September 22, 2025

Submitted via Regulations.gov
Comment Intake
Legal Division Docket Manager
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Defining Larger Participants of the Auto Financing Market 2025
90 FR 38415

The National Consumer Law Center (on behalf of its low-income clients), Consumer Federation of America, National Association of Consumer Advocates, Consumers for Auto Reliability and Safety, Consumer Reports, National Association of Consumer Advocates, New Yorkers for Responsible Lending, and Oregon Consumer Justice appreciate the opportunity to submit these comments on the Consumer Financial Protection Bureau's advance notice of proposed rulemaking (ANPR) on whether to propose a rule to amend the test to define larger nonbank participants in the auto finance market. Entities defined as larger participants are potentially subject to supervision by the CFPB.

I. The Benefits of CFPB Supervision

We oppose changing the definition of larger participant in a way that would reduce the number of auto finance companies that qualify, which would do *nothing* to achieve the CFPB's stated goals of reducing compliance burdens or avoiding the diversion of CFPB limited resources. The CFPB is not required to and does not conduct examinations of all larger participant auto finance companies, and many are never examined at all. The CFPB conducts only a limited number of examinations each year, and the CFPB can limit the resources devoted to supervision and the number of companies examined without changing the larger participant definition.

But amending the definition would have harms, including depriving the CFPB of the flexibility to examine an auto finance company if problems arise or to spot check compliance by entities of different size. The CFPB would have less information about market practices and compliance challenges by mid-sized companies, making it harder to tailor regulation to them. Companies would have less incentive to respond to consumer complaints or to ensure that they are complying with the law. Law-abiding companies would be harmed by unfair competition. Companies that escape supervision, a confidential, non-adversarial compliance tool, might instead face enforcement actions.

The ANPR suggests that as few as five auto finance companies could be subject to supervision if the threshold is raised as discussed. Even worse, if the larger participant threshold is raised that high, not a single auto finance company that focuses on the subprime lending market would be included, shrouding some of the worst abuses. The auto finance marketplace is facing an urgent moment, as Americans owe over $1.6 trillion in auto debt, defaults and repossessions have increased in recent years, and cars are more expensive than ever. The auto lending industry is already notoriously opaque, and the precarious dynamics of the market mean that lenders' conduct will have increasingly significant impacts on borrowers. This is the time for the CFPB to enhance its supervision of auto lending, not reduce it.

A. Supervision is an important confidential and cooperative compliance tool.

Supervision is an important tool that helps the CFPB ensure compliance with the law, stop problems and potential problems, and identify emerging issues. Supervision is a more cooperative, less adversarial approach than an enforcement action. The typical result of an examination is a report with items to address. Most examinations do not result in enforcement actions.

Supervision is confidential. Neither the CFPB's findings nor the action that a company takes in response are public. Even the fact that a company is subject to examination is confidential. Enforcement actions, in contrast, are very public. Without supervision as an option, when the CFPB receives complaints or otherwise hears of problems, it would have to use more adversarial and public tools including launching a formal investigation, issuing subpoenas and civil investigative demands, and filing a public lawsuit in court. Even if the matter is resolved without litigation, consent orders from the Bureau are also public.

Supervision helps the CFPB and auto finance companies identify and correct small problems before they become big ones. The CFPB can identify compliance oversight weaknesses before they result in legal violations, or small issues before they harm even more consumers or warrant an enforcement action.

Supervision offers benefits to auto finance companies that are being examined. Companies have the opportunity to fix problems and improve their compliance. If problems go unaddressed, the company can still face enforcement by a state regulator or attorney general, or private litigation.

Supervision helps to keep an entire auto finance market safe and free of legal violations or unfair, deceptive or abusive practices. Publicity about a problem at one company can lead consumers to shun others. Work to ensure compliance with the law across a market promotes fair competition by requiring everyone to play by the same rules and preventing law-abiding companies from having to compete with those who violate the law or take advantage of consumers.

