COMMENTS
of the
Center for Responsible Lending

to

Bureau of Consumer Financial Protection
Regarding 12 C.F.R. Ch. X
Larger Participant Rulemaking
76 Fed. Reg. 38059 (June 29, 2011)
CFPB Docket No. CFPB–HQ–2011–2.'

Submitted August 15, 2011

These comments are submitted by the Center for Responsible Lending (CRL), a nonprofit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, a nonprofit community development financial institution. For thirty years, Self-Help has focused on creating asset-building opportunities for low-income, rural, women-headed, and minority families, primarily through financing safe, affordable home loans. In total, Self-Help has provided over $5.6 billion of financing to 64,000 low-wealth families, small businesses and nonprofit organizations in North Carolina and across America.

I. Introduction

Section 1024 of the Dodd-Frank Act (DFA) grants the Consumer Financial Protection Bureau (CFPB) the authority to "supervise" – that is, to conduct on-site examinations and require reports from – certain non-banks that provide consumer financial products and services.[1] Section 1024 expressly grants this authority for residential mortgage origination, brokerage and servicing, private education loans, and payday loans.[2] For all other markets, the CFPB must determine, by its own rule, the scope of its supervisory authority over "larger participants" in markets for other consumer financial products or services. The term "larger participant" is not defined in the statute. This leaves the CFPB with the tasks of both identifying the markets to supervise, and defining a "larger participant" in each market.

The range of consumer financial products and services is broad, and constantly shifts and grows. The best way to fulfill the mission of the CFPB and to protect consumers over time while ensuring even-handed regulation is to identify markets for "consumer financial products and services" and define "larger participants" in a way that is both flexible and inclusive. A flexible, multi-faceted approach will allow CFPB to capture entities that have significant market share and/or consumer impact, while also ensuring coverage as markets and products shift and change over time.

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[1] Dodd-Frank § 1024(b).
[2] Dodd-Frank §§ 1024(a)(1)(A), (D), (E).

Sustainable lending as well as responsible consumer financial products and services are needed to restore and maintain economic health. Indeed, because consumer spending accounts for 70 percent of gross domestic product promoting a fair, equitable, and transparent marketplace across all consumer financial services is a crucial component of restoring and maintaining financial stability.

Although risky and irresponsible mortgage lending – and the lack of effective consumer-oriented oversight – was at the heart of the financial crisis, economic stability does not depend upon a safe and responsible mortgage market alone. It depends upon a fair, equitable, transparent and responsible marketplace for all consumer financial products. To that end, it is particularly important that the CFPB take a broad approach to identifying markets and defining larger participants in the non-depository space, allowing it to oversee, monitor risk and prevent abuses to consumer in numerous areas of consumer financial services.

A broad, flexible approach will also help ensure a level regulatory playing field. Congress gave the CFPB broad rule-writing authority and some supervision and enforcement authority. CFPB rules generally are applicable to all entities. However, the CFPB has supervision authority only over certain institutions, including larger non-bank participants in markets for consumer financial products and services. Prior to enactment of DFA, these non-bank entities were wholly unsupervised by the federal government, and some had little oversight from the states. By bringing many of these previously unregulated entities into the CFPB's purview, DFA helps to even the playing field between bank- and non-bank financial institutions.

If all competitors in a market equally face the possibility of supervision, none will gain an unfair advantage by exploiting loopholes. Adopting broad, flexible supervisory eligibility rules will minimize the risk that abusive larger participants will evade supervision by creatively structuring their business, products, or services.

II. <u>The CFPB Should Use Broad and Flexible Criteria to Define a Larger Participant.</u>

The CFPB has sought input on the criteria and thresholds to be used to define larger participants. Rather than having an overly static or rigid approach to defining larger participants, the CFPB should develop a multi-faceted approach that is flexible and inclusive. The rule at issue is only one aspect of developing the CFPB's nonbank supervision program. Certain factors that affect a product's risk to consumers will not be known at this stage. As such, the CFPB should use broad criteria in defining by rule which participants are "larger" while also setting forth other, flexible criteria that can be used later to determine which specific entities are actually examined.

As detailed below, larger participants should be defined by both relative size and also by absolute thresholds within a particular market. Indeed, diverse criteria should be used, such that an entity that meets any of the identified criteria would be included as a larger participant. This flexible multi-faceted approach would allow the CFPB to capture all businesses large enough to pose significant risks to consumers. The CFPB should also remain vigilant and utilize Section 1024(a)(1)(C) to identify markets or actors posing risks to consumers that are not captured by the larger participant rule.

A. <u>Utilize Criteria Linked to Scope of Consumer Contact.</u>

Because the CFPB is tasked with supervising entities that have a large impact on consumers, it seems appropriate for the CFPB to begin its identification of larger participants by focusing on an entity's relationship to or impact on consumers, specifically by looking at the number of transactions it has per year, with different numbers for different markets based on the overall scope of the market, and with "transaction" being defined as a single instance of any activity meeting the definition of consumer financial product or service. This type of measurement will reflect how often an entity interacts with or impacts consumers in any given market, and will naturally correlate to the potential for risk of injury to consumers and, hence the public in general.

B. <u>Utilize Criteria Relevant to the Particular Market or Sub-Market.</u>

In defining larger participants, the CFPB should not take a one-size-fits-all approach, as different markets have different characteristics, players and sizes. Different criteria and thresholds should be developed for each market (and even submarket) to determine who are the "larger participants" within that particular market, rather than in the marketplace in general. Indeed, the language of Dodd-Frank contemplates this formulation, in that it applies to "a larger participant of ***<u>a</u>*** market for other consumer financial products or services," rather than *the* market in general.

Within markets, the CFPB should look to the relative size of the players within it, and should set forth various additional criteria, such that an entity that meets any of them would be included as a larger participant. Intra-market criteria should include the following: (1) the top x number of actors in a market (with the number possibly depending on whether it is a small or large market) based on transaction volume; (2) any actors meeting or exceeding a particular number of transactions; (3) any actors meeting or exceeding a particular market share; (4) any actors who provide products or services in three or more states; and (5) any actors whose transaction volume or market share is above the median for that market. Additionally, the CFPB should consider impacts on minority or rural communities. Often, abuses in the markets for consumer financial products and services have greater impacts on minority or rural populations. The CFPB should also consider this as a component of its rule and include participants that have large market share minority or rural communities, even if they do not have a large market share nationwide.

The CFPB should also take into account different kinds of markets. For example, a market may be very concentrated with only a handful of large players across the country. In such situations, the CFPB should not feel restricted to determine "*larger* participant" based on the relative size of the companies and should include all of the players for that market, as they will all pose the same potential risk to consumers and the marketplace and all operate as multi-state companies affecting large numbers of consumers. On the other end of the spectrum, a market may be very dispersed with many small actors. The CFPB should not feel constrained by the similarity of actors, and should look to all the criteria listed above to determine which providers to include, and should ensure that a sufficient number of actors are included for supervision to allow the CFPB to effectively oversee the market.

