

COMMENTS
of the
National Consumer Law Center
on behalf of its low-income clients

and

**the Consumer Federation of America,
Consumers Union,
U.S. PIRG, and
the National Association of Consumer Advocates**

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**

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TABLE OF CONTENTS

I. INTRODUCTION	1
II. USE BOTH ABSOLUTE AND RELATIVE CRITERIA TO CREATE A BROAD AND FLEXIBLE DEFINITION OF LARGER PARTICIPANT.....	2
A. Define Larger Participant Broadly Using Flexible Criteria.....	2
B. Adopt a broad reach—judiciously exercised.....	3
C. Select criteria closely related to consumer activity.....	4
D. Use Relative Criteria, Not Just Absolute Criteria.....	6
III. USE REGISTRATION ONLY ON A TARGETED BASIS, NOT ACROSS THE BOARD.....	7
IV. RETAIN SUPERVISION IF AN EXAMINATION FINDS VIOLATIONS OR A PARTICIPANT ACTS TO EVADE SUPERVISION.	8
V. DEFINE MARKETS FLEXIBLY AND RECOGNIZE SUB-MARKETS.	9
A. Consider the entire market for consumer financial products and services as a whole.	10
B. Supervise Debt Collectors and Debt Buyers as Separate Markets, and Supervise Creditors’ In-House Collection Activity.....	11
C. Supervise Consumer Reporting Agencies, but Define a Number of Markets Within This Area.....	12
D. Supervise Debt Relief Services as Two Markets: For-profit and Non-profit.....	26
E. Supervise the Larger Participants in Each of Several Prepaid Card Markets.....	29
F. Supervise the Larger Participants in the Check Casher Market.	33
G. Supervise Larger Money Transmitters.....	36
H. Supervise the Larger Participants in Several Auto Finance Markets.	39
I. Supervise the Larger Participants in the Small Installment Loan Market and the Specialized Military Lending Market.....	41
J. Supervise the Larger Participants in the Manufactured Home Finance Market.....	45

C. Supervise Consumer Reporting Agencies, but Define a Number of Markets Within This Area.

The CFPB should include consumer reporting in the initial rule. As discussed below, it should define any nationwide consumer reporting agency, and the largest providers of credit scoring models, as larger participants. Beyond these two types of participants, it should also define multiple markets within this category. Finally, using its authority under the Fair Credit Reporting Act as well as its supervision authority, it should require all consumer reporting agencies to register with it.

1. The CFPB's Supervision Authority Is Supplemented by its FCRA Rulemaking Authority.

The intersection of the Fair Credit Reporting Act (FCRA) and the definition of “consumer financial product or service” is complex, but provides the CFPB sufficient authority to supervise the larger participants in various credit reporting market, and to require registration. The term “consumer financial product or service” includes entities engaged in:

“(ix) collecting, analyzing, maintaining, or providing consumer report information or other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service, except to the extent that—

(I) a person—

* * * *

(cc) provides information that is used or expected to be used solely in any decision regarding the offering or provision of a product or service that is not a consumer financial product or service, including a decision for employment, government licensing, or a residential lease or tenancy involving a consumer;”

Dodd-Frank § 1002(15)(A)(ix).

Thus, the term “consumer financial product or service” covers some, but not all, products that would be considered “consumer reports” under the FCRA. Conversely, there may be database and information products that are consumer financial products or services because they are “account information” but are not consumer reports. And as discussed below, certain companies that are considered “consumer reporting agencies” (CRAs) under the FCRA also offer other types of consumer financial product or service, such as payment processing.

The fact that the definition of “consumer financial product or service” excludes some consumer reports means that the CFPB cannot supervise specialty companies that offer solely those types of reports. However, as shown below, in many cases these reports are offered by a division of a company that also offers a wide range of products that clearly meet the definition of consumer financial product or service. Since the CFPB is to exercise supervision over “persons,” not over particular products or services, it will be able to supervise these companies without drawing artificial lines between the many interrelated products they offer.

In addition, the CFPB has independent authority under Section 621(e) the FCRA to issue rules “as may be necessary or appropriate to administer and carry out the purposes and objectives of [the FCRA], and to prevent evasions thereof or to facilitate compliance therewith.”²³ This authority exists regardless of whether a consumer financial product or service is involved. Thus, the CFPB can issue regulations that govern CRAs and consumer reports even if they do not involve a consumer financial product or service.

2. If a Company Is Designated a “Larger Participant,” All of its Products, or At Least Its Database and Information Products, Should be Supervised.

