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Part VI

Bureau of Consumer Financial Protection

12 CFR Parts 1001 and 1090

Defining Larger Participants of the Automobile Financing Market and Defining Certain Automobile Leasing Activity as a Financial Product or Service; Final Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1001 and 1090

[Docket No. CFPB–2014–0024]

RIN 3170–AA46

Defining Larger Participants of the Automobile Financing Market and Defining Certain Automobile Leasing Activity as a Financial Product or Service

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau or CFPB) amends the regulation defining larger participants of certain consumer financial product and service markets by adding a new section to define larger participants of a market for automobile financing. The new section defines a market that includes: grants of credit for the purchase of an automobile; refinancings of such obligations (and subsequent refinancings thereof) that are secured by an automobile; automobile leases; and purchases or acquisitions of any of the foregoing obligations. The Bureau issues this rule pursuant to its authority, under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), to supervise certain nonbank covered persons for compliance with Federal consumer financial law and for other purposes. The Bureau has the authority to supervise nonbank covered persons of all sizes in the residential mortgage, private education lending, and payday lending markets. In addition, the Bureau has the authority to supervise nonbank ''larger participant[s]'' of markets for other consumer financial products or services, as the Bureau defines by rule. This final rule identifies a market for automobile financing and defines as larger participants of this market certain nonbank covered persons that will be subject to the Bureau's supervisory authority. It also defines certain automobile leases as a ''financial product or service'' under section 1002(15)(A)(xi)(II) of the Dodd-Frank Act. Finally, this final rule makes certain technical corrections to existing larger-participant rules.

DATES: Effective August 31, 2015.

FOR FURTHER INFORMATION CONTACT: Dania Ayoubi or Jolina Cuaresma, Counsels; or Amanda Quester, Senior Counsel, Office of Regulations, Consumer Financial Protection Bureau, 1700 G Street, NW., Washington, DC 20552, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Summary of Final Rule

The Dodd-Frank Act authorizes the Bureau to define by regulation larger participants of certain markets for financial products or services.[1] On September 17, 2014, the Bureau proposed a rule to define larger participants of a market for automobile financing and to make certain technical amendments to its rules defining larger participants of other consumer financial product and service markets (Proposed Rule).[2] Pursuant to authority granted by the Dodd-Frank Act, the Proposed Rule also defines the term ''financial product or service'' for purposes of title X of the Dodd-Frank Act to include certain automobile leases that are not currently defined as a financial product or service under section 1002(15)(A)(ii) of the Dodd-Frank Act. The Bureau is now issuing this final rule (Final Rule) largely as proposed.

The Final Rule defines a market for automobile financing that covers specific activities and sets forth a test to determine whether a nonbank covered person is a larger participant of that market. The Final Rule defines ''automobile'' to mean any self-propelled vehicle primarily used for personal, family, or household purposes for on-road transportation, with certain exclusions (motor homes, recreational vehicles (RVs), golf carts, and motor scooters). The Final Rule defines ''annual originations'' to mean the sum of the following transactions for the preceding calendar year:

- credit granted for the purchase of an automobile;
- refinancings of such obligations (and any subsequent refinancings thereof) that are secured by an automobile;
- automobile leases; and
- purchases or acquisitions of any of the foregoing obligations.

For purposes of the Final Rule, refinancing has the same meaning as it does in Regulation Z, except that, for a refinancing to be considered an annual origination under this Final Rule, the nonbank covered person need not be the original creditor or a holder or servicer of the original obligation. The term ''automobile lease'' means a lease that is for the use of an automobile and that meets the requirements of section 1002(15)(A)(ii) of the Dodd-Frank Act or of new § 1001.2(a), which is discussed below.

As in the Proposed Rule, the term ''annual originations'' in the Final Rule does not include investments in asset-backed securities. The Final Rule also excludes certain purchases or acquisitions by special purpose entities that are established for the purpose of facilitating asset-backed securities transactions.

Under the Final Rule, a nonbank covered person that engages in automobile financing[3] is a larger participant of the automobile financing market if it has at least 10,000 aggregate annual originations. To determine a nonbank covered person's aggregate annual originations, the Final Rule provides that the annual originations of a nonbank covered person must be aggregated with the annual originations of any person (other than a dealer that is excluded from larger-participant status under the Final Rule[4]) that was an affiliated company of the nonbank covered person at any time during the preceding calendar year.

As noted above, the Bureau is including automobile leases in the criterion it uses to define larger participants in the market for automobile financing. Certain consumer leases are identified as a financial product or service under section 1002(15)(A)(ii) of the Dodd-Frank Act, and therefore count toward the aggregate annual originations threshold for the larger-participant test in this Final Rule. For the reasons explained below, the Bureau believes that the purpose of the Final Rule and the Bureau's overall mission are best served by covering automobile leasing more broadly. Accordingly, under its authority granted by section 1002(15)(A)(xi)(II) of the Dodd-Frank Act, the Bureau is adding §§ 1001.1 and 1001.2 in new part 1001 to title 12 of the Code of Federal Regulations. Section 1001.1 states the authority and purpose of part 1001, which is to implement the Bureau's authority, granted by section 1002(15)(A)(xi) of the Dodd-Frank Act, to define the term ''financial product or service'' for purposes of title X of the

[1] Public Law 111–203, section 1024, 124 Stat. 1376, 1987 (2010) (codified at 12 U.S.C. 5514).

[2] 79 FR 60762 (Oct. 8, 2014).

[3] For purposes of the Final Rule, ''automobile financing'' means providing or engaging in any annual originations as defined in the rule. The terms ''automobile'' and ''automobile financing'' are used in this Supplementary Information in a manner consistent with how they are defined in the Final Rule. The terms ''auto'' and ''auto financing'' are used more generically.

[4] The Final Rule provides that certain auto dealers do not qualify as larger participants. Under section 1029 of the Dodd-Frank Act, the Bureau may not exercise its authority over certain auto dealers, as outlined in that section. As explained below, the final larger-participant rule also excludes certain dealers that extend retail credit or retail leases directly to consumers without routinely assigning them to unaffiliated third party finance or leasing sources, even though such dealers are not subject to the statutory exclusion of section 1029.

Dodd-Frank Act to include certain financial products or services in addition to those defined in section 1002(15)(A)(i)–(x). Section 1001.2(a) defines the term ''financial product or service'' under that same authority to include certain automobile leases that national banks are authorized to offer and that do not fall under the definition in section 1002(15)(A)(ii).

The Final Rule also makes certain technical corrections to existing larger-participant rules. Specifically, the Final Rule inserts the word ''financial'' before the term ''product or service'' in the definition of ''nonbank covered person'' in § 1090.101. The Final Rule also amends §§ 1090.104(a) and 1090.105(a) to clarify that if a company ceases to be an affiliated company of a nonbank covered person during the relevant measurement period, its annual receipts must be aggregated for the entire period of measurement for purposes of the consumer reporting and consumer debt collection larger-participant rules.

II. Background

Section 1024 of the Dodd-Frank Act gives the Bureau supervisory authority over all nonbank covered persons [5] offering or providing three enumerated types of consumer financial products or services: (1) origination, brokerage, or servicing of consumer loans secured by real estate, and related mortgage loan modification or foreclosure relief services; (2) private education loans; and (3) payday loans.[6] The Bureau also has supervisory authority over ''larger participant[s] of a market for other consumer financial products or services,'' as the Bureau defines by rule.[7]

Subpart A of the Bureau's existing larger-participant rule, 12 CFR part 1090, prescribes various procedures, definitions, standards, and protocols that apply to all markets in which the Bureau defines larger participants.[8] Those generally applicable provisions also apply to the automobile financing market described by this Final Rule.

As prescribed by existing § 1090.102, any nonbank covered person that qualifies as a larger participant remains a larger participant until two years after the first day of the tax year in which the person last met the applicable test. Pursuant to existing § 1090.103, a person will be able to dispute whether it qualifies as a larger participant in the automobile financing market. The Bureau will notify an entity when the Bureau intends to undertake supervisory activity; the entity will then have an opportunity to submit documentary evidence and written arguments in support of its claim that it is not a larger participant.[9] Section 1090.103(d) provides that the Bureau may require submission of certain records, documents, and other information for purposes of assessing whether a person is a larger participant of a covered market; this authority will be available to the Bureau to facilitate its identification of larger participants of the automobile financing market, just as in other markets.

The Bureau includes relevant market descriptions and larger-participant tests, as it develops them, in subpart B. The Final Rule is the fifth in a series of rulemakings to define larger participants of markets for other consumer financial products or services within subpart B. The first four rules define larger participants of markets for consumer reporting, consumer debt collection, student loan servicing, and international money transfers.[10]

This Final Rule describes a market for consumer financial products or services, which the Final Rule labels ''automobile financing.'' The definition does not encompass all activities that could be considered auto financing. Any reference herein to the ''automobile financing market'' means only the particular market for automobile financing identified by the Final Rule.

The Final Rule defining larger participants of a market for automobile financing does not impose new substantive consumer protection requirements. Nonbank covered persons generally are subject to the Bureau's regulatory and enforcement authority, and any applicable Federal consumer financial law, regardless of whether they are subject to the Bureau's supervisory authority.

The Bureau is authorized to supervise nonbank covered persons subject to section 1024 of the Dodd-Frank Act for purposes of: (1) assessing compliance with Federal consumer financial law; (2) obtaining information about such persons' activities and compliance systems or procedures; and (3) detecting and assessing risks to consumers and consumer financial markets.[11] The Bureau conducts examinations, of various scopes, of supervised entities. In addition, the Bureau may, as appropriate, request information from supervised entities without conducting examinations.[12]

The Bureau prioritizes supervisory activity among nonbank covered persons on the basis of risk, taking into account, among other factors, the size of each entity, the volume of its transactions involving consumer financial products or services, the size and risk presented by the market in which it is a participant, the extent of relevant State oversight, and any field and market information that the Bureau has on the entity. Such field and market information might include, for example, information from complaints and any other information the Bureau has about risks to consumers posed by a particular entity.

The specifics of how an examination takes place vary by market and entity. However, the examination process generally proceeds as follows. Bureau examiners contact the entity for an initial conference with management and often request records and other information. Bureau examiners will ordinarily also review the components of the supervised entity's compliance management system. Based on these discussions and a preliminary review of the information received, examiners determine the scope of an on-site

[5] The provisions of 12 U.S.C. 5514 apply to certain categories of nondepository (nonbank) covered persons, described in subsection (a)(1), and expressly exclude from coverage persons described in 12 U.S.C. 5515(a) or 5516(a). ''Covered persons'' include: ''(A) any person that engages in offering or providing a consumer financial product or service; and (B) any affiliate of a person described [in (A)] if such affiliate acts as a service provider to such person.'' 12 U.S.C. 5481(6).

[6] 12 U.S.C. 5514(a)(1)(A), (D), (E). The Bureau also has the authority to supervise any nonbank covered person that it ''has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity . . . to respond . . . is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.'' 12 U.S.C. 5514(a)(1)(C); *see also* 12 CFR part 1091 (prescribing procedures for making determinations under 12 U.S.C. 5514(a)(1)(C)). In addition, the Bureau has supervisory authority over very large depository institutions and credit unions and their affiliates. 12 U.S.C. 5515(a). Furthermore, the Bureau has certain authorities relating to the supervision of other depository institutions and credit unions. 12 U.S.C. 5516(c)(1), (e). One of the Bureau's mandates under the Dodd-Frank Act is to ensure that ''Federal consumer financial law is enforced consistently without regard to the status of a person as a depository institution, in order to promote fair competition.'' 12 U.S.C. 5511(b)(4).

[7] 12 U.S.C. 5514(a)(1)(B), (a)(2); *see also* 12 U.S.C. 5481(5) (defining ''consumer financial product or service''). The Bureau's supervisory authority also extends to service providers of those covered persons that are subject to supervision under 12 U.S.C. 5514(a)(1). 12 U.S.C. 5514(e); *see also* 12 U.S.C. 5481(26) (defining ''service provider'').

[8] 12 CFR 1090.100–.103.

[9] 12 CFR 1090.103(a).

[10] 77 FR 42874 (July 20, 2012) (Consumer Reporting Rule) (codified at 12 CFR 1090.104); 77 FR 65775 (Oct. 31, 2012) (Consumer Debt Collection Rule) (codified at 12 CFR 1090.105); 78 FR 73383 (Dec. 6, 2013) (Student Loan Servicing Rule) (codified at 12 CFR 1090.106); 79 FR 56631 (Sept. 23, 2014) (International Money Transfer Rule) (codified at 12 CFR 1090.107).

[11] 12 U.S.C. 5514(b)(1).

[12] *See* 12 U.S.C. 5514(b) (authorizing the Bureau both to conduct examinations and to require reports from entities subject to supervision).

examination and then coordinate with the entity to initiate the on-site portion of the examination. While on-site, examiners spend a period of time discussing with management the entity's policies, processes, and procedures; reviewing documents and records; testing transactions and accounts for compliance; and evaluating the entity's compliance management system. Examinations may involve issuing confidential examination reports, supervisory letters, and compliance ratings. In addition to the process described above, the Bureau may also conduct off-site examinations.

The Bureau has published a general examination manual describing the Bureau's supervisory approach and procedures.[13] As explained in the manual, the Bureau will structure examinations to address various factors related to a supervised entity's compliance with Federal consumer financial law and other relevant considerations. In connection with this Final Rule, the Bureau is releasing examination procedures related to automobile finance originations and servicing.[14] These procedures are a component of the CFPB's general Supervision and Examination Manual and provide guidance on how the Bureau will be conducting its monitoring in the automobile financing market.

III. Summary of Rulemaking Process

On September 17, 2014, the Bureau issued a notice of proposed rulemaking [15] and requested public comment. The Bureau received approximately 30 comments from consumer advocates, civil rights groups, industry participants, trade associations, individual consumers, members of Congress, and others. The Bureau has considered these comments in adopting this Final Rule.

IV. Legal Authority and Procedural Matters

A. Rulemaking Authority

The Bureau is issuing this Final Rule pursuant to its authority under the following provisions of the Dodd-Frank Act: (1) Sections 1024(a)(1)(B) and (a)(2), which authorize the Bureau to supervise nonbanks that are larger participants of markets for consumer financial products or services, as defined by rule; [16] (2) section 1024(b)(7), which, among other things, authorizes the Bureau to prescribe rules to facilitate the supervision of covered persons under section 1024; [17] (3) section 1022(b)(1), which grants the Bureau the authority to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of Federal consumer financial law, and to prevent evasions of such law; [18] and (4) section 1002(15)(A)(xi), which authorizes the Bureau to prescribe rules to define ''other financial product[s] or service[s],'' if the Bureau finds that such financial products or services are: (i) entered into or conducted as a subterfuge or with a purpose to evade any Federal consumer financial law; or (ii) permissible for a bank or a financial holding company to offer or provide under any applicable Federal law or regulation, and have, or likely will have, a material impact on consumers.[19]

B. Effective Date of Final Rule

The Administrative Procedure Act generally requires that rules be published not less than 30 days before their effective dates.[20] The Bureau proposed that the Final Rule would be effective 60 days after publication and received no comments relating to the effective date. The Bureau has decided that the Final Rule will be effective 60 days after publication in the **Federal Register**.

V. Section-by-Section Analysis

A. 12 CFR Part 1001—Financial Product or Service

Section 1001.1 Authority and Purpose

Proposed § 1001.1 stated the authority and purpose for proposed new part 1001. It explained that under section 1002(15)(A)(xi) of the Dodd-Frank Act, the Bureau is authorized to define certain financial products or services for purposes of title X of the Dodd-Frank Act, in addition to those defined in section 1002(15)(A)(i)–(x). Proposed § 1001.1 explained that the purpose of proposed part 1001 was to implement that authority.

The Bureau received no comments on proposed § 1001.1. Section 1001.1 is finalized as proposed.

Section 1001.2 Definitions

Proposed § 1001.2(a) defined the term ''financial product or service'' under section 1002(15)(A)(xi)(II) of the Dodd-Frank Act to include extending or brokering certain leases of an automobile that (1) meet the requirements of leases authorized under section 108 of the Competitive Equality Banking Act of 1987 (CEBA),[21] as implemented by 12 CFR part 23, and are thus permissible for banks to offer or provide; and (2) are not currently defined as a financial product or service under section 1002(15)(A)(ii) of the Dodd-Frank Act. The proposal explained that under section 1002(15)(A)(xi), for purposes of title X of the Dodd-Frank Act, the Bureau may define as a financial product or service, by regulation:

> such other financial product or service . . . if the Bureau finds that such financial product or service is— . . . (II) permissible for a bank or for a financial holding company to offer or to provide under any provision of a Federal law or regulation applicable to a bank or a financial holding company, and has, or likely will have, a material impact on consumers.

The Bureau proposed § 1001.2 pursuant to this authority. For the reasons discussed below, the Bureau adopts § 1001.2 as proposed with one technical change that has no substantive effect.[22]

The Bureau proposed to include automobile leasing in the consumer financial product or service market for automobile financing for purposes of a rule defining larger participants in that market. Section 1002(15)(A)(ii) of the Dodd-Frank Act defines the term ''financial product or service'' to include certain leases that, among other things, are the functional equivalent of purchase finance arrangements.

The proposal set forth the Bureau's belief that the phrase ''functional equivalent of purchase finance arrangements''—which is not defined in the Dodd-Frank Act [23]—is reasonably interpreted to encompass most automobile leases. Specifically, the Bureau explained that in light of the Bureau's purpose and mandate, the phrase ''functional equivalent of purchase finance arrangements'' is best interpreted from the perspective of the consumer.

The proposal explained that, for consumers, the leasing process functions in ways that are equivalent to a financed purchase. For example, leasing a vehicle requires an application process and an ongoing contractual obligation that are both financial in

[13] *CFPB Supervision and Examination Manual* (Oct. 1, 2012), *available at http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf.*

[14] *CFPB Automobile Finance Examination Procedures* (June 10, 2015), *available at http://www.consumerfinance.gov/guidance/supervision/manual/.*

[15] 79 FR 60762 (Oct. 8, 2014).

[16] 12 U.S.C. 5514(a)(1)(B), (a)(2).

[17] 12 U.S.C. 5514(b)(7).

[18] 12 U.S.C. 5512(b)(1).

[19] 12 U.S.C. 5481(15)(A)(xi).

[20] 5 U.S.C. 553(d).

[21] Public Law 100–86, section 108, 101 Stat. 552, 579 (1987) (codified at 12 U.S.C. 24(Tenth)).

[22] The Final Rule includes a minor clarifying change in the wording of § 1001.2(a).

[23] The Bureau is not aware of any Federal or State statute or regulation that defines the term.

nature and similar to entering into a financial arrangement to purchase a vehicle. Like a consumer seeking to qualify for a loan to purchase a vehicle, a consumer seeking to lease a vehicle must provide basic financial information such as income and credit history.[24] Though a consumer who leases an automobile need not finance the entire cost of the vehicle, the consumer still undertakes a major financial obligation in the form of a commitment to make a stream of payments over a significant period of time.[25] The consumer must consider how much cash to use, if any, for a capitalized cost reduction (similar to a down payment),[26] the preferred lease term, and the affordability of monthly payments and other costs including maintenance, insurance, and State registration fees.

The proposal further noted that automobile leasing shares many other features with automobile lending. A consumer must demonstrate an ability to pay the monthly payments in order to qualify for a lease, and a consumer's creditworthiness impacts the terms of the lease. An automobile finance company may furnish information about a lessee, such as payment history, to credit bureaus in the same manner that the company does for a borrower. Also, similar to a consumer who finances an automobile with a loan, a consumer who leases an automobile bears the responsibility for the vehicle's upkeep and must maintain, repair, and service the vehicle during the lease term.[27] The consumer must also insure the vehicle and bears the risk should the vehicle become damaged or totaled.[28] Similarly, if a consumer fails to make loan or lease payments, the vehicle must be returned to the automobile finance company, and fees or penalties may apply.[29] Also, regardless of whether consumers seek to purchase or lease a vehicle, they must negotiate the price and terms. For all the foregoing reasons, the Bureau reasoned in the proposal that automobile leases carry similar obligations and risks to consumers as automobile loans.

As the Bureau further observed in the proposal, in an automobile leasing arrangement, the consumer can typically purchase the vehicle at the end of the lease term for a pre-determined amount, which is generally based on the residual value of the vehicle.[30] Accordingly, from the perspective of a consumer, leasing presents an alternative method to a loan for acquiring a vehicle through a series of installment payments.

Moreover, the proposal explained that automobiles are important to the financial well-being of consumers regardless of whether the consumer obtains the use of a vehicle through a lease or a loan. Consumers rely on automobiles for their transportation needs. From a consumer's standpoint, whether a vehicle is leased or financed through a loan, any act or practice that impedes access to a vehicle or otherwise creates problems related to the loan or leasing arrangement can have a critical impact on the consumer. Based on these factors, the Bureau reasoned in the proposal that, from the perspective of the consumer, most automobile leases are the functional equivalent of purchase finance arrangements.

The Bureau also noted in the proposal that typical automobile leases meet the remaining two requirements of section 1002(15)(A)(ii) of the Dodd-Frank Act. First, automobile leases are generally ''non-operating.'' Consistent with the definition in Regulation Y, which governs bank holding companies and changes in bank control, ''non-operating,'' as interpreted by the Bureau in the proposal, means that the lease provider is not, directly or indirectly, engaged in operating, servicing, maintaining, or repairing the leased property during the lease term.[31] Under most automobile leases, the consumer, rather than the lessor, is responsible for ensuring the care and maintenance of the vehicle.[32] Second, most leases have terms well beyond 90 days. Lease terms for automobiles typically range from 12 to 48 months, with the majority of leases ranging from 25 to 48 months.[33] Thus, the Bureau observed that the extending or brokering of most automobile leases readily falls under section 1002(15)(A)(ii) as a financial product or service.

However, as the Bureau explained in the proposal, the requirement that leases that fall under section 1002(15)(A)(ii) (''category (ii) leases'') be the functional equivalent of purchase finance arrangements means that coverage of leases under that section will necessarily depend on a number of factors and circumstances that may vary among particular leases and institutions. Given this potential variance, the Bureau expressed concern in the proposal that not all automobile leases that materially impact consumers will necessarily qualify for coverage under section 1002(15)(A)(ii) and that market participants may have a difficult time discerning which leases meet the definition and which do not. Such a result would make the automobile financing larger-participant rule difficult to administer with respect to leasing and would not provide optimal protection to consumers. Accordingly, to further the mandate of protecting consumers and for ease of administering the automobile financing larger-participant rule, the Bureau proposed to exercise its authority under section 1002(15)(A)(xi)(II) of the Dodd-Frank Act to define certain automobile leases not covered under section 1002(15)(A)(ii) as financial products or services within the meaning of section 1002(15)(A).

As discussed above, under section 1002(15)(A)(xi)(II), for purposes of title X of the Dodd-Frank Act, the Bureau may define as a covered financial product or service other financial products or services that are permissible

[24] *See* Fed. Trade Comm'n, *Consumer Information: Understanding Vehicle Financing* (Jan. 2014), *available at http://www.consumer.ftc.gov/articles/0056-understanding-vehicle-financing.*

[25] Like consumers who borrow money to purchase a vehicle, consumers who lease are contractually obligated to make monthly lease payments during the lease term. *See* Fed. Reserve Bd., *Key to Vehicle Leasing Consumer Guide* (Mar. 13, 2013), *available at http://www.federalreserve.gov/pubs/leasing/.*

[26] *See id.*

[27] *See id.*

[28] *See id.*

[29] *See id.* Also, if a consumer terminates a lease early, early termination fees may apply. *See id.*

[30] CFPB, *Ask CFPB: What Is Residual Value?* (June 24, 2012), *available at http://www.consumerfinance.gov/askcfpb/737/what-residual-value.html.* The residual value is the projected market value of the vehicle at the end of the lease, which is used in calculating the amount the consumer would have to pay to purchase the vehicle at the end of the lease term. Additionally, the consumer may be responsible for any applicable taxes or fees.