C. <u>The CFPB Should Not Consider Issues of Existing Regulatory Coverage When *Defining* Larger Participants, But Rather in *Supervising* Larger Participants.</u>

In defining larger participants and deciding which markets to include, CFPB should not give determinative weight to the fact that certain markets may already be supervised by other regulators. DFA is explicit that issue of dual regulation, to the extent that it may exist, should be addressed in carrying out its supervisory authority, and not in defining the scope of that authority in the first instance.

DFA mandates a risk-based supervision program. Specifically, DFA provides that the CFPB "shall exercise its [non-bank supervisory] authority … in a manner designed to ensure that such exercise … is based on the assessment by the Bureau of the risks posed to consumers in the relevant product markets and geographic markets, and taking into consideration, as applicable—(A) the asset size of the covered person; (B) the volume of transactions; (C) the risk to consumers of the product or service provided; (D) ***the extent of state oversight***; and (E) any other factors the Bureau determines to be relevant."[3]

Similarly, any potential issue of whether companies are supervised by other regulators is already addressed elsewhere in DFA. DFA does not suggest that entities already regulated should not be included within the larger participant rule. Instead, DFA directs the CFPB to coordinate its supervisory activities, including examinations, where applicable, with other regulators.[4]

As these provisions demonstrate, the extent of existing state or other oversight is relevant to the question of whether the CFPB should exercise its authority to supervise, but not to the initial question of whether an entity or market should be included within the scope of the supervisory program. A broad and flexible rule, as outlined above, without loopholes or blanket exemptions, will be harder to evade and will, consequently, promote greater compliance among larger participants potentially subject to the CFPB's examination authority.

If the CFPB does not retain the authority to supervise participants that are regulated at the state level, abusive businesses could migrate to states that weak laws or lack the resources or will to exercise their own oversight authority. A rule that maintains the CFPB's authority to supervise participants and markets, even where regulated by the states, will permit the Bureau to defer to state authorities doing a good job, and to focus more where supervision is needed. In doing so, the CFPB, in the exercise of its authority, can and should fill regulatory gaps instead of creating unnecessary duplication.

[3] Dodd-Frank § 1024(b)(2) (emphasis added).
[4] Dodd-Frank § 1024(b)(3).

III. Other Issues In Developing a Larger Participant Rule.

A. Where Possible, the CFPB Should Rely Upon Existing Data; Where Necessary for Complete Market Data, Registration Should be Required.

The CFPB has requested input on the existence and use of data to define larger participants. DFA itself provides at least a portion of the answer to this question. It provides that "[t]he Bureau shall, to the fullest extent possible, use (A) reports pertaining to persons described in subsection (a)(1) that have been provided or required to have been provided to a Federal or State agency; and (B) information that has been reported publicly."[5] We agree that to the extent that data on businesses and markets at issue are available through existing reports, that information should be used by the CFPB to make larger participant determinations.

Unfortunately, however, broad and complete market (and market participant) data is not available for all the categories under consideration. Where such information is not available (like in the debt relief area[6] where most businesses are privately held), basic market and financial data should be collected from all market participants, or all participants conducting more than *de minimis* business, through a registration process including, at a minimum: (1) annual revenues and profits for previous three years; (2) number of transactions, each of past three years; (3) number of customers/clients served, each of past three years; (4) number (and list) of states in which the business provides the product/service at issue.[7] This information should regularly be updated.

In order to minimize burden on businesses, the CFPB may consider coordinating registration through the Nationwide Mortgage Licensing System & Registry (NMLS) (and encouraging states to use the system). The NMLS is currently expanding its system to allow for uniform state licensing beyond mortgage-related businesses, to include licensing for many, if not all, of the business categories under consideration by the CFPB. This is expected to be available in January 2012.

B. The CFPB Should Develop Measurement Dates and Supervision Timeframes That Allow for Efficient, Consistent Supervision That Minimizes Opportunities for Evasion.

The CFPB also seeks comment on the timeframes it should use both for determining who is a larger participant, and the time period for review once a business is determined to be a larger

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[5] Dodd-Frank § 1024(b)(4).

[6] One potential source of data on the debt relief market is through a private company called Persolvo. Persolvo describes itself as "the leading aggregator of account information of debtors enrolled in voluntary workout programs." www.persolvodatasystems.com. According to its website, Persolvo aggregates information from more than 450 debt settlement companies and more than $6 billion in consumer debt daily. *Id.* Given industry estimates that the market as a whole represents $15 billion in consumer debt, however, even this source appears to be incomplete.

[7] The CFPB has the authority to collect such information under Dodd-Frank §§1022(c)(4), 1022(c)(5) and 1024(b)(7).

participant.[8] Again, the primary factors in developing the larger participant rule should be maximum flexibility, breadth and inclusiveness. As such, the rule should be developed with the recognition that in a dynamic marketplace, a particular participant may fall in and out of static criteria for "larger participants" from one year to the next. As such, participants should be considered using several years worth of data where available, and should be considered a larger participant if it meets any of the criteria in any of those years.
Then, once a participant is determined to be a "larger participant," supervision should continue for at least a two-year period. This would promote efficiency, consistency and stability in the supervision of these participants, and would ensure that small fluctuations in a participants' market reach would not immediately end the CFPB's ability to supervise that participant. Incorporating a longer time period for supervision into the rule would also limit the ability of participants to actively take steps to disqualify themselves as a larger participant after the criteria for "larger participants" has been set.

The Bureau also seeks comments on how long a supervised participant should remain subject to supervision after an examination finds violations of the law or otherwise raises compliance concerns.[9] We believe that following any finding of violations or other concerns, a participant should remain subject to supervision by the CFPB until it is able to pass at least two examinations cleanly, whether or not it continues to meet the definition of a larger participant. The CFPB is given supervisory authority over larger participants to assess compliance with the law and to detect and assess any risk to consumers and markets.[10] This supervisory and examination authority goes hand in hand with the authority to enforce or facilitate enforcement against larger participants where warranted. Such authority would be undermined if the CFPB did not have the ongoing authority to oversee entities found to be creating risk to consumers or markets. In addition, given that CFPB has just determined that a particular provider poses significant risk to consumers in that it found a compliance violation, this alone should qualify the provider as a larger participant judged by risk to consumers. The CFPB must, then, be given the opportunity to continue supervision over problematic entities until the problems are resolved.