In markets like auto finance, where nonbank companies compete with banks, supervision of nonbank players helps to level the playing field. All banks are supervised either by the CFPB or by other federal banking regulators, but no federal agency other than the CFPB has the authority to supervise nonbanks. If the CFPB does not have jurisdiction to supervise a nonbank company, there is no potential for federal supervision at all.

States are not an adequate substitute for the CFPB in the supervision of nonbank auto finance companies. Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act and gave the CFPB the mandate to supervise nonbank companies because of fatal gaps in consumer protection oversight of those companies. States do not possess the level of expertise in federal consumer protection laws that the CFPB's supervision team has developed, and virtually none of them has the resources to examine for compliance with those laws. Most do not have robust supervision for the auto finance market at all. Even if a few states were able to conduct robust oversight, that would leave consumers in most other states exposed to legal violations and unfair practices. These consumers are less likely to have their auto finance problems noticed and addressed by regulators and attorneys general in states with less robust consumer protection regimes.

The CFPB has said that it will prioritize work to protect servicemembers and veterans. But without supervision, the CFPB will be far less likely to spot problems affecting our military and will have fewer options to address violations. As discussed below, servicemembers and veterans are impacted by the auto finance market.

Consumers in rural areas also especially benefit from the CFPB's supervision oversight. People in rural areas are especially reliant on cars and are likely to be reliant on "indirect" financing through the creditor of the dealer's choice, given the lack of mainstream, brick-and-mortar banking facilities in many rural areas. Moreover, because larger auto finance entities are generally multi-state actors, having CFPB oversight is more efficient, more effective, and more likely to happen than a series of individual state regulators separately attempting to address the problems the nonbank causes to residents of any particular state.

B. Changing the definition of larger participants will hamper the CFPB's flexibility to respond to problems, make compliance with the law harder for companies, and encourage risky behavior.

The CFPB stated that it is considering reducing the number of companies that are deemed to be larger participants because:

> 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 whom 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.[1]

But the current definition does not impose significant, unwarranted compliance burdens on auto finance companies that they would not otherwise have. All of the companies that fall within the definition need to receive advice and counsel about how to comply with the consumer financial

[1] 90 Fed. Reg. 38415, 16

laws examined and enforced by the Bureau. But so do companies that are not larger participants. Removing supervision does not mean that their obligation to comply with the law is now absent. It simply increases – though does not remove – the possibility that they can violate the law without being caught, which presents a dangerous proposition.

Similarly, the CFPB has ample ability to decide how to allocate its limited resources without changing the definition of larger participant. The definition merely gives the CFPB the *option* of supervising a company. We understand that, even under the current definitions, many if not most of the companies on the smaller end of the spectrum have *never* been examined. The CFPB's supervision program has already shrunk dramatically (if it is operating at all) under current leadership. Changing the definition of a larger participant does not constrain the CFPB's discretion in how much of its resources it devotes to supervision and which companies it supervises. If the CFPB feels that supervision of companies below some threshold is not currently worth the benefit to consumers or the burden to companies, it can stop examining them.

While changing the definition of larger participant will not address the burdens the CFPB lists, it will pose several problems.

If the CFPB receives a slew of complaints about a particular company or an emerging threat that it has not been examining, it currently has the option of using supervision to see what is going on. Keeping the existing definition under the current rules gives the CFPB flexibility about the best way to address the most significant risks to consumers.

Conversely, if a company knows that it cannot be supervised, then it will have less incentive to address consumer complaints or resolve problems that would be flagged by supervision or escalated for enforcement. The CFPB's complaint system is a cost-effective way to resolve individual issues, but it could become less effective as a company would feel less compulsion to address a complaint that has been referred to it. Members of Congress across the political spectrum have referred complaints to the CFPB, and they may be less able to get help for their constituents.

Companies that cannot be supervised could be more willing to take risks and skirt the law. The obligation to comply with consumer financial protection laws will remain, as will the risk of federal, state or private enforcement and the need for a compliance program. But some companies may gamble on not being caught if there is no potential of being supervised by the CFPB.

Violations that occur between 2025 to 2029 can still be the subject of enforcement actions for years to come, and having a smaller set of larger participants examined now could backfire. A change of CFPB leadership could result in more enforcement actions of the companies that escaped supervision – either because the companies became too lax, or because small problems were not addressed early. New leadership will not have to change the larger participant rule to file enforcement actions.

