



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, RIN: 3170-AA46)**

Dear Ms. Jackson:

The American Financial Services Association (“AFSA”)¹ and the Structured Finance Industry Group, Inc. (“SFIG”)² welcome the opportunity to comment on the Consumer Financial Protection Bureau’s (“CFPB” or “Bureau”) proposed rule (“Proposed Rule”) that would identify a market for automobile financing and define as larger participants of this market certain nonbank covered persons that would be subject to the CFPB’s supervisory authority. (SFIG has contributed to only Section II of this letter.) The Proposed Rule would also define certain automobile leases as a “financial product or service” under section 1002(15)(A)(xi)(II) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).

AFSA agrees with the Bureau regarding the important role that automobiles and auto-related financing play in consumers’ lives, and in the country as a whole. With this in mind, it is crucial that the CFPB exercise great care in crafting the final rule defining larger participants in the automobile financing market to avoid creating further regulatory burdens, minimize uncertainty for covered persons in that market, and potentially restrict consumers’ access to credit for these loans. We therefore ask the CFPB to: (1) use the Regulation Z definition of “refinancing” in 12 CFR 1026.20(a), as opposed to the proposed expanded definition; (2) retain the exclusion for asset-backed securities from the definition of “annual originations” and modify the exclusion to clearly cover asset-backed securities; (3) refrain from overreach regarding leases; (4) modify the test used to determine larger participants to ensure that it truly captures the “larger” participants who actually occupy the vast majority of the market; (5) change certain other definitions as

¹ AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its more than 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage creditors, mortgage servicers, credit card issuers, industrial banks and industry suppliers.

² SFIG is a member-based, trade industry advocacy group focused on improving and strengthening the broader structured finance and securitization market. SFIG provides an inclusive network for securitization professionals to collaborate and, as industry leaders, drive necessary changes, be an advocate for the securitization community, share best practices and innovative ideas, and educate industry members through conferences and other programs. Members of SFIG represent all sectors of the securitization market including issuers, investors, financial intermediaries, law firms, accounting firms, technology firms, rating agencies, servicers, and trustees. Further information can be found at www.sfindustry.org.

described below; (6) provide additional detail on Experian Automotive’s AutoCount® database and specifically exclude loans not made for the purpose of financing the purchase of automobiles or the refinancing of such original obligations from the database; and (7) revisit the cost likely to be incurred by a larger participant experiencing supervisory activities by the Bureau.

I. Definition of “Refinancing”

The Proposed Rule should use the definition of “refinancing” in 12 CFR 1026.20(a), as opposed to the proposed expanded definition. The proposed definition of refinancing significantly increases the number of nonbank covered persons who may meet (and who have no way of knowing whether they meet) the proposed threshold for larger participants of the automobile financing market, but whose main business is not automobile financing. Additionally, it is difficult, if not impossible, to determine whether a refinancing meets the proposed definition.

The Proposed Rule states, “Refinancing has the same meaning as in 12 CFR 1026.20(a), except that the nonbank covered person need not be the original creditor or a holder or servicer of the original obligation.”³ This definition is too broad. The definition of refinancing should be limited to the definition in 12 CFR 1026.20(a). The covered person should have to be the original creditor or a holder or servicer of the original obligation. The broad definition currently being contemplated will lead to many more annual originations being counted towards the threshold, pushing several more companies to be identified as larger participants. As a result, covered persons whose main business is not automobile finance (such as finance companies that do not originate purchase money automobile loans) could be included in this rule as larger participants because of the excessively broad definition.

Currently, the proposed definition covers debt consolidation, which should be treated differently than refinancing. Most refinancing occurs because the consumer has a different need for funds. For example, a consumer might have a motor vehicle sales finance contact on a vehicle that is several years old, so that the existing balance is less than the depreciated value of the vehicle, and be in need of funds to pay for emergency medical expenses. If the consumer has a good payment record, then the original creditor or another creditor might extend credit using the vehicle as collateral, even if the account is not fully secured. In such circumstances, the parties clearly have no intention of making a purchase money loan – they are not intending to and are not in fact financing, an automobile purchase. Rather, they are refinancing debt in order better to meet other non-purchase-related needs. It therefore does not make sense that an extension of credit that has nothing to do with the acquisition of the vehicle should count towards the proposed threshold for larger participants of the “automobile financing” market.

