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CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1090

Docket No. CFPB-2025-0029

RIN 3170-AB50

Defining Larger Participants of the Automobile Financing Market

AGENCY: Consumer Financial Protection Bureau.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Consumer Financial Protection Bureau (CFPB or Bureau) is seeking information to assist it in considering whether to propose a rule to amend the test to define larger participants in the automobile financing market established by the Bureau's Defining Larger Participants of the Automobile Financing Market and Defining Certain Automobile Leasing Activity as a Financial Product or Service Final Rule published on June 30, 2015 (Automobile Financing Larger Participant Rule).

DATES: Comments must be received on or before [INSERT DATE 45 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB-2025-0029, by any of the following methods:

- *Federal eRulemaking Portal:* https://www.regulations.gov. Follow the instructions for submitting comments.
- *Email:* 2025-ANPR-AutomobileFinancing@cfpb.gov. Include Docket No. CFPB-2025-0029 in the subject line of the message.

- *Mail/Hand Delivery/Courier:* Comment Intake—Defining Larger Participants of the Automobile Financing Market 2025, c/o Legal Division Docket Manager, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

Instructions: The CFPB encourages the early submission of comments. All submissions should include the agency name and docket number. Additionally, where the Bureau has asked for specific comment on a topic, commenters should seek to highlight the topic to which their comment is applicable. Because paper mail is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *https://www.regulations.gov*. All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Dave Gettler, Paralegal Specialist, Office of Regulations, at 202-435-7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov*.

SUPPLEMENTARY INFORMATION:

The Bureau is seeking information in order to consider whether to propose a rule to amend the test to define larger participants in the automobile financing market. Currently, a nonbank covered person is a larger participant of the automobile financing market if the nonbank covered person has at least 10,000 aggregate annual originations. The Bureau is concerned that the benefits of the current threshold may not justify the compliance burdens for many of the entities that are currently considered larger participants in this market, and that the current threshold may be diverting limited Bureau resources to determine who among the universe of providers may be subject to the Bureau's supervisory authority and whether these providers should be examined in a particular year. To address this problem, the Bureau could amend the test by raising the threshold. There are a range of thresholds the Bureau could propose. To facilitate comment, the Bureau provides three examples further below. In the example with the largest increase, raising the threshold to 1,050,000 aggregate annual originations would reduce the number of entities estimated to qualify as larger participants by more than 90 percent, from 63 entities (who account for an estimated 94 percent of market activity) to five entities (who account for an estimated 42 percent of market activity).

I. Background

Section 1024 of the CFPA,[1] codified at 12 U.S.C. 5514, gives the Bureau supervisory authority over all nonbank covered persons[2] offering or providing three enumerated types of consumer financial products or services: (1) origination, brokerage, or servicing of consumer loans secured by real estate, and related mortgage loan modification or foreclosure relief services; (2) private education loans; and (3) payday loans.[3] The Bureau also has supervisory authority over "larger participant[s] of a market for other consumer financial products or services, as defined by rule[s]" the CFPB issues.[4] To date, the Bureau has issued six rules

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[1] Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376, 1955 (2010) (hereinafter CFPA).

[2] The provisions of 12 U.S.C. 5514 apply to certain categories of covered persons, described in section (a)(1), and expressly excludes from coverage persons described in 12 U.S.C. 5515(a) (very large insured depository institutions and credit unions and their affiliates) or 5516(a) (other insured depository institutions and credit unions). The term "covered person" means "(A) any person that engages in offering or providing a consumer financial product or service; and (B) any affiliate of a person described [in (A)] if such affiliate acts as a service provider to such person." 12 U.S.C. 5481(6).

[3] 12 U.S.C. 5514(a)(1)(A), (D), (E).

[4] 12 U.S.C. 5514(a)(1)(B), (a)(2); *see also* 12 U.S.C. 5481(5) (defining "consumer financial product or service").

defining larger participants of markets for consumer financial products and services for purposes of CFPA section 1024(a)(1)(B).[5]

The Bureau published the Automobile Financing Larger Participant Rule on June 30, 2015. The final rule defined a market for automobile financing and established that nonbank covered persons with at least 10,000 aggregate annual originations would be considered larger participants in this market. The final rule defined “annual originations” to mean the sum of the following transactions for the preceding calendar year: credit granted for the purchase of an automobile; refinancings of such obligations (and any subsequent refinancings thereof) that are secured by an automobile; automobile leases; and purchases or acquisitions of any of the foregoing obligations.

