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Office of Nonbank Supervision
Consumer Financial Protection Bureau
1700 G Street NW
Washington DC 20006

VIA ONLINE SUBMISSION

Re: CFPB Docket No. CFPB-2012-0005
"Defining 'Larger Participants' in Certain Consumer Financial Products and Services Markets"

Dear Consumer Financial Protection Bureau:

MFY Legal Services submits the following comments to the Consumer Financial Protection Bureau (CFPB) regarding its proposed rule for defining "larger participants" in the consumer debt collection and consumer reporting markets that will be subject to CFPB supervision.

MFY urges the CFPB to define "larger participants" as broadly and as flexibly as possible, to ensure that the CFPB has maximum ability to directly supervise a wide array of institutions. A flexible standard is critical to allow the CFPB to effectively respond to ever-changing markets, business models and practices that harm consumers and communities.

MFY Legal Services provides free legal civil services to more than 7,000 low-income elderly, disabled, immigrant, poor and working poor New Yorkers every year. We are the largest legal services provider for people with mental disabilities in New York City and we have several other projects that assist vulnerable New Yorkers, including our Adult Home Advocacy Project, Foreclosure Prevention Project, Legal Aid for Seniors Project, Lower Manhattan Justice Project, Workplace Justice Project and Consumer Rights Projects. MFY launched its Consumer Rights Project seven years ago in response to our clients' growing demand for legal representation and information about debt collection and other consumer issues.

MFY has seen first-hand the effect on their clients' lives of abusive financial services and lending practices that target New York consumers and strip wealth from communities.

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Under-regulated, non-bank players dominate the markets in consumer debt collection and consumer reporting, as well as in other markets that are rife with deceptive and abusive practices. The CFPB has a unique and unprecedented opportunity to oversee these markets and ensure a fair marketplace. As a result, MFY strongly believes that the CFPB must fill regulatory gaps and extend its supervisory authority as broadly as possible over these and other markets.

The proposed rule defines "larger participants" in the consumer debt collection market too narrowly.

Abusive debt collection practices are pervasive throughout New York State, heavily perpetrated by debt buying companies and the debt collection law firms that they hire. Debt buying companies of various sizes purchase defaulted debt—including credit card debt, cell phone bills, and medical debt—for pennies on the dollar. They then attempt to collect the debts through a variety of means, ranging from telephone calls to lawsuits.

Debt buyers typically purchase an electronic file that includes minimal information about, and no substantiating documentation of, the debts in any given portfolio. Many of the debts are in fact too old to be sued on, have already been paid or discharged in bankruptcy, or result from identity theft or mistaken identity. Even in cases where the consumer may owe some money, debt buyers often try to collect grossly inflated amounts, padding the debts with unauthorized fees and interest. Debt buyer portfolios are typically sold without any consideration for whether collection of the debts in the portfolio is legal. This problem was recently addressed in a March 29, 2012 article in the American Banker. *See Bank of America Sold Card Debts to Collectors Despite Faulty Records*, American Banker, March 29, 2012.

Litigation is one of the debt buyers' most abusive collection tactics. Hundreds of thousands of debt collection lawsuits are filed against low and moderate income New Yorkers every year, most of them by debt buyers; in 2010, more than 200,000 debt collection lawsuits were filed in New York City alone. Though debt buyers often have no supporting documentation of the underlying debts, very few defendants have access to legal counsel to help them contest the debt. In fact, most of the time people do not even receive notice that they have been sued. Without notice, they do not appear in court, and debt buyers easily obtain "default" judgments, without having to produce legitimate proof of the debts. *See* Legal Aid Society, MFY Legal Services, Inc., Neighborhood Economic Development and Advocacy Project, Urban Justice Center, *Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers* 5 (May 2010); *see also* District Council 37 Municipal Employees Legal Services, *Where's the Proof? When Debt Buyers are Asked to Substantiate their Claims in Collection Lawsuits Against NYC Employees and Retirees, They Don't* (December 2009). The consequences of these default judgments can be devastating. Debt buyers enforce judgments by freezing people's bank accounts and garnishing their wages, leaving New Yorkers and their families unable to pay for their most basic needs such as food, medicine, housing and utilities.

