September 22, 2025

Comment Intake
Legal Division Docket Manager
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Defining Larger Participants of the Automobile Financing Market; RIN 3170-AB50; Docket No. CFPB–2025–0029; 12 CFR Part 1090 (August 8, 2025)

Dear Ladies and Gentlemen:

Better Markets[1] appreciates the opportunity to comment on the advance notice of proposed rulemaking ("ANPR"), which solicits feedback on whether the Consumer Financial Protection Bureau ("CFPB" or "Bureau") should substantially reduce the number of nonbank companies the CFPB supervises in the automobile ("auto") finance market.

We oppose changing the threshold definition for larger participants. It would do nothing to advance the interests of consumers and, in fact, would offer only illusory benefits to market participants. We describe in the following the reasons for opposing these changes, followed by a market-specific discussion of the infirmities of the CFPB's approach to raising larger participant thresholds.

Supervision Is An Important Tool

Supervision by the Bureau is an important tool that allows regulators and market participants to detect problems before they escalate into larger consumer protection issues. While the ANPR asks a series of questions about firms' cost outlays due to supervision, it fails to consider the potential cost *savings* due to supervision. If noncompliance with relevant consumer financial protection laws is caught early through the supervisory process, it can save firms time and costs associated with state supervisory and law enforcement inquiries, consumer complaints, and private litigation. Additionally, Bureau supervision has the benefit of statutorily protected confidentiality. Enforcement actions and private litigation are carried out in the public sphere; such actions can have a negative effect on firm reputations and value, whereas Bureau supervision is private.

Supervision also has positive competitive effects. By ensuring that a wide range of market participants are following the rules, it ensures that no single firm has an advantage due to corner-

[1] Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

cutting in legal compliance. By curtailing supervision of nonbanks, the menu of options in this ANPR would competitively harm depository institutions engaged in the same activity, as they would continue to be subject to both Bureau and prudential regulator supervision.

Finally, even if the CFPB designates a nonbank firm as a larger participant, it does not follow that the Bureau will necessarily examine that firm at all or on any particular cadence. The CFPB still has discretion about how to deploy supervisory resources using other risk-based metrics of its choice. The notion that raising the thresholds above which nonbank firms are deemed larger participants will spare the Bureau a costly diversion of limited resources is a faulty one. The CFPB can still select which of the larger participants it chooses to supervise, and in fact, maintaining the current thresholds may save Bureau resources. For one, the Bureau is currently devoting precious staff time to proposing to raise the larger participant thresholds through this ANPR. That itself is a drag on resources. Second, any time "saved" by not supervising nonbank larger participants may be spent by other Bureau staff intaking and processing consumer complaints or initiating investigations or enforcement actions that could have been spared if routine compliance were established.

Automobile Financing Market

The Bureau's 2015 rule established that nonbank covered persons with at least 10,000 aggregate annual originations would be considered larger participants in this market.[2] This ANPR proposes to raise the threshold aggregate annual origination level to a menu of potential other options, including by a factor of 30 to 300,000 annual originations, a factor of 55 to 550,000 annual originations, or a factor of 105 to 1,050,000 annual originations. We oppose all the options described to change the larger participant origination threshold trigger.

Harm to Consumers

The changes proposed by the Bureau would almost certainly cause harm to consumers. Shedding a larger participant designation would give comfort to the auto lenders that will escape CFPB supervision. Conversely, while designation as a larger participant does not guarantee supervision, it at least reminds market participants of the possibility of CFPB oversight and makes it easier for the Bureau to identify and rectify noncompliance with relevant laws.