In addition to being too broad, the definition is also unworkable. Covered persons simply do not have the information necessary to determine whether they are refinancing an obligation subject to the proposed definition. This is because the refinancing creditor far more often than not has no way even to know if it is refinancing an automobile purchase money loan. The lack of knowledge is due to the fact that (1) there is nothing in the public record (the title received by the refinancing creditor) to indicate whether it is a purchase money loan that is being paid off; (2) as most borrowers are unfamiliar with the term “purchase money loan,” the borrower is unlikely to

³ § 1090.108(a)

know if the specific transaction being refinanced was or was not a purchase money loan or the refinancing of a purchase money loan; and (3) the refinancing creditor cannot learn from the creditor about to be paid off that the loan was a purchase money or refinance of a purchase money auto loan because the original creditor is only allowed to provide the refinancing creditor with the balance on the account, and is not allowed to state the purpose of the loan being refinanced.

Because the refinancing creditor cannot know from the public record, from the borrower, or from the creditor about to be paid off, whether the original transaction was or was not a refinancing of or an original purchase money loan, there is no way a refinancing creditor can even know whether the proposed loan is in fact a refinancing of a purchase money loan. If that creditor cannot know whether a refinanced loan meets the proposed definition, then the creditor will be unable to determine whether it is a larger participant in the automobile financing market. And it is axiomatic that is important for creditors to be able to determine whether they will be considered a larger participant. (For example, creditors who meet the larger participant threshold may have to budget in advance for the cost of CFPB supervisory exams.)

II. Securitization Exemption

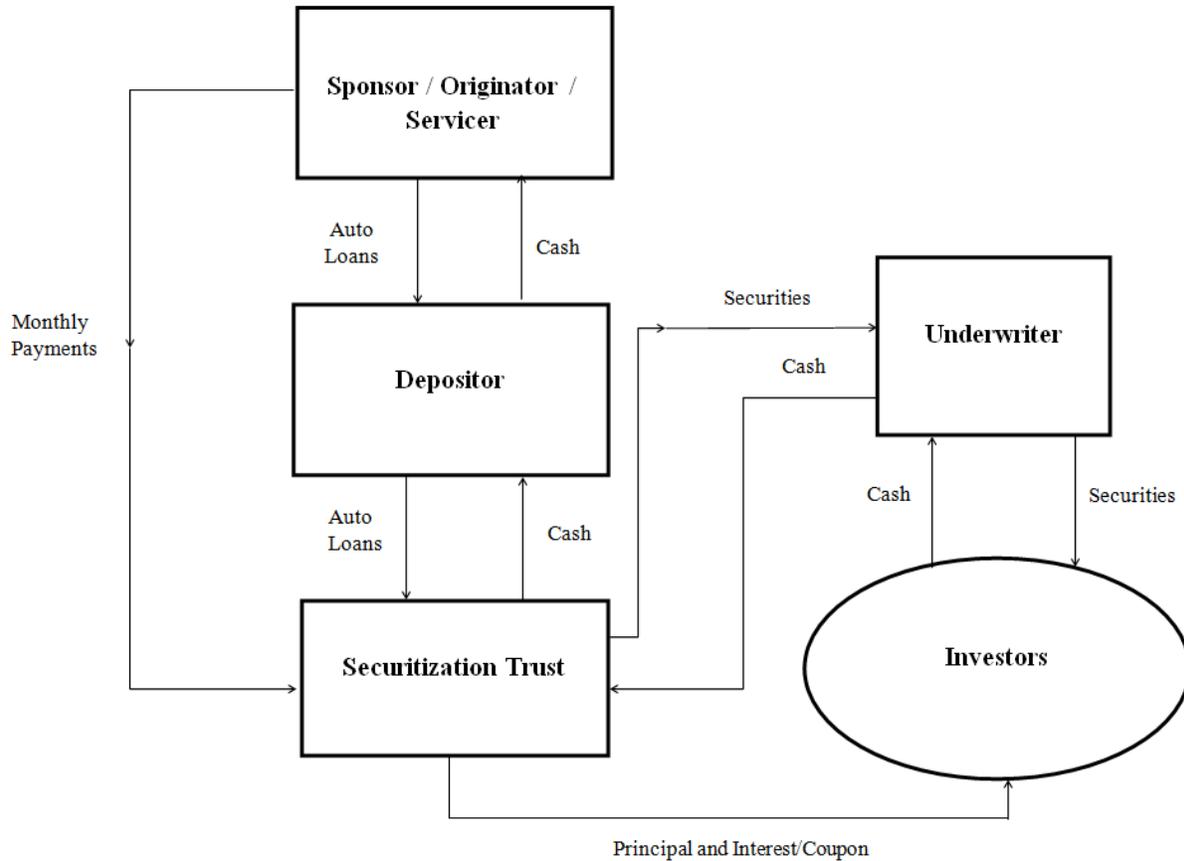
AFSA and SFIG agree with the CFPB that asset-backed securities should not be considered annual originations under the Proposed Rule. As the CFPB correctly states, asset-backed securities are investment vehicles that are used by finance companies to raise money in the capital markets, but they do not alter contractual obligations between the consumer and the finance company. The process used by finance companies to create asset-backed securities, the payment of which depends primarily on the performance of those underlying assets, is more generally referred to as securitization.