[31] 12 CFR 225.28(b)(3)(i) n.6 (''The requirement that the lease be on a non-operating basis means that the bank holding company may not, directly or indirectly, engage in operating, servicing, maintaining, or repairing leased property during the lease term. For purposes of the leasing of automobiles, the requirement that the lease be on a non-operating basis means that the bank holding company may not, directly or indirectly: (1) Provide servicing, repair, or maintenance of the leased vehicle during the lease term; (2) purchase parts and accessories in bulk or for an individual vehicle after the lessee has taken delivery of the vehicle; (3) provide the loan of an automobile during servicing of the leased vehicle; (4) purchase insurance for the lessee; or (5) provide for the renewal of the vehicle's license merely as a service to the lessee where the lessee could renew the license without authorization from the lessor.'').

[32] *See* Fed. Reserve Bd., *Key to Vehicle Leasing Consumer Guide* (Mar. 13, 2013), *available at http://www.federalreserve.gov/pubs/leasing/.*

[33] *See* Melinda Zabritski, Experian Automotive, *State of the Automotive Finance Market Fourth Quarter 2014,* at 20 (Feb. 19, 2015), *available at http://www.experian.com/assets/automotive/white-papers/experian-auto-2014-q4-presentation.pdf?WT.srch=Auto_Q42014FinanceTrends_PDF; see also* Fed. Reserve Bd., *supra* note 32.

for a bank or for a financial holding company to offer, and have, or likely will have, a material impact on consumers. To implement this provision, the Bureau proposed to define the term ''financial product or service'' under section 1002(15)(A)(xi)(II) to include automobile leases that: (1) meet the requirements of leases authorized under section 108 of CEBA, as implemented by 12 CFR part 23, and therefore are permissible for national banks to offer or provide; and (2) are not the functional equivalent of purchase finance arrangements under section 1002(15)(A)(ii).

As explained in the proposal, banks and financial holding companies are broadly authorized to engage in automobile leasing. With respect to national banks, CEBA amended the National Bank Act, to add, among other things, 12 U.S.C. 24(Tenth), which authorizes national banks to ''invest in tangible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment, or furniture, for lease financing transactions on a net lease basis,'' as long as such investment does not exceed 10 percent of its assets.[34] Neither CEBA nor its implementing regulations require that such leases be the functional equivalent of loans, credit, or purchase finance arrangements.[35] Similarly, under Regulation Y, banks and financial holding companies may engage in leasing of personal property irrespective of whether the leases are the functional equivalent of loans, credit, or purchase finance arrangements.[36]

Additionally, in the proposal, the Bureau expressed its belief that, whether or not a particular automobile lease qualifies as a category (ii) lease, all leasing covered by the proposed definition has a material impact on consumers. The Bureau noted that access to a vehicle is critical for consumers, automobile leasing is a significant financial obligation, and consumers are increasingly turning to leasing as a means to obtain a vehicle. The Bureau further stated in the proposal that the impact of automobile leasing on consumers and their financial well-being does not turn on whether a lease is the functional equivalent of a purchase finance arrangement.

Accordingly, as authorized under section 1002(15)(A)(xi)(II) of the Dodd-Frank Act, the Bureau proposed to define the term ''financial product or service'' to include extending or brokering leases for automobiles, where the lease: (1) qualifies as a full-payout lease[37] and a net lease, as provided by 12 CFR 23.3(a), and has an initial term of not less than 90 days, as provided by 12 CFR 23.11; and (2) is not a financial product or service under section 1002(15)(A)(ii).[38] The Bureau asserted that the proposed definition met the requirements of section 1002(15)(A)(xi)(II) of the Dodd-Frank Act because banks and financial holding companies are permitted to engage in automobile leasing described under this definition, and such automobile leasing has a material impact on consumers.

The Bureau explained that the proposed definition would also ensure that leases falling under the definition are subject to the range of protections applicable to ''financial product[s] or service[s]'' under the Dodd-Frank Act. For example, it would ensure that the offering or providing of the defined leases is subject to the prohibition against unfair, deceptive, or abusive acts or practices in section 1031 of the Dodd-Frank Act.[39] The Bureau further expressed its belief that because leases that are not the functional equivalent of purchase finance arrangements can raise the same consumer protection concerns as category (ii) leases, it was appropriate to subject these additional leases to the Dodd-Frank Act provisions that apply to ''financial product[s] or service[s].'' The Bureau also noted that comprehensive coverage of automobile leasing would make the larger-participant rule easier to administer by eliminating uncertainty about which types of leasing activities are counted towards the larger-participant threshold.

The Bureau received a number of comments relating to its interpretation of leases that fall within section 1002(15)(A)(ii) of the Dodd-Frank Act and to the proposed new definition under section 1002(15)(A)(xi)(II). A consumer group agreed with the Bureau's interpretation that, from the perspective of the consumer, certain leases are the ''functional equivalent of purchase finance arrangements'' under section 1002(15)(A)(ii). The commenter reasoned that whether or not the transaction results in owning a car, consumers likely experience leases much in the same way as they do purchase loans. The commenter also noted that both are financial transactions paid by the consumer over a certain period of time, and both grant the consumer exclusive use and possession of an automobile. The commenter also supported the Bureau's inclusion under section 1002(15)(A)(xi)(II) of certain other leases because those leases also have a material impact on consumers.

Other commenters including several trade associations suggested that the Bureau erred in interpreting the phrase ''functional equivalent of purchase finance arrangements'' from the perspective of the consumer. These commenters argued that: (1) the Bureau's interpretation is inconsistent with prior judicial and prudential regulator interpretations that leases are only functionally equivalent to loans and/or credit where the residual value of the leased asset falls below a specified threshold; (2) contrary to the Bureau's interpretation, the term ''functional equivalent of purchase

[34] Under the implementing regulations, net lease is defined as:

a lease under which the national bank will not, directly or indirectly, provide or be obligated to provide for:

(1) Servicing, repair, or maintenance of the leased property during the lease term;

(2) Parts or accessories for the leased property;

(3) Loan of replacement or substitute property while the leased property is being serviced;

(4) Payment of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain required insurance; or

(5) Renewal of any license or registration for the property unless renewal by the bank is necessary to protect its interest as owner or financier of the property.

12 CFR 23.2(f).

[35] 12 U.S.C. 24(Tenth); 12 CFR 23.2, 23.3.

[36] 12 CFR 225.28(b)(3). Bank holding companies are limited to leases that are non-operating, as described above, and have an initial term of at least 90 days. *Id.*

[37] Under the implementing regulations, ''full-payout lease'' is defined as:

a lease in which the national bank reasonably expects to realize the return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, from:

(1) Rentals;

(2) Estimated tax benefits; and

(3) The estimated residual value of the property at the expiration of the lease term.

12 CFR 23.2(e).

[38] For purposes of this definition, ''automobile'' is defined as proposed in § 1090.108(a).

[39] 12 U.S.C. 5531. The proposed definition also would affect the scope of certain other Bureau authorities under title X of the Dodd-Frank Act. For example, the proposed definition would have an impact on: (1) the Bureau's rulemaking authority under section 1032 of the Dodd-Frank Act, which authorizes the Bureau to prescribe rules to ensure that the features of any consumer financial product or service are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service; (2) the Bureau's authority under section 1022(c) of the Dodd-Frank Act to ''monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services;'' and (3) the scope of the Bureau's authority under section 1033 of the Dodd-Frank Act to prescribe rules for covered persons with respect to consumer rights to access information concerning consumer financial products or services that the consumer received from such person.

finance arrangements'' requires that the lease result in the transfer of ownership; (3) the Bureau's interpretation is inconsistent with lease recharacterization provisions under the Truth in Lending Act (TILA), the Uniform Commercial Code (UCC), and certain State laws; and (4) the Bureau's interpretation would confuse consumers. According to these commenters, under a correct interpretation of the term, most automobile leases would not qualify as functionally equivalent to purchase finance arrangements under section 1002(15)(A)(ii). The Bureau has considered each of these arguments and concludes that its interpretation of category (ii) leases, as laid out in the proposal, is reasonable and best fulfills the relevant purposes of the Dodd-Frank Act. The Bureau therefore adheres to that interpretation. Under that interpretation, most automobile leases qualify as section 1002(15)(A)(ii) financial products or services.

Commenters are correct in pointing out that the prudential regulators, as well as at least one court decision, have interpreted regulatory requirements that a lease offered by a financial institution be the ''functional equivalent'' of a loan and/or credit to impose limits on the residual value [40] that the lessor may rely on for the return of its full investment.[41] Notwithstanding this regulatory history, the Bureau does not believe that the phrase ''functional equivalent of purchase financing arrangements'' in section 1002(15)(A)(ii) must be interpreted to impose a limit on the residual value of leased assets for category (ii) leases, and, thus (assuming most leases would exceed such limit), to exclude most automobile leases.[42] It is not clear that Congress intended the interpretation of the phrase ''functional equivalent of purchase finance arrangements'' in section 1002(15)(A)(ii) to be controlled by the prudential regulators' and judicial interpretations raised by commenters and discussed above.[43] Instead, the Bureau believes that the phrase ''functional equivalent of purchase finance arrangements'' is ambiguous and—in light of the Bureau's unique mission—is reasonably interpreted, from the perspective of the consumer, not to incorporate a limitation on the residual value of the leased item.

First, the phrase used in section 1002(15)(A)(ii)—''functional equivalent of purchase financing arrangements''—does not appear in any of the other statutes or regulations pertaining to the leasing activities of financial institutions. The prudential regulators and courts have consequently never addressed the meaning of that specific language. That Congress chose a phrase different from the language utilized by other regulators (*e.g.,* the Office of the Comptroller of the Currency's ''functional equivalent of a loan'' [44] or the Federal Reserve Board's ''functional equivalent of an extension of credit'' [45]) weighs against the contention that Congress intended for those specific interpretations to control the meaning of the term ''functional equivalent of finance purchase arrangements'' in section 1002(15)(A)(ii).

Even if the ''functional equivalent'' language in section 1002(15)(A)(ii) were identical to the language interpreted by the prudential regulators and judicial precedent to impose a residual value limit, the Bureau believes that the difference in the roles of the prudential regulators and the Bureau, and the different purposes of the provisions at issue, would make it reasonable for the Bureau to interpret the same language differently from those prior interpretations. In interpreting what leases might be the ''functional equivalent'' of a purchase finance arrangement, a key question is how the leases function and with respect to whom. The prudential regulators' primary role is to ensure safety and soundness of financial institutions by, among other things, serving as the gatekeepers of permissible banking activity. In light of this role, it made sense for prudential regulators to focus on how leases function vis-a-vis the financial institution and thus to consider primarily the risk posed to the financial stability of the institution when delineating permissible leasing activity. Accordingly, the prudential regulators deemed leases ''functionally equivalent'' to credit transactions only when the lease and the loan created a similar level of risk to the institution, such as in the case of low residual value leasing.

By contrast, Congress charged the Bureau with a different mission than the prudential regulators, and, accordingly, the Bureau believes that the ''functional equivalent'' language in section 1002(15)(A)(ii) of the Dodd-Frank Act should play a different role from the language governing the prudential regulators' leasing provisions. As set forth in the Dodd-Frank Act, the Bureau's purpose is to ''ensur[e] that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.'' [46] The Bureau's objectives, moreover, include working to ensure that consumers are

[40] As noted above, the residual value is the projected market value of the vehicle at the end of the lease. *See* CFPB, *Ask CFPB: What Is Residual Value?* (June 24, 2012), *available at http://www.consumerfinance.gov/askcfpb/737/what-residual-value.html.*

[41] *See M &M Leasing Corp.* v. *Seattle First Nat'l Bank,* 563 F.2d 1377, 1382 (9th Cir. 1977) (holding that, for a lease to be ''functionally interchangeable'' with a loan, and thus permissible for a national bank to engage in as the ''business of banking'' under 12 U.S.C. 24(Seventh), the residual value of the item must ''contribute[] insubstantially to the bank's recovery''); *see also* Fed. Reserve Bd., Revision of Regulation Y, 49 FR 794, 827 (Jan. 5, 1984) (permitting bank holding companies to engage in leases that are the ''functional equivalent of an extension of credit'' and setting a residual value limit of 20 percent for those leases); Office of the Comptroller of the Currency (OCC), Lease Financing Transactions, 56 FR 28314 (June 20, 1991) (adopting provision that permits national banks to engage in leasing with a residual value of 25 percent or less as ''consistent with the parameters set forth in *M & M Leasing''*); 12 CFR 160.41 (OCC regulation for Federal savings associations setting a 25 percent residual value limit for leasing that is ''the functional equivalent of a loan''); Nat'l Credit Union Admin. Interpretive Rule and Policy Statement 83–3, 48 FR 52568 (Nov. 21, 1983) (indicating that leases that, among other requirements, meet a 25 percent residual value limit are ''the functional equivalent of secured lending''); *cf.* Fed. Reserve Bd., Final Rule-Amendment to Regulation Y, 78 Fed. Reserve Bull. 548–49 (July 1992) (permitting bank holding companies to invest up to 10 percent of their assets in certain ''high residual value leasing,'' in which the residual value could be up to 100 percent and increasing the residual value limit for other leases to 25 percent); Fed. Reserve Bd., Amendment to Regulation Y, 62 FR 9290 (Feb. 28, 1997) (eliminating functional equivalence and residual value requirements and noting that ''permissible high residual value leasing may not be the functional equivalent of an extension of credit'').

[42] Commenters assert that most auto leases would not be considered functionally equivalent to purchase finance arrangements if that term were interpreted to incorporate the residual value limits set by prudential regulators as discussed above. They also assert that vehicle residual values are typically in the range of 30 to 50 percent of the Manufacturer's Suggested Retail Price, which they describe as close to the adjusted capitalized cost in the lease.

[43] To support their argument that the Bureau should model its interpretation on that of the Federal banking regulators, commenters pointed to the Senate Report for the Senate bill that was the precursor to the Dodd-Frank Act. Commenters note that the report states that the definition of the phrase ''financial product or service'' in the Senate bill was ''modeled on the activities that are permissible for a bank or a bank holding company, such as under section 4(k) of the Bank Holding Company Act and implementing regulations.'' S. Rept. 111–176, at 159–60 (2010). Notably, the current regulation authorizing leasing activities for bank holding companies does not have a residual value requirement. *See* Fed. Reserve Bd., Amendment to Regulation Y, 62 FR 9290 (Feb. 28, 1997) (eliminating functional equivalence and residual value requirements).

[44] 12 CFR 160.41.

[45] As noted above, the Federal Reserve Board's leasing regulations included this language until 1997. *See* 62 FR 9290, 9306 (1997).

[46] 12 U.S.C. 5511(a).

provided with timely and understandable information to make responsible decisions about financial transactions and that they are protected from unfair, deceptive, or abusive acts and practices and from discrimination.[47] Given the Bureau's responsibility to protect consumers in markets for financial products and services, the Bureau believes that its interpretation of section 1002(15)(A)(ii) of the Dodd-Frank Act should focus on the similar ways in which leases and loans function for consumers. Placing limits on the interpretation of leasing activity that qualifies as a consumer financial product or service unrelated to the impact of that activity on consumers would create artificial barriers to consumer protection and would hinder the Bureau's ability to accomplish its purpose and objectives. The Bureau does not interpret the plain text of section 1002(15)(A)(ii) to impose such limits. For these reasons, the Bureau believes that analyzing whether leases are the ''functional equivalent of purchase finance arrangements'' from the perspective of the consumer, as set forth in the proposal, remains an appropriate inquiry and is a reasonable approach to interpreting an ambiguous statutory provision, as well as the approach best suited to the Bureau's purpose and objectives.

Commenters also asserted that, even from the perspective of the consumer, a lease cannot be the ''functional equivalent of [a] purchase finance arrangement'' unless the lease agreement actually results in the acquisition or ownership of the leased item by the lessee at the end of the lease term. They argued that for a product to be functionally equivalent to a ''purchase finance arrangement'' it must necessarily result in a ''purchase.'' They further stated that the core function of a purchase finance arrangement is to finance the acquisition of ownership, and that any product or service that lacks this specific function, cannot be said to be functionally equivalent to such an arrangement. Along similar lines, commenters maintained that the Bureau's approach is in fundamental conflict with provisions under the UCC[48] and TILA[49] that respectively provide that a lease creates a security interest or is a credit sale where the lessee has the option to become the owner of the property for nominal or no consideration upon compliance with the contract.[50] Commenters maintained that, for consistency with these analogous standards, most automobile leases should not be treated as the functional equivalent of purchase finance arrangements.

The Bureau does not disagree with commenters that the phrase ''purchase finance arrangement'' suggests financing used for a purchase. However, the touchstone of the relevant requirement of section 1002(15)(A)(ii) is not whether a lease is a ''purchase finance arrangement,'' but rather whether the two are functionally equivalent. The Bureau does not believe that transfer of ownership or the option to acquire a vehicle for nominal or no consideration is a necessary hallmark of functional equivalence under section 1002(15)(A)(ii) or that most automobile leases therefore do not qualify as functionally equivalent to purchase finance arrangements.[51] With respect to real property leases, section 1002(15)(A)(ii)(III) imposes an additional condition necessary to qualify as a financial product or service on top of the functional equivalence test applicable to all leases: That such leases be intended to result in ownership of the leased property to be transferred to the lessee. If the functional equivalence standard were only met where a lease resulted in a transfer of ownership at the end of the lease term, there would have been no reason for Congress to impose this separate requirement with respect to real property leases. Likewise, that Congress chose to impose such a requirement only with respect to real property leases suggests that Congress did not intend to impose a similar ownership requirement on other leases.

Nor are the UCC, TILA, and other similar provisions invoked by commenters instructive. These provisions seek to identify financial arrangements that are labeled as leases but are in fact disguised security interests or credit sales.[52] Section 1002(15)(A)(ii) by contrast is appropriately understood to encompass leases that are ''functional[ly] equivalent'' to, though in fact distinct from, purchase finance arrangements. As noted in the proposal, the Bureau believes that one feature of most leases that makes them functionally equivalent to purchase finance arrangements is that the consumer can typically purchase the vehicle at the end of the lease term for a pre-determined amount, which is generally based on the residual value of the vehicle. This feature provides the opportunity for ownership, which from the consumer's perspective contributes to making a lease ''functionally equivalent'' to a purchase finance arrangement even if the consumer chooses not to acquire the vehicle (and a transfer of ownership therefore does not result) and even though more than nominal consideration must be paid for the purchase.[53]

Commenters further suggested that interpreting an automobile lease to be functionally equivalent to a purchase finance arrangement may cause consumer confusion about the difference between an automobile lease and an automobile loan. The Bureau does not think that these concerns are warranted. Consumers are unlikely to rely on this rule as a source of information on automobile leases. However, even if consumers do so, the Bureau does not take the position here that automobile leases and purchase finance arrangements are identical. Rather, the discussion above specifically explains that the two are ''functionally equivalent'' for the reasons identified, though they remain distinct products.[54]

[47] 12 U.S.C. 5511(b).

[48] *See* UCC § 1–203 (stating that ''[a] transaction in the form of a lease creates a security interest'' if, among other things, ''the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement'').

[49] *See* 15 U.S.C. 1602(h) (defining ''credit sale'' to include a lease if, among other things, ''it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract'').

[50] Commenters also invoked similar provisions under State laws. *See* California Automobile Sales Finance Act, Cal. Civ. Code § 2981(a) (defining ''conditional sale'' to include ''[a] contract for the bailment of a motor vehicle between a buyer and a seller, with or without accessories, by which the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the vehicle and its accessories, if any, at the time the contract is executed, and by which it is agreed that the bailee or lessee will become, or for no other or for a nominal consideration has the option of becoming, the owner of the vehicle upon full compliance with the terms of the contract''); New York Motor Vehicle Retail Instalment Sales Act, N.Y. Pers. Prop. Law § 301(5); Texas Motor Vehicle Installment Sales Provisions, Tex. Fin. Code § 348.002.

[51] Notably, none of the prudential regulators' provisions discussed above pertaining to leases that are the functional equivalent of credit require that the lease result in the transfer of ownership.

[52] Commenters relying on these provisions pointed to legislative history characterizing the TILA provision as intended to ''include leases, only if they are, in essence, disguised sale arrangements.'' *See* H. Rept. No. 90–1040, at 23 (1967).

[53] Commenters point out that, under the UCC provision, aspects of leases such as the option to purchase for market value or higher, the assumption of risk of loss, and the payment of maintenance and other costs, are not sufficient to create a security interest. *See* UCC § 1–203(c). They therefore argue that the Bureau's reliance on such similarities for its functional equivalence analysis is flawed. For the reasons discussed above, the Bureau does not find the UCC provision to be instructive of the correct interpretation of section 1002(15)(A)(ii).

[54] In the unlikely event that consumer confusion arises as a result of this rule, the Bureau believes

Having considered the comments discussed above, the Bureau adheres to its position in the proposal that it is reasonable, and best suited to the Bureau's purpose and objectives, to assess the functional equivalence requirement from the perspective of the consumer. For the reasons set forth in the proposal and relayed above, the Bureau believes that, from the consumer's perspective, most automobile leases are therefore functionally equivalent to purchase finance arrangements.[55] Accordingly, the Bureau believes that interpreting the phrase ''functional equivalent of purchase finance arrangements'' in section 1002(15)(A)(ii) from the perspective of the consumer to include most automobile leases is both a reasonable interpretation of the statutory language and the interpretation that best fulfills the relevant purposes of the Dodd-Frank Act.

The Bureau received no comments challenging its assertion that most automobile leases meet the other two requirements of section 1002(15)(A)(ii) for personal property leases—that is, that they have terms longer than 90 days and are non-operating. The Bureau adheres to its position that most automobile leases meet these requirements. For the foregoing reasons, the Bureau continues to believe that most automobile leases qualify as financial products or services under section 1002(15)(A)(ii).

The Bureau also received a number of comments regarding its decision to define certain leases as financial products or services under section 1002(15)(A)(xi)(II) of the Dodd-Frank Act. Commenters did not dispute the Bureau's assertion that national banks may offer or provide such leases under CEBA. Commenters also did not dispute the Bureau's assertion that invoking authority under section 1002(15)(A)(xi)(II) to define CEBA leases as financial products or services would make the larger-participant rule easier to administer.

However, the Bureau received comments stating that the Bureau may not or should not rely on its authority under section 1002(15)(A)(xi)(II) with respect to automobile leases that are not the functional equivalent of purchase finance arrangements. Those comments argued that: (1) The Bureau failed to provide a proper record for its definition of automobile leases as financial products or services under section 1002(15)(A)(xi)(II); (2) the Bureau underestimated the number of leases that would be covered by that definition; (3) the Bureau has not demonstrated that leases covered by the definition will have a material impact on consumers as a whole; (4) because Congress already defined some leases as financial products or services under section 1002(15)(A)(ii), the Bureau lacks authority under section 1002(15)(A)(xi)(II) to define additional leases as financial products or services; and (5) expansion of the Bureau's authority over automobile leasing is unnecessary because automobile leases are sufficiently regulated.[56] The Bureau has considered each of these arguments.

With regard to the comment that the Bureau has failed to provide a proper record to support its definition of certain automobile leases as financial products or services under section 1002(15)(A)(xi)(II), the Bureau believes that it has appropriately met the two-part showing required under section 1002(15)(A)(xi)(II): That the financial product or service may be offered by banks and has (or likely will have) a material impact on consumers.

