



NATIONAL INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION

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Submitted Electronically Via Regulations.gov

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

Re: Comments to Proposed Rule Defining Larger Participants of the Automobile Financing Market and Certain Automobile Leasing Activity as a Financial Product or Service  
Docket No. CFPB-2014-0024 or RIN 3170-AA46

Dear Ms. Jackson,

The National Independent Automobile Dealers Association (NIADA) submits the following comments to the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) regarding the Bureau’s proposed rule defining larger participants of the automobile financing market and certain automobile leasing activity as a financial product or service.

A. Introduction

NIADA is among the nation's largest trade associations representing the used motor vehicle industry comprised of more than 38,000 licensed used car dealers. Since 1946, NIADA has represented the voice and interests of used car dealers at the federal level in Washington, D.C. Coupled with its state association network across the country, NIADA’s grass-roots framework provides a dual layer of advocacy unmatched in the used motor vehicle industry.

For 68 years, NIADA has engineered programs and leveraged technology to fulfill its mission to advance, educate, and promote the independent, used car dealer. NIADA stands tall for its members who subscribe to a strict Code of Ethics of duty, honor and integrity and who believe in the advancement of small business in support of the free-market system

NIADA's members include dealers that sell used vehicles wholesale, retail, and buy here pay here (BHPH). Many of NIADA's dealer members own and operate small businesses as defined by the Small Business Administration with almost 50 percent of those members employing five or fewer employees. Significantly, more than 40 percent of these dealers have been in business longer than 20 years.

After having reviewed the proposed rule, NIADA offers the following comments.

**B. Setting the Threshold at 10,000 Aggregate Annual Originations**

The Bureau's proposed rule would define a nonbank larger market participant in the automotive finance market as an entity that has at least 10,000 aggregate annual originations in a calendar year. The Bureau defines annual originations in the proposed rule to include the sum of the following: grants of credit for the purchase of an automobile, automobile leases, refinancings of credit obligations for the purchase of a vehicle, and any subsequent refinancings thereof, and purchases or acquisitions of such credit obligations (including refinancings).

In setting this threshold, the Bureau indicates that approximately 38 entities, or 7% of all nonbank entities in the automobile financing market will be covered by the rule. The Bureau, citing to Experian Automotive's AutoCount database suggests that these 38 entities account for roughly 91% of the activity in the nonbank automobile financing market.

The Bureau indicates that it considered, and is continuing to consider, the establishment of a higher threshold – 50,000 annual originations, and one that is lower – 5,000 annual originations. In declining to set the threshold at 50,000 annual originations, the Bureau postulates that it would lower the number of covered entities from 38 to 17, although those 17 entities would still comprise approximately 86% of the market activity. On the other hand, the Bureau states that the lower 5,000 threshold would increase the number of covered entities from 38 to 55, but would only increase the market share from 91% to 93%.

NIADA believes that the Bureau should decline to establish any threshold that is lower than the 10,000 annual originations proposed in the draft rule. The Bureau's own analysis is basis enough for finding that those entities covered by a lower threshold are truly not larger participants. The Bureau states that any additional entities "are only a fraction of the size of the smallest entities that meet the proposed threshold and are mostly regional finance companies."<sup>1</sup>

NIADA also encourages the Bureau to reconsider setting a higher threshold. During the Bureau's recent field hearing on auto finance, the American Financial Services Association (AFSA) commented that many of the entities subject to supervision under the proposed rule have well below 1% of the market share. NIADA agrees with AFSA that such an entity having a nominal amount of market share does not constitute a larger participant.

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<sup>1</sup> See, Page 41-42 of the Proposed Rule.

### C. Excluding Title Lending or Securitization of Automobile Loans

The proposed rule indicates that the Bureau is considering whether to include other types of automobile-secured loans in scope of the definition of automobile financing. The Bureau specifically mentions automobile title loans. In the proposed rule as released, the Bureau declined to include automobile title lending in the framework of this rule stating its view that title loans are a substantially different product than automobile financing.

Automobile title lending and financing for the acquisition of a motor vehicle, be it through purchase financing agreements or leasing, are entirely separate financial products or services. Title lending has a different purpose than does financing for the acquisition of a vehicle and refinancing. Title loans are given to consumers who already have an ownership interest in their car and are desirous to obtain money for a purpose other than acquiring the vehicle. Automobile financing occurs for the purpose of obtaining a vehicle, and refinancing occurs generally to secure better terms related to the acquisition of that vehicle.

If an individual elects to acquire a title loan, that transaction occurs at a later point in time than does the financing for acquisition of the vehicle. Excluding refinancing, automobile financing, as defined in the proposed rule, occurs before the consumer has an interest in the vehicle and is provided to assist the consumer obtain an interest therein. Conversely, automobile title lending occurs after the consumer has attained an interest in the vehicle and can demonstrate such interest.

A nationally renowned title loan company explains a title loan as follows, “A title loan (or title pawn in some states) is a quick and convenient way for people who own their car to get cash. Getting a title loan is easy, as long as you own your car and have a lien-free title, you can use it as collateral to get the cash you need...”<sup>2</sup>

Because the very nature, purpose, and timing of automobile title loans is vastly different from those related to financing for the acquisition of a vehicle, the Bureau should not lump title loans or similar products into its definition of “automobile financing” and “annual originations” as contained in this proposed rule. NIADA takes no position on whether the Bureau should consider title lending in a separate, future rule-making.

