

Client Alert.

July 17, 2012

CFPB Issues Final Rule Broadly Defining Larger Participants for the Consumer Reporting Market

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Yesterday, the Consumer Financial Protection Bureau (“CFPB”) issued a final rule defining certain nonbank “larger participants” in markets for consumer financial products or services. The final rule is the first in a series of rulemakings defining larger participants in consumer financial markets and the final rule only applies to consumer reporting agency markets. The rule subjects larger participants in consumer reporting markets to the supervisory authority of the CFPB.¹ The rule will be effective on September 30, 2012 with the CFPB conducting the first supervisory examinations thereafter.

The rule defines “larger participants” of the consumer reporting markets in terms of the combined annual receipts of the participant and any affiliate² of the participant “resulting from” consumer reporting.³ The threshold for annual receipts triggering supervision for consumer reporting agencies is \$7 million.⁴ Generally, the annual receipts threshold is measured by the average of the previous three years’ receipts.⁵

The final rule defines “consumer reporting” broadly to include “collecting, analyzing, maintaining, or providing consumer report information or other account information used or expected to be used in any decision by another person regarding the offering or provision of any consumer financial product or service.”⁶ This definition excludes the following activities: (i) activities solely related to the person’s own conduct with consumers; (ii) furnishing affiliate information to a consumer reporting entity; (iii) authorizations of specific extensions of credit by a credit card issuer; or (iv) providing information solely for use in an employment, government licensing, or residential leasing or tenancy decision.⁷

The CFPB stated that this broad definition of consumer reporting is by design; it is the CFPB’s intent to broadly define consumer reporting because the CFPB is not limited to supervising the person with respect to laws specific to credit reporting, such as the Fair Credit Reporting Act.⁸ The CFPB further stated that once a person is determined to be a larger participant in the consumer reporting market, the CFPB’s supervisory authority “is not limited to the products or services that qualified a person for supervision, but also includes other activities of such a person that involve other consumer

¹ Defining Larger Participants of the Consumer Reporting Market, Final Rule, at 90 (to be codified at 12 C.F.R. § 1090.100).

² The CFPB defines “affiliate” in terms of common control, such as greater than 25% voting power, any type of control over the election of a majority of the directors, or indirect or direct controlling influence over management. Final Rule at 90 (to be codified at 12 C.F.R. § 1090.101). The CFPB notes that “mere execution of certain of another company’s activities would not constitute ‘control.’” Final Rule, supp. info., at 16.

³ Final Rule at 90, 97 (to be codified at 12 C.F.R. §§ 1090.101, 104(b)).

⁴ *Id.* at 97 (to be codified at 12 C.F.R. § 1090.104(b)).

⁵ *Id.* at 95 (to be codified at 12 C.F.R. § 1090.104(a)(2)).

⁶ *Id.* at 96 (to be codified at 12 C.F.R. § 1090.104(a)).

⁷ *Id.* at 96-97 (to be codified at 12 C.F.R. § 1090.104(a)).

⁸ *Id.*, supp. info., at 43.

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financial products or services or are subject to Federal consumer financial law.”⁹ Accordingly, once a person is deemed to be a “larger participant” with respect to *any* consumer financial product, such person is subject to the supervision of the CFPB for *all* consumer financial products. And, once triggered, larger participant status remains regardless of any change in circumstances for at least two years from the first day of the year in which the person became a larger participant.

The CFPB noted that although the proposed rule published by the CFPB in February 2012 covered both debt collectors and consumer reporting agencies, the final rule is limited to covering consumer reporting agencies. The CFPB reportedly plans to finalize a larger participant debt collection rule during the fall of 2012.

PRESS RELEASE

<http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-to-supervise-credit-reporting/>

FACT SHEET

http://files.consumerfinance.gov/f/201207_cfpb_factsheet_credit-reporting-market.pdf

FINAL RULE

http://files.consumerfinance.gov/f/201207_cfpb_final-rule_defining-larger-participants-consumer-reporting.pdf

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⁹ *Id.*, supp. info., at 24.