Finally, the CFPB should adopt rules allowing it to initiate or continue supervision over participants that take action with the intention of evading supervision. Activities at the state level have shown just how nimble and creative entities can be when they seek to evade state regulation.[11] The act of evading supervision in and of itself could be an indication that there is

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[8] Bureau of Consumer Financial Protection, *Notice and Request for Comment: Defining Larger Participants in Certain Consumer Financial Products and Services Markets*, Docket NO. CFPG-HQ-2011-2, 76 Fed. Reg. 38059 at 38061 (June 29, 2011) [hereinafter "*Defining Larger Participants RFC*"].
[9] *Defining Larger Participants RFC* at 38061.
[10] Dodd-Frank § 1024(b)(1).
[11] For example, as discussed below in Section III.B.2., in some states like Texas where restrictions have been placed on payday lending, businesses evaded those restrictions by utilizing a credit service organization license and brokering high cost short-term loans that are essentially payday loans. After Washington State limited payday loans to 8 loans per year for borrowers, some lenders started offering loans through gift cards that were actually structured like payday loans. *See* Bellamy Pailthorp, "Payday Lenders Finding Ways Around Washington's New Law," *KPLU* (Jan. 21, 2011), available at http://www.kplu.org/post/payday-lenders-finding-ways-around-washingtons-new-law. In Virginia, car title lenders made line of credit loans to take advantage of a loophole in the law that allowed unrestricted open-end loans, and after payday lending was restricted, payday lenders moved to do the same. *See* Jay Speer, "Fool Me Once … Will the Loophole Lender Lobbyists Get Their Way Again?," *Augusta Free Press* (Feb.

significant risk that the participant is either hiding or planning inappropriate conduct and it should, therefore, be considered a larger participant due to risk to consumers.

IV. The CFPB Should Include Each of The Identified Markets, Identify Submarkets, and Maintain a Broader Market for Consumer Financial Products and Services.

The CFPB should take a broad approach to the financial products and services it includes in the initial rule, with the primary goal being inclusiveness and flexibility. The CFPB is not *required* to actually supervise all entities it includes in the initial rule. Instead, the CFPB is *authorized* to supervise such entities. To provide greatest flexibility and nimbleness to the agency to oversee markets and take action where necessary, a broad approach in the definition of larger participant is preferable.

A. Establish a Broad Market For Consumer Financial Products And Services.

As is all too clear, the capacity of businesses to innovate and morph, especially in response to regulation, is almost limitless. New products or services, including unfair or abusive ones or even outright scams, arise in the market all the time, especially in times of economic hardship. As such, in addition to the specific markets identified by the CFPB, we encourage the CFPB to adopt a rule that considers the market for all consumer financial products and services as a whole, using the volume of transactions test to identify larger participants. This would allow the ready inclusion of new business models without the need for a lengthy additional round of rulemaking by the CFPB.

This would also allow for the inclusion of businesses that transact in more than one market or submarket. In this situation, if an entity does not meet any of the intra-market criteria discussed above, it should be considered a larger participant if engages in at least X transactions per year in any combination of markets.

B. The CFPB Should Include All of the Identified Markets in its Initial Rule and Should Segment the Markets into Submarkets Where Appropriate.

If possible, the initial rule should include all of the broad markets outlined in the request for comment, specifically: (1) debt collection; (2) consumer reporting;[12] (3) consumer credit and related activities; (4) money transmitting;[13] (5) check cashing and related activities; (6) prepaid cards;[14] and (7) debt relief services. As discussed below, each of these markets has revealed abuses and risks to consumers, warranting closer attention by regulators.

15, 2010), available at http://augustafreepress.com/2010/02/15/fool-me-once-will-the-loophole-lender-lobbyists-get-their-way-again/.

[12] For a broader discussion of the markets for consumer reporting and the need for CFPB supervision, see *Comments of the National Consumer Law Center On Behalf of its Low-Income Clients and the Consumer Federation of America to CFPB Regarding 12 C.F.R. Ch. X Larger Participant Rulemaking 76 Fed. Red. 38059* (Submitted Aug. 15, 2011) [hereinafter "*NCLC/CFA Submission*"].

[13] For a broader discussion of the markets for money transmission and the need for CFPB supervision, see *NCLC/CFA Submission*

[14] For a broader discussion of the markets for prepaid cards and the need for CFPB supervision, see *NCLC/CFA Submission*.

In addition to being inclusive within markets, CFPB should ensure broad coverage of all types of larger participants in all of the markets under consideration. To do so, the CFPB should develop a rule that segments the broad market categories into submarkets to include diverse products or services within each designated category, and should also be sure to define the markets in such a way that includes any affiliate or related entities, such as those that market (including lead generators), arrange, package and/or develop these services or products; and any entities that provide ancillary services related to the primary product or service. Although some of these entities may not directly provide the product or service (such as marketing entities), they would be covered persons in that they "offer or provide" products or services to consumers[15] or provide a "material service" to a covered person as a service provider.[16] Such entities also qualify as a "participant of a market for other consumer financial products or services."[17] As such, they should be included within the definition of larger participants.

We discuss several of these markets below to provide context in determining which markets to include in an initial rule.[18] Although we believe that each of the markets should face supervision by the CFPB, we understand that resource constraints may require CFPB to issue an initial proposed rule that does not cover each market, and to follow up with the remaining markets later. If this is the case, we believe that CFPB should focus on debt collection, consumer credit and prepaid cards in its initial proposed rule.

1. <u>Debt Collection</u>

There is no doubt that debt collection is an issue rife with abuses and ripe for oversight by the CFPB.[19] Moreover, the debt collection industry has an extremely wide reach, by some estimates having more than one billion contacts with consumers each year.[20] Debt collection is not a unitary market, however. Instead, there are the creditors themselves, third-party contingent fee debt collectors and debt buyers. Because each of these players employs a different business model and poses unique risks to consumers, the CFPB should treat them separately and include the larger participants of each group within its rule.

Contingent fee debt collectors seek to collect debt on behalf of the creditor, and get paid by keeping a percentage of the debt actually collected. According to an industry study, as a group, these third party collectors made $11.5 billion in contingency revenue in 2007, and total

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[15] Dodd-Frank § 1002(6).
[16] Dodd-Frank § 1002(26).
[17] Dodd-Frank § 1024(a)(1)(B).
[18] For additional discussion of the markets needing CFPB supervision, see generally *NCLC/CFA Submission*.
[19] *See, e.g.*, Federal Trade Commission, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration* (July 2010) [hereinafter "*Repairing a Broken System*"], available at http://www.ftc.gov/os/2010/07/debtcollectionreport.pdf; Rachel Terp & Lauren Bowne, *PAST DUE: Why Debt Collection Practices and the debt Buying Industry Need Reform Now* at 3-4 and n.11-18 (East Bay Community Law Center and Consumers Union Jan. 2011), available at http://www.ebclc.org/documents/Past_Due_Report_2011.pdf; National Consumer Law Center, *THE DEBT MACHINE: How the Collection Industry Hounds Consumers and Overwhelms Courts* (July 2010) [hereinafter "*The Debt Machine*"], available at http://www.nclc.org/images/pdf/pr-reports/debt-machine.pdf.
[20] U.S. Government Accountability Office, GAO-09-748, *Credit Cards: Fair Debt Collection Practices Act Could Better Reflect the Evolving Debt Collection Marketplace and Use of Technology* at 35 (Sept. 2009) [hereinafter "*Credit Cards*"], available at http://www.gao.gov/new.items/d09748.pdf.