It is also unwise for the CFPB to relax potential oversight over the smaller large participants. The largest companies tend to have the most robust and sophisticated compliance programs. Those with fewer resources may need more help spotting problems, and benefit from free advice given through supervision exams and from publicly available information in the Supervisory Highlights that alert them to compliance issues.

Maintaining the authority to occasionally spot-check companies on the lower end can help the CFPB determine if there are more systemic issues affecting that segment of the marketplace. The CFPB might realize that those companies need more guidance or other assistance to help them comply with the law.

The CFPB can even reduce overall regulatory burden by having a better understanding of how mid-size companies operate, how they differ from the largest companies, and the compliance issues that they face. Those insights can help the CFPB to develop more appropriate regulations tailored to those companies.

II. The Nonbank Auto Finance Sector Needs Continued Supervision

Auto finance, and cars in general, have an enormous impact on most households. Transportation, largely in the form of private vehicles, is the second largest expense for U.S. households, and auto credit is currently the largest source of non-housing consumer debt in the United States. For most households in the United States, a car is vital not only for physical mobility, but also for economic mobility. Car access improves families' economic outcomes in a variety of ways. In the short term, having a car provides access to more and better job opportunities, and expanded affordable housing options. In the long term, research has shown that shorter commute times, which are often possible only with a car, are one of the strongest factors in helping families escape poverty. Transportation has a stronger role in social mobility than other community characteristics, including elementary school test scores, percentage of two-parent families, or crime. At the same time, owning a car is expensive and drives millions of households to take on significant debt. As prices paid for cars rise, so too does the risk of non-payment and loss of the car, which often jeopardizes access to employment and other necessaries of living.

The CFPB added automobile financing to the scope of supervised larger participants in 2015, when Americans owed approximately $900 billion in auto debt.[2] In the last ten years, that amount has nearly doubled, and Americans owe over $1.6 trillion in auto debt.[3] The number of

[2] 80 Fed. Reg. 37496, 37517.

[3] Federal Reserve Bank of New York, Center Microeconomic Data, Household Credit and Debt Report (Q2 2025) at https://www.newyorkfed.org/microeconomics/hhdc.

consumer complaints to the CFPB about auto loans[4] and repossessions[5] are at all-time highs, signaling that borrowers increasingly rely on the Bureau to assist them with escalating problematic auto lending conduct.

At the time the Bureau is proposing to reduce its supervision of the auto finance market, borrowers are experiencing significant difficulty staying on track with their auto loan payments. An analysis of the New York Fed's consumer credit panel in 2024 showed that car buyers with above-average credit scores (620-679) were twice as likely to fall behind as they were before the pandemic.[6] Affordability is cracking for average consumers, not just those on the margins. In January 2025, the share of subprime auto borrowers at least 60 days past due on their loans was approximately 6.5%, the most since the data collection began in 1994, according to Bloomberg reporting, citing Fitch Ratings.[7]The percentage of auto borrowers with severely delinquent debt (defined as 90+ days past due) is at its highest since the peak of the COVID lockdown, and before that, the Great Recession. Of course, by the time an auto loan is in a 90-day delinquent status, they are well on their way to a repossession, and indeed repossessions are occurring at the highest level since 2009, just before the Great Recession.[8] That number jumped an estimated 43% from 2022 to 2024. The auto loan delinquency problem is particularly pronounced for younger borrowers aged 18-29, who are transitioning into serious delinquency (90 days late or more) on their auto loans faster than older borrowers.

Notably, publicly available information about nonbank auto finance conduct is minimal and often excludes important portions of the marketplace and important details of the transactions—details that reveal the performance of the credit market in allowing consumers to affordably and safely buy a car, as well as risks to consumers. The existing publicly available data is highly aggregated, limiting its usefulness to understand a marketplace with thousands of creditors, tens of thousands of originating dealers, and many different business models. This means that the Bureau is the only cop on the beat for many nonbank auto lenders, and it makes the CFPB's Supervision Highlights a particularly valuable resource for the public, including supervised and unsupervised auto lenders.