Without access to proprietary datasets, it is difficult to precisely know auto lender aggregate annual origination figures and, therefore, which auto lenders would escape larger participant status under the various proposals outlined in the ANPR. However, to showcase the general problem with these proposals, Better Markets did an analysis of all nonbank, noncaptive auto lenders against which the Bureau has brought an enforcement action since its creation as an

2 Consumer Financial Protection Bureau. "Defining Larger Participants of the Automobile Financing Market and Defining Certain Automobile Leasing Activity as a Financial Product or Service." Final Rule. Federal Register/Vol. 80, No. 125. June 30, 2015, available at: https://www.govinfo.gov/content/pkg/FR-2015-06-30/pdf/2015-14630.pdf.

agency.[3] To wit, the Bureau has recovered from nonbank, noncaptive auto lenders nearly $75 million in customer restitution and penalties affecting 1.36 million customers, including more than 50,000 servicemembers.[4] While it is difficult to know based on public data which of those auto lenders were larger participants, consumers inevitably would have had a harder time getting redress from improper and predatory practices without the Bureau's supervision.

Moreover, Better Markets' analysis of the CFPB's Consumer Complaint Database found approximately 32,000 complaints from Americans related to the auto lending practices of nonbank, noncaptive auto lenders.[5] Our analysis further found that there were consumer complaints filed against 870 unique nonbank, noncaptive auto lenders.[6] Under the various proposals suggested by the Bureau, only five, two or zero nonbank, noncaptive lenders, respectively, would be covered as larger participants. This represents just 0.5 percent, 0.23 percent, and zero percent of the nonbank, noncaptive auto lenders for which the Bureau has received complaints from consumers. It seems implausible that any of these new proposed thresholds would truly be capturing "larger participants" in the market when they capture such a tiny fraction of the firms from which consumers are seeking redress.

Growth in the Subprime Auto Market

Beyond the clear harm to consumers, recent data also supports the fact that now is not the time to weaken oversight in the auto financing market. Recent analysis from the Federal Reserve Bank of New York found that more than 2 million Americans experienced significant declines in their credit scores, with many dropping by 100 points or more, after credit reporting resumed on student loan delinquencies.[7] While this shift doesn't necessarily mean that more borrowers will fall behind on their auto loans, it does mean that underwriting such loans may become more

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[3] Nonbank, noncaptive auto lenders (or, in other words, specialty auto lenders and Buy-Here-Pay Here lenders) are the population that this ANPR seeks to more widely exempt from larger participant status. To analyze this information, Better Markets relied upon the Consumer Financial Protection Bureau's enforcement actions database, searching for actions taken against nonbank, noncaptive lenders within the categories of "auto finance origination" and "auto finance servicing." Better Markets then reviewed all relevant nonbank, noncaptive consent orders, totaling customer restitution and penalty amounts. In some cases, the number of affected borrowers, including subpopulations including servicemembers, is known. In other cases, a precise number is not stated or is stated for only certain of the legal violations listed in the consent order. In cases of the latter, Better Markets uses the best estimate contained in the consent order. This likely results in lower estimates for affected borrowers than what actually occurred. See the CFPB's enforcement action database, available at: https://www.consumerfinance.gov/enforcement/actions/.

[4] Specifically, $50.94 million in customer restitution and $23.72 million in penalties.

[5] Better Markets analyzed downloaded consumer complaint database information, available for download at: https://www.consumerfinance.gov/data-research/consumer-complaints/

[6] *Id.*

[7] Federal Reserve Bank of New York. "Household Debt and Credit, 2025: Q1." May 2025, available at: https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2025Q1

difficult and complicated for lenders.[8] Trade publications from the auto industry indicate that with declining credit scores, many borrowers may now fall into the "subprime" category, pushing more customers to specialty lenders who understand the "nuances" of underwriting for this population of borrowers.[9] Further, affordability on auto loans may deteriorate as these newly subprime borrowers may now have to pay higher rates to obtain loans.[10] Other data from the Federal Reserve indicates that precisely the lenders these borrowers may turn to – noncaptive specialty finance companies and Buy Here Pay Here ("BHPH") firms – offer higher interest rate and longer duration loans than bank, credit union or captive finance company loans.[11]