For the reasons set forth in the proposal, the Bureau finds that the leases falling within proposed and final § 1001.2(a) may be offered by banks under Federal law. As noted above and in the proposal, CEBA allows banks to offer certain automobile leases even when they are not the functional equivalent of purchase finance arrangements.[57] Section 1001.2(a) defines as a financial product or service extending or offering only those leases that banks may offer under CEBA and that are not financial products or services under section 1002(15)(A)(ii).

The Bureau also finds that all CEBA automobile leases have a material impact on consumers even if they are not the functional equivalent of purchase finance arrangements. Access to a vehicle is critical for consumers, and consumers are increasingly turning to leasing as a means to obtain possession and use of a vehicle. For consumers who choose to lease an automobile, the lease is a significant financial obligation. The average monthly payment for new leases as of the fourth quarter of 2014 was $408, and the average lease term was 35 months (with nearly two-thirds of lease terms between 25 and 36 months).[58] Furthermore, an automobile lease can have significant consequences for a consumer's financial well-being. Because consumers rely on automobiles for their transportation needs and because—as explained above—automobile leases carry significant risks

that it can resolve this confusion through appropriate consumer-facing documents.

[55] The Federal Reserve Board noted similarities between auto leases and loans in its 1976 statement *Automobile Leasing as an Activity for Bank Holding Companies,* 62 Fed. Reserve Bull. 928 (Nov. 1976). The Board discussed advocates' arguments about the similarities:

> Those parties to the proceeding in favor of the performance of the activity by bank holding companies (generally hereafter ''proponents'') argued that leasing is essentially a financial transaction since it is an alternate method of financing the purchase of an automobile without the necessity of a large initial down payment. Thus, to the customer it is a means of obtaining the possession and use of an automobile through deferred payment. To the bank it is another in a spectrum of methods of new car financing that includes instalment credit transactions, floor planning and commercial lending to independent lessors.

Id. at 931–32. The Board also separately recognized ''many'' other similarities between leases and loans: In each case there is a sum certain in amount. This sum includes the acquisition cost of the vehicle and the cost of financing and is recovered through a schedule of noncancellable deferred payments. The term of the payment period in both cases is 24 to 36, or recently to 48 months. The vehicle serves as a type of collateral to guarantee payment on both the instalment loan and the lease. Both forms of financing are applied to a specific automobile that is chosen prior to preparation of the document . . . All attributes of ownership pass to the lessee who is responsible for servicing, insurance, and depreciation.

Id. at 932.

[56] One commenter also stated that the Bureau has not provided an accurate statement of its definition. As noted in the proposal and reiterated above, the Bureau is defining as financial products or services extending or brokering any automobile leases where the lease: (1) Qualifies as a full-payout lease and a net lease, as provided by 12 CFR 23.3(a), and has an initial term of not less than 90 days, as provided by 12 CFR 23.11; and (2) is not a financial product or service under section 1002(15)(A)(ii).

[57] The purpose of section 1002(15)(A)(xi)(II) is to help ensure that the Bureau has jurisdiction over consumer financial products or services that banks may offer (if they have or likely will have a material impact on consumers). It thus bears noting that banks have long had authority to offer automobile leases regardless of whether they are the functional equivalent of purchase finance arrangements. As discussed in the proposal, in 1987, Congress passed CEBA, which allows national banks to invest up to 10 percent of their assets in personal property leases, including vehicle leases, without regard to the residual value of the leased asset and without a functional equivalence requirement. Public Law 100–86, 101 Stat. 552 (1987); *see also* 12 CFR 23.2(c). For its part, the Federal Reserve Board (Board), in 1997, amended its leasing provisions under Regulation Y to eliminate the ''functional equivalent of an extension of credit'' requirement as well as any limitations on the residual value of the leased item for permissible leasing activities. 62 FR 9290 (Feb. 28, 1997). Even before this amendment, which eliminated the functional equivalence test, beginning in 1992, Board regulations permitted bank holding companies to invest up to 10 percent of their assets in certain ''high residual value leasing,'' in which the residual value could be up to 100 percent. Final Rule-Amendment to Regulation Y, 78 Fed. Reserve Bull. 548–49 (July 1992). Board regulations now allow bank holding companies to issue any non-operating leases of personal property with terms greater than 90 days. 12 CFR 225.28(b)(3). Accordingly, to the extent that certain automobile leases that may be offered by banks are not already covered by section 1002(15)(A)(ii), it nonetheless is appropriate for them to be covered by section 1002(15)(A)(xi)(II).

[58] Zabritski, *supra* note 33, at 20.

to and obligations of the consumer, any act or practice that impedes access to a vehicle or otherwise creates problems related to the leasing arrangement can have a critical impact on consumers.

Indeed, Congress, in enacting the Consumer Leasing Act of 1976 (CLA),[59] recognized the impact that automobile leases have on consumers. In issuing the statute nearly 30 years ago, Congress noted that ''there has been a recent trend toward leasing automobiles and other durable goods for consumer use as an alternative to installment credit sales and that these leases have been offered without adequate cost disclosures.'' [60] Given the recent growth of automobile leasing and the importance of automobile leases to a consumer's financial well-being, Congress' finding in the CLA that automobile leases can pose risks to consumers is even truer today. The CLA establishes, among other things, disclosure requirements pertaining to lease costs and terms, limitations on the size of penalties for delinquency or default and on the size of lessee's residual liabilities, and disclosure requirements for lease advertising.[61] These consumer protections further highlight Congress' recognition of the many ways in which leases can significantly impact consumers' financial well-being. For these reasons, the Bureau finds that all automobile leases under proposed and final § 1001.2(a) have a material impact on consumers irrespective of whether they are the functional equivalent of purchase finance arrangements.[62]

Commenters also suggested that the Bureau overestimated the number of leases that are financial products or services under section 1002(15)(A)(ii) and that, as a result, section 1002(15)(A)(xi)(II) would have to be the primary basis for defining automobile leases as financial products or services. The Bureau does not agree with the premise of this comment. As explained above, the Bureau believes that section 1002(15)(A)(ii) should be interpreted from the perspective of the consumer and would thus cover most consumer automobile leases. However, even if the commenter were correct that section 1002(15)(A)(ii) covered no or very few automobile leases, the Bureau believes that its definition under § 1001.2(a) would nevertheless be authorized under section 1002(15)(A)(xi)(II). As noted above, the Bureau has found that banks may offer automobile leases under CEBA even if they are not the functional equivalent of purchase finance arrangements. This is true irrespective of the number of leases that fall under section 1002(15)(A)(ii). The Bureau has also found that all CEBA automobile leases—regardless of whether they are the functional equivalent of purchase finance arrangements—have a material impact on consumers. The need for the Bureau's definition under section 1002(15)(A)(xi)(II) would only be magnified if the Bureau overestimated, as the commenter suggested, the number of leases that already qualify as financial products or services under section 1002(15)(A)(ii). Therefore, even if the Bureau's interpretation that section 1002(15)(A)(ii) covers most automobile leases were erroneous, the Bureau's findings and exercise of its authority under section 1002(15)(A)(xi)(II) in this rulemaking would be sufficient to define all automobile leases that banks may offer under CEBA, and that are not already covered under section 1002(15)(A)(ii), as financial products or services.

A commenter also suggested that because the Bureau's proposed definition under section 1002(15)(A)(xi)(II) would apply to a small number of automobile leases, the Bureau has not demonstrated that these leases will have a material impact on consumers as a whole. As the Bureau understands it, the premise of this comment is that section 1002(15)(A)(xi)(II) requires the Bureau to find that a financial product or service has a ''material impact'' on consumers in the aggregate rather than on individual consumers. The Bureau believes that it appropriately demonstrated material impact as required under section 1002(15)(A)(xi)(II). Nothing in section 1002(15)(A)(xi)(II) requires the Bureau, in defining a financial product or service, to find that it has a material impact on consumers in the aggregate.[63] The provision does not define the term ''material impact on consumers,'' nor does it state how the Bureau must assess a financial product or service's ''material impact on consumers.'' The ordinary meaning of the term ''material impact'' is also vague.[64] In light of these ambiguities, the Bureau believes that a product may have a ''material impact on consumers'' in the aggregate, individually, or both. In the Bureau's view, this interpretation of the applicable standard is essential to provide comprehensive coverage of financial products or services offered or provided by banks that could materially affect the financial well-being of consumers, either individually or in the aggregate.

A commenter suggested that because Congress already defined some leases as financial products or services under section 1002(15)(A)(ii), the Bureau lacks authority under section 1002(15)(A)(xi)(II) to define additional leases as financial products or services. However, there is no indication that Congress intended for the categories of financial products or services defined in section 1002(15)(A)(i)–(x) to serve as a limit on the types of other financial products or services that the Bureau may define under section 1002(15)(A)(xi)(II). Congress itself decided to define a number of specific financial products or services as areas of special interest to Congress for regulation and oversight by the Bureau, but it also vested the Bureau with broad discretionary rulemaking authority to define ''other'' financial products or services to fill any gaps left by Congress where the two conditions of section 1002(15)(A)(xi)(II) are met. The Bureau believes that, in order to best fulfill the purposes of the Dodd-Frank Act and to provide comprehensive protections for consumers, its authority in section 1002(15)(A)(xi)(II) should allow it to define a new financial product or service even if it is within the same category as a product or service defined in section 1002(15)(A)(i)–(x). In other words, although Congress defined certain leases as financial products or services in section 1002(15)(A)(ii), the Bureau is free to define ''other'' leases as financial products or services under

[59] Public Law 94–240, 90 Stat. 257 (codified as amended at 15 U.S.C. 1667–1667f).

[60] 15 U.S.C. 1601(b).

[61] 15 U.S.C. 1667a–1667c.

[62] Section 1002(A)(xi)(II) requires the Bureau to find that a financial product or service ''has, or likely will have, a material impact on consumers.'' For the same reasons that support the Bureau's finding above that all automobile leases under § 1001.2(a) have a material impact on consumers, the Bureau also finds that all automobile leases under § 1001.2(a) likely will have a material impact on consumers.

[63] At any rate, the Bureau notes that leasing is, as a general matter, an important and growing part of the automobile financing market for consumers. While the automobile financing market is largely comprised of purchase loans, in recent years consumers have begun to migrate more towards leasing agreements. As of the fourth quarter of 2014, leases comprised approximately 30 percent of new vehicle automotive financing transactions, which is up from about 20 percent at the end of 2009. *See* Zabritski, *supra* note 33, at 16. Furthermore, of all new and used automobile financing transactions recorded in the fourth quarter of 2014, approximately 14 percent occurred through leasing arrangements, while the remainder used purchase financing. *See id.*

[64] For instance, the Oxford English Dictionary includes several definitions of the word ''material,'' including ''of serious or substantial import; significant, important, of consequence.'' Oxford University Press, *OED Online* (2015), *available at http://www.oed.com.* It also defines ''impact'' as ''the effective action of one thing or person upon another; the effect of such action; influence; impression.'' *Id.*

section 1002(15)(A)(xi)(II), as long as it makes the requisite findings. The Bureau believes that a contrary interpretation would artificially limit the scope of section 1002(15)(A)(xi)(II) and would leave some financial activities that are important to consumers under-regulated for purposes of the Dodd-Frank Act.

As further discussed above, those conditions are met with respect to the automobile leasing activities described under § 1001.2(a). And the Bureau is not seeking to define under section 1002(15)(A)(xi)(II) activities that already qualify as financial products or services under section 1002(15)(A)(i)–(x) or to modify the definition of leasing activities described under section 1002(15)(A)(ii). To the contrary, the Bureau is defining ''other'' financial products or services and has expressly carved out from its definition in § 1001.2(a) financial products or services already covered under section 1002(15)(A)(ii).

Finally, one commenter generally suggested that expansion of the Bureau's authority over automobile leasing is unnecessary because, in the commenter's view, automobile leases are sufficiently regulated. This commenter noted that the Bureau administers and enforces the CLA and its implementing Regulation M, which cover automobile leases. The commenter also noted that automobile leases are subject to section 5 of the Federal Trade Commission Act, which prohibits unfair or deceptive acts or practices. The commenter further highlighted that the Federal prudential regulators may supervise banks for compliance with section 5 with respect to automobile leasing activities.

The Bureau agrees that the existing regulatory framework governing automobile leasing is important, but the Bureau believes this framework would best protect consumers when applied in conjunction with the Bureau's particular authorities under title X. Those authorities include authority to supervise nonbank ''larger participant[s]'' in markets for consumer financial products or services, 12 U.S.C. 5514(a)(1)(B); to prohibit unfair, deceptive, and abusive acts or practices; to monitor markets for a consumer financial product or service, 12 U.S.C. 5512(c)(1); to require disclosures regarding the features of a consumer financial product or service, 12 U.S.C. 5532(a); and to prescribe rules for consumers to seek information concerning a consumer financial product or service they have obtained, 12 U.S.C. 5533(a). The Bureau believes that these title X-specific authorities are necessary to ensure a fair, transparent, and competitive market for consumer automobile leasing. The Bureau further notes that the existence of the complementary regulatory framework noted by the commenter is not unique to automobile leasing. Numerous products that qualify as financial products or services under title X and are thus subject to the Bureau's title X authorities also fall under one or more ''enumerated consumer laws'' [65] and are subject to section 5 of the Federal Trade Commission Act. Title X requires the Bureau to coordinate with other Federal regulators to ''promote consistent regulatory treatment,'' [66] and sets forth specific procedures for coordination between the Bureau and the Federal Trade Commission.[67] The Bureau takes these coordination obligations seriously and believes that they will ensure optimal synergies between the Bureau's authorities and the existing regulatory structure. For all these reasons, the Bureau adopts § 1001.2(a) essentially as proposed with one minor clarificatory addition.[68]

B. 12 CFR Part 1090—Defining Larger Participants of Certain Consumer Financial Product and Service Markets

Section 1090.101—Definitions

The Bureau proposed to make a technical correction to the definition of ''nonbank covered person'' in § 1090.101 by substituting the term ''consumer financial product or service'' for ''consumer product or service'' where it appears. The Bureau did not receive any comments on this change and is finalizing § 1090.101 as proposed.

Section 1090.104 Consumer Reporting Market

104(a) Market-Related Definitions

104(a), Paragraph (iii)(D) of the Definition of ''Annual Receipts''—''Annual Receipts of Affiliated Companies''

The Bureau proposed to make a technical correction to paragraph (iii)(D) of the definition of ''annual receipts'' in § 1090.104(a), which governs how the affiliate aggregation rules apply to formerly affiliated companies for purposes of the Consumer Reporting Rule. The correction clarifies that if a company is an affiliated company of the nonbank covered person during the relevant measurement period but ceases to be an affiliated company during the same period, the annual receipts of the nonbank covered person and the formerly affiliated company must be aggregated for the entire period of measurement. As noted below, the Bureau proposed to make the same change to paragraph (iii)(D) of the definition of ''annual receipts'' in § 1090.105(a) in the Consumer Debt Collection Rule. For the reasons explained below, the Bureau is finalizing these changes as proposed.[69]

Under section 1024(a)(3)(B) of the Dodd-Frank Act, the activities of affiliated companies are to be aggregated for purposes of computing activity levels for the larger-participant rules. In the Consumer Reporting and Consumer Debt Collection Rules, the Bureau implemented the aggregation called for by section 1024(a)(3)(B) by prescribing the addition of all the receipts of a nonbank covered person and its affiliated companies to produce the nonbank covered person's annual receipts.[70] The Bureau prescribed similar calculations for account volume in the Student Loan Servicing Rule and for aggregate annual international money transfers in the International Money Transfer Rule.[71]

The affiliate aggregation provisions of each of the larger-participant rules address circumstances where a company becomes affiliated with a nonbank covered person or ceases to be affiliated with the nonbank covered person during the relevant measurement period.[72] The Bureau believes it is appropriate in both circumstances to aggregate the activity of the company with that of the nonbank covered person for the entire period of measurement, even though the company was an affiliated company of the nonbank covered person for only part of the measurement period.

This is the approach used in the Student Loan Servicing Rule's definition of ''account volume'' and the International Money Transfer Rule's definition of ''aggregate annual

[65] 12 U.S.C. 5481(12).

[66] 12 U.S.C. 5495.

[67] *See, e.g.,* 12 U.S.C. 5493(b)(3), 5512(c)(6)(C), 5514(a)(2), 5514(c)(3).

[68] The Final Rule also includes a clarifying change in the wording of § 1001.2(a). This change from the proposal does not have any substantive effect.

[69] The Final Rule also includes a clarifying change in the wording of the first sentence of paragraph (iii)(D) of the definition of ''annual receipts'' in § 1090.104(a). This change from the proposal does not have any substantive effect.

[70] 12 CFR 1090.104(a), .105(a).

[71] 12 CFR 1090.106(a), .107(a).

[72] This aspect is addressed in paragraphs (iii)(B) and (iii)(D) of the definition of ''annual receipts'' in § 1090.104(a), paragraphs (iii)(B) and (iii)(D) of the definition of ''annual receipts'' in § 1090.105(a), paragraphs (iii)(B) and (iii)(C) of the definition of ''account volume'' in § 1090.106(a), and paragraph (iii)(B) of the definition of ''aggregate annual international money transfers'' in § 1090.107(a).

international money transfers.'' [73] It is also the approach that the Bureau intended to adopt in the Consumer Reporting and Consumer Debt Collection Rules. However, the language addressing aggregation of formerly affiliated companies in the definition of ''annual receipts'' in those rules is unclear.[74] To clarify the operation of those paragraphs, the Bureau proposed to replace the final sentence of paragraph (iii)(D) of the definition of ''annual receipts'' in § 1090.104(a) and § 1090.105(a).

Only one commenter addressed this proposed technical correction. An industry trade association urged the Bureau not to use this rulemaking to make changes to the larger-participant rules for the consumer reporting and consumer debt collection markets. It stated that doing so would undermine transparency and public participation in the rulemaking process. This commenter acknowledged that the proposed change may be simpler for the Bureau but suggested that it may be difficult for companies to secure necessary financial records from entities with which they are no longer affiliated.

The Bureau believes that when companies have been affiliated at any time during the measurement period it is simplest and most appropriate to aggregate annual receipts corresponding to the entire measurement period. As explained above, doing so will promote consistency across the larger-participant rules and will make the handling of formerly affiliated companies more consistent with the approach taken for newly affiliated companies in the Consumer Reporting and Consumer Debt Collection Rules. It may also avoid administrative difficulties associated with part-year calculations of annual receipts in some instances.

The Bureau provided the public with notice of these proposed changes and an opportunity to comment in the proposal that was published in the **Federal Register** on October 8, 2014. The proposal described the changes in the summary and discussed them in full in the section-by-section analysis. In addition, the amended regulation was provided for commenters to review. In suggesting that this change will burden companies by requiring them to obtain information from their former affiliates, the commenter may have been assuming that companies will need to calculate whether they are larger participants. However, as the Bureau has explained in prior larger-participant rulemakings, the larger-participant rules do not require such a calculation. Generally, an entity will need to calculate its annual receipts only if it decides to dispute that it is a larger participant when the Bureau initiates supervision activity, such as an examination or a requirement that the company provide reports to the Bureau. Under rare circumstances such as this, the Bureau does not believe it would be difficult for a nonbank covered person to obtain information regarding the annual receipts of companies with which it was recently affiliated.[75]

Section 1090.105 Consumer Debt Collection Market

105(a) Market-Related Definitions

105(a), Paragraph (iii)(D) of the Definition of ''Annual Receipts''—''Annual Receipts of Affiliated Companies''

The Bureau proposed to amend the final sentence of paragraph (iii)(D) of § 1090.105(a)'s definition of ''annual receipts'' to clarify that if a company is an affiliated company of the nonbank covered person during the relevant measurement period but ceases to be an affiliated company during the same period, the annual receipts of the nonbank covered person and the formerly affiliated company must be aggregated for the entire period of measurement. For the same reasons described above with respect to § 1090.104(a), the Bureau is finalizing the changes to § 1090.105(a) as proposed.[76]

Section 1090.108 Automobile Financing Market

Section 1090.108 relates to automobile financing. Autos have become indispensable for most working individuals, with nearly 90 percent of the workforce commuting to work by car, truck, or van, and most driving alone.[77] Autos are also commonly used for other purposes that are important to consumers, such as transportation to school or healthcare providers, travel, and recreation. Consumers' reliance on vehicles is underscored by recent studies on repayment patterns, which show that consumers pay their auto loans before other secured and unsecured debt.[78] Auto loans are the third largest category of outstanding household debt, behind mortgage and student loans. In the fourth quarter of 2014, Experian Automotive estimated that consumers in the United States had auto loans valued at roughly $886 billion.[79]

While a significant number of consumers obtain credit to purchase

[73] Paragraph (iii)(C) of the definition of ''account volume'' in § 1090.106(a) provides: ''If two affiliated companies cease to be affiliated companies, the number of accounts of each continues to be included in the other's account volume until the succeeding December 31.'' Paragraph (iii)(B) of the definition of ''aggregate annual international money transfers'' in § 1090.107(a) provides:

The annual international money transfers of a nonbank covered person must be aggregated with the annual international money transfers of any person that was an affiliated company of the nonbank covered person at any time during the preceding calendar year. The annual international money transfers of the nonbank covered person and its affiliated companies are aggregated for the entire preceding calendar year, even if the affiliation did not exist for the entire calendar year.

[74] Paragraph (iii)(D) of the definition of ''annual receipts'' in both § 1090.104(a) and § 1090.105(a) provides:

The annual receipts of a formerly affiliated company are not included if affiliation ceased before the applicable period of measurement as set forth in paragraph (ii) of this definition. This exclusion of annual receipts of formerly affiliated companies applies during the entire period of measurement, rather than only for the period after which affiliation ceased.

[75] Participants seeking to self-assess could also arrange to obtain information relevant to the threshold in advance of ending such an affiliation.

[76] The Final Rule also includes a clarifying change in the wording of the first sentence of paragraph (iii)(D) of the definition of ''annual receipts'' in § 1090.105(a). This change from the proposal does not have any substantive effect.

[77] *See* Brian McKenzie & Melanie Rapino, U.S. Census Bureau, *Commuting in the United States: 2009,* at 2 (2011), *http://www.census.gov/prod/2011pubs/acs-15.pdf.*

[78] *See* TransUnion, *2014 Payment Hierarchy Study* (2014), *available at http://media.marketwire.com/attachments/201403/233081_PaymentHierarchyInfographic2014FINAL.jpg* & *http://www.transunioninsights.com/studies/behaviorstudy.*

[79] Zabritski, *supra* note 33, at 6. An Equifax report estimated that the total number of outstanding loans exceeded 65 million in 2014 and that the total balance of outstanding auto loans was $924.2 billion in August 2014. *See* Equifax, *Auto Market Revels in Record Vehicle Loan Totals: A Breakdown of the Recent National Consumer Credit Trends Report* (Nov. 10, 2014), *available at http://insight.equifax.com/auto-market-revels-in-record-vehicle-loan-totals-a-breakdown-of-the-recent-national-consumer-credit-trends-report/.* The Federal Reserve Bank of New York estimated that consumers in the United States had 87.4 million outstanding auto loans valued at nearly $900 billion as of the first quarter of 2014. Fed. Reserve Bank of N.Y., *Quarterly Report on Household Debt and Credit* (May 2014), *available at http://www.newyorkfed.org/householdcredit/2014-q1/data/pdf/HHDC_2014Q1.pdf* & *http://www.ny.frb.org/householdcredit/2014-q4/data/xls/HHD_C_Report_2014Q4.xlsx.* For purposes of these statistics, the Federal Reserve Bank of New York defines ''auto loans'' as ''loans taken out to purchase a car, including Auto Bank loans provided by banking institutions (banks, credit unions, savings and loan associations), and Auto Finance loans, provided by automobile dealers and automobile financing companies.'' In a technical comment, one industry trade association noted that the proposal's Supplementary Information refers to dealers giving ''loans'' and asserted that dealers in fact sell a vehicle through an installment contract rather than giving loans. Unless otherwise indicated, the term ''auto loan'' is used throughout this preamble to include credit extended through installment sales contracts as well as other types of financing.

their autos,[80] in recent years, consumers have begun to migrate more toward leasing agreements. Leasing is growing quickly as a proportion of new vehicle financing.[81]

Recognizing the significant impact that automobile financing has on consumers' lives, the Bureau proposed to identify a market for automobile financing. Commenters generally supported the Bureau's identification of an automobile financing market, although some raised specific concerns regarding the scope of the market that are discussed in the section-by-section analysis of § 1090.108(a) and (b) below. Because automobile financing is an important activity that affects millions of consumers, the Bureau believes that supervision will be beneficial to both consumers and the market as a whole. Supervision of larger participants in the automobile financing market will help the Bureau ensure that these market participants are complying with applicable Federal consumer financial law and thereby will further the Bureau's mission to ensure consumers' access to fair, transparent, and competitive markets for consumer financial products and services.