Securitization enables finance companies to convert illiquid assets (i.e., motor vehicle sales finance contracts and leases in this context) into securities that can be sold to investors. Through securitizations, finance companies are able to generate immediate funds to allow additional purchases of motor vehicle sales finance contracts and leases from dealers. This reduces the cost of credit for consumers and increases credit availability. Over the years, securitization has grown in large measure because of the benefits it delivers to transaction participants, consumers and to the financial system as a whole, including: lower cost of financing, incremental credit creation, the ability to transfer risk, and credit cost reduction and increased credit availability.

Typically, securitizations are organized by a “sponsor,” which in many cases is the finance company that purchased the motor vehicle sales finance contracts or leases from dealers. In the case of motor vehicle sales finance contracts, they are initially sold by the sponsor to a “depositor” (usually an affiliate of the sponsor) under a purchase agreement.⁴ Pursuant to a sale and servicing agreement, the motor vehicle sales finance contracts are then sold by the depositor to the securitization “trust” (also called the “issuer”). The securitization trust will issue securities representing the right to receive payments on the motor vehicle sales finance contracts that are then sold to investors.

⁴ Because leased vehicles are titled in the name of the finance company, lease securitization transactions are structured differently so that the leases are not transferred by the finance company to avoid retitling the vehicles.

Throughout the life of a securitization, a “servicer” is responsible for collecting payments made on the motor vehicle sales finance contracts and leases. Below is a diagram that shows the process and the parties involved in a typical securitization transaction.



Including asset-backed securities as annual originations would likely result in many securitization entities becoming larger participants under the Proposed Rule, which could be detrimental to the securitization process but provide no oversight benefit.⁵ The securitization entities do not have employees or processes, but as described above, rely on a servicer, that is often the finance company, to manage the accounts. Even though the depositor in the transaction described above purchases or acquires all of the accounts, it only holds them for a moment before they are transferred to the issuer in the securitization transaction. There would be no benefit for the depositor to be a larger participant. In addition, because the special purpose entities involved in securitization transactions are typically affiliates of the finance company, failing to exclude them would result in a double or triple counting of the obligations under (a)(ii).

