# NACCA

National Association of Consumer Credit Administrators

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Mr. Nicholas Krafft, Research Analyst
Nondepository Supervision
Consumer Financial Protection Bureau
1801 L Street, NW
Room 513-H
Washington, DC 20036

*Re: Defining "Larger Participants" in Financial Services and Product Markets – CFPB Docket No. CFPR-HQ-201102*

Dear Mr. Krafft:

Please accept the suggestions below from the National Association of Consumer Credit Administrators (NACCA) in response to the CFPB's notice and request for comments as the new federal agency develops its initial "larger participant" rule.

NACCA is an association of state regulatory officials from 49 states as well as the US territories and Canadian provinces who are authorized to enforce laws and rules relating to consumer loans and consumer credit sales. Many of our members have additional responsibilities relating to debt collectors, money transmitters, debt relief companies, consumer reporting agencies, stored-value card issuers and check-cashers.

Our state member agencies regulate financial services and products through licensing or registration, compliance examinations, responses to consumer complaints, and administrative or civil enforcement actions.

We welcome the involvement of, and partnership with, the CFPB, especially to the extent that the federal agency recognizes the work of the states in these areas and seeks to complement our members' efforts utilizing the authority and resources allocated to the CFPB.

We are especially enthusiastic about the possibility that the CFPB will be able to address situations in which states' abilities are limited because of the interstate nature through which many actual or purported financial services and products are offered, including Internet-based payday loans and other offerings that are challenging for individual state regulators and legislatures to address in a comprehensive manner.

With respect to the "larger participant" issue, we offer the following suggestions.

1) We believe that a single, one-size-fits-all rule is not practicable. Rather, we believe that companies offering financial services or products should be deemed "larger participants" if they meet any one of a number of different tests.

2) We are pleased to see that the CFPB recognizes the Consumer Financial Protection Act's (the Act's) requirement that the activity levels of affiliated companies be aggregated for purposes of measuring "larger participant," since we have seen many instances in which financial service or product providers divide up various facets of their operation (or use a variety of assumed business names), often in attempts to deflect regulatory responsibility.

3) We suggest that one threshold be the number of states in which a company is conducting business. We believe that if a creditor or lender has primary or branch locations in, for example, five (5) or more states, that lender or creditor should automatically be considered a larger participant. (An Internet lender that makes loans to borrowers in 5 or more states should be considered a larger participant although it will not have traditional branch locations.) For companies such as debt collectors that conduct business primarily through written correspondence and the telephone, we believe that the 5-state test should apply to 1) the locations of the *clients* of the business, such that if a debt collector is hired by creditors located in 5 or more states to collect debts, the collector should be deemed a larger participant, as well as to 2) the locations of *debtors contacted*, such that a collector dunning consumers in, for example, 5 or 10 different states, should automatically be considered "larger."

4) We believe that dollar volume of originated loans should also define "larger participant." For lenders, this amount could be $10 million or more in loans originated in the previous calendar year. (For small-dollar lender such as payday lenders, volume should include all claimed interest, or in the alternative an additional trigger should be the number of loans [counting both original loans and renewals], such that a payday lender that makes 500,000 original or renewal loans should be considered "larger.") For retailers that offer consumer credit sales, the amount could be $10 million or more in annual credit sales. For money transmitters, the trigger could be issuance of $10 million in payment instruments in the prior calendar year. For debt collectors, the threshold could be reached if the company had collections of $10 million or more in the prior calendar year.

With respect to the subcategory of debt collectors who operate as debt buyers, since those debt buyers typically assume the position of the original creditor in enforcing rights against consumers, we recommend that debt buyers be subject to dual threshold tests, the first being the same as applied to traditional debt collectors, as referenced above, and the second being a $10

million threshold test based on the face value of consumer debt acquired by the debt buyer for collection from consumers. If a debt buyer (meaning an entity that purchases consumer debt that is delinquent or in default at the time of acquisition) meets either of the foregoing tests, we recommend that it be deemed to be a "larger participant" for CFPB purposes.