The automobile financing market identified by the Final Rule includes: (1) Specialty finance companies; (2) ''captive'' nonbanks (commonly referred to as ''captives''); and (3) Buy Here Pay Here (BHPH) finance companies.[82] Specialty financing companies serve consumers in specialized markets. Many of these companies focus on providing financing to subprime borrowers who tend to have past credit problems, lower income, or limited credit histories, which prevent them from being able to obtain financing elsewhere.

Generally, captives are subsidiary finance companies owned by auto manufacturers. They provide consumers with financing for the primary purpose of facilitating their parent companies' and associated franchised dealers' auto sales.

Some BHPH finance companies are similar to captives in that they are associated with certain dealers. BHPH dealers traditionally focus on subprime and deep subprime borrowers. While BHPH dealers are mostly independently-owned entities that serve as the primary lender and receive payments directly from consumers, some larger BHPH dealers will sell or assign their contracts to specific BHPH finance companies once the contract has been consummated with the consumer. Unlike captives, these BHPH finance companies do not focus on a particular auto manufacturer.[83]

According to the Bureau's estimates based on 2013 data from Experian Automotive's AutoCount® database,[84] the automobile financing market defined in this Final Rule includes over 500 nonbank automobile lenders.[85] The Bureau estimates that fewer than 40 entities comprise over 90 percent of the auto loan and lease transactions in the nonbank market, as measured by the number of transactions identified in the AutoCount Lender Report℠.[86] Large captives dominate the top tier of this market. The other large companies in the nonbank automobile financing market are either specialty finance companies or BHPH finance companies. The lower tiers of the nonbank market are comprised generally of smaller regional specialty finance companies.

Auto credit is provided both through direct and indirect channels creating different dynamics for consumers and industry participants. In the direct lending channel, a consumer seeks credit directly from the financing source, whereas in the indirect lending channel, the dealer typically enters into a retail installment sales contract that it then sells to a third-party finance company.[87] Depository institutions and credit unions have an advantage in the direct lending space because these entities often have a pre-existing relationship with consumers. Captives and other specialty finance companies are more active in the indirect channel. Most consumers who finance the purchase of an auto use the indirect channel.

With indirect lending, dealers rather than consumers typically select the lender that will provide the financing. Upon completion of the vehicle selection process, the dealer usually collects basic information regarding the applicant and uses an automated system to forward that information to prospective indirect auto lenders. After evaluating the applicant, indirect auto lenders may provide the dealer with purchase eligibility criteria or stipulations including, but not limited to, a risk-based ''buy rate'' that establishes a minimum interest rate at which the lender is willing to purchase a retail installment sales contract executed between the consumer and the dealer for the purchase of the vehicle.[88]

A franchised dealer often can choose from a selection of funding sources in arranging credit for a consumer. However, a franchised dealer that is affiliated with a manufacturer can be incentivized to use a captive through mechanisms such as promotional discounts or limited-time financing offers that can be used to attract consumers. An independent auto dealer, which is not associated with a specific manufacturer or brand, typically does not have access to captive finance sources but will have access to other indirect sources, including depository institutions engaged in indirect lending as well as specialty finance companies.

With the relevant eligibility criteria and stipulations, the dealer then selects the indirect lender that will provide the financing and extends the credit through a retail installment sales

[80] In addition to financing the initial acquisition of an auto, some consumers refinance their existing auto loans. Consumers typically refinance their auto loans to lower their interest rates in order to achieve lower monthly payments. The level of refinancing depends on trends in interest rate levels over the term for most auto loans, which ranges from three to seven years.

[81] As stated above, at the end of the fourth quarter of 2014, leases comprised approximately 30 percent of new vehicle automotive financing transactions, which is up from about 21 percent five years earlier. *See* Zabritski, *supra* note 33, at 16.

[82] Although dealers may also engage in some automobile financing activities, they are not included for purposes of this discussion of market participants.

[83] Typically, only after the BHPH dealer assesses a consumer's creditworthiness and determines the maximum monthly payment based on that creditworthiness does the dealer present auto options.

[84] Experian Automotive's AutoCount database is a vehicle database that collects monthly transaction data from State Departments of Motor Vehicles. *See also infra* notes 116–117 and accompanying text.

[85] To reach this estimate, the Bureau considered data on nonbanks from Experian Automotive's AutoCount database for calendar year 2013, with several adjustments. First, transactions with no lender listed were excluded from the sample. Second, entities with fewer than 360 loans and leases on an annual basis were excluded from the sample. Third, entities that were identified by Experian Automotive as ''Other'' in the lender type category were excluded from the sample. Fourth, the Bureau excluded entities that already fall within the Bureau's supervisory authority or that it identified as BHPH dealers and title lenders. In some cases, entities were also consolidated due to known affiliations.

[86] These estimates were derived using the same methodology described in note 85 above.

[87] Such sources include depository institutions, nonbank affiliates of a depository institution, independent nonbanks, and captives.

[88] An indirect auto lender may also have a policy that allows the dealer to mark up the interest rate above the indirect auto lender's buy rate. In the event that the dealer charges the consumer an interest rate that is higher than the lender's buy rate, the lender may pay the dealer what is typically referred to as ''reserve'' (or ''participation''), compensation based upon the difference in interest revenues between the buy rate and the actual note rate charged to the consumer in the retail installment sales contract executed with the dealer. Dealer reserve is one method lenders use to compensate dealers for the value they add by originating retail installment sales contracts and finding financing sources. The exact computation of compensation based on dealer markup varies across lenders and may vary between programs at the same lender.

contract that the indirect lender purchases or acquires. The dealer is typically compensated for arranging indirect financing. In the indirect model, the indirect auto lender typically becomes responsible for servicing the retail installment sales contract, and consumers will then make payments to the lender.

Leases can also be obtained through direct or indirect channels. To purchase an auto lease from a dealer, finance sources express their interest by providing the dealer with the relevant terms of a lease similar to those considered for a loan. These terms can include a ''money factor,'' which can be used to determine the rent charge portion of the monthly payment, and the length or term of the lease.[89] However, in a lease, a finance source will also quote a residual value, which is the projected market value of the vehicle at the end of the lease. As a practical matter, few auto dealers enter into a financing or leasing arrangement with a consumer unless there is an indirect lender or lessor that will purchase the retail installment sales contract or leasing contract.[90]

Refinancing of an existing credit obligation can enable a consumer to reduce his or her monthly auto payment. The refinancing market is highly dependent on interest rates and, thus, activity typically increases as rates decrease relative to the initial rate at origination. According to Experian Automotive, the average auto loan term as of the fourth quarter of 2014 was around 66 months for new vehicles and around 62 months for used vehicles.[91] Market rates during the loan repayment period typically do not differ much from the rates at origination. These dynamics explain why the Bureau believes that overall refinancing volumes comprise only a small niche of the broader auto financing market. Unfortunately, only limited data on refinancing volume are available because, among other things, publicly traded market participants generally tend to consolidate refinancing activity within origination activity for financial reporting purposes.

108(a) Market-Related Definitions

Unless otherwise specified, the definitions in § 1090.101 should be used when interpreting terms in this Final Rule.[92] The Proposed Rule defined additional terms relevant to the proposed automobile financing market. These terms include ''aggregate annual originations,'' which the Proposed Rule used as the criterion for assessing larger-participant status; ''annual originations''; ''automobile''; ''automobile financing''; ''automobile lease''; and ''refinancing.'' The Bureau is adopting the Proposed Rule's definitions largely as proposed, with certain modifications that are discussed below.

Aggregate Annual Originations

The Bureau proposed to use aggregate annual originations as the criterion to assess whether a nonbank covered person is a larger participant of the automobile financing market. Proposed § 1090.108(a) defined the term ''aggregate annual originations'' as the sum of the number of annual originations of a nonbank covered person and the number of annual originations of each of the nonbank covered person's affiliated companies, calculated according to instructions set forth in the Proposed Rule. The Bureau is finalizing this definition as proposed, except that the Final Rule: (1) Counts refinancings as ''annual originations'' only if they meet the requirements set forth in the Proposed Rule and are also secured by an automobile, and (2) excludes certain purchases or acquisitions by special purpose entities that are made for the purpose of facilitating asset-backed securitizations. The Bureau has also made some technical changes to proposed § 1090.108(a) for clarity.

Annual originations. Proposed § 1090.108(a) defined the term ''annual originations'' to mean the sum of the following transactions for the preceding calendar year: Credit granted for the purchase of an automobile, refinancings of such obligations and any subsequent refinancings thereof, automobile leases, and purchases or acquisitions of any of the foregoing obligations. The Bureau proposed to exclude from annual originations any investments in asset-backed securities. The Bureau received a number of comments relating to this proposed definition of ''annual originations,'' which are discussed below. For the reasons that follow, the Bureau is finalizing the definition of ''annual originations'' largely as proposed, with modifications related to refinancings and asset-backed securities and technical changes for clarity.[93]

Purchases of retail installment contracts. Two trade association commenters expressed concern that the proposed definition of ''annual originations'' may fail to adequately capture purchases of retail installment sales contracts by indirect automobile lenders from dealers. These commenters indicated that while the proposed definition includes, among other things, ''[c]redit granted for the purpose of purchasing an automobile,'' the indirect automobile lender is not itself granting credit. One of the commenters explained that it is the dealer that offers credit to consumers in this scenario rather than the indirect lender.

Purchases of retail installment contracts are included in paragraph (i)(A)(4) of the proposed definition of ''aggregate annual originations,'' which includes ''purchases or acquisitions'' of ''[c]redit granted for the purpose of purchasing an automobile.'' Therefore, originations that are made indirectly are captured by the proposed definition, and the Final Rule does not modify this aspect of the proposed definition.

Inclusion of refinancings. The Bureau proposed to include refinancings of credit granted for the purpose of purchasing an automobile and any subsequent refinancings thereof in the term ''annual originations.'' A number of consumer advocacy and civil rights organizations supported the Bureau's inclusion of refinancings in ''annual originations.'' However, two trade associations and an industry commenter suggested that covered persons would not have the information necessary to determine whether they are refinancing credit granted for the purpose of purchasing an automobile.[94]

The Bureau continues to believe that it is appropriate to include refinancing activity in the automobile financing market defined in this rule, and is therefore finalizing this element of the proposed definition of ''annual originations'' as proposed. Like purchase-money loans, the refinancings that are included in the proposed definition involve debt arising from the purchase of an automobile. The creditors that offer such refinancings are in competition with other creditors in the automobile financing market for the right to hold and service such debt. Although refinancing activity is limited

[89] Fed. Reserve Bd., *Glossary, Keys to Vehicle Leasing* (Mar. 13, 2013), *available at http://www.federalreserve.gov/pubs/leasing/glossary.htm.*

[90] This does not apply to those auto dealers, such as BHPH dealers, that serve as the primary lender.

[91] Zabritski, *supra* note 33, at 34.

[92] Some commenters suggested that the Bureau should provide a definition of ''affiliate.'' However, § 1090.101 already provides a definition of ''affiliated company,'' which should be used when interpreting terms in this Final Rule.

[93] The Bureau has adjusted the wording of paragraph (i)(A)(4) of the definition of ''aggregate annual originations'' for clarity. This change from the proposal does not have any substantive effect.

[94] These commenters also argued that the proposed definition of ''refinancing'' is too broad and suggested that the Bureau should not include refinancing activity conducted by third parties in the definition. Their comments relating to the definition of ''refinancing'' are discussed in the section-by-section analysis of that definition below.

at present, it could become more prevalent in the future should conditions change (for example, in a rapidly declining interest rate environment).

The Bureau considered the concern raised by some commenters that covered persons may not have the information necessary to determine whether they are refinancing an obligation subject to the proposed definition. As explained above, the Final Rule does not require automobile finance companies to calculate whether they are larger participants. In any event, most auto loans are purchase-money loans, and the Bureau believes that covered persons that refinance vehicle-secured loans generally know whether the debt they are refinancing was originally incurred for the purpose of purchasing the vehicle.[95]

The Bureau recognizes, however, that in rare cases a purchase-money loan could be refinanced without the refinancing creditor taking a security interest in the automobile, making the original purpose of the debt less obvious. To address such circumstances and for ease of administration, the Bureau has included language in paragraph (i)(A)(3) of the definition of ''aggregate annual originations'' to clarify that a refinancing must be secured by an automobile to be included in the definition. The Bureau is otherwise finalizing paragraph (i)(A)(3) of the definition of ''aggregate annual originations'' as proposed.

Exclusion related to asset-backed securities. Proposed paragraph (i)(B) of the definition of ''aggregate annual originations'' excluded investments in asset-backed securities. As the Bureau explained in the proposal, automobile asset-backed securities are investment vehicles in which the principal and interest payments from automobile loans serve as collateral for bonds sold to investors and do not generally alter the contractual obligation between the consumer and the entity that granted the credit or services the loan. The Bureau sought comment on whether the proposed exclusion for asset-backed securities was appropriate and whether the Bureau should define the term ''asset-backed securities'' in proposed § 1090.108(a).

The Bureau received comments from industry trade associations and an industry participant in support of the proposed exclusion and no comments opposing it. However, several of these commenters stated that the final rule should also exclude purchases or acquisitions of obligations by securitization trusts and other special purpose entities that are created to facilitate securitization transactions. They indicated that without this change, many securitization entities would be considered larger participants, which would negatively impact the securitization process. Some of these commenters stated that if the Bureau did not exclude these transactions, the rule would lead to double or triple counting of the same automobile loan or lease contract.

Raising similar concerns, an industry trade association requested that the Bureau clarify the exclusion to expressly exclude all securitization activities from the definition of annual originations. It stated that securitization activities are not a consumer financial product or service and have no impact on consumers.

Another trade association commented that the language does not clearly exclude the various transactions creating those securities, and requested that the Bureau clarify that any purchases or acquisitions of credit obligations for securitization purposes and transfers of credit obligations among affiliated entities do not fall within the scope of the rule. This commenter also requested that the Bureau not define the term ''asset-backed securities.'' No commenter urged the Bureau to define the term ''asset-backed securities.''

For the same reasons expressed in the proposal, the Bureau believes that it is appropriate to exclude investments in asset-backed securities from ''annual originations'' and is therefore finalizing that element of the proposal in paragraph (i)(B)(1) of the definition of ''aggregate annual originations.'' In addition, the Final Rule excludes certain purchases or acquisitions of obligations by special purpose entities established for the purpose of facilitating asset-backed securities in paragraph (i)(B)(2) of the definition of ''aggregate annual originations.'' In light of the limited role that these special purpose entities play, the Bureau does not believe that their purchases or acquisitions should be included in the definition of ''annual originations'' if they are made for the purpose of facilitating an asset-backed securities transaction.[96]

Title loans. The Bureau proposed to define a market for automobile financing that would not include title loans, in which a lender extends credit to a consumer that is secured by the title to an automobile that the consumer owns free and clear prior to the loan. The Bureau explained that title loans may be better analyzed separately from the automobile financing market as a part of a future larger-participant rulemaking because the Bureau believes that title loans are substantially different from the automobile financing activities included in the Proposed Rule. However, the Bureau solicited feedback on whether it should define the market for automobile financing and annual originations to include title loans and other types of loans secured by automobiles, and if so, whether it would be appropriate to use the same criterion and threshold as in the proposal. For the reasons stated below, the Bureau has decided not to include title lending in this larger-participant rulemaking.

Most commenters supported the Bureau's proposal to exclude title loans from the automobile financing market. Several trade associations and an industry commenter urged the Bureau not to expand the scope to include loans that are not made for the purpose of purchasing or refinancing an automobile.[97] One of these trade associations stated that title loans are a separate consumer financial product or service, and that the nature, purpose, and timing of title loans distinguish them from financing for the acquisition of an automobile. This commenter noted that title loans are given to consumers who already have an ownership interest in their car and wish to obtain money for a purpose other than acquiring the vehicle. By contrast, it noted that 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.

A number of individuals and consumer advocacy groups also

[95] The Bureau recognizes that some loans secured by a vehicle such as title loans are not purchase-money loans or refinancings of purchase-money debt. However, such loans typically have very different terms, interest rates, and loan amounts than the automobile lending covered in this rule, making it unlikely that a company would be in the business of refinancing covered loans without knowing that it was doing so.

[96] The Final Rule does not, however, exclude all transfers among affiliated entities, as one commenter suggested. The Bureau believes that the types of purchases or acquisitions included in the definition of ''aggregate annual originations'' reflect participation in the automobile finance market, even if they are made or received from an affiliated entity, and has therefore limited the exclusion in paragraph (i)(B) of the definition to transactions relating to asset-backed securitizations.

[97] Some of these commenters also suggested that the Bureau use Delaware's definition of ''title loan'' as a basis for defining title lending. The Bureau has not, however, attempted to define title lending in this rulemaking and does not need to do so for purposes of the Final Rule.

supported the Bureau's decision to exclude title loans from the scope of this automobile financing market. Many of these commenters encouraged the Bureau to cover title lending as soon as possible in a future rulemaking.

On the other hand, a few commenters recommended that the Bureau include title loans in the market defined in this rulemaking. Citing the potential consumer harms stemming from title lending, one consumer group encouraged the Bureau to include title lenders that made more than 25 extensions of credit during the preceding calendar year.

A trade association representing title lenders also encouraged the Bureau to include title loans.[98] The commenter stated that title loans are more similar to automobile financing than they are to payday loans and asserted that the Proposed Rule presents a more appropriate framework of regulation than any rulemaking that the Bureau may issue for the payday lending industry. The commenter also noted that the proposed rule amending Regulation C, which implements the Home Mortgage Disclosure Act,[99] would impose reporting requirements on both closed-end mortgage loans and home equity lines of credit. The commenter suggested that it would be consistent with the proposed revisions to Regulation C for the Bureau to include both automobile purchase-money loans and title loans within the scope of this rule.

After considering all of these comments, the Bureau has decided to exclude title loans from the Final Rule. Loans provided by title lenders are not used for the same purposes as the types of financing included within the proposed market (*i.e.,* to purchase or lease an automobile or to adjust the terms of debt incurred to purchase an automobile). As the Bureau noted in the proposal, title loans are generally provided by companies that do not compete with lenders that finance the acquisition of a vehicle. Further, title loans are generally significantly shorter in term and smaller in size than loans used to purchase an automobile or to refinance an existing automobile loan.[100] These differences may warrant a different criterion and threshold than is appropriate for the automobile financing market defined in this rule. In light of all of these factors, the Bureau believes that title loans are best addressed through a future larger-participant rulemaking.

There is no need for the Bureau to address in this rulemaking the assertion by one commenter that title loans are more similar to automobile financing transactions than to payday loans because payday lending is not a part of this larger-participant rulemaking.[101] Regulation C's handling of dwelling-secured loans is also not relevant here because Regulation C and this larger-participant rule serve different purposes and involve different financial products or services.[102] For the reasons set forth above, the Bureau believes that title loans are sufficiently different from the automobile financing transactions covered by this rule that they should not be included in the market defined in this larger-participant rulemaking.

Aggregating the annual originations of affiliated companies. Under the Dodd-Frank Act, the activities of affiliated companies are to be aggregated for purposes of computing activity levels for rules—like this Final Rule—to determine larger participants in particular markets for consumer products or services under section 1024(a)(1).[103] The Proposed Rule therefore defined ''aggregate annual originations'' for each nonbank covered person as the sum of the number of annual originations of the covered entity and the number of annual originations of all its affiliated companies, and laid out specifics on how this aggregation should be done. For the reasons set forth below, the Bureau is finalizing this aggregation method as proposed.

For purposes of computing the covered person's aggregate annual originations, the Proposed Rule provided that the annual originations of each affiliated company were first to be calculated separately and then aggregated with the originations of the covered entity. Paragraph (ii) of the proposed definition of ''aggregate annual originations'' set forth the method of aggregating the annual originations of a nonbank covered person and its affiliated companies when affiliation has started or ended within the preceding calendar year. It provided that the annual originations of a nonbank covered person must be aggregated with the annual originations of any person that was an affiliated company of the nonbank covered person at any time during the preceding calendar year. The annual originations of a nonbank covered person and its affiliated companies were to be aggregated for the entire preceding calendar year, even if the affiliation did not exist for the entire calendar year. The aggregation provision would not apply, however, if the affiliated company was a dealer excluded by proposed § 1090.108(c), which is discussed below.

Several commenters supported the Bureau's proposal to aggregate annual originations of all affiliated companies in the previous calendar year for the purpose of calculating aggregate annual originations. One trade association objected to the Bureau's proposal to count ''annual originations'' in a manner that includes an affiliate's annual originations during a calendar year, regardless of whether an affiliation existed during the entire calendar year. This commenter suggested that it may be difficult for a company to secure necessary financial records from an unaffiliated company.

Because the criterion for the rule is aggregate *annual* originations, the Bureau believes that it is simplest and most appropriate to aggregate originations for the entire calendar year when companies have been affiliated at any time during that calendar year. This approach is similar to the approach taken with respect to other larger-participant rules, including in §§ 1090.104(a) and 1090.105(a) as described above, and will avoid the administrative difficulties associated with part-year calculations of annual originations. As noted above, the larger-participant rules do not impose a record-keeping requirement and do not require nonbank covered persons to keep track of their annual originations. Moreover, the Bureau does not believe it would be difficult to gather this type of information from current or former affiliates should a nonbank have

[98] While encouraging the Bureau to include title loans in this larger-participant rule, this commenter also challenged the Bureau's authority to regulate the title lending industry. The Bureau does not agree with the commenter's assertions regarding the scope of the Bureau's rulemaking authority but does not need to address them in this rulemaking because it has chosen, for the reasons stated below, to exclude title lending from the scope of the market defined in this larger-participant rule.

[99] 12 U.S.C. 2801–10.

[100] Title loans are also generally significantly shorter in term than leases used to finance an automobile.

[101] No larger-participant rulemaking is required to establish supervisory authority over payday lenders because the Bureau already has supervisory authority over the offering or providing of payday loans pursuant to section 1024(a)(1)(E) of the Dodd-Frank Act, 12 U.S.C. 5514(a)(1)(E).

[102] The purpose of Regulation C is to implement the Home Mortgage Disclosure Act, which provides the public with loan data that can be used for the purposes set forth in 12 CFR 1003.1(b).

[103] 12 U.S.C. 5514(a)(3)(B) (''For purposes of computing activity levels under [12 U.S.C. 5514(a)(1)] or rules issued thereunder, activities of affiliated companies (other than insured depository institutions or insured credit unions) shall be aggregated.'').

occasion to do so.[104] For the reasons described above and in the Proposed Rule, the Bureau adopts the aggregation method as proposed.

Automobile

The Bureau proposed to define ''automobile'' to mean any self-propelled vehicle primarily used for personal, family, or household purposes for on-road transportation.[105] The proposed definition of ''automobile'' expressly excluded motor homes, RVs, golf carts, and motor scooters. The Bureau has considered the comments on the definition of ''automobile'' and, for the reasons set forth below, is finalizing the definition as proposed.