Unique Risks of Specialty Nonbank Auto Lenders and Buy-Here-Pay-Here Lenders

There is also substantial evidence suggesting that specialty finance companies, and especially BHPH lenders, present more risks to consumers. Many state consumer education websites and personal finance columnists warn borrowers that there are perils associated with this type of financing.[12] For example, the Commonwealth of Massachusetts warns that at BHPH lenders, "very often used cars are offered at significantly higher prices than their book values. Interest rates tend to be on the high end of what's allowed under Massachusetts law. Payment plans can be bi-weekly and car buyers who get behind on payments often see their cars get repossessed."[13] Other news articles have profiled borrowers in Kansas, Louisiana, and Georgia who have been charged hidden fees and been offered confusing loan modification terms on their subprime auto loans that trapped them in cycles of debt.[14]

Bureau Proposals Allow Subprime Lenders to Evade "Larger Participant" Status

As the Bureau indicates in the ANPR, raising the aggregate annual origination threshold to 300,000, 550,000, or 1,050,000 would scope out a greater number of subprime borrower-serving

8 Campbell, Jaelyn. "Auto Loan Market Shifts as Student Loan Delinquencies Distort Subprime Scores." *CBT News*. July 21, 2025, available at: https://www.cbtnews.com/auto-loan-market-shifts-as-student-loan-delinquencies-distort-subprime-scores/.

9 *Id.*

10 *Id.*

11 Board of Governors of the Federal Reserve System. "Nuts and Bolts of Today's Auto Finance Market: Consumer & Community Context." November 30, 2023, available at: https://www.federalreserve.gov/publications/2023-november-consumer-community-context.htm.

12 See, for example, Commonwealth of Massachusetts. "Car Buyer Beware: 'Buy Here Pay Here' Used Car Financing and Sales are Riddled with Pitfalls." *Mass Consumer Affairs Blog*. March 23, 2017, available at: https://www.mass.gov/news/car-buyer-beware-buy-here-pay-here-used-car-financing-and-sales-are-riddled-with-pitfalls. See also Phillip Reed. "Don't Let a Car Dealers 'Yo-Yo' Financing Reel You In." *Tampa Bay Times*. February 27, 2019, available at: https://www.tampabay.com/business/dont-let-a-car-dealers-yo-yo-financing-scam-reel-you-in-20190227/.

13 *Id.*, Commonwealth of Massachusetts.

14 Gabrielson, Ryan and Byard Duncan. "One of the Nation's Largest Auto Lenders Told Customers, 'We're Here to Help.' Then It Took Their Money and Their Cars." *ProPublica*. September 12, 2024, available at: https://www.propublica.org/article/exeter-finance-skip-payments-debt.

lenders, including specialty finance companies and BHPH lenders. As stated previously, while a threshold of 300,000 would capture five subprime-serving lenders, a threshold of 550,000 would only cover two such lenders, and a threshold of 1,050,000 would likely cover zero such lenders.

Bureau Proposals Are Missing Key Data

The data provided by the Bureau in the ANPR is also missing other key metrics. The original 2015 final rule by the Bureau indicated that the 10,000 aggregate annual origination threshold covered just 7 percent of all nonbank covered persons in the auto finance market.[15] As the final rule stated a decade ago, "the fragmentation of the market…does not change the fact they are 'larger' than the vast majority of market participants."[16] This recent ANPR does not describe the percentage of nonbank covered persons that would be captured by the new proposed thresholds – a crucial heuristic for determining if a firm is a "larger participant" in the reference market. Likewise, the current ANPR does not discuss the percentage of subprime originations that would be covered by any of these new triggers. Because of the inherent relative riskiness of subprime loans and potential geographic or population-specific concentration of these loans, it is important to understand the scope of subprime lending that could be omitted from the larger participant definition under the various proposed origination thresholds.

Cost of Larger Participant Designation is Minimal

The Bureau's 2015 final rule indicated that the cost of being designated a larger participant was less than one-tenth of 1 percent of the total revenue generated from one year's originations for an entity at the threshold of 10,000 aggregate annual origination.[17] Surely that percentage would be even lower for firms originating more than 10,000 annual loans. The cost of the actual supervision resulting from being designated a larger participant may be even smaller than initial estimates indicated, given that many larger participants have never actually been supervised by the CFPB or may be supervised infrequently.