⁵ A typical securitization transaction includes well over 10,000 accounts and often is a multiple of that number. The number of accounts in Ford Credit public U.S. retail securitization transactions since 2010 have ranged from 51,209 to 98,738, for example.

While the Proposed Rule does not intend to cover securitization, some modification is needed to the definition of “annual originations”⁶ to clearly exclude the entities involved in securitization transactions. The problem lies in the language of (a)(i)(A)(4) which broadly applies to “Purchases or acquisitions of obligations. . . .” As described above, securitization trusts and other special purpose entities created to facilitate securitization transactions purchase or acquire the obligations and so would be covered by this definition. As a result, it is important that the exclusion contained in (a)(i)(B) be clearly drafted to exclude these purchases or acquisitions of obligations when they occur by a securitization entity. To accomplish this, we suggest that the CFPB modify (a)(i)(B) to state:

(B) The term annual originations does not include purchases or acquisitions of obligations by special purpose entities established by nonbank covered persons for the purpose of funding or securitization transactions.

III. Leases⁷

Proposed § 1001.2 includes in the definition “financial product or service” found in § 1002(15)(A)(ii) of the Dodd Frank Act:

“extending or brokering leases of personal or real property that are the functional equivalent of purchase finance arrangements, if--

- (I) the lease is on a non-operating basis; [and]
- (II) the initial term of the lease is at least 90 days.”

The CFPB explains in great detail in the Supplemental Information why most vehicle leases are captured by this definition (“category (ii) leases”). There is little doubt most vehicle leases have an initial term greater than 90 days, and the Bureau’s decision to use a legal, as opposed to an accounting, definition of “non-operating lease” found in Regulation Y arguably covers many motor vehicle leases. Thus, the qualifying aspects of the definition are likely met by many motor vehicle leases. However, it is the threshold requirement, that such leases are the “functional equivalent of purchase finance arrangements,” where the definition fails to capture most vehicle leases.

We strongly disagree with the CFPB’s reasoning that most vehicle leases are the “functional equivalent of purchase finance arrangements,” and thus, category (ii) leases. In viewing the definition from the consumer’s perspective, the Bureau focuses on the many irrelevant similarities between lease applications and payments and purchase applications and payments, but disregards the primary difference between the two. Title to the vehicle never transfers unless and until the consumer exercises an option to purchase the vehicle from the lessor. The actual transfer of ownership of the vehicle occurs only with a purchase finance contract which would be

⁶ § 1090.108(a)(i)(B)

⁷ AFSA supports the comment letter submitted by the Association of Consumer Vehicle Lessors (“ACVL”). ACVL’s letter focuses on consumer automobile leasing in the Supplementary Information accompanying the Proposed Rule. Specifically, ACVL’s letter comments on the Supplementary Information discussion of when vehicle leases “are the functional equivalent of purchase finance arrangements” as that phrase is used in Section 1002(15)(A)(ii) of the Dodd-Frank Act. As the national trade association of consumer vehicle lessors, the ACVL is uniquely qualified to comment upon the subject of consumer automobile leasing.

a separate origination. It does not occur in a typical vehicle lease. This is a material and fundamental difference between the two that the Proposed Rule and its commentary fail to acknowledge.

We believe most consumers understand the difference between a lease and purchase money financing, and have different expectations for both. The CFPB's rationale that it is only the application and payment aspects that matter to a consumer is logically flawed.

The CFPB's logic is also flawed when viewed in the context of the second proposed definition of a lease as a financial product or service. Here, the Bureau relies on the definition of financial services permissible for a national bank to offer found in the Competitive Equality Banking Act of 1987 ("CEBA"). The description of a lease found in CEBA § 108 was included for the express purpose of allowing national banks to offer the kind of automobile lease most prevalent in the market today. Without the CEBA authority, national banks were limited to "finance leases" that were the functional equivalents of loans, i.e., those intended as purchase financing arrangements, made pursuant to their § 24(Seventh) lending authority under the National Bank Act. In other words, the very leases the CFPB works so hard to argue are category (ii) leases were impermissible for national banks to enter into under the "functional equivalence" standard. Only after the enactment of CEBA § 108, have national banks been able enter into CEBA leases that are virtually identical to those offered by non-depository institutions. It logically follows that including the CEBA definition captures all of the leases necessary to calculate accurately annual aggregate originations without having to forcefully reason them into the category (ii) definition.