The proposed definition of ''automobile'' was informed by the definition of ''motor vehicle'' in section 1029(f) of the Dodd-Frank Act,[106] but included modifications to limit its application to vehicles primarily used for personal, family, or household purposes for on-road transportation. In the proposal, the Bureau explained that the ''motor vehicle'' definition in the Dodd-Frank Act encompasses a wide range of vehicles, and that the use of such a broad definition in a larger-participant rulemaking would make the rule difficult to administer. Consistent with the definition of ''motor vehicle,'' the proposed definition of ''automobile'' covered vehicles such as cars, sports utility vehicles, light-duty trucks, and motorcycles. However, other vehicles such as heavy-duty trucks, buses, and ambulances were not included because the proposed definition was limited to vehicles primarily used for personal, family, or household purposes.

The Bureau also proposed expressly to exclude certain types of motor vehicles, such as motor homes, RVs, golf carts, and motor scooters, from the definition of ''automobile.'' The Bureau did not have extensive data on the financing activity associated with these types of vehicles, and indicated that the vehicles excluded from the definition might warrant different larger-participant criteria and thresholds if they were included in the market defined for the Proposed Rule. The Bureau sought comment and additional market data related to its assumptions. The Bureau also sought comment on its proposed definition of ''automobile,'' including whether the proposed definition should address other vehicles or types of vehicles and whether motorcycles should be a separately defined term.

Industry participants, two trade associations, and several members of Congress urged the Bureau to exclude motorcycles from the definition of ''automobile,'' maintaining that motorcycles are more akin to the types of recreational vehicles excluded from the proposed definition than to cars and light trucks. These commenters stated that motorcycles are largely discretionary purchases and are not commonly used for commuting. They also stated that motorcycles are significantly less expensive than cars and that the overall volume of motorcycle sales is equal to only a small fraction of car sales.

These commenters urged the Bureau to follow the approach taken by six other Federal regulators (the Agencies) that recently excluded motorcycle loans from the definition of ''automobile loan'' in the Credit Risk Retention Rule.[107] That rule implements the credit risk retention requirements for asset-backed securities under section 941 of the Dodd-Frank Act.[108] Pursuant to section 941, securitizers of asset-backed securities are generally required to retain not less than 5 percent of the credit risk of the assets collateralizing the asset-backed securities. In the Credit Risk Retention Rule, the Agencies exempted, among other things, securitizations consisting solely of ''automobile loans'' that meet specific underwriting standards, but did not include motorcycle loans in the definition of ''automobile loan.'' [109] The Agencies reasoned that motorcycle loans should not be exempt because the ''overall risk profile of motorcycles as a class remains distinct from that of automobiles and, like other recreational vehicles, [motorcycles] exhibit overall a higher risk profile.'' [110]

The Bureau has considered these comments but believes that similarities in the financing process, relevant compliance requirements, pricing, and how the vehicles may be used support inclusion in the same market for supervisory purposes. Similar to cars and light-duty trucks, motorcycles are often purchased at a dealership where the price is negotiated, add-ons may be sold, and financing is arranged through an application and credit check.[111] Compliance issues also appear to be very similar and would likely involve the same requirements of Federal consumer financial law, the same examination procedures, and the same potential consumer harms. While motorcycles are generally less expensive than cars, average prices of cars and motorcycles are not that far apart.[112]

Unlike many of the vehicles excluded from the proposal, motorcycles are commonly used for on-road transportation and can be used for many of the same purposes as automobiles, such as daily errands and long-distance trips. They can also be used for transportation to work, even if that is uncommon. Although the proposal noted that automobiles are important to many consumers as a means of transportation to work, the Bureau did not intend to suggest that the rule would only cover vehicles that are used for that purpose or that the financing of vehicles used for recreational purposes is unimportant. The proposed definition includes, for example, cars or light-duty trucks that are not used for commuting.

[104] Participants seeking to self-assess could also arrange to obtain information relevant to the threshold in advance of ending the affiliation.

[105] The proposed definition applies to both new and used vehicles.

[106] Under section 1029(f)(1) of the Dodd-Frank Act, the term ''motor vehicle'' means:

(A) Any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road;

(B) recreational boats and marine equipment;

(C) motorcycles;

(D) motor homes, recreational vehicle trailers, and slide-in campers, as those terms are defined in sections 571.3 and 575.103(d) of title 49, Code of Federal Regulations, or any successor thereto; and

(E) other vehicles that are titled and sold through dealers.

12 U.S.C. 5519(f)(1).

[107] Office of the Comptroller of the Currency, Fed. Reserve Bd., Fed. Deposit Ins. Corp., U.S. Sec. & Exch. Comm'n, Fed. Hous. Fin. Agency, & Dep't of Hous. & Urban Dev., Credit Risk Retention, 79 FR 77602 (Dec. 24, 2014).

[108] Section 941 of the Dodd-Frank Act amends the Securities Exchange Act of 1934 (the Exchange Act) and adds a new section 15G to the Exchange Act, 15 U.S.C. 78o–11. Specifically, section 941 of the Dodd-Frank Act requires the Securities Exchange Commission, the Federal banking agencies, and, with respect to residential mortgages, the Secretary of Housing and Urban Development and the Federal Housing Finance Agency to prescribe rules to require that a securitizer retain an economic interest in a portion of the credit risk for any asset that it transfers, sells, or conveys to a third party through the issuance of an asset-backed security.

[109] 79 FR 77602, 77683 (Dec. 24, 2014).

[110] *Id.*

[111] Indeed, some companies that offer motorcycle financing operate as captives for affiliated manufacturers in the same manner as described above.

[112] One industry commenter reported that the average Manufacturer's Suggested Retail Price of a new on-road motorcycle in 2013 was $15,366, according to data compiled by the Motorcycle Industry Council. This is similar to the average price of a used car in 2013, which was $15,900 according to one report. *See* Greg Gardner, *Average Used Car Price Hits Record High in 2014,* USA Today, Feb. 18, 2015, *available at http://www.usatoday.com/story/money/cars/2015/02/18/record-used-car-prices-in-2014/23637775/.* According to Kelley Blue Book, the average transaction price of a light vehicle as of December 2013 was roughly double that, $33,525. Kelley Blue Book, *New-Car Transaction Prices Reach New Record, Up Nearly 3 Percent in December 2014, According to Kelley Blue Book* (Jan. 5, 2015), *available at http://mediaroom.kbb.com/2015-01-05-New-Car-Transaction-Prices-Reach-New-Record-Up-Nearly-3-Percent-In-December-2014-According-To-Kelley-Blue-Book.*

Although some commenters suggested that the Bureau should follow the approach taken in the Credit Risk Retention Rule, the Agencies' exclusion of motorcycles from the exemption provided in that rule was based on their assessment that motorcycles—like other vehicles that are used for recreational purposes—as a class have a riskier profile than the vehicles that are included in the Agencies' definition of ''automobile loans.'' [113] The Agencies' decision to exclude motorcycle loans from ''automobile loans'' was for the purpose of determining whether a securitizer should be exempt from retaining any risk on vehicle loans. In this rule, the Bureau is defining larger participants of a market in order to carry out the Bureau's consumer protection mission through its supervisory function. In light of the different purposes of the two rulemakings, the Bureau continues to believe that including motorcycle loans in ''annual originations'' is appropriate.

One industry trade association expressed support for the Bureau's decision to exclude RVs from the definition of ''automobile'' in this rule, while emphasizing that RVs should still be considered motor vehicles as defined in the Dodd-Frank Act. This commenter believed that using the broad definition of ''motor vehicle'' found in the Dodd-Frank Act would make this rule difficult to administer. It also stated that there are no significant nonbank financial institutions in the RV industry and that including motor homes and RVs in the Final Rule would thus have little if any impact. No other commenters addressed the Proposed Rule's exclusions for specific categories of motor vehicles.

The Bureau is finalizing the specific exclusions to the definition of ''automobile'' as proposed. These exclusions will promote clarity and ease of administration by providing bright lines regarding which vehicles are covered. The Bureau also recognizes that the uses of the excluded vehicles are either different or more limited than those of the vehicles that are included in the definition. For example, motor scooters generally are not suitable for long-distance trips or highway driving, while RVs and motor homes generally cannot be used for commuting or daily errands due to parking limitations. On average, the categories of vehicles excluded in the Proposed Rule are also either substantially more or less expensive than the vehicles that qualify as automobiles under the proposed definition.[114] As noted in the proposal, including the financing of these vehicles in this market could warrant a different criterion or threshold given the differences in scale and nature of financing, and the Bureau has limited data about the financing of the excluded vehicles. As the Bureau gathers more information about financing for the types of vehicles that it is excluding from this Final Rule, it can evaluate whether it is appropriate to cover them in a future larger-participant rulemaking. Accordingly, the Bureau is finalizing the definition of ''automobile'' as proposed.

Automobile Financing

Proposed § 1090.108(a) defined the term ''automobile financing'' to mean providing the transactions identified under the term ''annual originations'' as defined in proposed § 1090.108(a). The Bureau intended this proposed definition to reflect the number of consumer loans and leases made or facilitated (through purchases of the loans and leases) regarding one of the most important assets of American households. The comments that the Bureau received relating to the definition of ''automobile financing'' were similar to those relating to the definition of ''annual originations.'' For the same reasons discussed above in the section-by-section analysis of the definition of ''aggregate annual originations,'' the Bureau is finalizing the definition of ''automobile financing'' as proposed, with one minor clarifying change that does not have any substantive effect.

Automobile Lease

Proposed § 1090.108(a) defined the term ''automobile lease'' to mean a lease for the use of an automobile, as defined in the Proposed Rule, that is a financial product or service under either section 1002(15)(A)(ii) of the Dodd-Frank Act or proposed § 1001.2(a). A number of consumer groups, civil rights groups, and individual commenters supported the proposal to include automobile leasing in the market for automobile financing. However, as discussed above, two industry trade associations and an industry commenter suggested that the Bureau should include only a narrower category of leases that meet certain residual value limits and, in their view, are the functional equivalent of a purchase finance arrangement. Because of the similarities between automobile leases and automobile loans described above and the importance of leases to consumers, the Bureau believes that it is important to maintain broad coverage of automobile leases in this larger-participant rule. The Bureau therefore is not narrowing the scope of leases included in the manner suggested by some commenters and is finalizing the definition of ''automobile lease'' as proposed.

Refinancing

The Proposed Rule defined ''refinancing'' by reference to the definition contained in Regulation Z § 1026.20(a), except that the Proposed Rule indicated that a refinancing need not be by the original creditor, holder, or servicer of the original obligation. Section 1026.20(a) provides that ''[a] refinancing occurs when an existing obligation that was subject to this subpart is satisfied and replaced by a new obligation undertaken by the same consumer'' and identifies certain transactions that are not treated as a refinancing. The Bureau sought comment on whether the Regulation Z definition of refinancing as modified is appropriate, and whether the Bureau should consider a new definition of refinancing for purposes of this larger-participant rulemaking. The Bureau also sought data on refinancing activity in the market and its participants.

Two trade associations and an industry commenter suggested that the Bureau should adopt a narrower definition of ''refinancing'' that is fully consistent with the definition in Regulation Z. These commenters stated that the proposed definition should be modified so as not to include refinancing activity conducted by third parties.

The definition of ''refinancing'' in Regulation Z § 1026.20(a) serves a different purpose than the concept of refinancing in this larger-participant rule. Section 1026.20(a) addresses when the *original* creditor, holder, or servicer of an existing consumer credit obligation must provide new cost disclosures and other protections that that same creditor already provided to the consumer before initial credit was extended. As comment 20(a)–5 to § 1026.20(a) explains, a third party that refinances an existing obligation must generally provide disclosures and protections to the consumer, and such

[113] *See* 79 FR 77602, 77683 (Dec. 24, 2014).

[114] For example, the Recreation Vehicle Industry Association indicates that type A, B, and C new motorhomes typically cost between $43,000 and $500,000. Recreation Vehicle Indus. Ass'n, *RV Types, Terms & Prices* (Aug. 28, 2013), *available at http://www.rvia.org/UniPop.cfm?v=2&OID=1004&CC=1120.* According to Consumer Reports, small motor scooters begin at about $1,000, while large scooters range up to about $10,000. Consumer Reports, *Motorcycle & Scooter Buying Guide* 2 (Apr. 2015), *available at http://www.consumerreports.org/cro/motorcycles-scooters/buying-guide.htm.*

transactions are thus excluded from the definition of a ''refinancing'' under section 1026.20(a).[115] In contrast, the term ''refinancing'' is used in this rulemaking to identify transactions that should be counted as ''annual originations,'' which in turn are used to determine whether a covered person is a larger participant in the automobile financing market.

Given the purpose of this rulemaking, it would not be appropriate to exclude third-party refinancings from the term ''refinancing.'' Refinancings by the original creditor and a third party are sufficiently similar so as to be considered part of the same market for automobile financing. Therefore, consistent with the proposal, the Bureau is finalizing the rule to include refinancings by nonbank covered persons that were not the original creditor, holder, or servicer of the obligation. In addition, as explained in the discussion of the definition of ''aggregate annual originations'' above, the Bureau has added a requirement in paragraph (i)(A)(3) of the definition of ''aggregate annual originations'' that a refinancing must be secured by a vehicle to be counted as an ''annual origination'' in order to facilitate application of the criterion.

108(b) Test To Define Larger Participants

Criterion

The Bureau proposed to use aggregate annual originations as the criterion that establishes which entities are larger participants of the automobile financing market. A discussion of the comments received relating to the definition of ''aggregate annual originations'' and the adjustments the Bureau has made to that proposed definition is set forth above. For the reasons stated there and below, the Bureau is finalizing ''aggregate annual originations'' as the criterion as proposed.

The Final Rule uses aggregate annual originations because, among other things, it is a meaningful measure of a nonbank covered person's level of participation in the automobile financing market and of its impact on consumers. A particular nonbank entity's annual number of originations reflects the number of loans and leases it makes or facilitates (through purchases of the loans and leases) regarding one of the most important assets of American households. Further, because the Final Rule defines the term ''aggregate annual originations,'' in part, in terms of how many loans or leases an entity granted or purchased, the Bureau expects that aggregate annual originations criterion will generally correlate to the size of the entity's loan and lease portfolios.

The Bureau anticipates that nonbank covered persons will be able to calculate aggregate annual originations without difficulty, should the occasion arise to do so. As a general matter, most market participants generally know the number of loans and leases they extend because they handle the servicing for these accounts and are presumably expecting a payment for each loan and lease. Further, they generally know the number of loans they make or purchase because they execute liens against the automobile titles.

In the proposal, the Bureau relied on Experian Automotive's AutoCount database for data on a significant portion of annual originations. AutoCount is a vehicle database that collects monthly transaction data from State Departments of Motor Vehicles (DMVs). In 46 States, DMV title and registration information includes the finance source on record.[116] These finance sources are listed either individually or categorized into lender type. The proposal invited comments on this data source as well as suggestions for other data sources that commenters believed might augment the Bureau's understanding and analysis of the market.

Two industry trade associations and an industry commenter urged the Bureau to provide more detail on why the Experian AutoCount database was chosen and how the data in the database was gathered. These commenters asked if the Bureau would be using the same definitions as Experian, and expressed concern that the use of the database could misidentify larger participants due to differences in the Experian dataset and the Bureau's criterion. No commenter suggested an alternative national source of data.

The Bureau recognizes that estimates of ''annual originations'' based on the AutoCount data may be either over- or under-inclusive due to differences between what is included in the AutoCount data and in the Bureau's definitions. For example, the term ''annual originations,'' as defined in this Final Rule, includes transactions not tracked in the AutoCount data. Specifically, the Final Rule defines ''annual originations'' to include the sum of a nonbank covered person's credit granted for the purchase of an automobile, refinancings of such obligations (and any subsequent refinancings thereof) that are secured by an automobile, automobile leases, and purchases or acquisitions of any of the foregoing obligations. In contrast, the AutoCount data track only loans and leases for which a title and registration is filed with the State DMV and are less inclusive than the Final Rule in a number of respects. For example, the AutoCount data may not include certain refinancings and purchases and acquisitions of credit obligations and leases that are included in the Final Rule definition of ''annual originations.''[117] Similar to the Final Rule, AutoCount excludes vehicles that are designed for and used primarily for commercial purposes. However, the exact scope of which commercial transactions are excluded in AutoCount may be different than in the Final Rule.

Notwithstanding the differences between AutoCount and the Final Rule definitions, AutoCount data provide a reasonable proxy for the Bureau's definition of ''annual originations'' for rulemaking purposes. The dataset covers almost the entire United States and is relatively reliable because it is based on title and registration information filed with State DMVs. AutoCount is therefore the most comprehensive database that the Bureau could identify for this rulemaking, and commenters did not identify any other database that the Bureau should use. In light of these factors, the Bureau believes that the AutoCount data can adequately inform the decision of setting a threshold using the criterion of aggregate annual originations.

The Bureau's use of the AutoCount database in this rulemaking will not result in covered persons being misidentified as larger participants, as some commenters asserted. To the extent that the Final Rule's definitions differ from the types of transactions that

[115] 12 CFR 1026.20, comment 20(a)–5 (''Section 1026.20(a) applies only to refinancings undertaken by the original creditor or a holder or servicer of the original obligation. A 'refinancing' by any other person is a new transaction under the regulation, not a refinancing under this section.'').

[116] The AutoCount data cover transactions in every State, excluding Oklahoma, Wyoming, Rhode Island, and Delaware.

[117] The AutoCount data analyzed by the Bureau also do not include motorcycle transactions. However, given the relative size of the motorcycle segment as compared to the car and light-duty truck segments of the market, the Bureau does not believe that this limitation will substantially undermine the accuracy of its estimate of the number of larger participants. According to the U.S. Department of Transportation, there were approximately 234 million light-duty vehicles registered in the United States in 2012, as compared to only 8.45 million motorcycles. U.S. Department of Transportation Bureau of Transportation Statistics, *National Transportation Statistics* tbl. 1–11 (2015), *available at http://www.rita.dot.gov/bts/sites/rita.dot.gov.bts/files/publications/national_transportation_statistics/html/table_01_11.html.*

are included in AutoCount, the Final Rule's definitions control for purposes of determining whether an entity is in fact a larger participant of the automobile financing market. The Bureau will consider a variety of data sources in determining whether a nonbank covered person qualifies as a larger participant before initiating any supervisory activity. In addition to AutoCount data, these sources may include, for example, filings with the U.S. Securities and Exchange Commission, public shareholder information, and industry surveys. In some instances, if sufficient information is not available to the Bureau to assess a person's larger-participant status, the Bureau may require submission of certain records, documents, and other information pursuant to existing § 1090.103. The Bureau will notify an entity if the Bureau decides to undertake supervisory activity.[118] Pursuant to § 1090.103, a person will then be able to dispute whether it qualifies as a larger participant in the automobile financing market, should it choose to do so.

While generally agreeing with the Bureau's proposal to consider aggregate annual originations, a number of consumer advocates and civil rights groups suggested that the Bureau include servicing activity within the criterion or otherwise ensure that the Final Rule will cover large servicers as well. These commenters noted that servicing may be done by entities that do not own the obligations that are being serviced and that it is important to ensure that consumer protection laws and regulations are being followed in servicing.

The Bureau agrees that oversight of servicing in the automobile financing market is important, but believes it can accomplish that goal without including servicing activity within the Final Rule's criterion. As the commenters recognize, the use of non-holder servicers is not as prevalent in the auto market as in the housing market. Instead, most of the entities that will be larger participants under this Final Rule service their own loans and leases, and the Bureau will be able to examine their servicing activity as part of its larger-participant examinations even if servicing activity is not part of the criterion used in this Final Rule.[119] Additionally, the Bureau has the authority to supervise service providers to larger participants.[120] Accordingly, where a third-party servicer acts as a service provider to a larger participant, the Bureau will have the authority to supervise the servicer's performance of services for the larger participant. In light of these considerations, the Bureau has decided not to include servicing activity within the criterion.

Two industry trade associations and an industry commenter also suggested that the Bureau should exclude all direct lending from the scope of the market defined in this rule. These commenters suggested that the Bureau's primary concerns are with practices that only occur in the purchase of motor vehicle sales finance contracts, such as pricing disparities that result when dealers are given pricing authority. The Bureau has considered these comments but believes that direct lending is an integral and important part of the automobile financing market defined in this rule. Like indirect lending and leasing, direct lending can affect a consumer's access to transportation. Supervision will allow the Bureau to ensure that market participants engaging in these activities are complying with applicable Federal consumer financial law. The Bureau therefore declines to carve direct lending out of the scope of this rule and is finalizing the criterion as proposed.

Threshold

The Proposed Rule defined a nonbank covered person as a larger participant of the automobile financing market if the person has at least 10,000 aggregate annual originations. The Bureau received comments supporting the Bureau's proposed approach, as well as comments advocating a higher or lower threshold. For the reasons that follow, the Bureau is finalizing the rule with a threshold of 10,000 aggregate annual originations as proposed.

Based on the Bureau's estimates, a threshold of 10,000 aggregate annual originations will bring within the Bureau's supervisory authority about 34 entities and their affiliated companies that engage in automobile financing.[121] The Bureau estimates that these entities account for roughly 7 percent of all nonbank covered persons in the automobile financing market and are responsible for approximately 91 percent of the activity in the nonbank automobile financing market.

As the Bureau explained in its proposal, the aggregate annual originations threshold of 10,000 will allow the Bureau to supervise market participants that represent a substantial portion of the automobile financing market and that have a significant impact on consumers. The Bureau estimates that in 2013 the entities that would qualify as larger participants under the proposed threshold provided loans and leases to approximately 6.8 million consumers.[122]

A number of consumer groups, civil rights groups, and consumer attorneys supported the proposed threshold and encouraged the Bureau to ensure that a threshold of 10,000 aggregate annual originations covers finance companies that target subprime consumers, regional finance companies, and finance companies related to Buy Here Pay Here (BHPH) dealers. One consumer advocacy group urged the Bureau to decrease the threshold to 5,000, asserting that the Bureau should protect as many consumers as feasible. A consumer banking trade association urged the Bureau not to raise the threshold above 10,000 because the proposed threshold would allow the Bureau to supervise a more varied mix of entities and would help to level the playing field between banks and nonbanks.

Two trade associations and an industry participant encouraged the Bureau to raise the threshold to 50,000. They believe that a lower threshold might prompt some covered persons to limit their originations to larger loans and to avoid making smaller loans, in order to avoid the rule's coverage. Three trade associations and an industry participant noted that many of the entities that would be larger participants at the proposed threshold have well below 1 percent market share and that small businesses could qualify as larger participants under the proposed threshold. A law firm representing small businesses urged the Bureau either to increase the threshold or to explicitly carve out small businesses as defined by the Small Business Administration (SBA). The commenter indicated that

[118] As noted above, the Bureau prioritizes supervisory activity among entities subject to its supervisory authority on the basis of risk, taking into account a variety of factors.

[119] *See* 77 FR 42874, 42880 (July 20, 2012).

[120] 12 U.S.C. 5514(e); *see also* 12 U.S.C. 5481(26)(A) (defining service provider).

[121] The Bureau originally estimated that the proposed threshold would bring within the Bureau's supervisory authority about 38 entities. In the proposal, the Bureau noted that it had consolidated entities in some cases based on known affiliations and excluded other entities listed in the AutoCount data on the ground that they do not engage in automobile financing activity as defined in the Proposed Rule. The Bureau's estimates of coverage at the different thresholds considered have changed slightly since the proposal stage due to the identification of some additional affiliations and additional entities that should be excluded from the market definition such as title lenders. However, these changes do not affect in any significant way the Bureau's analysis or its estimates of aggregate market activity covered at each threshold.