II. Background on the Automobile Financing Market

Autos have become indispensable for most working individuals. Autos are commonly used to commute to work, or for other purposes that are important to consumers, such as transportation to school or healthcare providers, travel, and recreation.

Americans owed more than $1.6 trillion on auto loans through the first quarter of 2025, with more than 100 million active auto finance accounts outstanding.[6]

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[5] These six rules defined larger participants of markets for consumer reporting, 77 FR 42874 (July 20, 2012) (Consumer Reporting Rule), consumer debt collection, 77 FR 65775 (Oct. 31, 2012) (Consumer Debt Collection Rule), student loan servicing, 78 FR 73383 (Dec. 6, 2013) (Student Loan Servicing Rule), international money transfers, 79 FR 56631 (Sept. 23, 2014) (International Money Transfer Rule), automobile financing, 80 FR 37496 (June 30, 2015) (Automobile Financing Rule), and general-use digital consumer payment applications, 89 FR 99582 (Dec. 10, 2024) (General-Use Digital Payment Applications Rule). The Bureau is issuing advance notices of proposed rulemakings to reconsider the test for defining larger participants in the consumer reporting, consumer debt collection, international money transfer, and automobile financing markets. The Bureau will continue to assess whether it is appropriate to reconsider the test for the student loan servicing market. The General-Use Digital Payment Applications Rule was made ineffective by a joint resolution of disapproval by Congress under the Congressional Review Act. S.J.Res.28 — 119th Congress (2025-2026), Pub. L. 119-11; *see also* 5 U.S.C. 801 *et seq*.

[6] *See* Federal Reserve Bank of New York, Household Debt and Credit Report, https://www.newyorkfed.org/microeconomics/hhdc/ (last visited May 22, 2025).

Auto credit is provided through both direct and indirect channels, creating different dynamics for consumers and industry participants. In the direct lending channel, a consumer seeks credit directly from the nonbank or depository institution financing source, whereas in the indirect lending channel, the dealer typically enters into a retail installment sales contract that it then sells to a third-party nonbank finance company, or a depository institution engaged in indirect lending.

Most consumers who finance the purchase of a vehicle use the indirect channel. Depository institutions and credit unions have an advantage in the direct lending space because these entities often have a pre-existing relationship with consumers and a lower cost of funds, which enables them to offer competitive rates, but these entities also operate heavily in the indirect lending space. Nonbanks, other than Buy Here Pay Here entities (discussed below), are also active in the indirect channel.

With indirect lending, dealers rather than consumers typically select the lender that will provide the financing. Upon completion of the vehicle selection process, the dealer typically collects basic information regarding the applicant and uses an automated system to forward that information to prospective indirect auto lenders. After evaluating the applicant, indirect auto lenders may provide the dealer with purchase eligibility criteria or stipulations.

The dealer typically selects the lender to whom it will assign the retail installment sales contract. The dealer is typically compensated for arranging indirect financing. In the indirect model, the indirect lender typically becomes responsible for servicing the contract, and the consumer will then make payments to the indirect lender.

Leases can also be obtained through direct or indirect channels. With an auto lease from a dealer, finance sources provide the dealer with the relevant terms of a lease. In a lease transaction, a finance source will also quote a residual value, which is the projected market value of the vehicle at the end of the lease. If the consumer opts for a lease, then the origination process continues in a manner similar to the loan process.

III. The Bureau's 2015 Larger Participant Rule Defining the Market

The Bureau published the Automobile Financing Larger Participant Rule on June 30, 2015. The final rule defined a market for automobile financing that covers specific activities and set forth a test to determine whether a nonbank covered person is a larger participant of that market. It established that nonbank covered persons with at least 10,000 aggregate annual originations would be considered larger participants in this market.

The automobile financing market identified by the Automobile Financing Larger Participant Rule includes the following types of nonbank covered persons: (1) specialty finance companies; (2) "captive" nonbanks (commonly referred to as "captives"); and (3) Buy Here Pay Here (BHPH) finance companies.