---

[4] Consumer Complaint Database reflecting "vehicle loans" between 2015-2025, Consumer Financial Protection Bureau, available at https://shorturl.at/MOCIc.

[5] Consumer Complaint Database reflecting "vehicle loans" between 2015-2025, Consumer Financial Protection Bureau, available at https://shorturl.at/raEey.

[6] Andrew Haughwout, Donghoon Lee, et al.. "Breaking down Auto Loan Performance." *Liberty Street Economics*, (Feb. 13 2025), available at libertystreeteconomics.newyorkfed.org/2025/02/breaking-down-auto-loan-performance/.

[7] Ballentine, Claire. "Late Car Loan Payments: Auto Delinquencies Spike to Highest Level in Decades." *Bloomberg* (Mar. 6, 2025), available at www.bloomberg.com/news/articles/2025-03-06/late-car-loan-payments-auto-delinquencies-spike-to-highest-level-in-decades?embedded-checkout=true

[8] "Car Repos Hit Levels Unseen since 2008 Financial Crisis." *PYMNTS.com*, (Mar. 27 2025) available at www.pymnts.com/transportation/2025/car-repos-hit-levels-unseen-since-2008-financial-crisis/.

The auto loan delinquency problem is not likely to resolve soon, because many people are facing the problem of having "more month than money." Student loan payments are being aggressively collected after years of pause by the federal government, credit card debt is on the rise, and more consumers are turning to alternative lending products to pay for necessaries like groceries and medical care.[9] According to modeling from the Yale Budget Lab[10], the newly-imposed tariffs will increase the average new car price by 13.5%, or roughly $6,400 on a $48,000 vehicle. Car buyers who purchase vehicles during times of price shock are locked into loan terms as long as eight years, significantly increasing their likelihood of having negative equity on that vehicle when it is traded in in the future.[11]

Consumers will prioritize their car payment over many other items in their household budget, putting auto lenders in a powerful position to exploit borrowers generally, but particularly during times of economic stress The Bureau's Supervision Highlights have pointed to the myriad auto lending misconduct that it has corrected to the benefit of consumers:

1. **Repossession and collections**. Losing a car to repossession is devastating. Without access to transportation, borrowers lose their jobs, their credit is wrecked, they face continued collections and judgments, and buying a replacement car is extremely difficult. Auto debt collection activity and repossessions expose borrowers to particularly harmful conduct, as highlighted by CFPB supervision:
    - Using starter interrupt devices (that beep or prevent a vehicle from starting if the lender asserts that the consumer is late on payments) when consumers were not actually behind on payments
    - Illegally threatening to suspend the borrower's drivers license or vehicle tags when borrowers were late
    - Repossessing cars after the borrower made sufficient payments or where the servicer agreed to cancel the repossession order;
    - Holding borrowers personal belongings in the repossessed car hostage until they paid an illegal storage fee;
    - Charging excessive repossession fees, making it difficult or impossible for consumers to reinstate their loan agreement.

2. **Add-on abuses**. These products, like window etching, service contracts, or fabric protection, increase the cost of an auto finance contract by hundreds or thousands of

[9] Creswell, Julie. "Consumers Are Financing Their Groceries. What Does It Say about the Economy?" *The New York Times* (June 2, 2025), available at www.nytimes.com/2025/06/02/business/buy-now-pay-later-groceries.html?smid=url-share.

[10] "The Fiscal, Economic, and Distributional Effects of 25% Auto Tariffs." *The Budget Lab at Yale*, 2025, budgetlab.yale.edu/research/fiscal-economic-and-distributional-effects-25-auto-tariffs.