employment at these firms was 152,000.[21] Debt collection is big business, and because these companies get paid based upon what they collect, they are often very aggressive in their practices, and consumers' rights are not often well protected.[22]

Unlike contingent-fee debt collectors, debt buyers are a relatively new – and rapidly expanding – industry. Debt buyers acquire large portfolios of debt for pennies on the dollar. According to sources, the face value of debts purchased by debt buyers increased from $6 billion in 1993 to $110 billion in 2005.[23] Given that debts are often old and records only electronic, debt buyers may lack documentation of their ownership of the debt or even of the legitimacy of the debt or the claim itself.[24] As the GAO found, "with the advent of the debt-buying industry, accounts are frequently sold and resold, which can make verification more difficult as the owner of the debt becomes farther removed from the original creditor."[25] In some cases, instances of "robo-signing" of false affidavits have been documented.[26]

The Legal Aid Society, NEDAP, MFY Legal Services and the Urban Justice Center issued a report that examined the lawsuits filed by debt buyers in New York.[27] The Report estimated that, in New York City, nearly **all** of the estimated $1.1 billion in judgments obtained by debt buyers from 2006 to 2008 were based on false or legally insufficient affidavits.[28] Moreover, of the 81 percent of cases reviewed that resulted in default judgments for the debt buyer plaintiff, (95 percent were entered against people who lived in low- or moderate-income neighborhoods, and 56 percent of judgments were entered against people who lived in communities in which the population is more than 50 percent black or Latino.[29] Virtually all of these default judgments were obtained by the use of false affidavits.[30]

2. <u>Consumer Credit and Related Activities</u>

"Consumer credit and related activities" is a very broad category, including very diverse actors such as car title lenders, pawn shops and other non-bank consumer lenders. Given that much of the unsustainable lending that pushed us into the financial crisis was originated by non-banks subject to little or no prudential supervision,[31] it is crucial that all forms of consumer lending, even that engaged in by non-banks, be subject to appropriate supervision by the CFPB. Lack of consistency of rules and oversight across institutions, and the ability of institutions to shop for the most lax regulator, had devastating impacts. By reserving the authority to broadly supervise, the CFPB would reduce the incentives, pressures and trends of such forum shopping. Moreover,

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[21] *See The Debt Machine* at 8.
[22] *See generally Repairing a Broken System.*
[23] *See The Debt Machine* at 18.
[24] *See generally The Debt Machine*.
[25] *See* Credit *Cards* at 1.
[26] *See id.* at 21-22.
[27] The Legal Aid Society, NEDAP, MFY Legal Services & Urban Justice Center, *Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers* (May 2010).
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] Of course, that is not to exonerate banks, whose role in creating and feeding the secondary market's appetite for these loans was equally culpable.

evening the playing field between bank and non-bank lenders will help ensure stability in the market.

Although we encourage the CFPB to broadly supervise all larger participants in the market for consumer credit, we focus in our comment especially on three areas: (1) car title lending; (2) consumer finance lending; and (3) credit service organizations.

Car Title Lending

Entities that make car title loans should be included as a market subject to supervision by the CFPB. Car Title loans are short term, over-secured small loans secured by the borrower's automobile.[32] A typical car title loan has a triple-digit annual interest rate, requires repayment within one month, and is made for much less than the value of the car. Although car title loans are marketed as small emergency loans, in reality, these loans trap borrowers in a cycle of debt. Car title loans put at high risk an asset that is essential to the well-being of working families – their vehicle. As an example, a 2008 report from Tennessee show that in the $73 million title lending industry, annual interest rates averaged 264% and 1 out of every 4 loans was renewed at least seven times.[33] Most troubling, the data show that 1 in 7 loans resulted in the borrower losing his or her car.[34]

Given the high cost and risky nature of the product, as well as the great potential for harm to consumers, the CFPB should include car title lending in its supervisory program. Moreover, the CFPB should also include companies that engage in lead generation for car title loans within the scope of its supervision. Lead generators engage in marketing activities such as internet advertisements to generate consumer interest for a vendor's services or products, and pass on the interested consumers to the vendor for a fee. Lead generators are subject to CFPB supervision because they are a covered person – they offer consumer products (in this case, car title loans),[35] are participants in the car title market,[36] and pose risks to consumers. In addition, they are subject to CFPB supervision because they are a service provider – they provide material support to car title lenders.[37]

Consumer Finance Companies

Consumer finance lenders should also be subject to CFPB supervision. Consumer finance lenders make both secured and unsecured loans. Data suggest, however that there are two

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[32] *See generally* Amanda Quester & Jean A. Fox, *Car Title Lending: Driving Borrowers to Financial Ruin* (Center for Responsible Lending and Consumer Federation of America Apr. 14, 2005), available at http://www.responsiblelending.org/other-consumer-loans/car-title-loans/research-analysis/rr008-Car_Title_Lending-0405.pdf.
[33] Tennessee Department of Financial Institutions, *The 2008 Report on the Title Pledge Industry* (Feb. 20, 2008), available at http://www.state.tn.us/tdfi/compliance/tpl/TPLReport2008FinalFinal.pdf.
[34] *Id. See also* Jean A. Fox & Elizabeth Guy, Driven into Debt: CFA Car Title Loan Store and Online Survey at 5 (Nov. 2005) (discussing data showing 10% car repossession rates in various states), available at http://www.consumerfed.org/pdfs/Car_Title_Loan_Report_111705.pdf.
[35] Dodd-Frank § 1002(6).
[36] Dodd-Frank § 1024(a)(1)(B).
[37] Dodd-Frank § 1002(26).

markets within the overall market. The size of the loans is the dividing line between these two markets. One set of actors is focused on larger loans than the other set, and because of that has a larger dollar share of loans outstanding. The other group focuses on smaller loans, and as such has a smaller dollar share of loans outstanding but a much higher volume of actual loans made. These distinctions require a more flexible measurement of larger participant.