Specialty financing companies serve consumers in specialized markets. Many of these companies focus on providing financing to subprime borrowers who tend to have past credit problems, lower income, or limited credit histories, which prevent them from being able to obtain financing elsewhere.

Generally, captives are subsidiary finance companies owned by auto manufacturers. They provide consumers with financing and leases for the primary purpose of facilitating their parent companies' and associated franchised dealers' auto sales.

BHPH finance companies are typically associated with certain dealers. With some exceptions, BHPH dealers traditionally focus on subprime and deep subprime borrowers, and typically retain retail installment contracts or assign them to an affiliated finance company. Some very large lenders who may be categorized as BHPH lenders engage in prime lending, while the majority of the BHPH space is focused on consumers with subprime credit scores.

IV. Larger Participant Test in the 2015 Rule

Under the Automobile Financing Larger Participant Rule, a nonbank covered person qualifies as a larger participant in this market if it has at least 10,000 aggregate annual originations. Based on the Bureau's analysis of data from Experian Velocity℠ for the period of February 1, 2024, to January 31, 2025, approximately 63 entities met this test, which provides an independent basis for Bureau supervisory authority, regardless of whether these persons qualify under a separate authority described above.[7] The 63 entities include all three categories of nonbanks: specialty finance companies, captives, and BHPH finance companies. This covers an estimated 17.4 million consumer transactions, or approximately 94 percent of annual originations.

The market for automobile financing provided by nonbank covered persons is somewhat concentrated. According to the same data, 18 entities conducted approximately 80 percent of originations.

V. Concerns

The Bureau is concerned that the benefits of supervisory authority over nonbank covered persons with at least 10,000 aggregate annual originations may not justify the costs of increased compliance burdens for many entities that are considered larger participants under the current

[7] Experian Velocity℠ is a statistical database with deidentified information on vehicles and vehicle loans. The data are drawn from multiple sources, such as, but not limited to credit records, vehicle titles and registrations, auto lenders, and auto manufacturers. Importantly, the data include information on vehicle values and borrower credit scores for vehicles purchased with a loan. This analysis follows the parameters used in the Automobile Financing Larger Participant rule: 1) it includes both loans and leases; 2) transactions with no lender named were excluded; 3) entities with fewer than 360 loans originated were excluded; 4) loans listed as "other" lenders were excluded; and 5) BHPH dealer loans were excluded unless assigned to a BHPH finance lender. Any separate entries for the same entity have been combined.

test.[8] The Bureau is particularly concerned that smaller entities who now qualify as larger participants are being disproportionately impacted by the current threshold. The Bureau is also concerned that the number of larger participants in the automobile financing market subject to supervision may be too broad and is potentially diverting limited Bureau resources to determine who is a larger participant and whether an entity should be examined in a particular year. Finally, the Bureau notes that it has not evaluated whether changes in the automobile financing market call for updating the test to define larger participants since it published the Automobile Financing Larger Participant Rule ten years ago. The Bureau therefore seeks comment on the topics and questions listed below in light of the Bureau's intent to propose amending the test to define larger participants in the automobile financing market.

The Bureau has not previously raised the threshold for the test to define larger participants in the automobile financing market. By doing so, the Bureau could focus its supervisory oversight on the most active market participants that interact with very large numbers of consumers. For example, if the Bureau raises the threshold from 10,000 to 550,000 aggregate annual originations, the Bureau preliminarily estimates that 11 nonbank entities would qualify as larger participants and that the updated rule would cover approximately 66 percent of originations. At present, this would include nine nonbank entities that focus on prime lending and two entities that engage in at least some subprime lending. Another option would be to raise the threshold to 300,000 aggregate annual originations. Under this threshold, the Bureau preliminarily estimates that 17 nonbanks would qualify as larger participants, and the updated rule would cover approximately 79 percent of originations. At present, this would include 12

[8] For a discussion of compliance burdens, see generally section IV.B of the Automobile Financing Larger Participant Rule (describing costs of increased compliance, costs of supervisory activity, and costs of assessing larger participant status). 80 FR 37496 at 37516-21.

entities that primarily engage in prime lending and five entities that engage in at least some subprime lending.[9] As a third option, if the Bureau raises the threshold to 1,050,000 aggregate annual originations, the Bureau preliminarily estimates that five nonbank entities would qualify as larger participants, and the updated rule would cover approximately 42 percent of originations. At present, the five nonbank entities with the highest number of originations are captives, which focus on prime lending.

