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Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20006

Via Electronic submission:
http://www.regulations.gov/#!submitComment;D=CFPB-2012-0005-0003

RE: Docket No. CFPB-2012-0005 or RIN 3170-AA00
Document ID number CFPB-2012-0005-0003
Consumer Financial Protection Bureau Proposed Rule
Defining Larger Participants in Certain Consumer Financial Product and Service Markets
Consumer Credit

The National Credit Reporting Association, Inc. (NCRA) is appreciative for the opportunity to submit comments on the above proposed rule of the Consumer Financial Protection Bureau (CFPB) regarding the consumer reporting industry.

About NCRA

NCRA is a non-profit trade association founded in 1992 that represents the Consumer Reporting Industry and specifically credit reporting companies for the housing industry. NCRA's two primary membership groups, Mortgage Credit Reporting Agencies and Tenant Screening Agencies, provide the credit report, credit scores and other related consumer data required for the evaluation of a mortgage application or a residential lease.

NCRA's greatest membership segment is approximately 80% of the Credit Reporting Agencies in the United States and Puerto Rico that can produce the specialized Mortgage Credit Reports required by HUD, Fannie Mae and Freddie Mac for mortgage loan underwriting.

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General Concerns

In general, NCRA's concerns are focused on the CFPB's $7,000,000.00 ($7M) benchmark for this proposed rule to be a "larger participant" and the manner in which the receipts are calculated. NCRA understands that the CFPB has obtained these numbers from the Small Business Administration's (SBA) industry specific formula and calculation protocols; however, by using this benchmark for the proposed rule many small businesses whose business operations offer limited consumer risk will be heavily burdened by the proposed rule. Many smaller companies (some averaging as little as 18 employees), will be classified by the rule as a "larger participant" and regulated much in the same fashion as a depository institution with consumer funds in their possession. The added costs of this regulation may make it difficult for firms in this size category to compete, limiting competition in an already tight marketplace.

The $7M "Receipts" Formula to Determine Small Business

The CFPB's proposed rule would divide the industry into two segments of consumer reporting agencies: 1) Small businesses - specifically small enough to meet the SBA definition of small consumer reporting agencies with receipts of less than $7M, and 2) "Larger participants" - those firms above $7M that the CFPB is proposing are large enough players that they are the companies Congress directed them to regulate. This benchmark allows for no existence of a middle market in consumer reporting.

The $7M benchmark to denote larger participants eliminates much of the CFPB's concerns about the Regulatory Flexibility Act (RFA) by excluding small businesses according to the SBA's guidelines; however, many small businesses will be impacted by this proposed rule. In other measures, the number of employees is the marker for determining whether an organization is classified a "small business" and, as aforementioned, certain companies with very few employees will meet the $7M benchmark.

In the consumer reporting industry for example, a consumer reporting company that specializes in mortgage credit reports with annual gross sales of $4,200,000 and about 18-20 employees will be considered a "larger participant" in the proposed rule. In the mortgage reporting industry, the average cost of goods sold for a company of that size would be about 70% of gross sales. Since gross sales plus the cost of goods sold is the formula for receipts, that firm with a little more than $4M is now subject to the new regulations, and the costs associated with preparing for examinations. According to a survey of NCRA members taken during the week of April 9th specifically for this proposed rule comment, a six to eight percent net profit is typical for consumer reporting companies of this size in the mortgage industry.

For these small businesses with those types of profit margins, the added financial and administrative burdens of employing additional staff specifically to prepare for examinations similar in scope to those conducted on depository institutions would be catastrophic. NCRA does not believe that Congress intended in section 1024 of the Dodd-Frank Financial Reform Act of 2010 for the CFPB to set the definitions of "larger participant" so low that non-bank financial services markets could be damaged by regulating these types of firms out of the industry. The benefit to consumers from examination of firms of this size is far outweighed by the potential harm to the consumer if the regulatory burden results in a further reduction of an already small market of independent consumer reporting companies.

Fannie Mae's website, https://www.efanniemae.com/sf/refmaterials/creditproviders/index.jsp?sort=allByName provides a very complete list of the consumer reporting market that specializes in mortgage credit reports. In today's mortgage lending environment, if a consumer reporting agency cannot deliver a credit report via the Fannie Mae system, they cannot be considered active in the mortgage credit reporting market. When accounting for duplicate listings, one can see that total number of participants in the mortgage credit reporting space is about sixty (60) individual companies. NCRA estimates that with the proposed $7M benchmark, about 40% of those companies would fall into the "larger participant" category.

The Industry's Natural Division

The consumer credit reporting industry has already been segregated into "larger participants" by its primary Federal law, the Fair Credit Reporting Act (FCRA). The FCRA has split the industry into two basic segments based on primary business models and assigned some specific regulations that correlate with that specific business model. The national credit bureaus or repositories are defined in FCRA Section 603(p), "Consumer Reporting Agencies (CRA) whose manner of business includes assembling or evaluating, and maintaining for the purpose of furnishing consumer reports to third parties, both "(1) public record information (and) (2) credit account information from persons who furnish that information regularly and in the ordinary course of business." FCRA Section 607(e), provides for credit reporting agencies that are known as resellers (who are the producers of all mortgage credit reports), and defines resellers as those who "procure a consumer report for purposes of reselling the report …"

Despite the fact that the same laws cover the repository CRA and the reseller CRA, the different business models create a natural separation for the CFPB to use with industry regulation. For example, the repository CRA batch processes tens of millions of pieces of information into its database from creditors on almost every consumer in the country with a credit file on a daily basis. Reseller CRAs, on the other hand, individually process information a single piece at a time only after the accuracy or completeness of that particular report has been questioned. Further, the consumer credit reports in the reseller's database only pertain to consumers who have initiated a transaction with the reseller's customer, also known as the enduser of the consumer report. The reseller CRA only maintains this "transaction specific" information for a short period of time.

The NCRA recognizes that there are unique specialty consumer reporting bureaus other than the national credit repositories, and that the "larger participant" benchmark needs to consider these companies when addressing the industry. We also recognize that there are large resellers with dominant market shares that provide the potential for wide exposure to sensitive consumer data. We respectfully suggest that the CFPB respond to Congress's direction to address the "larger participants" of the industry by recognizing the specific nuances of each business model in the benchmark and setting examination processes that appropriately address the relative risks to consumers that may be inherent of each model.

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Conclusion

NCRA appreciates the opportunity to provide comments on the proposed rule. We understand the CFPB's desire to look to the SBA's $7M benchmark for a universal financial designation to create the "larger participant" category as it provides a quick and simplified standard. We believe this standard will create difficulties for the CFPB in its application. It will certainly impact many small businesses -- those with less than 20 employees that would be classified as a "larger participant" and by nearly all other measures classified as a small business. These firms would suffer negative financial impact as they would have far fewer consumer reports in which to spread the cost of a new middle management level employee. If these same firms' business models actually exposed consumers to high levels of risk, some cost would easily be justifiable. However, these firms are of minimum consumer risk and they provide consumers an irreplaceable level of service in industries like mortgage credit reporting. The added regulatory burdens to firms whose budgetary margins are already so tight would threaten their ability to exist and, in turn, seriously wound if not also threaten the industry they support.

Specifically, NCRA suggests an increase of the proposed rule to double the $7M current benchmark. This would create a middle market in the divide between large and small entities and still offer consumers adequate consumer protection. The CFPB would always retain the ability to examine any size entity when consumer complaints trigger a "for cause" compliance inspection to assure the industry is operating at peak level.

Sincerely,

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