Finally, in trying to fit the square peg that are today's automobile leases into the round hole of § 1002(15)(A)(ii) of the Dodd-Frank Act, the Bureau fails to take into account years of Uniform Commercial Code jurisprudence defining leases that are the equivalent of purchase arrangements, and opens the door to a substantive application of its category (ii) definition. The definition of "credit sale" in the Truth in Lending Act, as well as the retail installment sale contract definition of many state Retail Installment Sales Acts, have long identified when a purported lease is the functional equivalent of purchase finance arrangements in a manner contrary to the CFPB's analysis. By blurring the lines between the "true" leases that make up the vast majority of today's automobile leases and leases intended as purchase arrangements, the CFPB has created confusion where none should be necessary.

A plain reading of § 1002(15)(A)(ii) of the Dodd-Frank Act evidences that Congress was trying to capture the universe of purchase transactions in the category (ii) definition. Unless and until Congress rewrites § 1002(15)(A)(ii) of the Dodd-Frank Act or amends the Dodd-Frank Act to include CEBA-type leases, we respectfully request that the CFPB refrain from overreach in its application of the category (ii) definition to today's automobile leases and instead rely on its proposed CEBA definition. Further, we respectfully request that the CFPB withdraw its discussion in the Supplemental Information relating to "most" automobile leases being the functional equivalent of purchase arrangements.

IV. Test to Define Larger Participants

AFSA believes that the CFPB should redesign the test to define larger participants in the automobile finance market. The CFPB should raise the threshold, exclude direct automobile lending, and remove refinancings from the definition of “annual originations.”

The threshold the CFPB proposes for larger participants in the automobile finance market is too low. The CFPB proposes that a nonbank covered person that is not an automobile dealer and engages in automobile financing is a larger participant of the automobile financing market if the person has at least 10,000 aggregate annual originations. The CFPB should increase the threshold to 50,000 and limit the rule to only cover motor vehicle sales finance contracts and finance leases (not all leases, as explained above).

A threshold of 10,000, coupled with the overly broad definition of refinancing, is so low that covered persons who qualify as small businesses under the Small Business Administration’s (“SBA”) definition⁸ could also qualify as larger participants under the Proposed Rule. (If the definition of refinancing is not changed, even more small businesses have the potential to meet the definition of larger participant.) It seems contradictory that a covered person could be a small business and a larger participant at the same time. A small business that has less than \$38.5 million in average annual receipts without question does not have more than 1 percent of the \$900 billion automobile financing market share. It stretches credulity to conclude that such a small business with less than 1 percent of the market share should be considered a “larger” participant in the entire market.

Moreover, the CFPB estimates that the proposed threshold would bring about 38 entities within the CFPB’s supervisory authority, roughly 7 percent of all nonbank covered persons in the automobile financing market. Based on the number of covered transactions, the CFPB estimates that these 38 entities are responsible for approximately 91 percent of the activity in the nonbank automobile financing market. In comparison, the CFPB estimates that a threshold of 50,000 would allow the CFPB to supervise the 17 very largest participants in the market, representing 86 percent of the market activity. It is clear that the CFPB could adequately detect and assess risks to consumers and consumer financial markets by supervising 86 percent of the market rather than 91 percent. This market sample size is more comparable to that used in other CFPB larger participant rules. As a point of reference, the larger participant rule for the debt collection market covers 63 percent of the market.

