

CFPB: Important Comment Period on Nonbank Regulation

June 28, 2011

On June 23, the Bureau of Consumer Financial Protection (CFPB) invited preliminary comment on future rulemaking the Bureau will undertake under Section 1024 of the Consumer Financial Protection Act of 2010. Under Section 1024, the Bureau is required to construct a supervisory regime for residential mortgage, private education lending and payday lending firms, as well as the “larger participants” of other product and service markets that the Bureau defines in rulemaking.

A copy of the full Bureau release is available [here](#). The invitation for comment is *not* proposed rulemaking, reflecting, no doubt, the statutory limitations on the Bureau’s formal functioning until a Bureau Director assumes office.

Nevertheless, the June 23 publication by the Bureau provides an important opportunity for both nonbank and depository institutions to provide input in the initial shaping of CFPB regulation of nonbanks. Depository institutions and those specified Section 1024 firms – residential mortgage originators, brokers and servicers, mortgage loan modification and foreclosure relief firms, private educational lenders and payday lenders – seemingly will want the definition of “larger participants” and product and service markets to be as expansive as possible.

Likewise, those firms that, because of size or importance, can assume that they will have “larger participant” status under *any* definition will also want to see an expansive definition so that as many competitors as possible will be subject to the burdens of CFPB regulation. Small firms, by contrast, if they believe they may escape “larger participant” status, will focus on the definition of the product or service market, suggesting it be as broad as possible to make their own market share outside the “larger” category.

The Bureau’s June 23 release invites comment on both the consumer financial markets that will be subject to Bureau supervision and the metrics for defining the “larger participants” in those markets. In the release the Bureau identifies preliminarily as the operative product or service markets: debt collection, consumer reporting, consumer credit, money transmitting and check cashing, prepaid cards and debt relief services.

Any firm coming within the coverage of Section 1024 must comply with *reporting* and *examination* rules that the CFPB is required to adopt. The Bureau may, but is not required to, establish a *registration system* for Section 1024 firms.

Although the Bureau did not invite comment on the nature and scope of the supervision program the CFPB will adopt, the Bureau did acknowledge that the “larger participant” definition must reflect consideration of the Bureau’s ability to supervise additional products and services beyond those already specified in Section 1024. In the context of commenting on the number and size of consumer financial service firms that the Bureau can be expected to supervise, nonbank firms may choose to treat the June

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23 release as an opportunity to provide input on the advisability of a registration system, as well as to make suggestions for the reporting and examination system the Bureau is required to implement.



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