[11] CFPB "Negative Equity Findings from the Auto Finance Data Pilot" (June 17, 2024), www.consumerfinance.gov/data-research/research-reports/data-spotlight-negative-equity-findings-from-the-auto-finance-data-pilot/.

dollars. They are frequently overpriced, and many car buyers are tricked or coerced into purchasing them. CFPB supervision repeatedly identified all manner of add-on abuses by lenders, including:

- Charging interest on add-ons that were added to the contract without the buyer's consent
- Refusing to cancel add-on products or using onerous cancellation processes (such as requiring a borrower to visit a dealership in person twice to cancel)
- Financing add-ons that were completely void and worthless to the consumer
- Miscalculating rebates owed on canceled warranty products, affecting the calculation of deficiency balances

3. **GAP products**. GAP (guaranteed asset protection) is an add-on product with its own host of issues. GAP is intended to cover the difference between the amount you owe on your auto loan and the amount the insurance company pays if your car is stolen or totaled. But when your loan contract ends early–the loan is paid off, refinanced, or the car is repossessed–the lender owes you the unused portion of the GAP coverage. CFPB supervision has identified numerous problems with lenders' handling of GAP products:
    - Failing to refund unused GAP premiums or miscalculating refund amounts
    - Violating the GAP contract by accepting monthly payments even after the vehicle was declared a total loss
    - Collecting payments for GAP products where the consumers' vehicles did not even qualify for GAP coverage
    - Misrepresenting the benefits of GAP products

4. **Hidden and deceptive fees**. CFPB exams root out illegal conduct that consumers would have almost no way of learning about on their own. CFPB supervision identified instances of fees in auto finance contracts that were worthless, fraudulent, or hidden from the consumer.
    - Payment processing fees that far exceeded the cost of servicing payments ("pay to pay fees").
    - Collecting interest on fraudulent loan charges, such as options that were not present on the vehicle.
    - Charging consumers for unnecessary force-placed insurance policies and collecting premium payments for force-placed insurance after repossessions.
    - Charging late fees post-repossession, and overcharging late fees in excess of the contractual capped amount.

5. **Credit reporting**. Credit scores are economic gatekeepers. When auto lenders violate their statutory obligations to accurately furnish information to consumer reporting agencies, the harm to consumers goes well beyond that individual loan. CFPB supervision has repeatedly found credit reporting errors by auto lenders:
    - Reporting information with actual knowledge of errors about amounts past due, scheduled monthly payment amounts, and inaccurate dates of first delinquency;

- Continued errors in delinquency reporting, despite determinations that the information was furnished inaccurately or incompletely;
- Failing to implement reasonable policies and procedures concerning the accuracy and integrity of furnished information, such as document retention policies and documenting the process for identifying frivolous or irrelevant disputes

There are unique aspects of the auto finance market and the relationship between creditors and consumers that make supervision particularly important. First, a significant percentage of car buyers have not chosen the lender that will service their contract. The nature of "indirect financing" means that a consumer who finances through the dealership has their credit contract assigned to a third party lender (pursuant to an agreement to which the consumer is not a party).The consumer, who interfaces solely with the dealership that is listed as the original creditor, does not choose the lender that will service their loan for the (often lengthy) term or even know who it will be. These consumers did not "shop around" for the best lender - they were handed off to another creditor without any real say in the matter. The Bureau supervises auto lenders for unfair and abusive conduct, both of which are intended to penalize companies for exploiting situations outside the consumer's control. Many of the Bureau's findings of unfair conduct between consumers and auto lenders found that the consumers were unable to reasonably avoid the harm due to the nature of the indirect lending relationship.[12]

Second, there is an immense informational asymmetry between consumers and lenders about the nature of an auto finance transaction in general. Financing a car is arguably the most complicated transaction a consumer will ever face, even more so than a mortgage. Borrowers are negotiating and calculating numerous different variables all at the same time (trade-in value, loan payoff, add-on purchases, car price, rebates, loan terms, etc.) This informational asymmetry and complex transaction makes it particularly risky for borrowers, and well worth continued supervision.

Reducing supervision of auto finance companies will also harm servicemembers, particularly those who are younger. By age 24, approximately 20% of servicemembers have at least $20,000 in auto debt, compared with 7% of their civilian peers.[13] Research shows that servicemembers pay more for auto loans across the board. The CFPB comprehensively studied auto loan data between 2018 and 2022 and published a report about military borrowers' auto loans.[14] The CFPB's report found that servicemembers financed larger amounts, were more

---

[12] 12 U.S.C. §5531(c).

