics are more likely to be incarcerated. Second, in order to use these factors, you should be sure the information is accurate. One problem with criminal records is they often lack personally identifying information found in other sources, such as a social security number. If you are using a third-party vendor, it might be hard to be sure it belongs to the person

who has applied for credit with you. I teased Taskforce Chair Todd Zywicki that we could be pretty sure that he won't be confused as having a criminal record because there are not too many Zywickis out there. With a customer named John Baker or Jose Gonzalez, there might be many people with criminal records with that name and determining whether the record belongs to your customer can be a challenge.

Alternative data can potentially increase predictive power of underwriting and pricing models used by financial institutions, allowing institutions to expand access to credit to individuals previously considered uncreditworthy under traditional models. For instance, underwriting using cash flow data from a consumer's bank account gives a more holistic and real-time view of a consumer's actual financial situation rather than relying on point-in-time markers like monthly revolving balances that would be found on a traditional credit report. This expansion of the range of consumers a lender is willing to work with, particularly to consumers on the margin of acceptance under traditional regimes, expands access to the so-called "credit invisibles." It may also benefit consumers trying to restore good credit by enabling them to qualify for credit that could improve their financial well-being.

Texas Dealer: The report states "for the borrower whose need was too small or prospects too dim to interest the upmarket finance company, credit had to come from somewhere else. As it does today, a large population fit this description at the turn of the twentieth century: *Poverty remained a fact of life for most working-class families and a condition of existence for many. The slightest disturbance in the balance between income and expenses, whether brought on by illness, unemployment, injury, or . . . a relative in need, sent families looking for money. In these situations, children could be put out to work, meals could be cut back, boarders could be taken in, and charity solicited, but sometimes borrowing money was the only way to pay the bills.*" This quote reminded me of numerous conversations we have had with dealers over the years about how they have worked with a customer who was sick, lost a job, experienced a mechanical breakdown, or has some other family emergency. It seems larger companies are not equipped to handle this as well, what are your thoughts?

Jean Noonan: That sort of high-touch personal relationship is very important when you are dealing with a more fragile and vulnerable customer base who are not in a position to deal with things you and I might be able to withstand. Many people cannot handle those sorts of financial stressors. I would dare say some of your dealers do it both because they want the loyalty, and it may also be good business. They do not want a default. I have many finance company clients, and they almost all offer extensions because they do not want to repossess the car. They want to make this credit arrangement work for the customer. I think those can be smart and compassionate business moves. Now the one thing I must say, as a long-time fair lending lawyer, is you have to have an even hand. Obviously if you did it for your white customer but not a minority customer, you could be in trouble. Any sort of servicing concessions needs to be available to all people on a nondiscriminatory basis. Most of my big clients have policies to avoid any appearance of discrimination, such as limits on the number and frequency of an extension. And in fact, at some point default may be the most rational choice for the consumer. You know the consumer may just not have a way out of their financial dilemma.

Texas Dealer: On a different note, tell us what was your first car and what are you driving now?

Jean Noonan: My father spent his whole career in the auto parts business, so I have always loved cars. But not necessarily the sporty ones my high school friends all craved. I didn't get my first car

until I was a college senior, and it may have been one of the nerdiest cars ever built – a new green 1973 AMC Gremlin. I loved that car and drove it to both coasts several times. On a trip from Austin, TX, when I was moving to Washington, DC, after law school, the car overheated in the Smoky Mountains. I stopped at a stream and let it cool down before I investigated. I soon saw that the lower radiator hose had a tear at the clamp to the water pump, but the hose had enough play I thought I could cut off the bad part and re-attach it. All went well until I needed to force the hose back on and clamp it. The hose would not stretch to go back on, and I had no real leverage to force it. After some frustration, I thought, “If I only had a lubricant.” A light came on for me, and I applied lip balm to the hose and water pump, still very hot. The hose slid back on nicely. I refilled the radiator from the stream and was on my way! My father loved telling the story of how I fixed my broken car with a screwdriver, a pocket knife, and Chapstick.

I now live most of the year in Key West, FL. I drive back and forth to my home near DC, because my puppies travel with me. My Infiniti Q70 is great on the road, but too big for the narrow streets and tight parking in Key West. Last year I bought a 2012 Polaris GEM, a low-speed electric vehicle that is street legal, with a top speed of 25 MPH. It looks a bit like an egg with four wheels and no doors – even funnier looking than my Gremlin, if possible! At a friend’s suggestion, I named it ‘The Dude’. Now when I call out “Road Trip!” the puppies run out, jump onto the back bench seat of The Dude, and wait for me to buckle the seat belt tethers to their harnesses, so they don’t go sliding out when I take a corner too fast. The smiles I get from other drivers when they notice the puppies in the back seat with their tongues hanging out and their noses in the air are the best part of driving ‘The Dude’.

Jean will be a featured speaker at the TIADA Conference on Tuesday, July 27, 2021 in the Cars and Coffee section of The Learning Laboratory. www.tiadaannualconference.com