The richest data on consumer finance lending is collected in North Carolina, and we believe that it is reflective of the market as a whole. Currently in North Carolina, there are 79 companies operating 479 branch offices.[38] In recent reports, the North Carolina Commissioner of Banks (NCCOB) has divided consumer finance lenders into three tiers. Large lenders are those with 40 or more locations in the state. Two companies make up that tier: One Main Financial (formerly CitiFinancial) and Springleaf Financial (formerly American General Financial). These companies have held between 40% and 60% of the loans receivable in North Carolina over the past decade.[39] Further, recent data show that these two companies concentrate on larger loans – those above $5,000 – and make the vast majority of those loans.[40]
The middle tier includes companies that have between 7 and 39 office locations. This tier includes a number of more regional lenders that do business in North Carolina and several larger, in-state lenders. The third tier consists of companies with fewer than 7 office locations. These two tiers tend to make loans below $5,000. While these two tiers hold a smaller amount in loans receivable than the first tier of lenders, these companies make a larger number of loans than their larger counterparts.[41]

Data from North Carolina also show that repeat borrowing is a significant trend in the consumer finance market. Regulatory reports over the past decade indicate that approximately 80% of the loans made in any given year are made to renew existing accounts or are loans made to former customers of the lender.[42] Further, evidence submitted as part of an NCCOB-led study commission showed that the sale of credit insurance and other insurance products is a significant source of revenue for consumer finance companies but is also a potential source of abuse for consumers if lenders trick borrowers into accepting it.[43]

Based on the limited data available on consumer finance lending nationally and our experience, we believe that the same holds true in other states. Consumer finance lending is a fragmented market that differs from state to state, and, as such, CFPB should use a more expansive definition of larger participant in this context. Because the consumer finance industry is essentially a

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[38] North Carolina Commissioner of Banks, *2010 Consumer Finance Annual Report*, available at http://www.nccob.gov/public/docs/News/Pub%20And%20Research/2010%20CF%20Annual%20Report%20Final.pdf.

[39] North Carolina Commissioner of Banks, *Consumer Finance Annual Report*, published annually, available at http://www.nccob.gov/public/News/NRPubAndResearch.aspx and upon request from the NC Commissioner of Banks.

[40] North Carolina Commissioner of Banks, *The Consumer Finance Act: Report and Recommendations to the 2001 General Assembly* (Feb. 2011) [hereinafter "*N.C. Consumer Finance Act Report 2001*"], available at http://www.nccob.gov/Public/docs/Financial%20Institutions/Consumer%20Finance/NCCOBReport_Web.pdf.

[41] North Carolina Commissioner of Banks, *Consumer Finance Annual Report*, published annually, available at http://www.nccob.gov/public/News/NRPubAndResearch.aspx and upon request from the NC Commissioner of Banks.

[42] *Id.*

[43] *N.C. Consumer Finance Act Report 2001.*

bifurcated market with respect to loan size, it is important that CFPB cover the larger participants in both markets. Further, regulatory oversight of these companies varies widely from state to state. The high cost of these loans coupled with the high rate of repeat borrowing suggests a strong need for oversight and uniform protections in this market.

Credit Service Organizations (CSOs)

Credit Service Organizations that obtain credit for borrowers should also be supervised by the CFPB. In 1996, Congress passed the Federal Credit Repair Organizations Act to protect consumers from unscrupulous practices by organizations who claim to repair credit. Following its passage, many states enacted statutes modeled after the federal act. Of the thirty-seven states that have adopted a CSO Act, twenty-six currently allow entities licensed under these statutes to offer the service of obtaining credit from a third-party lender in exchange for a fee paid by the borrower.[44]

Because credit repair acts were originally designed to regulate actors offering credit repair services, not lending services, these statutes do not limit the fees that may be charged for such brokering of loans and do not incorporate such fees into the calculation of the cost of the underlying credit. As such, in some states, payday lenders utilize a CSO license to broker high cost short-term loans that are essentially payday loans, thereby both perverting the original intent of the CSO law, and evading existing state law protections for consumer loans.[45] Because state-level CSO laws have been used a vehicle to subvert lending laws and make offer dangerously abusive credit rather than provide credit relief, CSOs should be subject to CFPB supervision.

3. <u>Check Cashing And Related Activities</u>

We urge the CFPB to include Check Cashing in the categories of services it supervises. Check-cashing businesses are often the financial services provider of last resort for low-income consumers who may be unbanked or underbanked.[46] According to a 2009 survey by the FDIC, approximately 38.2% of unbanked households have used non-bank check cashing, while approximately 66% have used some type of alternative financial service.[47] Similarly,

[44] *See* Diane Standaert & Sara Weed, *Payday Lenders Pose as Brokers to Evade Interest Rate Caps: The Next Chapter in Payday Lender Subterfuge* (July 2010), available at http://www.responsiblelending.org/payday-lending/policy-legislation/states/CRL-CSO-Issue-Brief-FINAL.pdf.

[45] The loans typically work like this: (1) a third party lender finances a loan at the legal rate of 36% APR ($4.14), but has no relationship with the borrower; (2) the registered CSO charges the borrower a fee ($60) to arrange, collect and guarantee the loan; (3) the borrower receives a $300 loan due in twee weeks at an effective rate of 557% APR. *Id.* at 2.

[46] An FDIC survey found that estimated 7.7 percent of U.S. households, or 9 million, are unbanked. FDIC, *FDIC National Survey of Unbanked and Underbanked Households* at 10 (Dec. 2009), available at http://www.fdic.gov/householdsurvey/full_report.pdf. Those with lower incomes are more likely to be unbanked (27.1% for incomes less than $15k, 13.0% for incomes $15k-$30k, 4.2% for incomes $30k-$50k, 1.5% for incomes $50k-$75k and 0.3% for incomes of at least $75k). *Id.* at 18. The figures also differ widely among racial groups: 21.7% of black households and 19.3% of Hispanic households are unbanked versus 3.3% of white households and 3.5% of Asian households. *Id.* at 10. Approximately 17.9% of U.S. households, or 21 million, are underbanked. *Id.* at 32.

[47] *Id.* at 28, 29.

approximately 30% of underbanked households have used non-bank check cashing, while, by definition, 100% of them have used some type of alternative financial service.[48]

In many low-income neighborhoods, fringe service providers such as check cashers, pawn shops, payday lenders and the like outnumber mainstream financial institutions.[49] With limited access to mainstream financial institutions, unbanked consumers often use fringe services such as check cashing and end up paying a lot more to conduct basic financial transactions than those with bank accounts.[50] By some estimates, consumers who regularly use check cashers can spend nearly $800 annually on such transactions.[51] The reliance upon fringe financial services has kept many families from building savings and building credit.

Given the high cost of check cashing, the disproportionate impact on low income and minority households, and the scarcity of state regulation, the CFPB should provide some oversight of this industry.

