

# CFPB Requests Comment on Scope of Bureau Oversight

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Though still without a director, the Consumer Financial Protection Bureau ("CFPB") has published its first notice and request for comment in the Federal Register (76 Fed. Reg. 38,059 (June 29, 2011)). The CFPB seeks comment on development of a rule to define the "larger participants" who will be subject to supervision for compliance with federal consumer laws. The Frank-Dodd Act limits the scope of the CFPB's oversight over non-depository covered person to "a larger participant of a market for other consumer financial products or services," and directs the CFPB to define, by rule, what that means. CFPB rulemakings may progress under the Treasury Secretary's 1066(b) authority even if a director is not named by the July 21, 2011 transfer date.

The CFPB seeks comment on two main issues: (1) the criteria to be used to define a "larger participant," and (2) the categories of markets that should be covered in the initial rule. Criteria may be tailored by market and may be either absolute or relative. The CFPB is also considering using multiple criteria in combination. Among the markets currently being considered for inclusion in the initial rule are debt collection, consumer reporting, consumer credit and related activities, money transmission/check cashing, pre-paid cards, and debt relief services. These markets cover a wide range of companies and are in line with the enforcement priorities articulated by Elizabeth Warren in her March 17 testimony before the House Subcommittee on Financial Institutions and Consumer Credit Committee on Financial Services.

The CFPB is also considering the establishment of a registration program for some or all covered persons in accordance with the Consumer Protection Act §§ 1022(c)(7) and 1024(b)(7). Any such registration program could increase regulatory reporting burdens for entities that fall within the scope of the CFPB's supervisory authority.

Obviously, the proposal could have far-reaching consequences for companies that are deemed "larger participants," including exposure to periodic examinations and requirements to file compliance reports. Companies who wish to participate in the CFPB's maiden rulemaking will have until August 15, 2011 to submit their written responses. The final rule must be issued by July 21, 2012.