Special Populations – Rural and Servicemember Auto Consumers

The ANPR asks commenters about the potential impact of a change to the larger participant definition in the auto finance market for certain special populations of consumers, including those living in rural areas, servicemembers, and veterans.

In the case of rural consumers, previous CFPB research has shown that auto loan borrowers in rural areas, particularly in the American south, are likely to have larger loan balances that are a higher proportion of their household income.[18] In areas with persistent poverty in the rural south,

15 Consumer Financial Protection Bureau, *supra* note 2.

16 *Id.*

17 *Id.*

18 Consumer Financial Protection Bureau. "Consumer Finances in Rural Areas of the Southern Region." Office of Research. June 2023, available at: https://files.consumerfinance.gov/f/documents/cfpb_or-data-point_consumer-finances-in-rural-south_2023-06.pdf.

median auto loan balances amount to nearly half of median household income.[19] In other words, compliance with consumer financial laws is even more important for rural borrowers, since auto loans make up a large share of the money they take home every month. That importance is compounded by the fact that rural households must rely more heavily on personal vehicles to get to work or school, given the lack of availability of mass transit infrastructure in these areas of the country.

Likewise, compliance with relevant consumer financial laws is also of heightened importance for servicemember borrowers. As a CFPB report from earlier this year documents, "debt may affect whether servicemembers receive and maintain a national security clearance."[20] The report adds that "in addition to possible loss of their security clearance, servicemembers who fail to pay their debts also face other unique consequences such as military disciplinary action, delayed career progression, and termination from employment."[21] In other words, having a sustainable auto loan greatly affects the welfare of individual servicemembers and may also impact our nation's overall military readiness.

This same research by the Bureau also found that servicemembers in the auto market borrow more, are less likely to make a cash downpayment, make smaller downpayments, and have higher interest rates and longer loan terms than those of non-servicemembers.[22] These factors translated into "higher monthly payments for servicemembers than non-servicemembers, even accounting for servicemembers' longer loan terms."[23]

Finally, the study indicated that nonbank lenders and noncaptive lenders were less likely to collect data on a borrower's status as a servicemember.[24] In fact, the report had to exclude specialty finance providers and BHPH lenders from the data analysis due to the unreliability of information provided by these types of lenders.[25] The report concluded that this "may call into question [specialty lenders' and BHPH lenders'] ability to comply with various federal and state consumer protection statutes regarding servicemembers."[26] Again, the Bureau should not raise larger participant thresholds such that it is scoping out specialty and BHPH lenders given the Bureau's own recent stipulation that these lenders may be less likely adhere to data tracking that facilitates compliance with the relevant servicemember consumer protection law.

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19 *Id.*

20 Consumer Financial Protection Bureau. "Auto Lending to Servicemembers." January 2025, available at: https://files.consumerfinance.gov/f/documents/cfpb_servicemember-auto-finance-report_2025-01.pdf.

21 *Id.*

22 *Id.*

23 *Id.*

24 *Id.*

25 *Id.*

26 *Id.*

Finally, as cited previously, at least 50,000 servicemembers have already benefited from redress due to the Bureau's enforcement actions.[27] This track record further underscores the harm of excluding more lenders from supervision that serve this population.

Conclusion

The ability to get an auto loan may make or break an individual's opportunity to access employment, education, houses of worship, and family and friends. Sustainable, legally compliant auto lending both allows families to thrive and also facilitates competition and economic growth. Given the myriad benefits to consumers, the minimal costs to auto lenders, and the ability of the Bureau to tailor supervision among larger participants, it does not make sense for the CFPB to change larger participant thresholds. In fact, the Bureau should redouble its commitment to understanding market trends in the auto loan industry, including the accessibility and affordability of auto loans for all Americans, and especially rural, servicemember and veteran borrowers.

Sincerely,

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27 *Supra* note 3.