One of the most complicated issues with respect to CRAs is that many corporations who are “larger participants” offer both consumer reports that are consumer financial products or services, as well as consumer reports that are not such. In addition, these companies may offer other types of products and services that qualify as a consumer financial product or service. Alternatively, these companies may be affiliates acting as service providers to a person that provides consumer financial products or services.

Some of these corporations are not only “larger,” they are enormous. They are conglomerates, consisting of multiple database and information companies, as well as many other divisions, subsidiaries and affiliated entities. They have become larger and larger through acquisitions of smaller companies and through mergers. For example, the organizational history of one of these companies, FIS, from its own website looks like this:²⁴



In order to adequately protect consumers and minimize risks to them, the CFPB should supervise all of the database and information products of these companies. In particular, the CFPB should determine whether or not each database product meets the definition of a “consumer report” under the FCRA, and thus the company should be complying with the FCRA requirements.

²³ 15 U.S.C. § 1681s(e).

²⁴ FIS, Our Company, <http://www.fisglobal.com/aboutfis-ourcompany> (last visited July 21, 2011).

Indeed, even the biggest nationwide CRAs (Equifax, Experian and TransUnion) have products that they do not consider to be “consumer reports” and thus they believe these products are outside of the purview of the FCRA. One of the most notable examples of these products is the OFAC Advisor product offered by TransUnion, which was the subject of the Third Circuit’s decision in *Cortez v. TransUnion*, 617 F.3d 688 (3rd Cir. 2010). TransUnion took the position that the OFAC Advisor was not a consumer report, and thus did not need to comply with the FCRA, despite the fact that the OFAC Advisor was incorporated into credit reports and used to deny consumers the ability to obtain credit and rental housing. Fortunately, the Third Circuit ruled otherwise.

Another example is Talx, an Equifax subsidiary. Talx failed to comply with the FCRA until forced to do so by the FTC.²⁵

In addition to database products, the Big Three nationwide CRAs offer other types of consumer financial products and services. For example, Experian owns the lead generator web site, LowerMybills.com, which has been the subject of numerous complaints.²⁶

When a consumer reporting agency offers a multiplicity of products, the CFPB should designate the entire entity as a “larger participant” and subject it to supervision. These products are often intermingled and used by the same creditors, banks and other businesses for screening purposes. Furthermore, the companies’ policies and procedures on these databases, how they maintain accuracy, how they handle disputes, audits, compliance checks, data security, and privacy are all likely to be similar. Thus, it will be impractical for the CFPB to limit its supervision to that part of the entity that offers credit-based consumer reports or consumer financial products or services. Instead the CFPB must supervise the entire enterprise that sells database or information about consumers.

There are numerous examples of these gigantic conglomerates that offer consumer reports (both ones that fit the definition of consumer financial products or services and ones that do not), other data/information products, and consumer financial products or services that are not consumer reports. We discuss two of these companies as examples.

a. Lexis/Nexis Risk Solutions

LexisNexis is one of the largest companies in the world selling information about consumers. According to its website, LexisNexis “is a leading global provider of content-enabled workflow solutions designed specifically for professionals in the legal, risk management, corporate, government, law enforcement, accounting, and academic markets. A member of Reed Elsevier,

²⁵ See Consumer Reporting Agency TALX Corp. Agrees to Settle FTC Charges, July 9, 2009, available at <http://www.ftc.gov/opa/2009/07/talx.shtm> (last visited July 21, 2011).

²⁶ Joe Cuervo, *LowerMyBills.Com Ads Claiming an Obama Housing Refinance Program Completely Bogus*, Associated Content, June 10, 2010, at http://www.associatedcontent.com/article/5497646/lowermybillscom_ads_claiming_an_obama.html?cat=3 (last visited July 21, 2011).

LexisNexis serves customers in more than 100 countries with more than 15,000 employees worldwide.”²⁷

LexisNexis is certainly “large” in every sense of the word. Its parent, Reed Elsevier, has a market capitalization of £6.5 billion, or about \$10.5 billion USD. Reed Elsevier earned £6 billion in revenues in 2010 (or about \$10 billion USD).²⁸ LexisNexis Risk Solutions is the unit that offers consumer reports and other data/information services, and includes parts of the former Choicepoint. LexisNexis Risk Solutions earned total revenues in 2010 of £927 million, or about \$1.5 billion USD, and has 4,400 employees.²⁹

LexisNexis offers a number of different products, and has a number of divisions that sell consumer reports or furnish information to CRAs. According to its website:

LexisNexis offers the largest and most comprehensive base of public and proprietary information available today. We leverage more than 10,000 data sources and gather information from more than 20 billion public and proprietary records that are refreshed daily with an additional one million search records.