These judgments also appear on people's credit reports, making it difficult, if not impossible, for them to find housing, obtain employment, take out a loan, or accumulate any savings.

The following stories of MFY clients highlight the serious problem of abusive debt collection by debt buyers, and the devastating effects they have on New Yorkers:

Josefina A., 49, is a Spanish-speaking immigrant and working mother who lives in Queens. She opened up her very first credit card in 1995 – a Sears card financed by Citibank, which she only ever used at a Sears store close to her home. In May of 2005 Ms. A discovered charges for three transactions on her credit card statement that she had not made. All of the transactions had apparently been made in Bangkok, Thailand, for jewelry and other luxury goods, amounting to over $10,000. Ms. A immediately contacted Citibank and Sears to dispute the unauthorized charges, but instead of conducting an investigation into the fraudulent charges, Citibank charged off and sold the account to a debt buyer. The debt buyer first attempted to collect the debt by calling Ms. A constantly and demanding payment, but ultimately it filed a lawsuit against Ms. A in March of 2008, for $13,000.

Neil D., 63, is legally blind and lives in Manhattan. In February 2007 he purchased a voice recognition computer program over the phone, for people who are blind and visually impaired. The representative who sold the program to him offered him interest-free financing through GE Money Bank/Care Credit, and Mr. D accepted that financing offer. Mr. D paid his bill in full for months, but later realized that he was being billed for financing charges and for "account security" fees he had never agreed to. Although Mr. D paid the principal of the purchase off in full, he refused to pay the additional fees, and repeatedly disputed those billing errors with GE Money Bank. Nonetheless GE Money Bank turned the account over to a collection agency and then later charged off the remaining balance of the account (made up solely of fees and financing charges) to a debt buyer, who sued Mr. D in January 2010.

Daphne G., 59, lives in Brooklyn and works for the New York City public school system. Ms. G believes she is a victim of identity theft because years ago she was robbed at gunpoint and her wallet was stolen. In March 2011 she discovered that a debt collection law firm had entered a default judgment against her in a lawsuit in 2005, for a debt that she had never heard of with AT&T that had purportedly been purchased by a debt buyer. Ms. G had never had an AT&T account and had never heard of the debt buyer that sued her. She had never been served with a summons and she learned about the lawsuit only after her paycheck was garnished for the judgment, six years after the lawsuit had been filed.

Ira K., 62, of Manhattan, was denied public housing because a credit check revealed a two-year old judgment on his credit report. Until then, Ira did not know that he had been sued. Although he lives alone, the debt buyer claimed to have given the court papers to another person in his apartment. After Ira found a legal services attorney to help him vacate the judgment, the debt buyer abandoned its claim. However, Ira lost his eligibility for public housing because it took more time than the housing agency allowed to vacate the judgment and correct his credit report.

Ilda Q, 33, a Spanish-speaking immigrant and working mother residing in Brooklyn, learned she had been sued by a debt buyer in 2008 only after her wages were garnished, one year after the lawsuit was filed. Ms. Q was never served with a summons in that case because the process server hired by the debt buyer's lawyer served her at an address in Queens where she had not lived for years.

Betty S, a 32-year-old musician with very limited income, had her identity stolen by her father when she was young. Though her father eventually filed for bankruptcy for himself and passed away, Ms. S has been left with a legacy of poor credit because of the accounts that he opened in her name. In January 2011 Ms. S discovered that one of the accounts had been sold to a debt buyer, and that the debt buyer had been awarded a judgment against her in 2006. Ms. S had never been served with a summons, and she only learned of the judgment when she received a notice from her bank that her safe deposit box, containing her most important personal items and documents, had been restrained.

Sarah K, 32, is a single working mother who lives in Staten Island. She discovered in April 2010 that she had been sued three years earlier when she was unable to withdraw cash from an ATM to pay the toll to get across the bridge from her job in New Jersey back home. It turned out her bank account had been frozen by a debt buyer who had never given her notice of the lawsuit. She had never heard of the debt buyer that sued her, and when she tried to call the law firm to find out why this had happened, the law firm refused to give her any meaningful information, instead pressuring her to pay the debt.