### D. Exclusion of Buy Here Pay Here Dealers

In the proposed rule, the Bureau reaffirms the language that exists in the Dodd-Frank Wall Street Reform and Consumer Protection Act exempting certain automobile dealers from the Bureau’s jurisdiction. The proposed rule also exempts certain automobile dealers predominantly engaged in the sale and servicing of motor vehicles or the lease and servicing of motor vehicles, or both, that extend

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<sup>2</sup> <http://www.titlemax.com/faqs/>.

credit or leases to customers but do not routinely assign them to an unaffiliated third party. These dealers are commonly referred to as BHPH dealers.

The Bureau explains its opinion that BHPH dealers have a different business model and are typically much smaller in asset size and activity level than others that the Bureau proposes to supervise through this proposed rule. Although it does not specifically state so, perhaps the Bureau is referring to footnote 59 of its proposed rule when making its contention that the BHPH dealer is a different business model than automotive financing as defined in this proposed rule. Footnote 59 states, “BHPH automobile dealers generally are indifferent to the consumers’ automobile choice. Typically, only after the dealer assesses consumers’ creditworthiness and determines their maximum monthly payment does the dealer present automobile options.”

NIADA objects to any characterization that BHPH dealers engage in something other than automobile financing. Those who lend money to consumers in the automobile financing market, whether a bank, non-bank, prime lender, subprime lender, deep subprime lender, or BHPH dealer, provide the same financial product or service. The Bureau’s own definition of automobile financing as proposed in that rule recognizes this fact. The Bureau specifically proposes to define automobile financing as “the granting of credit for the purpose of purchasing an automobile.” That is exactly what the BHPH dealer does; grants credit to customers for the purpose of purchasing an automobile, no different than any other third party finance source.

Furthermore, NIADA disagrees with the general characterization the Bureau has about BHPH being indifferent to consumers’ automobile choice. When interacting with customers regarding a purchase of this magnitude, BHPH dealers cannot afford to be indifferent, particular considering the risk the BHPH dealer assumes as the financier. BHPH dealers work assiduously with potential buyers to determine the consumers’ creditworthiness, capacity to repay, and vehicle model they desire to purchase. Each is an important and distinct consideration in the underwriting process and is the same consideration undertaken by other lenders regardless of the prime, subprime, or deep subprime nature of the loan. NIADA believes this careful scrutiny is the essence of responsible lending. No automotive lender, traditional or otherwise, wants to establish a lending relationship that is destined to fail because the consumer’s credit creditworthiness and capacity to repay were not appropriately matched to the vehicle purchased.

It is true that some BHPH dealers gather information pertaining to creditworthiness and capacity to repay before appropriate vehicle options are presented to the customer. However, such a practice is not unique to BHPH dealers. Many automobile dealers engaged in new vehicle sales (or used vehicle sales financed through third parties) will have at least some snapshot of the consumer’s creditworthiness before vehicle options are presented. Likewise, this pre-sale snapshot is not exclusive to the automobile financing market. Legions of mortgage lenders provide pre-approval before the homebuyer ever makes contact with real estate agent to look at potential homes.

Because the ultimate objective of each automobile lender is to grant credit to purchase (or lease) a vehicle and the processes they use to determine creditworthiness and capacity to repay are the same,

NIADA objects to the Bureau's position that an additional larger participant rulemaking specific to BHPH dealers may be necessary.<sup>3</sup> If the Bureau intends to reserve rights to create a separate larger participant rule for BHPH dealers, then why not have separate rules for each type of finance source? Why not have a larger participant rule specific to manufacturer captive finance companies? Why not a specific rule for deep subprime companies?

The simple fact of the matter is that a distinct larger participant rule specific to BHPH dealers, or any other finance source for that matter is not needed, and the Bureau should not engage in any attempt to do so. One rule covering the entirety of the nonbank automobile financing market adequately addresses the market.

### III. Conclusion

NIADA urges the Bureau to remove footnotes 59 and 86 pertaining to BHPH dealers. NIADA believes the Bureau should not attempt to create a distinct larger participant rule for the BHPH dealer separate and apart from this proposed rulemaking. Furthermore, NIADA encourages the Bureau to reevaluate its threshold for defining the larger participants and consider the 50,000 annual originations suggested. Finally, because the dissimilar nature of title loans when compared to automobile financing, the Bureau should not include title loans in the framework of this rule.

We appreciate the Bureau's willingness to receive comments on this proposal. NIADA welcomes the opportunity to engage in further discussions on this proposal and our comments thereto.

At Your Service,



Steve Jordan  
NIADA  
Executive Vice President



Shaun K. Petersen  
NIADA  
Outside Legislative & Regulatory Counsel

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<sup>3</sup> Footnote 86 states, "As the Bureau has explained, this larger-participant rulemaking is only one in a series of rulemakings, and the Bureau could address motor vehicle dealers identified in section 1029(b)(2) in a separate larger-participant rulemaking with a criterion and threshold that is better tailored to their business model and activity levels, should it determine that it is appropriate to do so."