5) Our initial recommendation is to adopt an absolute dollar amount threshold rather than the "relative to the rest of the industry" approach, for at least two reasons. First, it is simpler. Second, some industries are dominated by large companies (for example, the "Big 3" credit reporting agencies that constitute 99 percent of overall activity), mooting the value of relativity.

6) In addition to overall volume, we believe that objective criteria could be incorporated into federal regulations enabling the CFPB to reach "smaller" companies posing a large risk to a wide array of consumers. For instance, one threshold measure could be based on the existence of a selected number of consumer complaints against a company, aggregated from state and federal database sources, such as from state regulators, state Attorneys General, the CFPB, and the FTC's Consumer Sentinel. (One NACCA member describes this as "evaluating directional and segment risk.") Another threshold measure could be the nature and extent of advertising undertaken by a company, such that if a company's marketing demonstrates a clear intent to secure a national customer base, it may be deemed a "larger participant." We feel that the CFPB should have the means to address potential widespread consumer harm through the application of objective criteria allowing it to define as "larger participants" those companies that pose a risk to a large number of consumers, regardless of the company's absolute size.

7) With respect to CFPB's need to collect information about industry participants to determine size, the process does not need to be complex. The CFPB needs contact information for the company and the prior year's business volume. Many state agencies require that regulated companies provide annual volume information, on forms that are often as short as one page or 1-1/2 pages in length. CFPB could obtain this information directly from the companies. In the alternative, state regulators who have regulatory authority in the applicable areas could easily provide the CFPB with an "initial cut" of companies likely to meet whatever standard is set, and the CFPB could follow up by contacting companies on the lists to verify levels of business activity. CFPB could use other third-party sources for businesses not regulated by the particular state. A company should not receive a "pass" on the prior year's business volume due to a merger, consolidation, or other business transaction.

8) The request for comments poses the question how the CFPB should address the reality that a "large" company's business may shrink in subsequent years such that it no longer meets the threshold. Some states deal with this situation by contacting companies prior to scheduled exams, and by requiring the companies to complete pre-exam questionnaires. That process allows state regulators to learn in advance whether a change in business volume since the last time information was provided, makes such a compliance examination no longer worthwhile.

9) The request for comments solicits opinions as to which types of financial product or service warrant priority attention. Congress has already identified mortgage lenders, brokers and servicers as priorities, as well as payday lenders and private education lenders. We believe state regulators have a good understanding of consumer credit and personal lending, and many states actively and effectively regulate debt collection. However, in our opinion one activity particularly ripe for CFPB review is the debt relief industry, especially "debt settlement" companies. These companies advertise heavily on the Internet, as well as on late-night AM radio and cable television, and invariably require large up-front payments. Many consumers complain about a complete lack of results for the money spent. Although the Federal Trade Commission took a large step toward regulation of these companies with its amendments to the Telemarketing Sales Rule, companies are already attempting to work around the restrictions by claiming affiliations with lawyers, or by locating on so-called sovereign land or in locations outside the country.

10) A second activity warranting attention, in our members' opinions, are financial scams involving advance payments for consumer loans, particularly when the organizers are located out of the country. These scams result in the loss of millions of dollars to US consumers, and often involve use of money transmission services or overnight mail. Furthermore, an individual state has almost no practical means to regulate or control an entity that is outside of the United States. We have seen reliable estimates, for example, that large percentages of all funds overnighted from consumers in the United States to recipients in Canada, are in response to fraudulent offers. We believe the CFPB should explore whether a way exists for money transmitters to share in the responsibility for such scams, since those services facilitate the fraudulent transactions. We also hope that means can also be developed to identify web hosts and take down Internet sites that are based completely on fraud. It is difficult to tell thousands of consumers each year that their funds are gone and cannot even be easily traced.

Thank you for the opportunity to comment on the issue of determining the phrase "larger participant." NACCA members understand the magnitude of the CFPB's undertaking, since our regulatory agencies have been in the business for many years. It is rewarding to provide protection and assistance for consumers of financial services, as well as providing clear guidance to regulated companies and individuals. We look forward with anticipation to sharing the regulatory process with the CFPB.

Sincerely,

Will Lund, President
National Association of Consumer Credit Administrators