[122] The Bureau assumes that an average consumer only enters into one auto loan or lease in a given year.

one of its clients is a small business that would meet the threshold.

The Bureau is finalizing the threshold as proposed because it believes that 10,000 aggregate annual originations is a reasonable and appropriate threshold for defining larger participants of the automobile financing market. A threshold of 10,000 aggregate annual originations will bring within the Bureau's authority roughly 34 entities together with their affiliated companies that engage in automobile financing. Each of these entities provides or engages in hundreds of automobile originations each week and falls in the top 10 percent of nonbank entities in the market according to the Bureau's estimates. They can reasonably be considered larger participants of the market. Some entities that meet this threshold will have considerably less than 1 percent market share, but that is due in large part to the fragmentation of the market and does not change the fact they are ''larger'' than the vast majority of market participants.

The Bureau does not believe that the proposed threshold is likely to have any appreciable effect on the availability of credit. As discussed in part VI.B.2.b below, the Bureau estimates that the cost of supervision for an entity that provides 10,000 aggregate annual originations would be a small fraction of 1 percent of its total revenue from one year's originations. Given the nominal cost of supervision, the Bureau does not believe that entities will change the types of loans and leases they offer merely to avoid the Bureau's supervisory authority. Furthermore, should an entity that would otherwise meet the larger-participant test adjust its offerings in response to the rule, any effect on consumers would be mitigated by the large number of remaining nonbank entities in the market as well as depository institutions that provide auto financing.

The Bureau also considered a lower or higher threshold. For example, a threshold of 5,000 aggregate annual originations would allow the Bureau to supervise approximately 50 entities and their affiliated companies that engage in automobile financing. While lowering the threshold would substantially increase the number of entities subject to supervision, it would only result in a marginal increase in the percentage of overall market activity covered due to the relatively small market share of entities at the lower threshold.

The Bureau has a variety of other tools that it can use to protect consumers should concerns emerge regarding nonbank market participants that have less than 10,000 aggregate annual originations. The Bureau could, for example, establish supervisory authority over a particular company that the Bureau has reasonable cause to determine poses risks to consumers pursuant to the Bureau's risk determination rule.[123] The Bureau could also use non-supervisory tools if appropriate, such as initiating enforcement investigations; coordinating with State regulators, State attorneys general, and the Federal Trade Commission; and engaging in research and monitoring. In light of all these considerations, the Final Rule does not include a lower threshold.

The Bureau estimates that a higher alternative threshold of 50,000 aggregate annual originations would allow the Bureau to supervise only the 15 very largest participants in the market and their affiliated companies, representing approximately 86 percent of market activity. At this higher threshold the Bureau would not be able to supervise as varied a mix of nonbank larger participants because some firms impacting a large portion of consumers in important market segments, such as captive, subprime, and BHPH lending, would be omitted.

The Bureau does not believe it is necessary to raise the threshold in order to avoid capturing small businesses as defined by the SBA or to add an express exclusion for such entities. According to the Bureau's estimates, few if any entities that meet the proposed threshold have annual receipts at or below the relevant SBA size standard, which in recent years has increased from \$7 million to \$38.5 million.[124] In setting its size standards, the SBA considers a variety of factors, such as eligibility for Federal small-business assistance and Federal contracting programs; startup costs, entry barriers, and industry competition; and technological change. In contrast, the Bureau has established its larger-participant thresholds by reference to relative participation in the market, with a view to ensuring sufficient coverage of the market to allow it to assess compliance with Federal consumer financial law and detect and assess risks to consumers effectively. Because the SBA's size standards and the Bureau's threshold are used for different purposes and targeted to different statutory objectives, the Bureau does not need to conform its threshold for a particular market to the most applicable SBA size standard even if some small businesses will be larger participants. In light of all of the considerations discussed above, the Bureau is finalizing the threshold of 10,000 aggregate annual originations as proposed.

108(c) Exclusion for Dealers

The Bureau proposed to exclude from the rule those motor vehicle dealers that are excluded from the Bureau's authority by section 1029 of the Dodd-Frank Act.[125] The Bureau also proposed to exclude additional motor vehicle dealers that are not subject to the statutory exclusion and over which the Bureau has rulemaking and other authority. Specifically, the proposal excluded those motor vehicle dealers that are identified in section 1029(b)(2) of the Dodd-Frank Act and are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.[126] For the reasons that follow, the Bureau is finalizing the exclusion for dealers with no substantive changes.

The Bureau explained in its proposal that the dealers that were excluded by proposed § 1090.108(c)(2), typically BHPH dealers, can reasonably be considered part of a separate and distinct market. A trade association representing the used motor vehicle industry objected to the exclusion of BHPH dealers from this rule and stated that BHPH dealers provide the same financial product or service as those entities that the Bureau proposed to include. No other comments related to the exclusion under proposed § 1090.108(c) were received.

The Bureau continues to believe that it is appropriate to exclude dealers that are identified in proposed § 1090.108(c)(2) from the market defined in this Final Rule and is therefore

[123] 12 CFR part 1091.

[124] *See infra* note 168. As explained below, the Bureau used AutoCount data for 2013 combined with public financial statements, securitization filings, and additional market research to estimate annual receipts for each of the entities that it identified as potential larger participants meeting the 10,000 threshold. Based on this review, the Bureau believes that few if any of these entities would be small businesses under the current small business size standard. One law firm indicated in a comment that one of their clients is a small business that would meet the proposed threshold, but did not identify the client. Assuming this is accurate, the Bureau's estimates suggest that this is very much the exception to the general rule.

[125] 12 U.S.C. 5519.

[126] As the Bureau explained in the proposal, this exclusion applied to certain dealers that extend retail credit or leases to consumers without routinely assigning them to unaffiliated third parties. However, the proposed rule included those nonbank covered persons that meet the definition of ''motor vehicle dealer'' under section 1029(f)(2) but are not predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. Thus, for example, a captive lender that meets the definition of ''motor vehicle dealer'' under section 1029(f)(2) but is predominantly engaged in the financing of motor vehicles could qualify as a larger participant.

finalizing § 1090.108(c) as proposed with minor changes for clarity.[127] As the Bureau explained in the proposal, the Bureau specifically has rulemaking and other authority over motor vehicle dealers that are identified in section 1029(b)(2) of the Dodd-Frank Act. Because such dealers engage in both selling and financing automobiles, they set the price of the automobile and other sale terms in addition to establishing the terms of the financing. Such dealers use a different business model and are typically much smaller in asset size and activity level than the entities included in this rule. Therefore, it is appropriate and consistent with the Bureau's authority to consider dealers that are identified in § 1090.108(c)(2) in a separate larger-participant rulemaking, should the Bureau determine it is appropriate to do so.

VI. Section 1022(b)(2)(A) of the Dodd-Frank Act

A. Overview

The Bureau has considered potential benefits, costs, and impacts of the Final Rule.[128] The Bureau set forth a preliminary analysis of these effects, and the Bureau requested and received comments on the topic. In developing the Final Rule, the Bureau has consulted with or offered to consult with the Federal Trade Commission, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the National Credit Union Administration regarding, among other things, consistency with any prudential, market, or systemic objectives administered by such agencies.

The Final Rule defines a category of nonbanks that would be subject to the Bureau's nonbank supervision program pursuant to section 1024(a)(1)(B) of the Dodd-Frank Act. The category includes ''larger participant[s]'' of a market for ''automobile financing'' described in the Final Rule. Participation in this market is measured on the basis of aggregate annual originations. A nonbank covered person engaged in automobile financing is a larger participant of the market for automobile financing if, together with its affiliated companies, it has aggregate annual originations (measured for the preceding calendar year) of at least 10,000. As prescribed by existing § 1090.102, any nonbank covered person that qualifies as a larger participant will remain a larger participant until two years after the first day of the tax year in which the person last met the larger-participant test.[129] The Final Rule also includes in the definition of ''financial product[s] or service[s]'' a new category of automobile leases, as defined by the Final Rule, under authority granted to the Bureau by section 1002(15)(A)(xi)(II) of the Dodd-Frank Act.[130]

B. Potential Benefits and Costs to Consumers and Covered Persons

This analysis considers the benefits, costs, and impacts of the key provisions of the Final Rule against a baseline that includes the Bureau's existing rules defining larger participants in certain markets.[131] At present, there is no Federal program for supervision of nonbank covered persons in the automobile financing market for compliance with Federal consumer financial law. The Final Rule extends the Bureau's supervisory authority over larger participants of the defined automobile financing market. This includes the authority to supervise for compliance with the Equal Credit Opportunity Act (ECOA), the Truth in Lending Act (TILA), the Consumer Leasing Act (CLA), and the prohibition on unfair, deceptive, or abusive acts or practices (UDAAP) under section 1031 of the Dodd-Frank Act, as well as other Federal consumer financial laws, to the extent applicable.

The Bureau notes at the outset that limited data are available with which to quantify the potential benefits, costs, and impacts of the Final Rule. As described above, the Bureau has utilized the Experian AutoCount database for quantitative information on the number of market participants and their number and dollar volume of originations. However, the Bureau lacks detailed information about their rate of compliance with Federal consumer financial law and about the range of, and costs of, compliance mechanisms used by market participants.

In light of these data limitations, this analysis generally provides a qualitative discussion of the benefits, costs, and impacts of the Final Rule.[132] General economic principles, together with the AutoCount data, provide insight into these benefits, costs, and impacts. Where possible, the Bureau has made quantitative estimates based on these principles and data as well as its experience of undertaking similar supervisory activities with respect to depository institutions and credit unions.

The discussion below describes four categories of potential benefits and costs. First, the Final Rule authorizes the Bureau to supervise certain nonbank entities in the automobile financing market. These larger participants in the market might respond to the possibility of supervision by changing their systems and conduct, and those changes might result in costs, benefits, or other impacts. Second, if the Bureau undertakes supervisory activity at specific larger participants, those companies would incur costs from responding to supervisory activity, and

[127] The Final Rule clarifies that the term ''motor vehicle'' is used in § 1090.108(c) as that term is defined in section 1029(f)(1).

[128] Specifically, 12 U.S.C. 5512(b)(2)(A) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services, the impact on depository institutions and credit unions with $10 billion or less in total assets as described in 12 U.S.C. 5516, and the impact on consumers in rural areas. In addition, 12 U.S.C. 5512(b)(2)(B) directs the Bureau to consult, before and during the rulemaking, with appropriate prudential regulators or other Federal agencies, regarding consistency with objectives those agencies administer. The manner and extent to which the provisions of 12 U.S.C. 5512(b)(2) apply to a rulemaking of this kind that does not establish standards of conduct are unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the analysis and consultations described in those provisions of the Dodd-Frank Act.

[129] 12 CFR 1090.102.

[130] The Final Rule also clarifies how to address aggregation of formerly affiliated companies for purposes of assessing larger-participant status under the existing Consumer Reporting and Consumer Debt Collection Rules, by making changes to the definition of ''annual receipts'' in those rules. As explained above, the changes to the affiliate aggregation provisions clarify the Bureau's methodology for affiliate aggregation. The changes will provide marginal benefits for market participants in the consumer reporting and consumer debt collection markets by making those rules clearer and easier to understand. They may, however, result in an additional cost to market participants that are seeking to assess whether they are larger participants, but only if they would not have collected information relevant to thresholds from formerly affiliated companies for the entire preceding calendar year when the affiliation ended during the preceding calendar year. The Bureau does not know the extent to which participants seeking to self-assess currently collect information relevant to thresholds from formerly affiliated companies. However participants seeking to self-assess could arrange to obtain information relevant to the threshold in advance of ending the affiliation, and such arrangements would tend to mitigate the costs of obtaining this information. Further, as noted above, participants in these markets are not required to engage in such self-assessments. Thus, both the benefits and costs of these amendments will not be significant.

[131] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits and costs and an appropriate baseline. The Bureau, as a matter of discretion, has chosen to describe a broader range of potential effects to inform the rulemaking more fully.

[132] While the Final Rule differs slightly from the Proposed Rule in the types of refinancings that are included as ''annual originations'' and the types of asset-backed securitization transactions that are excluded, the changes are intended to effectuate what the Bureau intended in its proposal, and so should not result in any additional costs or benefits beyond those discussed in the proposal. Accordingly, the impacts of these changes are not discussed here.

the results of the individual supervisory activities might also produce benefits and costs.[133] Third, entities might incur certain costs as a result of their efforts to assess whether they qualify as larger participants under the Final Rule. Fourth, including certain automobile leases in the Dodd-Frank Act definition of ''financial product or service'' subjects those leases to the UDAAP prohibition under section 1031 of the Dodd-Frank Act and to Bureau authority to prescribe certain rules applicable to a covered person or service provider under section 1031(b). The definition also expands the Bureau's supervisory authority, as described below, and these changes might also produce benefits and costs, although the Bureau does not expect these effects to be significant.

In considering the costs and benefits of the Final Rule, it is important to note that various products or services are included in the defined automobile financing market. Direct lending, where the consumer applies for credit directly to the financial institution, makes up a relatively small portion of the total automobile loan and sales volume. Direct lending is currently dominated by traditional depository institutions and credit unions already regulated by the Bureau and other Federal agencies. Indirect lending, where a dealer—rather than the consumer—finds a lender willing to provide credit to the consumer, comprises a significant portion of the automobile financing market. In addition, some consumers refinance the credit obligation for their automobile after taking out the initial loan. Finally, leasing is the other primary way in which consumers can finance the use of a vehicle; under this arrangement a financial institution holds the title to the vehicle that the consumer leases under a payment plan that typically ends with an option to purchase the vehicle.[134]

1. Benefits and Costs of Responses to the Possibility of Supervision

The Final Rule will subject larger participants of the automobile financing market to the possibility of Bureau supervision. That the Bureau will be authorized to undertake supervisory activities with respect to a nonbank covered person that qualifies as a larger participant does not necessarily mean the Bureau will in fact undertake such activities with respect to that covered entity in the near future. Rather, supervision of any particular larger participant as a result of this rulemaking is probabilistic in nature. For example, the Bureau will examine certain larger participants on a periodic or occasional basis. The Bureau's decisions about supervision will be informed, as applicable, by the factors set forth in section 1024(b)(2), relating to the size and volume of individual participants, the risks their consumer financial products and services pose to consumers, the extent of State consumer protection oversight, and other factors that the Bureau may determine are relevant. Each entity that believes it qualifies as a larger participant will know that it might be supervised and might gauge, given its circumstances, the likelihood that the Bureau will initiate an examination or other supervisory activity.

The prospect of potential supervisory activity could create an incentive for larger participants to allocate additional resources and attention to compliance with Federal consumer financial law, potentially leading to an increase in the level of compliance. These entities might anticipate that by doing so (and thereby decreasing risks to consumers) they could decrease the likelihood of their actually being subjected to supervision. In addition, an actual examination will likely reveal any past or present noncompliance, which the Bureau can seek to correct through supervisory activity or, in some cases, enforcement actions. Larger participants might therefore judge that the prospect of supervision increases the potential consequences of noncompliance with Federal consumer financial law, and they might seek to decrease that risk by curing or mitigating any noncompliance. Larger participants might thus be able to catch and address compliance problems at an earlier point when the costs of correcting them would be lower.

The Bureau believes it is likely that many market participants will increase compliance in response to the Bureau's supervisory activities authorized by the Final Rule. However, because the Final Rule itself does not require any nonbank covered person in the automobile financing market to alter its conduct, any estimate of the amount of increased compliance would require both an estimate of current compliance levels and a prediction of market participants' behavior in response to the Final Rule. The data the Bureau currently has do not support a specific quantitative estimate or prediction. But, to the extent that nonbank entities allocate resources to increase their compliance in response to the Final Rule, that response would result in both benefits and costs to consumers and covered persons.[135]

a. Benefits From Increased Compliance

Increased compliance with Federal consumer financial law by larger participants in the market for automobile financing will be beneficial to consumers who either finance the purchase of or lease automobiles, or refinance their credit obligations related to the purchase of their automobiles. The number of individuals potentially affected is significant. As noted above, data from Experian Automotive for the fourth quarter of 2014 show auto lenders holding outstanding auto loans totaling almost $900 billion.[136] The market is even larger when taking into account the auto leasing market, which comprised an additional 14 percent of the auto financing market in the fourth quarter of 2014.[137] Increasing the rate of compliance with Federal consumer financial law will benefit consumers and the consumer financial market by providing more of the protections mandated by law.

Several Federal consumer financial laws offer protections to consumers who seek automobile financing as defined in the Final Rule, including, to the extent applicable, TILA and Regulation Z, the Fair Credit Reporting Act and Regulation V, the CLA and Regulation M, ECOA and Regulation B, and the Gramm-Leach-Bliley Act and Regulation P.[138] More broadly, the Bureau will examine whether larger participants of the automobile financing market engage

[133] Pursuant to 12 U.S.C. 5514(e), the Bureau also has supervisory authority over service providers to nonbank covered persons encompassed by 12 U.S.C. 5514(a)(1), which includes larger participants. The Bureau does not have data on the number or characteristics of service providers to the larger participants of the automobile financing market. The discussion herein of potential costs, benefits, and impacts that may result from the Final Rule generally applies to service providers to larger participants.

[134] According to Experian Automotive, of all new and used auto financing transactions recorded in the fourth quarter of 2014, approximately 14 percent occurred through leasing arrangements, while the remainder used loans. *See* Zabritski, *supra* note 33, at 16.

[135] Another approach to considering the benefits, costs, and impacts of § 1090.108 would be to focus almost entirely on the supervision-related costs for larger participants and omit a broader consideration of the benefits and costs of increased compliance. As noted above, the Bureau has, as a matter of discretion, chosen to describe a broader range of potential effects to inform the rulemaking more fully.

[136] *See supra* note 79.

[137] *See* Zabritski, *supra* note 33, at 16.

[138] The Bureau recognizes that the nature of a larger participant's responsibility for compliance with these laws may vary depending on the activity the larger participant engages in. For example, under TILA, a larger participant that purchases a credit obligation for the purchase of an automobile is likely an assignee, not a ''creditor'' under TILA, and as such is generally liable only for a violation of TILA that is ''apparent on the face of the disclosure statement.'' 15 U.S.C. 1641(a).

in UDAAPs.[139] Conduct that does not violate an express prohibition of another Federal consumer financial law may nonetheless constitute a UDAAP.[140] To the extent that any larger participant or service provider is currently engaged in any UDAAP in connection with any transaction for or the offering of a consumer financial product or service, the cessation of the unlawful act or practice will benefit consumers. As the Bureau may review a larger participant's conduct in relation to any consumer financial product or service during an examination, larger participants might improve policies and procedures globally in response to possible supervision in order to avoid engaging in UDAAPs.

The possibility of supervision also may help make incentives to comply with Federal consumer financial law more consistent between the likely larger participants and depository institutions and credit unions, which are already subject to Federal supervision with respect to Federal consumer financial law. Introducing the possibility of Federal supervision could encourage entities that likely qualify as larger participants to devote additional resources to compliance. It could also help ensure that the benefits of Federal oversight reach consumers who do not have ready access to automobile financing through depository institutions and credit unions.

b. Costs of Increased Compliance

The Bureau recognizes that increasing compliance involves costs. These costs may be fixed or ongoing. Nonbank entities in the automobile financing market might need to hire or train additional personnel to effectuate any changes in their practices that would be necessary to produce the increased compliance. They might need to invest in changes to their systems to carry out their revised procedures. In addition, they might need to develop or enhance compliance management systems, to ensure awareness of any gaps in compliance. Such changes will also require investment and might entail increased operating costs.

In the proposal, the Bureau stated that economic theory predicts that fixed costs will be absorbed by providers, here the entities that may qualify as larger participants. One commenter stated that this prediction does not constitute broadly accepted economic theory. The Bureau disagrees and believes that fixed costs will not be directly passed through by providers. Canonical economic theory states that sellers will set a price along the demand curve based on the level of output where marginal cost equals marginal revenue. Since fixed costs do not impact demand, marginal cost, or marginal revenue, economic theory states that changes in these costs should not impact the pricing decisions of existing producers.[141]

Although these fixed costs are not expected to pass through to consumers via changes in price by current providers of automobile financing that become larger participants, consumers may be adversely affected by increases in costs associated with the introduction of this larger-participant rule to the extent these cost increases cause current providers to decrease volume below the larger-participant threshold (or to exit), deter current providers from increasing volume, or deter entry by new providers in the future.[142] This could result in consumers having more restricted choices than they would otherwise. In certain situations a decrease in the number of market participants could better enable those remaining providers to exercise market power, resulting in higher prices for consumers or decreased product or service quality, or both. One commenter expressed this concern as well, suggesting that smaller businesses may decrease origination volume in favor of issuing larger loans, thus restricting consumer choice. The extent to which this concern could come to fruition depends on the total number of participants in the market, as well as the existing number of covered entities. As stated earlier, the Bureau believes that the low relative costs of additional supervision, along with the large number of market participants in the market for automobile financing, should minimize these concerns.

An entity that incurs ongoing costs in support of increasing compliance might try to recoup these costs by attempting to pass those costs directly through to consumers; for example, in the case of the indirect channel, this could occur through lowering fees or other forms of compensation paid to dealers and other entities. Whether and to what extent either change would occur depends on the relative elasticities of supply and demand in the automobile financing market. These elasticities can vary across products or services covered by the Final Rule and may be influenced by the presence of substitute products or services as well as the availability of information, which would influence the perceived availability of substitute products or services. For example, larger participants of the automobile financing market may be in competition with depository institutions or credit unions (or affiliates thereof) that are already subject to supervision by the Bureau and/or Federal prudential regulators with respect to Federal consumer financial law. To the extent the Final Rule will result in an increase in the costs faced by larger participants, that increase will be a competitive benefit to banks and credit unions with sufficient liquidity to expand their financing operations. Competition from banks and credit unions might reduce the ability of larger participants to pass through cost increases to consumers, dealers, or other entities as they may instead seek alternate sources of financing. Moreover, consumers might respond to such a cost increase by reducing the amounts they are willing to pay in other aspects of the automobile purchase transaction. Dealers could respond to decreased levels of financing revenues shared with them by larger participants by either attempting to increase revenues derived from other areas of the automobile purchase transaction, such as the stated price of the vehicle or costs of accessories, or bearing the loss of revenue.

In considering the Final Rule's potential price effect, it is important to take into account the fact that nonbank covered persons below the larger-participant threshold will not be subject to supervision. The costs of these nonbank covered persons will therefore be unaffected by the definition of larger participants in the Final Rule and so their pricing should also not be affected. To the extent that nonbank larger participants consider raising their prices in response to this rule, nonbank entities that are not larger participants, along with banks and credit unions that already compete in the market while bearing the cost of supervision, could potentially offer more attractive transaction terms relative to larger participants and thus deter larger participants from actually increasing prices. While a shift in transactions from larger participants toward nonbank

[139] 12 U.S.C. 5531.

[140] The CFPB Supervision and Examination Manual provides further guidance on how the UDAAP prohibition applies to supervised entities. *CFPB Supervision and Examination Manual* (Oct. 1, 2012), *available at http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf.*

[141] *See, e.g.,* N. Gregory Mankiw, *Principles of Microeconomics* 284, 286–87 (7th ed. 2015).

[142] Alexei Alexandrov & Xiaoling Ang, *Identifying a Suitable Control Group Based on Microeconomic Theory: The Case of Escrows in the Subprime Market* (Dec. 30, 2014) (finding consumers not adversely affected by policy changes that implement a fixed cost), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2462128.*

entities that are not larger participants would mitigate some of the benefits to consumers of supervision of larger participants, the prospect of this shift might also reduce the likelihood that larger participants will choose to increase their prices in response to the Final Rule.