The proposed low threshold of 10,000 aggregate annual originations would also hurt consumers. This is because some covered persons may exit a portion of the business. Covered persons may choose to base their lending decisions on the size of the loan in order to avoid engaging in a volume of transactions that would cause them to reach the threshold. As a result, the Proposed Rule could have the unintended result of making it more difficult for consumers to finance lower-priced cars.

⁸SBA defines a finance company as a small business if the company has less than \$38.5 million in annual receipts. <https://www.sba.gov/content/summary-size-standards-industry-sector>.

We request that the CFPB also consider limiting the application of the final rule to motor vehicle sales finance contracts and finance leases. Many consumer finance companies make direct loans secured by automobiles but do not participate in purchasing motor vehicle sales finance contracts. Based on previous publications by the CFPB, it appears that the Bureau's primary concerns are with practices such as the payment of participation fees that only occur in the purchase of motor vehicle sales finance contracts. Specifically, the CFPB has focused on the pricing disparities that result when dealers are given pricing authority.⁹ These situations do not arise when loans are made by a consumer finance company directly to a consumer. The direct lending channel concerns a consumer seeking credit directly from the financing source, whereas in the indirect lending channel the dealer typically facilitates a loan from a third-party finance source. Nevertheless, the definition of "automobile financing" in the Proposed Rule §1090.108(a) does not specifically exclude direct lending channels. Direct lending industry participants (creditors that refinance loans) should be excluded from the definition of refinancing. Even though direct lenders may originate and refinance existing credit obligations using motor vehicles as collateral, these loans are not loans "for the purpose of purchasing an automobile," and in fact are a different market than this Proposed Rule is attempting to regulate.

Accordingly, we request that the CFPB modify the definition of "annual originations" to limit its application only to motor vehicle sales finance contracts – true purchase transactions. For example, § 1090.108(a)(i)(A)(1) could be revised to state, "Installment sales contracts entered into for the purpose of purchasing an automobile."

V. Other Definitions

AFSA suggests that the CFPB change the definition of "automobile," "automobile financing market," and "title loans." The Bureau should also provide a definition of "affiliate."

Definition of Automobile: Currently, the Proposed Rule defines automobile as "any self-propelled vehicle primarily used for personal, family, or household purposes for on-road transportation."¹⁰ In the analysis of the Proposed Rule, the CFPB asks for comment on whether motorcycles should be a separately defined term. AFSA believes that the CFPB should treat motorcycles in the same way as recreational vehicles, golf carts, and motor scooters. Motorcycles not only should be a separately defined term, but the financing of the purchase of motorcycles should not be included in the larger participant rule for the automobile financing market. The motorcycle financing market should be viewed together with other discretionary transactions that are already excluded from the Proposed Rule.

Very recently, six other federal bodies had the very same question before them as the CFPB now faces, i.e., whether to group motorcycle loans together with car and light truck loans, or whether to classify motorcycle loans separately. In the recently finalized Securitization Credit Risk Retention Rule, these regulators (Board of Governors of the Federal Reserve System, the Department of Housing and Urban Development, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, the Office of the Comptroller of the Currency, and the

⁹ CFPB Bulletin 2013-02: Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act. March 21, 2013.

¹⁰ § 1090.108(a)

Securities and Exchange Commission), concluded that motorcycle loans should be viewed as distinct from car and truck loans. These regulators definitively classified motorcycles as recreational vehicles, not vehicles used to commute to work or typically used in everyday life. We believe the CFPB should follow that same standard, and exclude motorcycle loans and other motorcycle finance transactions from the Proposed Rule, in the same way that it has already excluded recreational vehicle financing.