4. **Debt Relief**

We urge the CFPB to supervise companies that offer or are otherwise involved in the offer or provision of debt relief products and services, in addition to enforcing the FTC's recent amendments to the Telemarketing Sales Rule (TSR).[52] The request for comment notes that providers generally offer one of two products or services: (1) debt management plans or (2) debt settlement.[53] Although currently these appear to be the two primary services offered, there exist other debt relief products or services such as tax debt relief (as the request for comment mentions), debt restructuring,[54] or others that may arise. Debt relief services are forever morphing to attract customers and to exploit perceived loopholes in the law. As such, the CFPB should segment debt relief into several markets: (1) debt management; (2) debt settlement; (3) tax debt relief; (4) and a catch-all that would include emerging markets such as debt restructuring and that would capture businesses that conduct business across these different markets but that do not qualify as a larger participant within any one market or submarket. Additionally, the CFPB should also include in the rule supervision of other entities that provide either lead generation services or trust account and payment processing support to debt relief providers, as discussed below.

Whatever definition the CFPB may use to define debt relief, it should be inclusive to ensure coverage of all businesses, regardless of type, engaging in debt relief activities, regardless of the

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[48] *Id.* at 40, 41.
[49] *See, e.g.*, Federal Reserve Bank of San Francisco, Bank on San Francisco, available at http://www.frbsf.org/community/issues/assets/bankonsf/index.html.
[50] *Id.*
[51] *Id.*
[52] *See* Federal Trade Commission Telemarketing Sales Rule Final Rule Amendments, 16 C.F.R. 310, 75 Federal Register No. 153, 48458 (Aug. 10, 2010), available at http://www.ftc.gov/os/2010/07/100810tsrdebtreliefamendments.pdf.
[53] *Defining Larger Participants RFC* at 38062.
[54] *See* Steve Rhode, "Consumer Debt Restructuring 101: What It is and Why You Should Avoid It," *Get Out of Debt Guy* (July 28, 2011), available at http://getoutofdebt.org/29213/consumer-debt-restructuring-101-what-it-is-and-why-you-should-avoid-it.

format, so as to avoid the gaps in coverage that exist in the FTC rule (as discussed in more detail below). The CFPB should also clearly state in commentary on the rule that, for purposes of the CFPB's supervisory program, the definition of debt relief service is not subject to the same limitations as the TSR.

Direct Providers

As noted in the RFC, debt management plans (DMP) are typically provided by non-profit credit counseling agencies.[55] A DMP generally requires consumers to pay unsecured debts to their creditors in full, but with modified terms arranged by the agency that make the debts easier to pay, such as reduced interest rates and minimum payments and elimination of late and other fees. Under a DMP, the credit counseling agency creates a repayment schedule that typically last 3-5 years. The consumer sends one monthly payment to the agency, and the agency distributes funds to each of the consumer's creditors. According to the National Association of Attorneys General, "In the recent past, a number of for-profit debt management companies engaged in deceptive practices in the marketing and collection of fees for their programs. However, due to action by the States, the FTC, and the Internal Revenue Service, debt management abuses have been greatly reduced."[56] Nonetheless, the capacity for abuse remains. Inclusion of these companies in the larger participant rule by the CFPB, allowing the CFPB to supervise them if needed, will provide greater assurance that such abuses are a thing of the past.[57]

As consumers' credit card debt obligations grew in recent years, so did industries designed to profit from that growth. In particular, the for-profit debt relief industry grew rapidly in recent years. According to one recent industry estimate, more than 500,000 Americans with about $15 billion of debt are currently enrolled in debt settlement programs.[58]

The widespread abuses and flaws in the debt relief services industry have been well documented.[59] Indeed, it is questionable whether it is possible for the typical consumer to

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[55] *Defining Larger Participants RFC* at 38062.

[56] Letter from National Association of Attorneys General to Federal Trade Commission re Telemarketing Sales Rule – Debt Relief Amendments, Matter No. R4110011 at 2 (Oct. 23, 2009), available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00192.pdf.

[57] Debt relief activity by non-profit entities does not come within the exclusion under DFA for "activities related to the solicitation or making of voluntary contributions to a tax-exempt organization," and are therefore subject to CFPB supervision.

[58] *See* Shirley Gao, "Borrower Nightmares: Small town teacher seeks help for big debt, ends up in bankruptcy" I Watch News (The Center for Public Integrity July 20, 2011) (citing Andrew Housser, executive board member of the American Fair Credit Council (formerly TASC), a debt settlement trade group), available at http://www.iwatchnews.org/2011/07/20/5276/borrower-nightmares-small-town-teacher-seeks-help-big-debt-ends-bankruptcy.

[59] *See, e.g.*, 74 Fed. Reg. 41988 (Aug. 19, 2010); 75 Fed. Reg. 48457 (Aug. 10, 2010); U.S. Gov't Accountability Office Rep. No. GAO-10-593T, *Debt Settlement: Fraudulent, Abusive, and Deceptive Practices Pose Risk to Consumers* (Apr. 22, 2010) [hereinafter "*GAO Report*"], available at http://www.gao.gov/new.items/d10593t.pdf; *See* Shirley Gao, "Borrower Nightmares: Small town teacher seeks help for big debt, ends up in bankruptcy" I Watch News (The Center for Public Integrity July 20, 2011) (citing Andrew Housser, executive board member of the American Fair Credit Council (formerly TASC), a debt settlement trade group), available at http://www.iwatchnews.org/2011/07/20/5276/borrower-nightmares-small-town-teacher-seeks-help-big-debt-ends-bankruptcy; NBC News, "Do Debt Settlement Companies Save You Money?" (July 7, 2010), available at http://www.nbc.com/news-sports/today-show/do-debt-settlement-companies-save-you-money/; Peter Goodman,

receive a net benefit from for-profit debt relief services. The debt settlement business model generally requires that a consumer stop making payments to creditors. Instead, the consumer must make payments directly to the debt settlement company or into a separate bank account. In theory, the company will begin to negotiate individual debts when the consumer has amassed enough funds to attempt to negotiate a settlement. Even if a creditor is willing to accept less than the full amount due, the amount saved is rarely sufficient to cover the fees charged by for-profit debt relief services. Moreover, enrolling in a debt settlement program typically puts consumers in a worse position as debt grows and collection actions and other negative consequences escalate. Indeed, the American Bankers Association acknowledged in its submission to the FTC in support of the advance fee ban that "many [debt settlement] consumers find themselves deeper in debt, with a seriously impaired credit record, and facing continued collection efforts—including collection lawsuits and garnishment proceedings—following their engagement of a for-profit debt relief provider."[60]

On July 29, 2010, the Federal Trade Commission (FTC) issued amendments to the Telephone Sales Rule (TSR) relating to debt relief services, that includes a ban on advance fees. 2010. The FTC concluded that advance fees – then the primary business model of the debt settlement industry – "cause or are likely to cause substantial injury." The FTC explained as follows:

