

Lenders Compliance Group

Friday, July 8, 2011

CFPB: Defining "Larger Participant"

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On June 29, 2011, the Consumer Financial Protection Bureau (CFPB) issued a request for comments regarding the requirement to implement a program to supervise certain nondepository covered persons for compliance with Federal consumer financial laws.

The scope of the CFPB's supervision coverage varies for different product markets. Section 1024 of the the Dodd-Frank Act (Dodd-Frank) provides that the CFPB may supervise covered persons in the residential mortgage, private education lending, and payday lending markets. For other markets for consumer financial products or services, the supervision program generally will apply only to a "larger participant" of these markets.

Therefore, the CFPB is required to issue an initial "larger participant" rule not later than July 21, 2012, one year after the designated transfer date.

Essentially, under Dodd-Frank, the CFPB's non-bank supervision program will be able to look at companies of all sizes in the mortgage, payday lending, and private student lending markets. For all other markets - such as consumer installment loans, money transmitting, and debt collection - the CFPB generally can supervise non-banks only if they are larger participants in these markets.

Hence, in order to supervise them, the CFPB must write a rule within the next year to define who is a "larger participant."

The following outline is a brief synopsis of the questions requiring comments.

COMMENTS DUE DATE: AUGUST 15, 2011.

[Submit a Comment](#)

THREE ESSENTIAL QUESTIONS

- Should a larger participant be defined based on the relative size of the participants within a market (i.e., whether the number of annual transactions of the market participants is above the mean or median) or, alternatively, should a larger participant be defined based on an absolute threshold, such as doing business in a specified number of states?
- Should more than one criterion be used to determine the size of a market participant, such as the number of annual transactions and/or the number of states in which the participant conducts business?
- Should the same criteria and thresholds be used to define a larger participant for every market, or should different criteria and thresholds be tailored for each market based on the market's characteristics?

SIZE = AGGREGATE = LARGER PARTICIPANT

In considering how to define which nondepository covered persons are larger participants in a particular market, a number of approaches are be suggested.

Determining the appropriate criteria and thresholds are being approached in light of the applicable statutory language, which refers to a "larger participant" of a market. (This statutory language is not limited only to the "largest" participants in each market, but at the same time does not encompass smaller market participants.)

Dodd-Frank provides that, for purposes of computing the activity levels of a market participant, the activities of the participant "shall be aggregated" with the activities of nondepositor "affiliated companies."

Examples of potential criteria that could be used to define larger participants of a market include one or a combination of the following: annual number of transactions in the market; annual value of transactions (i.e., total loan volume); annual receipts or revenue; geographic coverage (i.e., number of states where engaged in business); asset size; and outstanding loan balances.

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CRITERIA

- The number of states in which a market participant conducts business. Public data, including from sources such as the Securities and Exchange Commission's online EDGAR database, and state and federal licensing and registration records.
- Nonpublic state or federal supervisory or other data.
- Commercial data, such as proprietary industry market analyses.
- Data obtained directly from market participants.

REGISTRATION?

The CFPB is considering the establishment of a registration program for certain covered persons through a future rulemaking that will serve to supplement existing data used to measure market participants.

Questions:

- For each market, what reliable data sources are available and would be suitable for the CFPB to use in its larger participant determinations?
- What data should the CFPB collect through a registration process to use in its larger participant determinations?

MEASUREMENT DATES AND SUPERVISION TIMEFRAMES

Questions:

- What factors should the CFPB consider in connection with the treatment of events such as the merger market participants during an assessment time period?
- Are there alternative approaches for establishing an assessment time period the CFPB should consider?
- For what length of time should a market participant be subject to supervision once it meets the applicable threshold?
- How should subsequent changes in the participant's size be treated?

MARKETS

The CFPB seeks comments regarding the following markets: Debt Collection; Consumer Reporting; Consumer Credit and Related Activities; Money Transmitting, Check Cashing, and Related Activities; Prepaid Cards; and, Debt Relief Services.


Questions:

- What consumer financial product or service markets should be included in the initial rule?
- How should the financial product or service markets included in the initial rule be defined?
- In addition to considerations relating to how to define the relevant product markets, should all markets be national in scope, or should the CFPB consider regional or other geographic markets in certain instances?
- If regional or other geographic markets should be considered, describe with specificity how they could be defined?
- What specific criteria should be measured, and threshold levels set, to define a larger participant in the markets identified above, and in any other markets that should be included in an initial rule?
- What data should be used to assess whether the thresholds have been met?

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CFPB: Defining Larger Participants in Certain Consumer Financial Products and Services Markets
Notice and Request for Comment. (12 CFR Chapter X)
Federal Register, Vol. 76, No. 125
June 29, 2011

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