Definition of Title Loans: The CFPB defines title loans as loans in which, “a lender extends credit to a consumer that is secured by the title to an automobile that the consumer owns.”¹¹ This definition is very broad and would include loans that are not commonly considered to be title loans, and so it should be changed. The CFPB could use Delaware’s definition of a title loan as a basis for its definition. Title 5 of the Delaware Code defines title loans as “a loan made to one or more natural persons by a licensee and secured by the title to a motor vehicle, which loan is not used for the purpose of purchasing the vehicle that is used as security and which loan has an originally stated repayment period of 180 days or less.”¹² Delaware’s definition is similar to the definition currently used in the Department of Defense’s Military Lending Act regulations: “*Vehicle title loans.* Closed end credit with a term of 181 days or fewer that is secured by the title to a motor vehicle, that has been registered for use on public roads and owned by a ... borrower, other than a purchase money transaction”¹³

Definition of Affiliate: The CFPB should provide a definition of affiliate. AFSA assumes that the CFPB is using the definition used in the Dodd-Frank Act, but since some state laws use a different definition, it would be helpful to have the specific definition included.

VI. Experian Automotive’s AutoCount® Database

The CFPB bases its estimates on the automobile financing market for the Proposed Rule on Experian Automotive’s AutoCount® database. We ask that the CFPB provide more detail on why this database was chosen and how the data in the database was gathered. Specifically, how is the number of accounts per participant calculated? Is an account included in the database just because it is secured by an auto? Exactly what criteria and definitions are used to create the model? Will the CFPB use the same definitions as Experian?

These questions need to be answered because some uncertainties arise from the use of the proposed database. For example, it is evident from the Proposed Rule that a direct loan secured by a lien on an automobile that is not for the purchase of an automobile or the refinancing of an automobile loan is not covered by the definition of “annual originations.” Therefore, such a loan would not be covered by the Proposed Rule. However, it is unclear as to whether the data gathered from Experian Automotive’s AutoCount® database by the CFPB to identify larger participants will mis-identify “larger participants” by inaccurately including those lenders that make direct loans (for purposes other than purchases or refinances of purchases) and note their lien on automobile titles that are recorded with state Departments of Motor Vehicles. This will

¹¹ Section-by-Section Analysis, § 1090.108(a)Market-Related Definitions

¹² <http://delcode.delaware.gov/title5/c022/sc05/index.shtml>

¹³ 32 CFR § 232.3(b)(1)(ii). (Please note that this definition may no longer be part of the Department of Defense’s regulations if the new proposed rule becomes effective.)

result in an inaccurate data source for capturing “grants of credit for the purpose of purchasing an automobile and related refinancings” in the market – the stated purpose of the Proposed Rule.

VII. Supervision

Costs of Supervisory Activities: The estimated costs of supervisory activities are unrealistically low. The CFPB estimates that total labor cost for an examination is about \$27,611 because all that would be required is a low level compliance officer and a small fraction of an attorney. However, from CFPB statements and exam manuals, AFSA believes that the CFPB actually expects a compliance officer that is a corporate officer with direct access to the Board. The salary for such a person would be much higher. Additionally, from what members of the industry have learned from their counterparts in other industries, a CFPB examination requires “all hands on board” plus substantial outside counsel costs. Specifically, a number of in-house attorneys, business persons, IT professionals, outside counsel, and outside consultants are directly involved with CFPB examinations. We believe, based on exam costs from companies in other industries, that a more accurate estimate for the cost of an examination would be \$750,000 to \$1,000,000. Larger and lengthier examinations can cost over a million dollars in staff time and outside counsel and consultants. (To be clear, this is independent of costs associated with the conclusion of Memos of Understanding or consent orders.) The estimate in the Proposed Rule also totally ignores other costs, such as e-discovery, costs which are often astronomical. For a small business with \$38.5 million or less in average annual receipts,¹⁴ even a half a million dollar exam is a huge cost.

Costs of Increased Compliance: The CFPB acknowledges that larger participants will likely have increased compliance costs. We agree. Larger participants will likely hire and train additional personnel, make systems changes, revise procedures, and enhance compliance management systems. There is every likelihood that these costs will be passed on to consumers. The costs of administration may have a disproportionate burden as compared to even the potential for minimal benefit.

Examinations: AFSA expects that the CFPB will create an exam manual for supervising larger participants in this market. AFSA has some suggestions for the exam manual and how the CFPB should supervise larger participants in the automobile financing market.