> The record shows that collecting fees for debt relief services prior to delivering services causes or is likely to cause substantial injury to consumers. Consumers in the midst of financial distress suffer monetary harm – often in the hundreds or thousands of dollars – when, following sales pitches frequently characterized by high pressure and deception, they use their scarce funds to pay in advance for promised results that, in most cases, never materialize. Further, in the case of debt settlement as currently structured, providers often instruct or advise consumers to stop paying their creditors and begin paying the provider's fees instead.
>
> These consumers not only suffer direct monetary injury from the late charges and interest that accrue when creditors are not paid, but they also suffer lasting harm to their creditworthiness such that future efforts to obtain credit, insurance, or other benefits will become more difficult and more expensive.[61]

Although the TSR is likely to reduce many of the most blatant abuses by debt settlement companies, the rule has notable gaps. For example, the TSR excludes certain transactions

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"Peddling Relief, Firms Put Debtors in Deeper Hole" *N.Y. Times* at A1 (June 19, 2010); Nightline News, "Claims of 'Becoming Debt-Free' Fall Flat for Consumers," available at http://abcnews.go.com/Business/story?id=7932088&page=1 July 24, 2009.

[60] Comments of the American Bankers Association to Federal Trade Commission re Telemarketing Sales Rule – Debt Relief Amendments, Matter No. R4110011 at 2 (Oct. 26, 2009) [hereinafter "*TSR*"], available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00199.pdf.

[61] *See TSR* at 48482.

involving face-to-face contact and Internet-based transactions.[62] It also does not include non-profit entities. Moreover, the rule addresses only the timing of the fee, and not the size or nature of the fee charged.[63]

Some debt settlement providers are already exploiting the gaps in coverage.[64] For example, some debt settlement providers believe there is a loophole in the TSR's ban on advance fees for a so-called "attorney model," apparently relying upon the face-to-face transaction exception (and state regulatory exemptions for attorneys).[65] Under the attorney model the debt relief provider uses an attorney as a front to allow collection of advance fees, while non-attorneys actually conduct the debt relief services (to the extent any services are provided at all).[66] The CFPB would be authorized to supervise attorneys under Section 1027(e)(3) under the Act because attorneys are subject to the Telephone Sales Rule which the CFPB has authority to enforce. Additionally, many of the larger attorney-based debt settlement companies would not be subject to exemption in Section 1027 because attorneys are not providing legal advice or services within an attorney-client relationship or are not licensed in the state in which they are providing services, as required for the exemption.[67]

These gaps in coverage call for fuller oversight and supervision by the CFPB. Supervising the larger participants in the debt relief market will enable the CFPB to detect this type of abuse on a broader basis and deter it in smaller participants subject to the TSR.

Related Entities

Any supervision of debt relief should include not only the entities that would provide the offered services but also the lead generators that provide customers to debt settlement companies, and the entities that provide escrow or other trust account and payment processing services[68] to customers of debt settlement companies.

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[62] *Id*. at 48468. The rule only applies to telemarketing – i.e., "a plan, program, or campaign which is conducted to induce the purchase of goods or services' and that involves interstate telephone calls." *Id*. *See also FTC Facts for Business: Debt Relief Services & the Telemarketing Sales Rule: What People Are Asking* at 2 (Rev. 10/27/2010) [hereinafter "*FTC Facts*"], available at http://business.ftc.gov/documents/bus73-debt-relief-services-telemarketing-sales-rule-what-people-are-asking.pdf.

[63] *TSR* at 48488 ("The Commission declines to set fee limits in this proceeding").

[64] *See, e.g.*, "Credit Counseling Group Makes Presentation to FTC About Cracking Down on Bad Actor Debt Settlement Companies" (Dec. 22, 2010), available at http://getoutofdebt.org/24571/credit-counseling-group-makes-presentation-to-ftc-about-cracking-down-on-bad-actor-debt-settlement-companies; *cf.* Michael Mallow & Michael A. Thurman, "In Search of Exceptions to the FTC's Amended Telemarketing Sales Rule – Don't Put Your Neck in a Loophole!" (Aug. 2010), available at http://www.loeb.com/exceptionstoftcsamendedtelemarketingsalesrule/.

[65] *See FTC Facts* at 2.

[66] *See, e.g.*, "Press Release: Madigan Files Lawsuit Aimed at New Wave of Consumer Debt Settlement Scams" (Mar. 2, 2011) ("The lawsuit alleges Legal Helpers Debt Resolution, based in Chicago, illegally charged fees upfront … In fact, Madigan alleges, attorneys with Legal Helpers Debt Resolution only served as a front to the business, and debt settlement service was contracted out to non-lawyer, third-party companies."); Alejandra Cancino, "Debt Settlers saddled With Hefty State Fine," *Chicago Tribune* (Aug. 2, 2011), available at http://articles.chicagotribune.com/2011-08-02/business/ct-biz-0802-legal-helpers-20110802_1_debt-settlers-debt-settlement-service-debt-settlement-firms.

[67] *See generally* Dodd-Frank § 1027.

[68] Payment processing services are provided in other contexts as well. The CFPB should consider including payment processing as another category of supervision.

Many debt settlement companies obtain clients by purchasing leads from lead generators. Because lead generators develop the initial marketing that consumers who sign up for debt settlement programs see, the representations they make and the practices they employ are significant. Lead generation companies, which market debt relief services to consumers to provide leads to debt relief providers, are covered persons because they offer consumer products directly to consumers (in this case, debt relief services),[69] and are participants in the debt relief market.[70] In addition, they are service providers since they provide material support to debt relief providers.[71] The FTC has cracked down on several lead generators for unfair or deceptive acts or practices in advertising and marketing debt relief services.[72] Moreover, "[a]dvertising & lead costs are the largest expense for many companies in the debt relief space,"[73] and these costs significantly impact the level and type of fees charged to consumers for debt settlement services.

Payment processing providers should subject to CFPB supervision because they are specifically included in DFA as a financial product or service.[74] The two largest companies that offer payment processing services in connection with debt settlement services are Global Client Solutions and NoteWorld. These companies process the incoming monthly payments from debt settlement consumers, process payment of fees to itself and to the debt settlement provider, and processes payments to creditors for settlement of debt. Although these companies administer trust accounts, they are not banks; instead, they provide payment processing and other services for accounts held by banks. By its own description, Global Client Services states that it is "the agent and payment processor for all activity related to the special purpose accounts [that consumers establish as part of a debt settlement program]. GCS as an agent for [Rocky Mountain Bank and Trust] provide[s] account reconciliation and handle[s] the electronic Automated Clearing House ("ACH") transfer of monies for [debt settlement customers]."[75]

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[69] Dodd-Frank § 1002(6).

[70] Dodd-Frank § 1024(a)(1)(B).

[71] Dodd-Frank § 1002(26).