2. Benefits and Costs of Individual Supervisory Activities

In addition to the responses of market participants anticipating supervision, the possible consequences of the Final Rule include the responses to and effects of individual examinations or other supervisory activities that the Bureau might conduct in the automobile financing market.

a. Benefits of Supervisory Activities

Supervisory activity could provide several types of benefits. For example, as a result of supervisory activity, the Bureau and an entity might uncover deficiencies in the entity's policies and procedures. The Bureau's examination manual calls for the Bureau generally to prepare a report of each examination, to assess the strength of the entity's compliance mechanisms, and to assess the risks the entity poses to consumers, among other things. The Bureau will share examination findings with the examined entity because one purpose of supervision is to inform the entity of problems detected by examiners. Thus, for example, an examination might find evidence of widespread noncompliance with Federal consumer financial law, or it might identify specific areas where an entity has inadvertently failed to comply. These examples are only illustrative of the kinds of information an examination might uncover.

Detecting and informing entities about such problems should be beneficial to consumers. When the Bureau notifies an entity about risks associated with an aspect of its activities, the entity is expected to adjust its practices to reduce those risks. That response may result in increased compliance with Federal consumer financial law, with benefits like those described above. Or it may avert a violation that would have occurred had Bureau supervision not detected the risk promptly. The Bureau may also inform entities about risks posed to consumers that fall short of violating the law. Action to reduce those risks would also be a benefit to consumers.

Given the obligations nonbank covered persons in the automobile financing market have under Federal consumer financial law and the existence of efforts to enforce such law, the results of supervision also may benefit entities under supervision by detecting compliance problems early. When an entity's noncompliance results in litigation or an enforcement action, the entity must face both the costs of defending its conduct and the penalties for noncompliance, including potential liability for damages to private plaintiffs. The entity must also adjust its systems to ensure future compliance. Changing practices that have been in place for long periods of time can be expected to be relatively difficult because the practices may be severe enough to represent a serious failing of an entity's systems. Supervision may detect flaws at a point when correcting them would be relatively inexpensive. Catching problems early can, in some situations, forestall costly litigation. To the extent early correction limits the amount of consumer harm caused by a violation, it can help limit the cost of redress. In short, supervision might benefit larger participants by, in the aggregate, reducing the need for other more expensive activities to achieve compliance.[143]

b. Costs of Supervisory Activities

The potential costs of actual supervisory activities arise in two categories. The first involves any costs to larger participants of increasing compliance in response to the Bureau's findings during supervisory activity and to supervisory actions. These costs are similar in nature to the possible compliance costs, described above, that larger participants in general might incur in anticipation of possible supervisory actions. This analysis will not repeat that discussion. The second category is the cost of supporting supervisory activity.

Supervisory activity may involve requests for information or records, on-site or off-site examinations, or some combination of these activities. For example, in an on-site examination, Bureau examiners generally contact the entity for an initial conference with management. That initial contact is often accompanied by a request for information or records. Based on the discussion with management and an initial review of the information received, examiners determine the scope of the on-site exam. While on-site, examiners spend some time in further conversation with management about the entity's policies, procedures, and processes. The examiners also review documents, records, and accounts to assess the entity's compliance and evaluate the entity's compliance management system. As with the Bureau's other examinations, examinations of nonbank larger participants of the automobile financing market could involve issuing confidential examination reports and compliance ratings. The Bureau's examination manual describes the supervision process and indicates what materials and information an entity could expect examiners to request and review, both before they arrive and during their time on-site.

The primary cost an entity will face in connection with an examination is the cost of employees' time to collect and provide the necessary information.[144] The frequency and duration of examinations of any particular entity will depend on a number of factors, including the size of the entity, the compliance or other risks identified, whether the entity has been examined previously, and the demands on the Bureau's supervisory resources imposed by other entities and markets. Nevertheless, some rough estimates may be useful to provide a sense of the magnitude of potential staff costs that entities might incur.

The cost of supporting supervisory activity may be calibrated using prior Bureau experience in supervision. The Bureau considers its auto financing examinations at depository institutions and credit unions as a reasonable proxy for the duration and labor intensity of potential nonbank larger participant examinations. This belief arises from the similar role these institutions play in the market for automobile financing,

[143] Further potential benefits to consumers, covered persons, or both might arise from the Bureau's gathering of information during supervisory activities. The goals of supervision include informing the Bureau about activities of market participants and assessing risks to consumers and to markets for consumer financial products and services. The Bureau may use this information to improve regulation of consumer financial products and services and to improve enforcement of Federal consumer financial law, in order to better serve its mission of ensuring consumers' access to fair, transparent, and competitive markets for such products and services. Benefits of this type would depend on what the Bureau learns during supervision and how it uses that knowledge. For example, because the Bureau will examine a number of covered persons in the automobile financing market, the Bureau will build an understanding of how effective compliance systems and processes function in that market.

[144] Some commenters suggested that the Bureau's estimate overlooks non-labor costs that supervised entities may incur in responding to examinations and other supervisory requests. The Bureau recognizes that responding to examinations and other supervisory requests will entail certain other costs, such as costs of producing information electronically or in hard copy. However, such expenses are generally minimal in comparison to labor costs, and accordingly, the Bureau has focused on staff time in collecting and providing information in order to provide an approximate sense of the magnitude of the key cost involved.

where they frequently coexist as direct competitors to one another.

The average duration of the on-site portion of Bureau bank auto financing examinations is approximately nine weeks.[145] Assuming that each exam requires two weeks of preparation time by a larger participant's staff prior to the exam as well as on-site assistance by staff throughout the duration of the exam, the Bureau assumes that the typical examination in this nonbank market would require 11 weeks of staff time. The Bureau has not suggested that counsel or any particular staffing level is required during an examination. However, for purposes of this analysis, the Bureau assumes, conservatively, that an entity might dedicate the equivalent of one full-time compliance officer and one-tenth of a full-time attorney to the exam. The mean hourly wage of a compliance officer in a nonbank entity that operates in activities related to installment lending is $33.97, and the mean hourly wage of a lawyer in the same industry is $83.88.[146] Assuming that wages account for 67.5 percent of total compensation, the total labor cost of an examination would be about $27,611.[147] The Bureau estimates that the cost for an entity with 10,000 aggregate annual originations per year, with an average amount financed of approximately $22,000 per loan origination,[148] would be less than one-tenth of 1 percent of total revenue from originations for that year.[149] This is a conservative estimate in several respects because it reflects revenue only from this line of business and uses an average amount financed in combination with the minimum number of transactions that a larger participant could provide.

Some industry commenters challenged this estimate, drawing on experiences by other companies in other industries to suggest that exam costs for larger participants would, in fact, range from $750,000 to $1,000,000.[150] While the Bureau acknowledges that larger and lengthier exams may prove costlier than the amount estimated in the Proposed Rule, it also believes that the experience-based analogue it uses provides a better analogue than the commenter's general cross-industry comparison because the exams considered by the Bureau more accurately reflect the sort of examination to which automobile financing entities will be subject.

A law firm that represents financial services entities indicated that one of its clients finances an average of $3,800 per transaction, an amount approximately 83 percent lower than the Bureau's estimate, and stated as a result that the cost of an examination relative to total revenue would be much higher than the Bureau's estimate. The Bureau acknowledges some entities may participate in certain segments of the market in a way that results in a lower amount financed; however, of the over 500 institutions in AutoCount that the Bureau considered as participants in the nonbank market in 2013, the amount cited by the commenter ($3,800) falls within the lowest percentile of amount financed. Even if this remarkably low amount financed were considered in evaluating relative costs, for an entity with the larger-participant minimum of 10,000 aggregate annual originations the costs would still be less than one-half of 1 percent of total revenue from the 10,000 aggregate annual originations according to the Bureau's estimates.

The Bureau declines to predict, at this point, precisely how many examinations in the automobile financing market it will undertake in a given year, as neither the Dodd-Frank Act nor the Final Rule specifies a particular level or frequency of examinations. Given the Bureau's finite supervisory resources, and the range of industries over which it has supervisory responsibility for consumer financial protection, when and how often a given larger participant will be supervised is uncertain. The frequency of examinations will depend on a number of factors, including the Bureau's understanding of the conduct of market participants and the specific risks they pose to consumers; the responses of larger participants to prior examinations; and the demands that other markets make on the Bureau's supervisory resources. These factors can be expected to change over time, and the Bureau's understanding of these factors may change as it gathers more information about the market through its supervision and by other means.

[145] This estimate was derived at the proposal stage using confidential supervisory Bureau data on the duration of on-site auto financing examinations at depository institutions and credit unions. For purposes of this calculation, the Bureau counted its auto financing examinations for which the on-site portion had been completed, while excluding the shortest and longest examinations to minimize the influence of outliers. Additionally, the Bureau counted only the on-site portion of an examination, which included time during the on-site period of the examination that examiners spent off-site for holiday or other travel considerations. However, the Bureau did not count time spent scoping an examination before the on-site portion of the examination or summarizing findings or preparing reports of examination afterwards.

[146] Bureau of Labor Statistics (BLS), *Occupational Employment Statistics, available at http://data.bls.gov/oes/* (May 2013 release for North American Industry Classification System code 522200 ''Nondepository Credit Intermediation'').

[147] BLS, *Employer Costs for Employee Compensation Database,* Series ID CMU2025220000000D, *available at http://data.bls.gov/timeseries/CMU2025220000000D?data_tool=XGtable* (providing wage and salary percent of total compensation in the credit intermediation and related activities private industry for the second quarter of 2013). Dividing the mean hourly wages by 67.5 percent yields a total mean hourly cost (including total costs, such as salary, benefits, and taxes). Assuming that individuals are compensated for 40 hour work weeks, the total labor cost of an examination is calculated as follows: [(0.1*83.88+33.97)/0.675]*40*11.

[148] In the proposal, the Bureau used an estimated average amount financed of $21,750 based on 2013 origination data from AutoCount for all entities with 360 or greater loans and leases on an annual basis. As noted below, one commenter raised a question about the Bureau's estimated average amount financed. To ensure that the estimate accurately reflects the nonbank market defined in this Final Rule, the Bureau has applied the same methodology as in the proposal but has excluded entities that are not participants in the nonbank market defined in this rule, such as depository institutions, which resulted in a very similar average amount financed of $22,299. These estimates of average amount financed per origination are based solely on loans in AutoCount for which data are available on amount financed. The Bureau was unable to obtain data on the average amount financed in lease transactions, but believes it is unlikely that the estimated revenue from leasing transactions, including both the stream of payments over the course of the lease as well as the option value of the purchase or resale price of the vehicle at the end of the lease, would differ in a way that materially impacts the relationship between the cost of supervision and revenues.

[149] In the proposal, the Bureau estimated revenue as the sum total of payments received for loans originated that year, assuming zero interest rates and no defaults. The proportion of revenue was thus $27,611/($21,750*10,000). A similar, more conservative calculation can also be done that considers only revenue generated from interest for an entity with 10,000 originations. Using 2013 origination data from AutoCount for which rate and term data are available, the Bureau estimates that the average interest rate per vehicle originated in the nonbank market defined in the Final Rule is 6.54 percent, and the average term length per vehicle originated in the nonbank market defined in the Final Rule is 60.42 months. Assuming zero default and zero prepayment, the Bureau estimates that an entity making 10,000 originations a year would receive approximately $39 million in total revenue from interest from a single year's originations. This is likely a low estimate because the interest rate of 6.54 percent reflects the frequently-subsidized low interest rates offered by the largest captive participants that typically originate much more than 10,000 loans per year. Under either approach to estimating revenue, the cost of an examination is less than one-tenth of 1 percent of revenue from a year's originations according to the Bureau's estimates.

[150] These commenters suggested that an examination might require the participation of a compliance officer with a higher salary than the mean hourly wage used in the Bureau's analysis. In estimating that an examination might require a full-time compliance officer for 11 weeks and using the mean hourly wage for compliance officers, the Bureau did not mean to suggest that only one mid-level person would be involved in an examination. Instead, the Bureau recognizes that both junior and high-level staff may participate on a part-time basis and that these staff may be drawn from different offices within the entity. The Bureau intended its original estimate to represent the aggregate amount of labor resources a company might dedicate to responding to supervisory activity.

3. Costs of Assessing Larger-Participant Status

The larger-participant rule does not require nonbank entities to assess whether they are larger participants. However, the Bureau acknowledges that in some cases they might decide to incur costs in assessing whether they qualify as larger participants and potentially disputing their status.

Larger-participant status depends on a nonbank's aggregate annual originations as defined in the Final Rule. An estimate of this number should be readily extractible from company records, as market participants likely evaluate the components of aggregate annual originations as part of their regular business practices. In addition, information on originations can be derived from title records that market participants maintain and publicly record.

To the extent that some nonbank covered persons in the automobile financing market do not already know whether their aggregate annual originations exceed the threshold, such entities might, in response to the Final Rule, develop new systems to count their aggregate annual originations in accordance with the definition in the Final Rule. The data the Bureau currently has do not support a detailed estimate of how many nonbank entities will engage in such development or how much they might spend. Regardless, nonbank entities will be unlikely to spend significantly more on specialized systems to count aggregate annual originations than it would cost them to be supervised by the Bureau as larger participants. It bears emphasizing that even if expenditures on an accounting system successfully proved that a nonbank covered person in the automobile financing market was not a larger participant, it does not necessarily follow that this entity could not be supervised. The Bureau can supervise a nonbank entity whose conduct the Bureau determines, pursuant to section 1024(a)(1)(C), poses risks to consumers. Thus, a nonbank entity choosing to spend significant amounts on an accounting system directed toward the larger-participant test could not be sure it will not be subject to Bureau supervision notwithstanding those expenses. The Bureau therefore believes it is unlikely that any but a very few nonbank entities will undertake such expenditures.

4. Benefits and Costs of Adding Certain Automobile Leases to the Definition of ''Financial Product or Service''

Finally, in § 1001.2, the Bureau is defining the term ''financial product or service'' to include automobile leases that (1) meet the requirements of leases authorized under section 108 of CEBA, as implemented by 12 CFR part 23, and are thus permissible for national banks to offer or provide; and (2) are not currently defined as a financial product or service under section 1002(15)(A)(ii) of the Dodd-Frank Act. As explained below, the Bureau believes that the benefits, costs, and impacts to consumers and covered persons of § 1001.2 will likely be small. First, § 1001.2 will not extensively alter the substantive obligations of covered persons. Second, § 1001.2 will not substantially expand the number of market participants brought under supervision as a result of the Final Rule, or for entities already subject to supervision, the scope of supervisory examinations. The Bureau lacks data about the range of, and costs of, compliance mechanisms used by banks or nonbank entities in the automobile financing market. In light of these data limitations, the Bureau's analysis generally provides a qualitative discussion of the benefits, costs, and impacts of § 1001.2.

a. Benefits of § 1001.2

Benefits of § 1001.2 will stem from enhanced consumer protections relating to automobile leases that will fall under the definition. As financial products or services under title X of the Dodd-Frank Act, such leases will become subject to the UDAAP prohibition under section 1031 of the Dodd-Frank Act. These leases are already subject to a similar prohibition against unfair or deceptive acts or practices (UDAP) in or affecting commerce under section 5 of the Federal Trade Commission Act (FTC Act).[151] The prohibitions set forth in section 5 of the FTC Act and section 1031 of the Dodd-Frank Act, however, are not precisely co-extensive. Most notably, section 5 of the FTC Act does not include a prohibition on abusive acts or practices similar to that under section 1031 of the Dodd-Frank Act. Accordingly, consumers will benefit from the expanded scope of consumer protection under section 1031 of the Dodd-Frank Act in connection with transactions involving these leases.

Section 1001.2 also has the potential to expand supervisory activities in two distinct ways. First, § 1001.2, as incorporated into the final larger-participant rule, could bring certain nonbank entities under Bureau supervision by expanding the activities counted in determining whether participants of the automobile financing market qualify as larger participants and are thus subject to supervision under the Final Rule. To the extent that nonbank entities in the automobile financing market are brought under supervision as a result of § 1001.2, both consumers and covered persons will benefit. The nature of these benefits, including from both the possibility of supervision and actual individual supervisory activities, are discussed above.

Second, § 1001.2 could affect the scope of supervision for other nonbank entities and certain banks and credit unions and their affiliates.[152] For nonbank entities in the automobile financing market that will be subject to supervision as a larger participant even absent § 1001.2, § 1001.2 will not expand the leasing activities of such entities that will be subject to supervision. However, § 1001.2 will expand the scope of supervision for leasing covered by § 1001.2 to include compliance with section 1031 of the Dodd-Frank Act.

With respect to banks and credit unions, the Bureau has supervisory authority over insured depository institutions and credit unions with total assets of more than $10 billion (and their affiliates) for compliance with Federal consumer financial laws, and the prudential regulators exercise primary supervisory authority over other insured depository institutions and credit unions with total assets of $10 billion or less for compliance with Federal consumer financial laws. As noted above, although § 1001.2 will not expand the scope of leasing activities of depository institutions and credit unions that are subject to supervision, for leasing covered under § 1001.2, it will expand the scope of that supervision to include compliance with section 1031 of the Dodd-Frank Act.

[151] 15 U.S.C. 45. This prohibition is enforced by the Federal Trade Commission with respect to nonbanks under section 5 and by the prudential regulators with respect to banks under section 8 of the Federal Deposit Insurance Act, 12 U.S.C. 1818.

[152] With respect to nonbanks, the Bureau currently supervises mortgage companies, payday lenders, and private student lenders, as well as larger participants of the consumer reporting, consumer debt collection, student loan servicing, and international money transfer markets. The Bureau is not aware of any significant automobile leasing activity by these entities. Thus, the Bureau believes that § 1001.2 in itself will have at most a marginal impact on the scope of examinations for these entities.

Again, the benefits to consumers of that expanded supervision authority will be similar to the general benefits of supervision discussed above.

Although the Bureau has identified the above potential consumer benefits from the expanded supervision authority that could result from § 1001.2, the Bureau believes such benefits will be limited in extent. Most significantly, as discussed above, the Bureau believes that most automobile leases currently qualify as a financial product or service under section 1002(15)(A)(ii) of the Dodd-Frank Act. Thus, the Bureau believes that few, if any, nonbank participants in the automobile financing market will be subject to the Bureau's supervision under the Final Rule as a result of § 1001.2.[153] Further, for bank and nonbank entities that will be subject to supervision even absent § 1001.2, the Bureau believes that § 1001.2 will expand only the scope of supervision of the leasing activities of such entities. Notably, even absent § 1001.2, all leasing activities of such entities will be subject to supervision by the Bureau or the prudential regulators for compliance with the ''enumerated consumer laws'' as defined in section 1002(12) of the Dodd-Frank Act, including the CLA.[154] And under the existing regulatory framework, the prudential regulators are authorized to supervise banks for compliance with section 5 of the FTC Act. Thus, for entities that will be subject to supervision even absent § 1001.2, the expanded supervision resulting from § 1001.2 will be focused on the entity's compliance with section 1031 of the Dodd-Frank Act in connection with the activities covered by § 1001.2.

Finally, under section 1031(b), the Bureau has authority to prescribe rules applicable to a covered person or service provider identifying as unlawful UDAAPs in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. Thus, the Bureau could promulgate such rules in connection with transactions for the leases that would fall under § 1001.2. The Bureau would consider the benefits, costs, and impacts of any such rulemaking as part of its analysis under section 1022(b)(2) for that rulemaking. The Bureau notes that any such rulemaking would likely aim to provide consumers and covered persons with additional clarity in regard to identifying UDAAPs. It is not possible, however, to identify with any greater specificity here the potential benefits to consumers or covered persons from § 1001.2 as a result of an unspecified future rulemaking.[155]

b. Costs of § 1001.2

Section 1001.2 will impose compliance costs on covered persons by subjecting leasing activities that fall under § 1001.2 to the UDAAP prohibition in section 1031 of the Dodd-Frank Act. Those entities will incur some cost of compliance because, as laid out above, the prohibitions under section 1031 of the Dodd-Frank Act and section 5 of the FTC Act are not co-extensive: in particular, section 5 of the FTC Act does not include a prohibition on abusive acts or practices similar to that under section 1031 of the Dodd-Frank Act. However, given the fact that, as interpreted by the Bureau, section 1002(15)(A)(ii) covers most automobile leases and the substantial overlap of the prohibited conduct under section 1031 of the Dodd-Frank Act and section 5 of the FTC Act, in the Bureau's judgment, the compliance costs to covered persons of this new prohibition will be limited in extent.

Regarding supervision, § 1001.2, as incorporated into the final larger-participant rule, could also bring certain nonbank entities under Bureau supervision and will affect the scope of supervision for other nonbank entities, banks, and credit unions. With respect to nonbanks, § 1001.2 will, as discussed above, expand the activities counted in determining whether participants of the automobile financing market qualify as larger participants and are thus subject to supervision under the Final Rule. To the extent that larger participants in the automobile financing market are brought under supervision as a result of § 1001.2, such entities will incur costs. The nature of these costs, including from the possibility of supervision as well as from actual individual supervisory activities, are discussed above. For participants of the automobile financing market that would be subject to supervision under the larger-participant rule even absent § 1001.2, § 1001.2 will impose costs by expanding the leasing activities of such entities subject to supervision for compliance with section 1031 of the Dodd-Frank Act. With respect to banks and credit unions, by expanding the leasing activities subject to the section 1031 UDAAP prohibition, as discussed above, § 1001.2 will correspondingly expand the activities subject to supervision by either the Bureau or the prudential regulators, as applicable, for compliance with that prohibition.

For both banks and nonbanks, the Bureau believes that the increased costs of supervision identified above will be small. As discussed above, the Bureau believes that most auto leases currently qualify as a financial product or service under section 1002(15)(A)(ii) of the Dodd-Frank Act, and, as discussed above, the Bureau believes that few, if any, nonbank participants in the automobile financing market will be brought under Bureau supervision under the Final Rule as a result of § 1001.2.[156] Similarly, for banks and nonbank entities that will be subject to supervision even absent § 1001.2, the Bureau believes that § 1001.2 will only subject the leasing activities of such entities to slightly expanded supervision. Notably, even absent § 1001.2, all leasing activities of such entities would be subject to supervision by the Bureau or the prudential regulators for compliance with the enumerated consumer laws, including the CLA.[157] And under the existing

[153] As discussed above, some commenters have argued that § 1001.2 will actually cover most, if not all, automobile leases. Even assuming this were the case, the Bureau estimates that very few entities will exceed the larger-participant aggregate annual origination threshold solely as a result of their total leasing volume. Thus, even if § 1001.2 were to cover all leasing, it would not have a significant effect on which entities are considered larger participants.

[154] With respect to the enumerated consumer laws, the scope of the Bureau's authority is defined by the scope of those laws, not by the activities listed under section 1002(15)(A) of the Dodd-Frank Act.

[155] Section 1001.2 will also benefit consumers by expanding the scope of certain other Bureau authorities under title X of the Dodd-Frank Act. Perhaps most significantly, § 1001.2 will expand the Bureau's rulemaking authority under section 1032 of the Dodd-Frank Act, which authorizes the Bureau to prescribe rules to ensure that the features of any consumer financial product or service are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service. In addition, § 1001.2 will expand the scope of the Bureau's authority under section 1022(c) of the Dodd-Frank Act to ''monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services,'' and the scope of the Bureau's authority under section 1033 of the Dodd-Frank Act to prescribe rules for covered persons with respect to consumer rights to access information concerning consumer financial products or services that the consumer receives from such persons. As with respect to section 1031(b) of the Dodd-Frank Act, it is not possible for the Bureau to identify with specificity here the benefits to consumers that might result from the Bureau's potential future exercise of these authorities. The Bureau, however, notes that it would consider the benefits, costs, and impacts of any rulemakings under sections 1032 or 1033 of the Dodd-Frank Act as part of the section 1022(b)(2) analysis for such rulemakings.

[156] *See supra* note 153.