AFSA stresses the need for coordination in supervisory activities with state regulators. The Dodd-Frank Act requires the CFPB to coordinate examinations with state regulators that have supervisory authority over covered non-depositories and must rely on existing reports required by those state regulators “to the fullest extent possible.”¹⁵ We therefore seek the Bureau’s description of how it plans to coordinate its supervisory authority with state regulators and examiners. In particular, we seek acknowledgment that the Bureau will consider the various state examiners’ reports as part of the Bureau’s own process. After all, this consideration is mandated by the Dodd-Frank Act and must therefore serve to guide the Bureau’s examination process “to the fullest extent possible.”

¹⁴ See Footnote 5.

¹⁵ Dodd-Frank Act § 1024(a)(4)(A); see also David. H. Carpenter, The Consumer Financial Protection Bureau (CFPB): A Legal Analysis, Cong. Res. Serv., CRS Report R42572, at 17. Jan. 14, 2014.

Coordinating examinations with state regulators would help the CFPB address one of the management challenges identified by the Federal Reserve/CFPB Office of the Inspector General (OIG). In a September report, the OIG reported that the CFPB could improve the efficiency and effectiveness of its supervisory activities.¹⁶ For example, coordinating examinations with state regulators who have experience with supervising automobile finance companies could help the CFPB draft examination reports faster.

We also want to take this opportunity to note that there is not the same data uniformity among nonbanks as there is with banks.

VIII. Other Types of Loans Secured by Automobiles

The CFPB has asked for feedback as to “whether it should define the market for automobile financing and annual originations to include other types of loans secured by automobiles and, if so, whether it is appropriate to use the same criterion and threshold for such loans as proposed here or whether an alternative criterion and threshold would be preferable.” AFSA does not believe that the market for automobile financing and annual originations should be expanded to include other types of loans secured by automobiles. Such loans that are not made for the purpose of automobile financing (i.e., as a grant of credit to purchase an automobile or to refinance an existing credit obligation) – are outside of the proposed scope of coverage for this Proposed Rule. To include such loans would unnecessarily cause confusion as to what is considered automobile financing for the purpose of the Proposed Rule.

IX. Conclusion

In order to avoid creating further regulatory burdens, uncertainty, and potential restriction of access to credit for auto loans, the CFPB should make several changes to the Proposed Rule. First, it makes more sense to use the Regulation Z definition of “refinancing,” as opposed to the proposed definition. Second, the CFPB should use the language above to modify the definition of “annual originations” to actually exclude all asset-backed securities. Third, the CFPB should refrain from overreach regarding leases. Fourth, the larger participant threshold should be raised from 10,000 to 50,000. Also, the test to define larger participants should exclude direct automobile lending and remove refinancings from the definition of “annual originations.” Fifth, the CFPB should change certain other definitions as described above. Sixth, we ask that the CFPB provide greater transparency and additional detail in the manner it will use Experian’s Automotive’s AutoCount® database. Further, motorcycle financing transactions should be treated like the financing of other recreational vehicles and excluded from the rule. Loans not made for the purpose of financing the purchase of an automobile or the refinancing of such an original obligation should be explicitly excluded from the database. And lastly, we strongly urge the CFPB to revisit the cost of supervisory activities and discuss supervision with covered persons.

¹⁶ Bialek, Mark (Inspector General), “The OIG’s List of Major Management Challenges for the CFPB.” Sept. 2014. <http://oig.federalreserve.gov/reports/cfpb-management-challenges-sept2014.pdf>

We look forward to working with the CFPB on this Proposed Rule. Please contact Bill Himpler (202-466-8616, bhimpler@afsamail.org) or Richard Johns (202-524-6301, Richard.Johns@sfindustry.org) with any questions.

Sincerely,



Bill Himpler
Executive Vice President
American Financial Services Association



Richard Johns
Executive Director
Structured Finance Industry Group, Inc.