Yvette S, 64, lives in Staten Island with her husband and son. They fell on hard times after Ms. S lost her job and her husband became seriously ill. Eventually she learned that two debt buyers she had never heard of had filed lawsuits against her without giving her any notice. By the time she learned about them one had already entered a default judgment against her. Ms. S had to go to court numerous times to fight these cases.

As these stories show, the debt collection and debt buying industries are rife with abuse that results in severe consequences for low-income New Yorkers. It is critical that the CFPB provide robust supervision of the debt collection industry, given all of the abuses and the fact that the industry has operated without any accountability for years. As debt collection companies use a number of business structures, the CFPB's definition of "larger participants" in the consumer debt collection market must be broad and flexible enough to include a significant portion of the market, no matter how the debt buyers and collection firms organize their businesses. For example, there are as many as 500 privately owned debt buyers in the United States, some of which have been purchased in whole or in part by private equity firms, hedge funds, and other companies that finance the purchase of debt portfolios. Some debt buyers are owned by the principals of debt collection law firms, and typically purchase more regionally-specific but still significant debt portfolios from the larger debt buyers.

The CFPB has already recognized the need for a broad definition by including affiliates in the determination of larger participant status. **However, as discussed below, we strongly urge the CFPB to further broaden the definition of a larger participant in the debt collection market by (1) reducing the threshold for annual receipts from $10 million to $7 million; (2) considering a company's total annual receipts rather than receipts from "consumer debt collection" alone; and (3) extending supervisory authority to the agents and subcontractors of "larger participants" that assist in collecting debts, particularly to the debt collection law firms that collect for "larger participants" in the market.**

The CFPB's proposed threshold for classifying debt buyers as "larger participants"—requiring at least $10 million in annual receipts from consumer debt collection—is too high. As noted by the comments submitted by the New Yorkers for Responsible Lending, the CFPB should not be limited to supervising only 4% of debt collection businesses, as would be the case if the threshold for supervision remained at $10 million in annual consumer debt collection receipts. At the very least, the CFPB should lower the threshold for annual receipts to $7 million, which would cover a larger percentage of debt collection businesses.

In the proposed rule, the CFPB also defines "annual receipts" too narrowly, in a way that will severely limit its supervisory authority. The CFPB should count a company's total annual receipts, from any of its revenue streams, toward the larger participant threshold, if the company also collects consumer debt; this will ensure the broadest possible supervision for companies that collect consumer debt and are not small businesses. In particular, the rule should allow for the supervision of debt collection companies that collect a substantial amount of both consumer debt *and* medical debt, but would not be defined as "larger participants" based on the collection of "consumer debt" alone, as defined in the statute. Annual receipts from collecting medical debt should count toward the larger participant threshold, because the collection of medical debt is conducted similarly and causes many of the same consequences for families and communities as the collection of consumer debt. Determining a company's status as a larger participant using total annual receipts is a much simpler method than trying to segregate out annual receipts from consumer debt collection, and will serve to reduce evasion as companies will not be tempted to misclassify the source of their revenues to avoid supervision.

If a collection company is defined as a larger participant, all of its subcontractors and agents, as well as its affiliates, must be included in any supervisory actions the CFPB takes. The debt collection law firms typically act as agents of the debt buyers and, as such, should be included in any supervisory action the CFPB may take. This is especially critical because the collection firms operate with little or no oversight, and many have engaged in widespread and systematic abuses. *Most of these collection firms will not exceed the larger participant threshold on their own. The CFPB must extend supervision to collection firms acting as agents for larger participant debt buyers, or the debt buyers will be able to avoid oversight by contracting out abusive collection practices to the law firms.*

In addition to including any agents in supervisory actions, the CFPB should also include any subcontractors used by "larger participants" in its supervisory actions. For example, Square Two Financial (formerly Collect America), a large debt buyer, uses an agent and subcontractor-based business model that illustrates the importance of including these actors in supervisory actions. Square Two will be classified as a larger participant in the debt collection market because it reported over $470 million in annual revenue from the collection of charged-off receivables in 2011. Square Two collects debts through its three networks of partners. These partners include debt collection law firms and attorneys and other debt collection agencies. Square Two apparently does not contact people directly; instead, all contact with individuals from whom the company is attempting to collect is made through the company's partners. Without supervision of its partners, the vast majority of Square Two's contacts with consumers would go unsupervised. This business model makes clear that the CFPB must include subcontractors and agents of "larger participants" when supervising debt collection companies—Square Two Financial is certainly not unique among debt collectors for its use of agents and subcontractors.

