December 8, 2014

Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

RE: Defining Larger Participants of the Automobile Financing Market and Defining Certain Automobile Leasing Activity as a Financial Product or Service (Docket No. CFPB-2014-0024)

Dear Ms. Jackson,

Consumers Union, the advocacy and policy arm of Consumer Reports,[1] appreciates the opportunity to comment on the proposed rule to define "larger participants" in the markets for automobile financing subject to the Bureau's nonbank supervision program. We applaud the Bureau's decision to focus on auto purchase loans, refinancings and leases, and offer suggestions to strengthen the proposed rule.

General Comments

The purpose of this rule is to determine the scope of the Bureau's authority to supervise providers of auto financing that may pose risks to consumers. Therefore, it is crucial that the Bureau employ a flexible, broad standard that can respond to changes in the marketplace and ensure that risky actors do not evade supervision. The Bureau's power to supervise nonbanks that offer consumer financial products and services is a critical part of its mission to protect consumers. Supervision enables the Bureau to detect problems early, prevent or resolve violations quickly, and have a better understanding of the consumer products and services it regulates.

Since the rule will set forth the scope of the Bureau's authority to supervise non-banks in markets that are constantly evolving, it should define both the types of non-banks that it might potentially supervise and what is a "larger participant" in a broad and general way. Dodd-Frank Section 1024 requires the Bureau to implement a risk-based supervision program for certain non-banks. *However, it does not require the Bureau in practice to supervise every larger participant in a market subject to the Bureau's supervisory authority.* A flexible, broad definition of "larger participant" simply ensures that the Bureau can properly implement its mandate under Dodd-Frank and respond nimbly to changes in the marketplace that pose risks to consumers. It also ensures that non-banks are all on notice that they could potentially face supervision, and thus creates a level playing field among competitors in the marketplace.

[1] Consumers Union is the public policy and advocacy division of Consumer Reports. Consumers Union works for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves, focusing on the areas of telecommunications, health care, food and product safety, energy, and financial services, among others. Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit organization rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications.

Providers of Auto Financing

For millions of consumers, buying or leasing an automobile is one of the most important financial decisions they make. Automobiles are a necessity, especially in areas with fewer public transit options, for consumers trying to commute to work, take kids to school, or conduct other important activities. Given the importance of auto financing transactions, it is crucial that the Bureau write a broad and flexible rule to enable a robust supervision program and protect consumers' interests.

We are pleased that the Bureau will supervise nonbanks offering auto leasing, in addition to purchase and refinance loans. Whether or not auto financing results in owning a car, the consumer likely experiences auto leasing much in the same way as a purchase loan. It is a financial transaction, paid by the consumer over a certain period of time, which grants the consumer exclusive use and possession of the automobile. Therefore, we support the Bureau's broad proposal to cover leases that are the "functional equivalent" to a purchase loan as seen from the consumer's perspective,[2] as well as other auto lease transactions that in any case have a "material impact" on consumers.[3]

However, we recommend that the Bureau consider a threshold of 5,000 aggregate annual originations, instead of the proposed 10,000, for determining larger participants in the auto financing market. The proposed 10,000 origination threshold would capture only 7 percent of market actors, and a 5,000 threshold would, as the Bureau notes, result in only a marginal increase in actors covered.[4] But we believe the additional reach, while marginal, is beneficial for extending the protections to as many consumers as feasible. A 5,000 threshold would cover approximately 93 percent of market activity, thus creating a broad and flexible standard on par with other larger participant rulemakings.[5] Because this rulemaking does not place any new substantive requirements on providers of auto financing, the Bureau should set a threshold that casts a wide net and leaves the Bureau discretion to respond as market realities evolve.

Furthermore, while we acknowledge that auto title lending is somewhat different from auto financing activities, we urge the Bureau to supervise larger auto title lenders as soon as possible – through a future rulemaking, if not this one. Auto title loans are small-dollar consumer loans that can come with balloon payments and triple-digit interest rates that pose grave risks to consumers. The Center for Responsible Lending estimates that the auto title lending market siphons $4.3 billion in fees alone out of consumers' wallets.[6] Meanwhile, failing to repay these expensive loans can lead to consumers losing their automobiles to repossession – which can further threaten job

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[2] 79 Fed. Reg. 60762, 60765 (proposed Oct. 8, 2014).

[3] 79 Fed. Reg. at 60766 (referencing authority under Dodd-Frank Section 1002(15)(A)(xi)(II)).

[4] 79 Fed. Reg. at 60772.

[5] *See* Defining Larger Participants in Certain Consumer Financial Product and Service Markets, 77 Fed Reg. 9592, 9602 (proposed Apr. 17, 2012) (proposing $7 million annual receipt threshold for larger consumer reporting agencies, which would encompass approximately 94 percent of consumer reporting market activity); Defining Larger Participants in the Consumer Reporting Market, 77 Fed. Reg., 42874, 42888 (July 20, 2012) (finalizing $7 million annual receipt threshold).

[6] CTR. FOR RESPONSIBLE LENDING, STATE OF LENDING: CAR TITLE LOANS 9 (2013), *available at* http://www.responsiblelending.org/state-of-lending/reports/7-Car-Title-Loans.pdf.

security due to lack of transportation, as well as overall financial security. The Bureau has a crucial role to play in ensuring that these high-cost loans are subject to proper oversight.

Conclusion

Thank you for considering these comments and for protecting consumers making auto financing transactions. We look forward to working with the Bureau as it develops its nonbank supervision program.

Sincerely,

Suzanne Martindale
Staff Attorney