[13] CFPB "Financially Fit? Comparing the Credit Records of Young Servicemembers and Civilians," (July 14, 2020) available at: www.consumerfinance.gov/data-research/research-reports/financially-fit-comparing-credit-records-young-servicemembers-civilians.

[14] CFPB "CFPB Finds Servicemembers Pay More in Auto Lending Market," (Jan. 29 2025) available at: www.consumerfinance.gov/about-us/newsroom/cfpb-finds-servicemembers-pay-more-in-auto-lending-market/ .

likely to finance negative equity, paid inflated prices for add-ons, and had higher monthly payments. The CFPB and Department of Defense also issued a joint letter in 2022 identifying illegal servicemember repossession practices and warning lenders of their strict obligations under the Servicemembers Civil Relief Act.

III. A Reduction in Origination Threshold for Larger Participants in the Automobile Financing Market Would Increase Risks to the Market and Consumers.

The ANPR discusses the possibility of amending the test to define larger participants in the automobile financing market by increasing the current threshold of 10,000 annual originations. Potentially raising the threshold to 300,000, 550,000, or 1,050,000 aggregate annual originations is discussed. Any such increase would be harmful to the automobile financing market, the ability of the Bureau to do its job, and consumers who finance the purchase of a car.

The ANPR indicates that the current threshold results in coverage of 94 percent of annual originations through larger participants. A reduction to 42 percent of originations under the most extreme potential presented in the ANPR would be a dramatic reduction in scope of any market supervision, but especially so in the automobile financing market. The automobile financing market is unusual in that both direct and indirect financing take place. These transactions are very different with the use of installment sales in indirect transactions and loans in typical direct transactions and with different consumer protections and origination requirements. Even among the indirect financing, several different categories of market participants use very different business models creating different risks to consumers and the market. As discussed in the ANPR, the indirect creditors in the automobile financing market include captives, subprime finance entities and Buy Here Pay Here financing. Each of these types of entities operate differently than traditional financing by depository institutions and differently from each other, with different incentives, different models, and different consumers.[15]

Typically operating as wholly owned subsidiaries of automobile manufacturers, captives are created and operate in support of manufacturers' sales. While captives have an incentive to make a profit through financing, they simultaneously have an incentive to help franchise dealers sell the manufacturer's cars. This makes them more likely to engage in offers of below market interest rates or more lenient underwriting than typical large indirect creditors. It also impacts ways in which they interact with dealers that assign credit transactions to them.

Speciality finance entities such as subprime finance companies operate very differently than other indirect creditors. In the case of subprime auto transactions, dealers sometimes pay a fee to the assignee finance company, or the retail installment contract might be sold below face value. Sometimes these transactions get quite complex with assignees withholding some amount as "dealer reserve" or "loss reserve" or "holdback" and then paying the dealer some

[15] Jasper Clarkberg, Jack Gardner, & David Low, "Data Point: Subprime Auto Loan Outcomes by Lender Type," *Consumer Fin. Prot. Bureau, DataPoint No. 2021-10* (Sept. 2021), (discussing variations in types of auto finance entities and their practices, incentives, and results).

amount below face value and potentially giving a portion of that money back to the dealer depending upon certain conditions.[16] They may be more likely to include Vendor Single Interest (VSI) insurance in the transaction which can create a number of issues.

Buy Here Pay Here dealers also operate differently. They target consumers with challenged credit much like subprime finance companies, but they sell both cars and financing which they hold themselves rather than assign. To insure profits and reduce risks, Buy Here Pay Here dealers use high prices and high down payments for cars in poor condition. Traditionally, they like to get a downpayment equal to the amount they have invested in the vehicle.[17] This leads to high delinquency and repossession rates while still allowing large profits. Buy Here Pay Here dealers often use the frequent repossessions as source of inventory, reselling the same car multiple times.