The CFPB should expand its definition of "annual receipts" for consumer reporting companies, to ensure the broadest possible supervision of companies that provide consumer reports for a variety of purposes.

Even though the Dodd-Frank Act exempts from coverage consumer reporting entities that furnish information solely for employment, government licensing, or residential tenancy, the CFPB should include annual receipts for these business lines in its larger participant determination, as long as a company also engages in consumer reporting related to a consumer financial product or service. Companies that "collect, analyze, maintain, or provide" consumer report information have a profound impact on families and communities. This is the case whether that information is used for determining access to credit, employment, or rental housing. Abuses or mistakes by consumer reporting agencies can have a profound impact on people's ability to get jobs or housing. In fact, consumer reporting companies are increasingly and aggressively marketing the use of credit histories for employment-related decisions, even though no nexus has been established between credit history and job performance. This practice particularly harms communities of color and low income communities. Although the CFPB cannot supervise credit reporting agencies that provide *only* employment, licensing or tenant credit checks, it is vital that the CFPB have as broad a supervisory authority as possible over companies that provide information for these uses and also for decisions involving consumer financial products or services.

The CFPB should define "larger participants" as broadly as possible, to ensure maximum flexibility in deterring and preventing abusive financial practices that harm consumers and communities.

The goal of the "larger participant" provisions in Dodd-Frank may have been to spare "mom and pop" businesses the burden of Bureau supervision, but the vast majority of non-bank financial

services companies do not operate in a "mom and pop" fashion. Given the fluid and adaptive nature of abusive financial services practices, it is important that the CFPB write rules that give it the broadest supervisory authority possible, in case that authority is needed. "Larger participants" should be measured not only by their total annual receipts, but also by their effect on consumers as measured by the volume of complaints about each business and the relative size of businesses within each covered market. In fact, a broad supervisory net—i.e., the mere threat of supervision –will serve as a significant deterrent to abusive financial practices and reduce the need for enforcement.

In addition to broadening the annual receipt thresholds proposed by the CFPB, companies should be designated as "larger participants"—regardless of their size—if they generate a volume of consumer complaints comparable to those filed against "larger participants". Using both annual receipt and complaint measurements to define "larger participants" will permit the CFPB to supervise both the largest and the most abusive companies.

Given the differences among various markets, we believe that "larger participants" should also be defined based on their relative size and performance within a given market, and not merely based on an absolute threshold like annual receipts. For example, any entity that does business in more than one state should automatically be considered a larger participant; this would be a simple, easily measured, bottom-line criterion for supervision. However, entities that do not cross state lines should also be defined as "larger participants" if their practices have a significant impact within a state, or in a metropolitan area or region of a state. This impact could be measured by the company's annual receipts relative to those of other market participants.

Finally, the definition of "larger participants" should be flexible enough to encompass large companies that sell a variety of products and services in different markets, even if the companies are not major providers of one specific service or product.

Consideration of Markets to Include in Future Rule Making

The CFPB's Notice and Request for Comment also seeks comments on which other markets for consumer financial products and services should be covered in future proposed rules to define "larger participants". MFY urges the CFPB to include the following markets in its future rule making: consumer credit and related activities; money transmitting, check cashing, and related activities; prepaid cards; and debt relief services. Non-bank entities engage in rampant abuse in all of the above markets. These are all rapidly growing, unregulated markets that affect an ever-increasing number of people and communities in New York and around the country, and that are rife with abusive practices.

Robust supervision of debt collection companies and credit reporting agencies will benefit millions of people in New York and nationally by preventing abusive financial practices that

strip wealth from families and communities, and adversely affect people's ability to get jobs, housing, and credit. We thank you for the opportunity to comment.

Sincerely,

Carolyn E. Coffey
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Consumer Rights Project
MFY Legal Services, Inc.