

CFPB Proposes Regulating Nonbank Auto Finance Companies

December 22, 2014

On September 16, the Consumer Financial Protection Bureau (CFPB) issued and requested comment on a proposed rule that would, for the first time, subject nonbank auto finance companies to federal regulation and oversight. The proposed rule would use the CFPB's power under Dodd-Frank to define and regulate "larger participants" that provide consumer financial products and services. In announcing the proposal, the CFPB said it sought to create the means for it to fight loan discrimination across the auto finance market after uncovering auto-lending discrimination at supervised banks. Specifically, the rule would amend the regulation defining larger participants of certain consumer financial product and service markets by adding a section defining "larger participants" of the auto finance market. The auto finance market would include extension of credit for consumer automobile (defined as a "self-propelled vehicle primarily used for personal, family, or household purposes for on-road transportation") purchases and leases, purchases of auto loans and leases (i.e. indirect auto lenders), and auto loan refinancings. Larger participants subject to regulation would be defined to include nonbank auto finance companies that make, acquire, or refinance 10,000 or more loans or leases annually. The CFPB estimates this represents approximately 38 auto finance companies responsible for originating 90 percent of nonbank auto loans and leases. Proposed nonbank participants would include (1) specialty finance companies, such as subprime auto lenders, (2) "captive" nonbanks (generally owned by auto manufacturers), and (3) Buy Here Pay Here finance companies. The rule would not apply to depository institutions and credit unions that engage in automobile financing and are already subject to the CFPB's supervisory authority. Several federal consumer protection financial laws already apply to automobile financing including the Truth in Lending Act, the Fair Credit Reporting Act, the Consumer Leasing Act, the Equal Credit Opportunity Act, and the Gramm-Leach-Bliley Act. **If adopted, the proposed rule would also subject auto finance contracts and leases to Dodd-Frank's prohibition on unfair, deceptive, or abusive acts or practices (UDAAP).** The proposal states that the CFPB would examine whether larger participants of the auto finance market engage in UDAAPs, noting that conduct that does not violate

an express prohibition of another federal consumer financial law may nonetheless constitute a UDAAP. The comments period on the proposed rule expired on December 8. The full text may be found here: http://files.consumerfinance.gov/f/201409_cfpb_proposed-rule_lp-v_auto-financing.pdf.

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