[157] With respect to the enumerated consumer laws, the scope of the Bureau's authority is defined by the scope of those laws, not by the activities

regulatory framework, the prudential regulators are authorized to supervise banks for compliance with section 5 of the FTC Act. Thus, for entities that would be subject to supervision even absent the Final Rule, the scope of expanded supervision for the limited activities that will fall under § 1001.2 will be further limited to compliance with section 1031 of the Dodd-Frank Act. The Bureau believes that the additional cost to entities already subject to supervision of being supervised for compliance with section 1031 of the Dodd-Frank Act will be minimal.

Finally, under section 1031(b) of the Dodd-Frank Act, the Bureau has authority to prescribe rules applicable to a covered person or service provider identifying as unlawful UDAAPs in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. Thus, under § 1001.2, the Bureau may promulgate such rules in connection with transactions for the leases that fall under § 1001.2. Such a rule may impose costs on covered persons or service providers. It is not possible to identify with any greater specificity here the potential costs to covered persons or service providers of any such hypothetical future rulemaking. The Bureau notes, however, that it would consider the benefits, costs, and impacts of any such rulemaking as part of its analysis under section 1022(b)(2) for that rulemaking.[158]

listed under section 1002(15)(A) of the Dodd-Frank Act.

[158] Section 1001.2 would also impose costs on covered persons by expanding the scope of certain other Bureau authorities under title X of the Dodd-Frank Act. Specifically, § 1001.2 will expand the Bureau's rulemaking authority under section 1032 of the Dodd-Frank Act, which authorizes the Bureau to prescribe rules to ensure that the features of any consumer financial product or service are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service. In addition, § 1001.2 will expand the scope of the Bureau's authority under section 1022(c) of the Dodd-Frank Act to ''monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services,'' and the scope of the Bureau's authority under section 1033 of the Dodd-Frank Act, to prescribe rules for covered persons with respect to consumer rights to access information concerning consumer financial products or services that the consumer receives from such persons. As with respect to section 1031(b) of the Dodd-Frank Act, it is not possible for the Bureau to identify with specificity here the costs to covered persons that may result from the Bureau's potential future exercise of these authorities. The Bureau, however, notes that it would consider the benefits, costs, and impacts of any rulemakings under sections 1032 or 1033 of the Dodd-Frank Act as part of the section 1022(b)(2) analysis for such rulemakings.

5. Consideration of Alternatives

The Bureau considered different thresholds for larger-participant status in the market for automobile financing. One alternative the Bureau considered is a larger threshold of, for example, 50,000 aggregate annual originations. Under such an alternative, the benefits of supervision to both consumers and covered persons would likely be substantially reduced because some firms impacting a large portion of consumers in important market segments, such as captive, subprime, and BHPH lending, would be omitted. On the other hand, the overall potential costs across all nonbank covered persons would be reduced if fewer firms were defined as larger participants and thus fewer were subject to the Bureau's supervision authority on that basis. Similarly, the Bureau also considered lower thresholds, such as 5,000 aggregate annual originations, but believes these would only marginally increase the proportion of market activity that the Bureau could supervise while potentially exposing a greater number of nonbank covered persons to the costs listed above. However, the total direct costs for actual supervisory activity might not change substantially because the Bureau conducts exams based on risk and would not necessarily examine more or fewer entities if the rule's coverage were broader or narrower.[159]

The Bureau also considered various other criteria for assessing larger-participant status, including dollar volume of originations and total unpaid principal balances. Calculating either of these metrics might be more involved than calculating the number of originations for a given nonbank entity. If so, then a given entity might face greater costs for evaluating or disputing whether it qualified as a larger participant should the occasion to do so arise. Additionally, as some nonbank entities might, for example, specialize in sectors featuring higher average loan amounts or different prepayment and default rates than others, using aggregate annual originations more directly captures the number of consumers impacted by the Final Rule. For each criterion, the Bureau expects that it could choose a suitable threshold for which the set of larger participants, among those entities participating in the market today, would be similar to those expected to qualify under the Final Rule. Consequently, the costs, benefits, and impacts of this Final Rule should not depend on which criterion the Bureau uses.

[159] Further discussion of comments on the threshold level is provided in the section-by-section analysis of § 1090.108(b) above.

C. Potential Specific Impacts of the Final Rule

1. Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026 of the Dodd-Frank Act

No depository institutions or credit unions of any size will become larger participants in the market for automobile financing under the Final Rule. Further, as explained above, the Final Rule's definition of certain leasing activity as a financial product or service will not in itself have any significant effect on depository institutions and credit unions with $10 billion or less in total assets. Nevertheless, the Final Rule might, as discussed above, have some impact on depository institutions or credit unions that provide financing for automobile transactions. The Final Rule might therefore alter market dynamics in a market in which some depository institutions and credit unions with less than $10 billion in assets may be active. For example, if nonbanks' price of credit for loan acquisitions or leases were to increase, or similarly were the compensation for selling those same products to decrease due to increased costs related to supervision, then depository institutions or credit unions of any size might benefit by the relative change in competitors' costs.

2. Impact of the Provisions on Consumer Access to Credit and on Consumers in Rural Areas

Because the rule applies uniformly to automobile financing transactions of both rural and non-rural consumers, the rule should not have a unique impact on rural consumers. The Bureau is not aware of any evidence suggesting that rural consumers have been disproportionately harmed by nonbank entities' failure to comply with Federal consumer financial law. The Bureau requested comments that provide information related to how automobile financing transactions affect rural consumers, but did not receive any.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA),[160] as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,[161] requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-

[160] Public Law 96–354, 94 Stat. 1164 (1980).

[161] Public Law 104–121, section 241, 110 Stat. 847, 864–65 (1996).

profit organizations.[162] The RFA defines a ''small business'' as a business that meets the size standard developed by the Small Business Administration (SBA) pursuant to the Small Business Act.[163]

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) of any proposed rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.[164] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small entity representatives prior to proposing a rule for which an IRFA is required.[165]

The undersigned certified that the Proposed Rule, if adopted, would not have a significant economic impact on a substantial number of small entities and that an IRFA was therefore not required. The Final Rule adopts the Proposed Rule with some modifications that do not lead to a different conclusion. Therefore, a final regulatory flexibility analysis is not required.

The Final Rule defines a class of nonbank covered persons as larger participants of the automobile financing market and thereby authorizes the Bureau to undertake supervisory activities with respect to those nonbank covered persons. The Final Rule also defines the term ''financial product[s] or service[s]'' to include automobile leases that (1) meet the requirements of leases authorized under section 108 of CEBA, as implemented by 12 CFR part 23, and are thus permissible for national banks to offer or provide; and (2) are not currently defined as a financial product or service under section 1002(15)(A)(ii) of the Dodd-Frank Act. The Final Rule will not affect a substantial number of small businesses.

Regarding insured depositories and credit unions, these entities are small businesses only if their assets are below $550 million.[166] The final definition of larger participants of the automobile financing market applies only to nonbank entities, so it will have no significant impact on depository institutions or credit unions of any size. The final definition of the term financial product or service to include certain automobile leases will have little impact on compliance and supervision costs for insured depositories and credit unions. The leasing activities covered under § 1001.2 will become subject to the UDAAP prohibition under section 1031 of the Dodd-Frank Act. Although the two are not co-extensive, as discussed above, a similar prohibition on UDAP in or affecting commerce under section 5 of the FTC Act already applies to these activities. Similarly, small banks are already subject to supervision for compliance with section 5 of the FTC Act, as well as with the enumerated consumer laws. In addition, most small banks have a very low share of leases relative to loans, and most of this leasing activity already qualifies as a financial product or service under section 1002(15)(A)(ii) of the Dodd-Frank Act. Accordingly, the Bureau estimates that very few, if any, small banks will experience a significant impact due to the Final Rule's change to the definition of a financial product or service.

Regarding nonbank entities, the Final Rule adopts a threshold for larger-participant status of at least 10,000 aggregate annual originations.[167] Under the size standard for the most relevant SBA classification, *i.e.,* North American Industry Classification System (NAICS) code 522220, an entity engaged in automobile financing is a small business if its annual receipts are at or below $38.5 million.[168] The Bureau solicited comments on whether NAICS code 522220 or any other NAICS code is more appropriate for this market, but did not receive any. The Bureau used AutoCount data for 2013 combined with public financial statements, securitization filings, and additional market research to estimate annual receipts for each of the potential larger participants.[169] Based on this review, it appears that few, if any, of the potential larger participants identified by the Bureau's analysis meet the small business threshold classification.[170]

Considering the limited public information available for several of the smallest potential larger participants, the Bureau requested comment on the impact of the Proposed Rule on small nonbank entities and solicited data that may be relevant to this analysis. A law firm that represents financial services entities stated that one of its clients, which the law firm did not name, had approximately $30 million in total receipts during fiscal year 2014, while generating sufficient origination volume to constitute a larger participant under the Proposed Rule. The Bureau acknowledges that it is possible that a few firms that qualify as a small business could also meet the threshold as a larger participant due to small loan amounts, short term lengths, or other factors. However, the Bureau's analysis indicates that this will not be the case for a substantial number of small entities. In order to qualify as a small business and a larger participant according to the Bureau's estimates, an

[162] 5 U.S.C. 601–12. The term '''small organization' means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes [an alternative definition after notice and comment].'' 5 U.S.C. 601(4). The term '' 'small governmental jurisdiction' means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes [an alternative definition after notice and comment].'' *Id.* at 601(5). The Bureau is not currently aware of any small governmental units or small not-for-profit organizations to which the Final Rule would apply.

[163] 5 U.S.C. 601(3). The Bureau may establish an alternative definition after consultation with SBA and an opportunity for public comment. *Id.*

[164] 5 U.S.C. 605(b).

[165] 5 U.S.C. 609.

[166] 13 CFR 121.201.

[167] As noted above, if a nonbank covered person meets the larger-participant test, it would remain a larger participant until two years from the first day of the tax year in which it last met the larger-participant test. 12 CFR 1090.102.

[168] 13 CFR 121.201 (NAICS code 522220) (as amended by 79 FR 33647, 33655 (June 12, 2014)). The Bureau believes that larger participants in the nonbank automobile financing market are likely to be classified under NAICS code 522220, sales financing. NAICS lists ''automobile financing'' and ''automobile finance leasing companies'' as index entries corresponding to this code. *See* U.S. Census Bureau, North American Industry Classification System, *2012 NAICS Definition 522220 Sales Financing, available at http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[169] To generate these estimates, the Bureau first calculated an estimate of the average stream of interest income the 34 potential larger participants identified by the Bureau would receive over a 12-month period for all loans originated in 2013, as well as the income each entity would receive during the same period for loans made in previous years if the number of originations were identical to 2013 levels. This initial calculation excludes leases that also generate income. It also assumes no prepayment, which would increase receipts; no defaults, which would decrease receipts; and no other income generated from any other sources. The Bureau then analyzed public financial statements to verify any potential outliers. Using this methodology, the Bureau found five potential larger participants with receipts from loans in 2013 that it estimated would fall below the current $38.5 million SBA size standard. Further market research indicated that four of these five remaining entities likely had sufficient additional revenue from leases, affiliate activity, or other sources such that their 2013 annual receipts also exceed the relevant size standard. Upon further review of information considered at the proposal stage and additional market research, the Bureau was not able to determine whether the final remaining entity would have met the relevant size standard in 2013.

[170] The Bureau's analysis concluding that few, if any, potential larger participants meet the relevant size standard is described in note 169 above. The Bureau also believes that it is unlikely that any small entities would be rendered larger participants of the consumer reporting or consumer debt collection markets by the Final Rule's technical amendments to §§ 1090.104(a) and 1090.105(a), since very few entities in those markets are likely to have annual receipts that are so close to the larger-participant threshold that inclusion of additional receipts from a formerly affiliated company would affect their larger-participant status.

entity would need to maintain a portfolio featuring a total number of originations at or close to the threshold, with the typical loan featuring some combination of below average rate, term length, and amount financed.[171] The Bureau therefore maintains its estimate that very few, if any, small businesses will be classified as larger participants of the automobile financing market under the Final Rule.[172]

Section 1001.2(a) will have little impact on small nonbank entities engaged in automobile leasing. As mentioned above, the vast majority of automobile leases likely already qualify as a financial product or service under section 1002(15)(A)(ii) of the Dodd-Frank Act, and so the change in definition is unlikely to affect the larger-participant status of any small business. With respect to costs related to compliance, under § 1001.2 small nonbanks will have to comply with the UDAAP prohibition under section 1031 of the Dodd-Frank Act when providing automobile leases covered under § 1001.2. However, as with small banks, small nonbanks that provide automobile leases must already comply with similar UDAP prohibitions under section 5 of the FTC Act as well as the applicable enumerated consumer laws, such as the CLA. Additionally, as explained above, there are likely to be few, if any, small nonbank businesses in the automobile financing market that will be subject to supervision irrespective of § 1001.2. To the extent that any small nonbanks are larger participants under the Final Rule, the Bureau believes that § 1001.2 will expand the scope of leasing activities of such entities subject to supervision for compliance with section 1031. The economic impact of this expansion in scope will not be significant. Notably, even absent § 1001.2, all leasing activities of such entities would be subject to supervision by the Bureau for compliance with the enumerated consumer laws, including the CLA.[173]

Additionally, if a larger participant qualifies as a small business under the $38.5 million SBA size standard, the Final Rule will not result in a ''significant impact'' on the entity. The Final Rule will not itself impose any business conduct obligations beyond those described above regarding the automobile leases defined under the Final Rule as financial products or services. Furthermore, the Bureau's supervisory activity will have very little economic impact on a supervised entity. When and how often the Bureau will in fact engage in supervisory activity, such as an examination, with respect to a larger participant (and, if so, the extent of such activity) will depend on a number of considerations, including the Bureau's allocation of resources and the application of the statutory factors set forth in section 1024(b)(2) of the Dodd-Frank Act. Given the Bureau's finite supervisory resources, and the range of industries over which it has supervisory responsibility for consumer financial protection, when and how often a given a larger participant will be supervised is uncertain. Moreover, if supervisory activity occurs, the costs that will result from such activity are expected to be minimal in relation to the overall activities of a larger participant.[174] Hence, the Final Rule will not have a significant economic impact on a substantial number of small entities because the Final Rule will not impose any significant business conduct obligations on the defined class of larger participants and the cost of supervisory activities will be nominal in relation to the revenue of a larger participant whose annual revenue fell at or below the $38.5 million SBA size standard.[175]

Finally, section 1024(e) of the Dodd-Frank Act authorizes the Bureau to supervise service providers to nonbank covered persons encompassed by section 1024(a)(1), which includes larger participants. Because the Final Rule does not specifically address service providers, effects on service providers need not be discussed for purposes of this RFA analysis. Even were such effects relevant, the Bureau believes that it would be very unlikely that any supervisory activities with respect to the service providers to the potential larger participants of the market for automobile financing would result in a significant economic impact on a substantial number of small entities.[176]

Accordingly, the undersigned certifies that the Final Rule will not have a significant economic impact on a substantial number of small entities.

VIII. Paperwork Reduction Act

The Bureau has determined that this Final Rule does not impose any new recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would constitute collections of information requiring approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

List of Subjects in 12 CFR Parts 1001 and 1090

Consumer protection, Credit.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau adds 12 CFR part 1001 and amends 12 CFR part 1090, to read as follows:

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[171] For example, an institution with exactly 10,000 aggregate annual originations at an interest rate and amount financed at the median among nonbank participants in 2013, along with a loan term in the fifteenth percentile, would still be estimated to generate receipts above the current $38.5 million SBA size standard.

[172] According to the 2007 Economic Census, more than 2,000 small firms are encompassed under the most applicable NAICS code (522220). U.S. Census Bureau, *American FactFinder Database, Estab and Firm Size: Summary Statistics by Revenue Size of Establishments for the United States: 2007, available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_52SSSZ4&prodType=table.* Thus, even if a few small firms were classified as larger participants, they would constitute less than 1 percent of the small firms in the industry under that NAICS code.

[173] As noted above, with respect to the enumerated consumer laws, the scope of the Bureau's authority is defined by the scope of those laws, not by the activities listed under section 1002(15)(A) of the Dodd-Frank Act.

[174] As noted in part VI.B.2.b above, the Bureau estimates that the cost of participation in an examination would be 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 originations. Even if the unusually low amount financed suggested by a commenter is used in the analysis, the Bureau's estimates suggest that an examination would still require less than one-half of 1 percent of total revenue from one year's originations for an entity at the threshold of 10,000 aggregate annual originations.

[175] Because the Final Rule aggregates the activities of affiliated companies in part by adding together annual originations, two companies that are small businesses might, together, have aggregate annual originations of 10,000 or more. The Bureau anticipates no more than a very few such cases, if any, in the automobile financing market.

[176] As noted above, according to the 2007 Economic Census, more than 2,000 small firms are encompassed under NAICS code 522220, and the number of those firms that are service providers for the approximately 34 potential larger participants and their affiliated companies will be only a small fraction of that number. Other service providers may be classified under NAICS code 522320 for financial transactions processing, reserve, and clearing house activities, which also includes more than 2,000 small firms. U.S. Census Bureau, *American FactFinder Database, Estab and Firm Size: Summary Statistics by Revenue Size of Establishments for the United States: 2007, available at http://factfinder2.census.gov/bkmk/table/1.0/en/ECN/2007_US/52SSSZ4//naics~522320.* Still other service providers are likely to be considered in other NAICS codes corresponding to the service provider's primary business activities. As noted above with respect to larger participants themselves, the frequency and duration of examinations that would be conducted at any particular service provider would depend on a variety of factors. However, it is implausible that in any given year the Bureau would conduct examinations of a substantial number of the more than 4,000 small firms in NAICS code 522220 and 522320, or the small firm service providers that happen to be in any other NAICS code. Moreover, the impact of supervisory activities, including examinations, at such small firm service providers can be expected to be less, given the Bureau's exercise of its discretion in supervision, than at the larger participants themselves.

■ 1. Add part 1001 to read as follows:

PART 1001—FINANCIAL PRODUCTS OR SERVICES

Sec.
1001.1 Authority and purpose.
1001.2 Definitions.

Authority: 12 U.S.C. 5481(15)(A)(xi); and 12 U.S.C. 5512(b)(1).

§ 1001.1 Authority and purpose.

Under 12 U.S.C. 5481(15)(A)(xi), the Bureau is authorized to define certain financial products or services for purposes of title X of the Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010) (Title X) in addition to those defined in 12 U.S.C. 5481(15)(A)(i)–(x). The purpose of this part is to implement that authority.

§ 1001.2 Definitions.

Except as otherwise provided in Title X, in addition to the definitions set forth in 12 U.S.C. 5481(15)(A)(i)–(x), the term ''financial product or service'' means, for purposes of Title X:

(a) Extending or brokering leases of an automobile, as automobile is defined by 12 CFR 1090.108(a), where the lease:

(1) Qualifies as a full-payout lease and a net lease, as provided by 12 CFR 23.3(a), and has an initial term of not less than 90 days, as provided by 12 CFR 23.11; and

(2) Is not a financial product or service under 12 U.S.C. 5481(15)(A)(ii).

PART 1090—DEFINING LARGER PARTICIPANTS OF CERTAIN CONSUMER FINANCIAL PRODUCT AND SERVICE MARKETS

■ 2. The authority citation for part 1090 continues to read as follows:

Authority: 12 U.S.C. 5514(a)(1)(B); 12 U.S.C. 5514(a)(2); 12 U.S.C. 5514(b)(7)(A); and 12 U.S.C. 5512(b)(1).

Subpart A—General

■ 3. Section 1090.101 is amended by revising the definition of ''*Nonbank covered person''* to read as follows:

§ 1090.101 Definitions.

* * * * *

Nonbank covered person means, except for persons described in 12 U.S.C. 5515(a) and 5516(a):

(1) Any person that engages in offering or providing a consumer financial product or service; and

(2) Any affiliate of a person that engages in offering or providing a consumer financial product or service if such affiliate acts as a service provider to such person.

* * * * *

Subpart B—Markets

■ 4. Section 1090.104 is amended by revising paragraph (iii)(D) of the definition of ''Annual receipts'' to read as follows:

§ 1090.104 Consumer reporting market.

(a) * * *

*Annual receipts** * *

(iii) * * *

(D) The annual receipts of a formerly affiliated company are not included in the annual receipts of a nonbank covered person for purposes of this section, if the affiliation ceased before the applicable period of measurement as set forth in paragraph (ii) of this definition. The annual receipts of a nonbank covered person and its formerly affiliated company are aggregated for the entire period of measurement if the affiliation ceased during the applicable period of measurement as set forth in paragraph (ii) of this definition.

* * * * *

■ 5. Section 1090.105 is amended by revising paragraph (iii)(D) of the definition of ''Annual receipts'' to read as follows:

§ 1090.105 Consumer debt collection market.

(a) * * *

*Annual receipts** * *

(iii) * * *

(D) The annual receipts of a formerly affiliated company are not included in the annual receipts of a nonbank covered person for purposes of this section if the affiliation ceased before the applicable period of measurement as set forth in paragraph (ii) of this definition. The annual receipts of a nonbank covered person and its formerly affiliated company are aggregated for the entire period of measurement if the affiliation ceased during the applicable period of measurement as set forth in paragraph (ii) of this definition.

* * * * *

■ 6. Add § 1090.108 to subpart B to read as follows:

§ 1090.108 Automobile financing market.

(a) *Market-related definitions.* As used in this section:

Aggregate annual originations means the sum of the number of annual originations of a nonbank covered person and the number of annual originations of each of the nonbank covered person's affiliated companies, calculated as follows:

(i) *Annual Originations.*

(A) Annual originations means the sum of the following transactions for the preceding calendar year:

(*1*) Credit granted for the purpose of purchasing an automobile;

(*2*) Automobile leases;

(*3*) Refinancings of obligations described in (i)(A)(*1*) of this definition that are secured by an automobile, and any subsequent refinancings thereof that are secured by an automobile; and

(*4*) Purchases or acquisitions of obligations described in (i)(A)(*1*), (*2*), or (*3*) of this definition.

(B) The term annual originations does not include:

(*1*) Investments in asset-backed securities; and

(*2*) Purchases or acquisitions of obligations by a special purpose entity established for the purpose of facilitating asset-backed securities transactions if the purchases or acquisitions are made for the purpose of facilitating an asset-backed securities transaction.

(ii) *Aggregating the annual originations of affiliated companies.* The annual originations of a nonbank covered person must be aggregated with the annual originations of any person (other than an entity described in paragraph (c) of this section) that was an affiliated company of the nonbank covered person at any time during the preceding calendar year. The annual originations of a nonbank covered person and its affiliated companies are aggregated for the entire preceding calendar year, even if the affiliation did not exist for the entire calendar year.

Automobile means any self-propelled vehicle primarily used for personal, family, or household purposes for on-road transportation. The term does not include motor homes, recreational vehicles (RVs), golf carts, and motor scooters.

Automobile financing means providing or engaging in the transactions identified under the term ''Annual originations'' as defined in this section.

Automobile lease means a lease that is for the use of an automobile, as defined in this section, and that meets the requirements of 12 U.S.C. 5481(15)(A)(ii) or 12 CFR 1001.2(a).

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.

(b) *Test to define larger participants.* Except as provided in paragraph (c) of this section, a nonbank covered person that engages in automobile financing is a larger participant of the automobile financing market if the person has at least 10,000 aggregate annual originations.

(c) *Exclusion for dealers.* The following entities do not qualify as larger participants under this section:

(1) Persons excluded from the Bureau's authority by 12 U.S.C. 5519; and

(2) Persons who meet the definition in 12 U.S.C. 5519(f)(2); are identified in 12 U.S.C. 5519(b)(2); and are predominantly engaged in the sale and servicing of motor vehicles (as that term is defined in 12 U.S.C. 5519(f)(1)), the leasing and servicing of motor vehicles, or both.

Dated: June 5, 2015.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

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