In addition, we have approximately 20 percent more data than other providers, with coverage on more than 400 million individuals and 150 million businesses.³⁰

Some of the LexisNexis products or divisions that sell consumer reports or furnish information to CRAs include:

Accurint – Accurint is a database that compiles and provides identification and public records information, with over 4 billion records. Accurint boasts that it has more than 400,000 customers.³¹ Despite the fact that it claims Accurint is not a CRA, LexisNexis offers one version, “Accurint for Collections” that it touts as “a powerful suite of debt collection data and skip tracing tools to help you identify assets and locate both individuals and businesses, thereby improving debt collections and enhancing operational efficiency.”³²

Public Records Vendor – LexisNexis is the largest vendor of public records to the Big Three nationwide CRAs. In 2003, LexisNexis had acquired Dolan Media, including Hogan Information Services, which was the public records vendor for TransUnion and Experian. Through its acquisition of Choicepoint, LexisNexis acquired National Data Retrieval, Inc., which was Equifax’s public records vendor.

²⁷ LexisNexis, About LexisNexis, at <http://www.lexisnexis.com/about-us/> (last visited July 21, 2011).

²⁸ Reed Elsevier, Annual Reports and Financial Statements 2010, at 2, at http://reports.reedelsevier.com/documents/pdfs/reed_ar_2010.pdf (last visited July 21, 2011).

²⁹ *Id.* at 25.

³⁰ LexisNexis Risk Solutions, Data Resources, at <http://www.lexisnexis.com/risk/about/data-resources.aspx> (last visited July 21, 2011).

³¹ LexisNexis Risk Solutions, Accurint, at <http://www.accurint.com> (last visited July 21, 2011).

³² LexisNexis Risk Solutions, Accurint® for Collections, at <http://www.lexisnexis.com/risk/solutions/contact-locate/skip-tracing-accurint-collections.aspx> (last visited July 21, 2011).

Specialty CRA Products – LexisNexis, through its acquisition of Choicepoint, offers a number of products that are consumer reports for specialty purposes, such as insurance. According to LexisNexis, “over 95% of insurance companies have come to rely on our products and services to manage their business”³³

- “Attract” Insurance Scores – Choicepoint sells insurance scores that dominate 50% of the market.
- C.L.U.E. Auto or Homeowners Reports
- Resident History Reports – This is Choicepoint’s tenant screening product
- Esteem – This is a retail employee “theft” database currently being sued for problems with accuracy and employer blacklisting.³⁴

Marketing Provider – LexisNexis’s acquisition of Dolan Media included ClickData, a purveyor of online marketing lists. ClickData’s offerings include:³⁵

- Bankruptcy List – “Bankruptcy List enables you to target consumers who have recently filed for—or been discharged from—bankruptcy. ... Records: 30+ million”
- Consumer List – “match your marketing offers to groups such as mail order buyers, homeowners, credit card users, and many more. Records: 150+ million”
- Tax Liens & Judgments List – “get accurate names and addresses for both individuals and businesses with tax liens and judgments against them. Records: 100+ million”

Finally, and perhaps most importantly, LexisNexis offers a number of undisclosed products that “provide[] financial institutions with risk management, identity verification, fraud detection, credit risk management, and compliance solutions.”³⁶

b. Fidelity National Information Services (FIS)

FIS proclaims itself to be “the world’s largest financial technology company. Supported by the skill and industry expertise of more than 32,000 employees across the globe, FIS provides core banking and payment processing solutions in over 100 countries.”³⁷ FIS is also a “larger

³³ LexisNexis Risk Solutions, LexisNexis Insurance Solutions, at http://solutions.lexisnexis.com/forms/IS09InsurIASAIASATS801?source=RD_insurancesolutions (last visited July 21, 2011).

³⁴ *Menefee v. Choicepoint*, 2009 WL 174134 (E.D. Pa. Jan. 26 2009).

³⁵ LexisNexis, ClickData, at <https://www.clickdatastore.com> (last visited July 21, 2011).

³⁶ Annual Reports and Financial Statements 2010, at 24, at http://reports.reedelsevier.com/documents/pdfs/reed_ar_2010.pdf (last visited July 21, 2011).

³⁷ FIS, Accelerate Success - 2010 Annual Review, at i, available at <http://www.fisglobal.com/ucmprdpub/groups/public/documents/relatedlinks/c007117.pdf> (last visited July 21, 2011).

participant” when one considers financial measurements. FIS has a market capitalization of about \$9.3 billion, and has \$14 billion in assets.³⁸ It earned about \$5.3 billion in revenues in 2010.³⁹

As a payment processor, FIS is a covered person. Under the Dodd-Frank Act, a consumer financial product or service includes:

“providing payments or other financial data processing products or services to a consumer by any technological means, including processing or storing financial or banking data for any payment instrument, or through any payments systems or network used for processing payments data, including payments made through an online banking system or mobile telecommunications network.”⁴⁰

FIS offers a number of payment transaction processing services, including the NYCE Network of ATMs. Other products offered by FIS that may be “consumer financial products or services” include:

“Automotive Finance – integrated loan and lease automotive finance servicing system.

