

NORTH AMERICAN COLLECTION AGENCY REGULATORY ASSOCIATION



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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 North American Collection Agency Regulatory Association (NACARA) in response to the CFPB's notice and request for comments as the new federal agency develops its initial "larger participant" rule.

NACARA is an association of 25 state regulatory officials who regulate the debt collection industry, administering laws and regulations utilizing either regulatory boards or other types of financial enforcement offices. Our state member agencies regulate debt collectors through such methods as 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 the area of collection regulation 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 collection activities related to Internet-based payday loans.

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

1) 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.

2) We suggest that one threshold be the number of states in which a company is conducting business. For debt collectors that conduct business primarily through written correspondence and the telephone, we believe the test should be whether the collector conducts business in a certain number of states; for example, in five or more states. We feel 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 debtors in, for example, 5 different states, should automatically be considered “larger.”

3) We believe that dollar volume of collected debts should also define “larger participant.” For example, the threshold could be reached if the company had collections of \$10 million or more in the prior calendar year. With respect to debt buyers (meaning entities that purchase consumer debt that is delinquent or in default at the time of acquisition), 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 third-party 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 meets either of the foregoing tests, we recommend that it be deemed to be a “larger participant” for CFPB purposes.

4) 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, information about the states in which the creditor-clients are located, information about the residences of debtors contacted, and the prior year’s business volume of collected or purchased debt. Many state agencies require that regulated companies provide annual business 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 over debt collectors 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 collection agencies listed 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 providing the prior year’s business volume due to a merger, consolidation, or other business transaction.

5) 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.

Thank you for the opportunity to comment on the issue of determining the phrase “larger participant.” NACARA’s 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 debtors and other consumers subject to collection activity, as well as providing clear guidance to regulated third-party collectors and debt buyers. We look forward with anticipation to sharing the regulatory process with the CFPB.

Sincerely,

Kelly Mack

Kelly Mack, President
North American Collection Agency Regulatory Association