The different business models employed by each of these companies mean that supervision of each category is necessary to assess compliance with the requirements of consumer protections, understand the practices and compliance systems for each type of entity, and assess risks to consumers and the auto finance market. As an example, while typical large indirect financing entities offer dealers incentives such as interest rate markups to dealers in return for dealers assigning retail installment sales contracts to the finance entity, captives often offer a flat dollar amount if the below market interest rate incentives would otherwise make them uncompetitive.[18] At the same time, subprime finance entities might actually charge the dealer an acquisition fee or acquire retail installment sales contracts at below face value. Each of these very different practices present different risks to the market and consumers.

Another example of a practice engaged in by only certain market entities is the use of churning by Buy Here Pay Here dealers. Churning is the repeated repossession and resale of the same car to a new consumer. This practice can harm both the previous owner of the car who may have their car repossessed for no reason or may face a creditor with an unusual incentive to repossess a car to provide more inventory for the creditor/dealer as well as the new buyer who will likely be buying an overpriced car that has seen multiple repossessions. While Buy Here Pay Here dealers routinely engage in churning most other finance entities do not.

---

[16] See e.g. *Commonwealth v. Credit Acceptance Corp*., 2021 WL 1147444 (Mass. Super. Ct. Mar. 15, 2021) (describing alleged practices of subprime finance company leading dealers to mark up prices they charge to customers in direct response to financial incentives created by defendant's business practices).

[17] The Buy Here Pay Here default rate was 37.5% in 2019 compared to the overall vehicle finance default rate of 4.94% in 2019. National Independent Automobile Dealers Association, NIADA Used Car Industry Report 2020 (2020). See Zhu Wang, Fed. Reserve Bank of Richmond, "Coronavirus and Auto Lending: A Market Outlook" (Apr. 16, 2020), available at www.richmondfed.org. See also Jasper Clarkberg, Jack Gardner, & David Low, "Data Point: Subprime Auto Loan Outcomes by Lender Type," Consumer Fin. Prot. Bureau DataPoint No. 2021-10 (Sept. 2021), available at https://shorturl.at/4Gpwu (finding extremely high default and delinquency rates among Buy Here Pay Here dealers).

[18] Mark A. Cohen, "Imperfect Competition in Auto Lending: Subjective Markups, Racial Disparity, and Class Action Litigation," *Vanderbilt Law and Economics Research Paper* (Jan. 14, 2007).

The current larger participant threshold, even though it results in supervisory coverage of 94 percent of annual originations and does a good job capturing traditional larger finance entities and captive creditors, still does not provide robust supervisory coverage of the variety of subprime auto finance entities and Buy Here Pay Here dealers, but does include at least some representation from Buy Here Pay Here and subprime finance entities. In the ANPR the Bureau indicates that the potential new thresholds discussed in the ANPR would result in only five, two, or no entities that engage in at least some subprime financing. These numbers are very small and engaging in "some" subprime financing is very different from finance companies that focus in particular, and often almost exclusively, on subprime. The ANPR does not address to what extent the proposed thresholds would impact inclusion of Buy Here Pay Here but presumably they would eliminate all Buy Here Pay Here from supervision.

While subprime and Buy Here Pay Here are a smaller part of the automobile financing market, representing perhaps less than 10% of the market, their aggressive practices have an oversize potential to create risk for consumers and the marketplace. Supervision of these entities should increase, not decrease. Rather than considering an increase to the overall threshold and a reduction in covered entities, the Bureau should consider creating new, lower thresholds for these two categories to ensure they are supervised.

IV. Conclusion

Supervision of the nonbank auto finance marketplace has proven to be a critical tool to ensure that the market is functioning properly, consumers are not harmed, and lenders understand their obligations to comply with the law. Changing the threshold definition as suggested in the ANPR will eliminate monitoring of an entire segment of the car buying population. We strongly oppose any such changes.

Thank you for the opportunity to submit these comments. If you have questions, please contact Erin Witte at ewitte@consumerfed.org or John Van Alst at jvanaslt@nclc.org.

Sincerely,

Consumer Federation of America
National Consumer Law Center, on behalf of its low income clients
Consumers for Auto Reliability and Safety
Consumer Reports
National Association of Consumer Advocates
New Yorkers for Responsible Lending
Oregon Consumer Justice