VI. Executive Order 12866

The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) has determined that this action is a "significant regulatory action" under Executive Order 12866, as amended. Accordingly, OMB has reviewed this action.

VII. Questions for Commenters

1. Is 10,000 aggregate annual originations an appropriate threshold for determining which entities should be considered larger participants in the automobile financing market? If not, what type of threshold would be more appropriate and why?
2. How would consumers be impacted by a potential increase in the threshold? Submissions of data related to the benefits or costs to consumers of the current rule and any particular change to the threshold are encouraged.
3. How would changing the current threshold for larger participants alter the behavior of participants in the automobile financing market? How would these changes benefit or harm consumers and participants? Would those changes in behavior have impacts beyond this specific market?

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[9] The estimates of market participants and market share are preliminary and are based on limited data from Experian Velocity[SM]. These estimates may change in any future rulemakings.

4. How would changing the current threshold for larger participants affect the Bureau's ability to address potential market failures in the automobile financing market and related areas?
5. What are the costs to covered entities that are specific to the Bureau's supervisory authority for larger participants in the automobile financing market? Specific figures as to staffing, staff time, and other resources are encouraged. How often are these costs incurred for larger participants under the current rule who are close to the current threshold for being larger participants?
6. What are the costs to covered persons that are not specific to the Bureau's supervisory authority, but are specific to being a larger participant in the automobile financing market? For instance, are there costs of monitoring status as a large participant or costs related to complying with relevant Federal statutes and regulations beyond what the firm would find reasonable absent the possibility of supervision?
7. Are there costs to covered persons from the current larger participant rule that specifically apply to firms whose aggregate annual originations are lower, but close to, the threshold?
8. Are there costs or benefits to consumers, including rural consumers, servicemembers, or veterans, of raising the larger participant threshold?
9. Do small business concerns, as defined by the Small Business Administration, or other smaller- or mid-size entities qualify as larger participants under the current threshold in the automobile financing market? Do these entities incur costs of compliance with their larger participant status that are not in proportion to their size relative to other larger participants in the automobile financing market?

10. Should the Bureau’s test for defining larger participants in the automobile financing market account for the Small Business Administration’s size standards? If so, how?
11. Are there significant recordkeeping requirements that would be reduced by raising the larger participant threshold?
12. What other specific costs or benefits, not mentioned above, would a change in the larger participant threshold have for consumers and covered persons?
13. In addition to data from the Economic Census or Velocity^{SM} data, what sources of data, if any, are available that can reliably inform estimates of the current size of the firms in the automobile financing market; the participation in the market by nonbanks, banks, and credit unions; and the number of firms that qualify as larger participants?
14. Should the Bureau reconsider the threshold for aggregate annual originations to qualify as a larger participant in the automobile financing market?
15. What threshold and number of participants allows the Bureau to effectively focus on the largest participants and efficiently use its resources?
16. Should the Bureau consider separate thresholds for each type of participant in this market, i.e., captives, specialty finance, and BHPH finance companies to capture the largest participants of each type?
17. Should the threshold ensure that the Bureau’s supervisory authority covers a mix of entity types (captives, specialty finance, and BHPH finance companies) and both the prime and subprime markets? If so, what is the appropriate mix? Or should Supervision focus on the automobile financing companies that produce the largest number of originations, which are currently primarily captive nonbanks who originate prime loans?

18. Among entities above the current threshold, how do the compliance costs and other costs imposed by larger participant status vary by:
    a. The type of nonbank entity;
    b. Number of originations;
    c. The share of the entity's lease versus loan originations; and
    d. Characteristics of the loan or lease?
19. Among entities above the current threshold, how do the risks, costs, or benefits to consumers of a potential increase in the threshold vary by:
    a. The type of nonbank entity;
    b. Number of originations;
    c. Whether the consumer took out a lease or a loan; and
    d. Characteristics of the loan or lease?

Russell Vought,
Acting Director, Consumer Financial Protection Bureau.