[72] *See, e.g.*, *FTC v. Media Innovations, LLC*, Case 8:11-cv-00164-RWT (Jan. 20, 2011) (Stipulated Final Judgment and Order), available at http://www.ftc.gov/os/caselist/0923054/110120hermosaorder.pdf.

[73] Michael Bovee, "The Future of Lead Generation in Debt," *Get Out of Debt Guy* (Mar. 24, 2011), available at http://getoutofdebt.org/26981/the-future-of-lead-generation-in-debt-relief; *see also* Federal Trade Commission Final Rule Amendments to the Telemarketing Sales Rule, 16 C.F.R. 310, at 77, available at http://www.ftc.gov/os/2010/07/R411001finalrule.pdf ("Overall, the record shows that advertising and marketing constitute the largest portion – and in many cases a substantial majority – of upfront costs for debt settlement providers.").

[74] Dodd-Frank § 1002(15)(A)(vii).

[75] *Carlsen v. Global Client Solutions, LLC*, No. 84855-6 (S. Ct. Wash. Sept. 28, 2010) (Global Client Solutions, LLC & Rocky Mountain Bank & Trust's Answering Brief), available at http://www.courts.wa.gov/content/Briefs/A08/848556%20defendants%20brief.pdf. Consumers sigh "blanket authorizations upon entering the debt relief program that establish[] automatic (1) monthly transfers from [their] primary bank accounts to their special purpose accounts, (2) monthly payments from the special purpose accounts to the debt settlement company, (3) monthly and one-time payments from the special purpose accounts to GCS for banking services, and (4) disbursements from the special purpose accounts to creditors when the debt settlement company negotiated a settlement. In its role as "processor" for the special purpose accounts, GCS initiated all these automatic transfers." *Carlsen v. Global Client Solutions, LLC*, No. 84855-6 at 3 (En Banc Opinion May 12, 2011), available at http://www.courts.wa.gov/opinions/pdf/848556.opn.pdf.

Similarly, NoteWorld states that it "administers trust accounts and provides payment processing services for consumers working with debt settlement companies …"[76]
In addition to the fees paid to the debt settlement providers, consumers who enroll in debt settlement programs pay fees to these companies for each transaction relating to the trust account. A typical fee schedule looks like the following: "GCS charged consumers various fees for its processing services. For example, plaintiffs Carl and Mary Popham agreed to pay a one-time account setup fee of $9.00, a monthly service charge of $9.85, and various fees per service, such as $15.00 per wire transfer."[77] NoteWorld charges similar fees. A NoteWorld Sign-Up Agreement available online shows the following fees: A $23.00 annual trust management fee, a $12.50 electronic payments processing fee per payment, a $25.00 non-electronic payments processing fee per payment and a $15.00 wire transfer fee per transfer.[78]

Global Client Solutions and NoteWorld both have significant market share and consumer impact in the field of debt settlement. According to the Washington lawsuit, "GCS's custodial account at RMBT contained over 600,000 special purpose accounts. To obtain these accounts, GCS contracted with over 500 different debt settlement companies like Freedom [Debt Relief]. Although GCS had contracts with these debt settlement companies, it generally did not receive fees from them. Rather, GCS's earnings came from the fees charged directly to special purpose account holders like the plaintiffs."[79] According to a separate lawsuit, NoteWorld has relationships "with scores (if not hundreds) of front-end debt settlement companies ('Front DSCs'), who together with NoteWorld compose the NoteWorld Enterprise."[80]

The Washington Supreme Court recently found that Global Client Solutions was subject to the state's debt adjusting statute and was guilty of aiding and abetting a violation of the statute with debt settlement company Freedom Debt Relief LLC.[81] These companies (and any other similar ones that may exist) pose risks to consumers in connection with debt relief services and should be supervised by the CFPB.

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[76] *Carlsen v. Global Client Solutions, LLC*, No. 84855-6 (S. Ct. Wash. Feb. 14, 2011) (Amicus Brief filed by NoteWorld), available at http://www.courts.wa.gov/content/Briefs/A08/848556%20Noteworld%20amicus.pdf.
[77] *Carlsen v. Global Client Solutions, LLC*, No. 84855-6 at 4 (En Banc Opinion May 12, 2011).
[78] *See* NoteWorld Servicing Center Sign-Up Agreement (as part of the contract with New Era Debt Solutions), available at http://www.neweradebtsolutions.com/Contract.Pdf.
[79] *Id.*
[80] *See Rajagopalan v. NoteWorld, LLC*, Case 3:11-cv-05574 ¶ 14 (W.D. Wash. July 26, 2011) (Complaint), available at http://getoutofdebt.org/wp-content/uploads/2011/07/Complaint1.pdf. According the lawsuit, "Those Front DSCs include at least the following entities: First Rate Debt Solutions, Expert Settlement Professional, P&E Solutions, Freedom Debt Center, Accredited Financial Corporation, Amber Network Inc., Best Debt Options, Beyond Financial Service, Brite Credit Inc. (d/b/a Brite Credit 123), Century Negotiations Inc., Clear Debt Solution, Coastal Debt Solutions LLC, Consumerwise Debt Solutions Inc., Counsel 4 Debt Relief, Countrywide Debt Solutions Inc., Credit Care Corporation, CreditCare Pro, Debt Help Center USA, Debt National Relief, Debt Reinvestment, Debt Solutions, Debt Erase Inc., DebtPointer Inc., DebtPro LLC, DTS Financial Group, E.A.C. Financial LLC, FBL Associates, Freedom Debt Solutions, Help Settle LLC, Helpsettle.com, Innovative Debt Solutions, Lifeguard Financial, Maximum Debt Solutions, Morgan Stevens Financial Solutions Company, National Financial Freedom LLC, Nationwide Consumer Advocacy Group, On Track Financial LLC, Personal Debt Systems of America, Princeton Debt Management LLC, Reduce My Debt LLC, Settle A Debt Inc., Settlement Corporation of America, SilverLeaf Debt Solutions, The Debt Answer, The Debt Cure, US Consumer Report, Vision Debt.com and World Debt Solutions." *Id.*
[81] *See generally Carlsen v. Global Client Solutions, LLC*, No. 84855-6 (En Banc Opinion May 12, 2011).

V. Conclusion

In conclusion, we urge the CFPB to employ broad and flexible criteria to allow swift response to changes in the marketplace and to ensure that risky actors do not evade supervision. To accomplish complete coverage of those participants that do substantial enough business to pose risks to consumers and the marketplace, we recommend that a broad market for consumer financial products and services be established, and also that larger participants be identified and segmented into submarkets and affiliated actors for each market identified by the CFPB in its request for comment.

The CFPB is not required to actually examine every participant who falls within the definition of "larger participant," and we do not encourage it to do so. By defining the markets and larger participants broadly, however, the CFPB will give itself the flexibility to act as necessary to protect consumers and the marketplace from risk as it arises.