



NEW YORKERS FOR RESPONSIBLE LENDING

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Nondepository Supervision
Consumer Financial Protection Bureau
1801 L St., NW, Room 513-H
Washington, D.C. 20036

RE: CFPB Docket No. CFPB-HQ-2011-2
“Defining Larger Participants in Certain Consumer Financial Products and Services Markets”

Dear Consumer Financial Protection Bureau:

The 23 undersigned members of New Yorkers for Responsible Lending (NYRL) are pleased to submit comments to the Consumer Financial Protection Bureau regarding its definition of non-bank “larger participants” that will be subject to supervision by the CFPB. We request that the CFPB consider this comment letter to constitute 23 separate letters for the purposes of counting the total comments received on this proposal.

Our groups urge the CFPB to define larger participants as broadly and as flexibly as possible, to ensure that the Bureau has maximum ability to directly supervise a wide array of institutions. Given the ever-changing landscape of financial services providers, a flexible standard is critical to allow the CFPB to effectively respond to changing markets, business models and practices that harm consumers and communities.

NYRL is a 154-member state-wide coalition that promotes access to fair and affordable financial services and the preservation of assets for all New Yorkers and their communities. NYRL members represent community development financial institutions, community-based organizations, affordable housing groups, advocates for seniors, legal services organizations, and community reinvestment, fair lending, and consumer advocacy groups.

Coalition members have detailed knowledge of the array of abusive financial services and lending practices that target New York consumers and strip wealth from communities. Under-regulated non-bank players dominate markets as diverse as debt collection, debt relief (particularly debt settlement outfits), consumer reporting, check cashing, money transmission, and prepaid cards – all of which are rife with deceptive and abusive practices. Our groups

believe that the CFPB must fill regulatory gaps and extend its supervisory authority over these and other markets.

Below are our specific recommendations in response to the CFPB's request for public comment.

A. Criteria and Thresholds to Define a Larger Participant

The CFPB should define “larger participants” with multiple criteria and maximum flexibility. The spirit of the “larger participant” provisions in Dodd-Frank may have been to spare “mom and pop” businesses the burden of Bureau supervision, but the vast majority of non-bank financial services companies do not operate in a “mom and pop” fashion. Given the fluid and adaptive nature of abusive financial services practices, it is important that the CFPB write a rule that gives it the broadest supervisory authority possible, in case that authority is needed. In fact, a broad supervisory net – i.e. the mere threat of supervision – will serve as a deterrent to abusive financial practices and reduce the need for enforcement.

Given the differences among various markets, larger participants should be defined based on their relative size and performance within a given market, and not necessarily on any absolute threshold. For example, any entity that does business in more than one state should automatically be considered a larger participant – this should be a simple, easily measured, bottom-line criteria for supervision. However, entities that do not cross state lines should also be defined as larger participants, if their practices have a significant impact within a state, or in a metropolitan area or region of a state. This impact could be measured by the annual number and dollar amount of transactions conducted as well as annual revenue earned by an entity, relative to other market participants.

Companies should also be designated as larger participants – regardless of their size or other criteria – if they generate a volume of consumer complaints comparable to those filed against larger participants. Using both relative size and complaint measurements to define larger participants will permit the CFPB to supervise both the largest and the most abusive companies.

Finally, the definition of larger participants should be flexible enough to encompass large companies that sell a variety of products and services in different markets, even if the companies are not major providers of one specific service or product.

B. Data to be Used in Measuring Criteria

Reliable, detailed data are not publicly available for many non-bank consumer financial services companies. State and city licensing and complaint databases are among the tools the CFPB should use to identify larger and problematic non-bank entities, in addition to conducting its own data collection.

The CFPB is considering establishing a registration program for certain entities, to assist the Bureau in gathering information about market players and defining larger participants. The CFPB should require all participants in covered markets to register electronically and provide basic data on their size, ownership, location, and business models. This will allow the CFPB to accurately identify larger participants in national as well as regional markets, and will more generally help the CFPB gather important data on various industries.

The CFPB should collect the following data from all participants: company principals or owners; corporate parent (if applicable); states where the company does business, and cities or metro areas if the company only operates within one state; gross and net revenue; number of consumer transactions per year; dollar value of transactions per year; asset size; number of employees; number of back offices; number of storefront locations; and a description of the business that includes the nature of the business and how the company communicates with its customers, e.g. in person or by phone. The CFPB should also gather information on the number and nature of court and administrative complaints filed against the company in the last three years.

Some companies may attempt to market their services to the public by touting their registration with the CFPB. The CFPB must make clear that registration is not the equivalent of licensing, and that the Bureau has not given its stamp of approval to companies based merely on their having registered. The CFPB should further write a rule that deems it a deceptive practice to use CFPB registration as a marketing tactic.

C. Measurement Dates and Supervision Timeframes

The CFPB should collect and evaluate registration data annually to identify new larger participants. If a company meets the definition thresholds in one or more of the previous three years, it should be considered a larger participant. Once a larger participant has been identified, it should remain a supervised entity. This continuity in supervision will allow the CFPB to more effectively monitor companies' compliance with CFPB regulatory guidance and enforcement actions, and will help the CFPB keep watch over non-bank industries and consumer financial services markets as a whole.

Consideration of Markets to Include in the Initial Rule

The CFPB's Notice and Request for Comment describes a number of markets for consumer financial products and services that could be covered in its initial larger participants rule. Our groups urge the Bureau to include all of these markets in its initial rule, including debt collection; consumer reporting; consumer credit and related activities; money transmitting, check cashing, and related activities; prepaid cards; and debt relief services.

Non-bank entities engage in rampant abuse in all of the above markets. Many are part of rapidly growing industries that affect the lives of more consumers than ever before. Debt buying

companies and debt collection law firms, for example, routinely employ abusive and illegal collection practices, with devastating consequences for consumers whose credit may be badly damaged or whose wages may be garnished. The rapidly expanding and improper use of individuals' credit information – collected and aggressively marketed by the credit reporting industry – compounds consumers' economic insecurity and reinforces racial and economic divides.

The CFPB's initial rule should cover not just entities that sell products or services in these markets, but also those that market, arrange, package, and develop these services and products; provide important technology that affects the terms or risks of products; or provide consumer profiles or information to other businesses, whether or not the entity in question has direct contact with consumers. Such a rule, for example, would cover specialty consumer reporting agencies that provide information to landlords, employers, and insurance companies.

Finally, the rule should segment covered markets to take into account the diverse players in each field. For example, debt collection companies include debt buying companies, debt collection law firms, and other collection agencies, which differ in size, practices and direct impact on consumers. Consumer credit and related activities is also a very broad category, and includes car title lenders, pawn shops, and other non-bank consumer lenders. In order to capture larger participants in each of these areas, the CFPB should develop distinct criteria, while also including a broader catch-all to ensure the rule covers emerging related entities.

Thank you for the opportunity to comment on the development of CFPB's larger participants rule.

Sincerely,

ANHD, Inc.
Brooklyn Cooperative Federal Credit Union
Central New York Citizens in Action, Inc.
Chhaya Community Development Corporation
Elder Law Clinic of St. John's University School of Law
Empire Justice Center
The Financial Clinic
Greater Rochester Community Reinvestment Coalition
Grow Brooklyn
Legal Services NYC - Bronx
MFY Legal Services
NEDAP
The Parodneck Foundation
PathStone

Pratt Area Community Council
PUSH Buffalo
Queens Legal Services
South Brooklyn Legal Services
Staten Island Legal Services
Syracuse University Securities Arbitration and Consumer Law Clinic
Urban Justice Center, Community Development Project
Westchester Residential Opportunities, Inc.
Western New York Law Center