Card Services – comprehensive, customized and flexible solutions and services for credit, debit and merchant card processing.

Check Services – complete check management programs and solutions for collecting outstanding check debt.”⁴¹

FIS also offers:

“FIS CreditWorx™ is the complete indirect point-of-sale financing solution used by many top financial institutions, manufacturers, and retailers to provide best-in-class financing experience for their entire indirect financing channel. The solution has been designed to support multiple loan types, multiple score models and multiple origination points.

FIS Loan Origination (FLO) services a wide range of domestic banks and thrifts seeking automation to originate commercial and consumer loans. FLO is a browser based solution that provides a wide range of loan origination functionality including warranted document selection, flexible IntelDoc technology, and third-party interfaces all coupled with seamless core integration.

FIS Automotive Financing offers both dealer and wholesaler software solutions for the global automotive finance industry, supported through service-oriented architecture (SOA).”⁴²

³⁸ *Id.* at 12.

³⁹ *Id.* at 13.

⁴⁰ Dodd-Frank § 1002(15)(A)(vii).

⁴¹ FIS, About FIS, at <http://www.fisglobal.com/aboutfis> (last visited July 21, 2011).

In addition to payment processing and lending products described, FIS is a consumer reporting agency and sells a number of different consumer reports. These include:

ChexSystems - In September 2007, FIS purchased eFunds. In turn, e-Funds operates ChexSystems, one of the largest – if not the largest - CRA that issues consumer reports on consumers' check writing histories for bank account opening purposes.

Certegy Check Services – This is a retail check authorization service both issues consumer reports and acts as a debt collector if the check is returned for nonsufficient funds.

FIS DebitBureau – According to its literature, this database and decisioning tool is “[u]pdated on average nearly 350,000 times each day, DebitBureau® is the powerhouse behind the decisioning solutions on which so many of the nation’s financial institutions rely.” DebitBureau includes information from over 9,000 financial institutions on account applications, account openings, reporting account closures, and check printing histories. It also includes information on 70% of retail check payments, including 3.5 billion checks verified at point-of-sale, and public records information.⁴³

This listing might only scratch the surface of the consumer reports and other consumer financial products and services that FIS offers. FIS is a result of the conglomeration, merger, and acquisition of many companies that are in the financial products business, as shown by the graphic above. As such, FIS is certainly a larger participant in several markets for consumer financial products or services, and its U.S. facing divisions should be supervised on an entity-wide basis.

Finally, but perhaps most importantly, we understand that some of the technology support services that FIS provides to small and medium size financial institutions include data processor services for those institutions to furnish information to the Big Three nationwide CRAs. In this role, we believe that FIS may be responsible for some of the errors in credit reports caused by such furnishers.

3. Any Nationwide CRA Should Be Considered a Larger Participant.

As a principle, we urge that any consumer reporting agency that “compiles and maintains files on consumers on a nationwide basis” under Section 603(p) of the FCRA, 15 U.S.C. § 1681a(p), be considered a “larger participant.” Section 603(p) of the FCRA covers any CRA that:

“regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer’s

⁴² FIS, Retail and Consumer Lending, at <http://www.fisglobal.com/products-lending-retailandconsumerlending> (last visited July 21, 2011).

⁴³ FIS, FIS DebitBureau, 2009-2010, at http://www.fismoreinfo.com/landing-pages/6steps/RFC_DebitBureau_Product_Sheet.pdf?webSyncID=a791ce14-842d-46d7-ab49-32a5ffdb73e7&sessionGUID=80055873-4a43-484d-aa0f-e482ab1911b8 (last visited July 21, 2011).

credit worthiness, credit standing, or credit capacity, each of the following regarding consumers residing nationwide:

- (1) Public record information.
- (2) Credit account information from persons who furnish that information regularly and in the ordinary course of business”

Sometimes referred to as “nationwide” CRAs, these entities are required under the FCRA to:

- Provide free annual credit reports
- Maintain a toll-free telephone number during normal business hours with personnel accessible to consumers who have received an adverse action notice.
- Jointly maintain a notification system for consumers to opt out of being included in prescreening list mailings.
- Provide fraud and active military duty alerts to consumer files and refer alerts to other such CRAs.

Currently, the FTC has designated only three nationwide CRAs – Equifax, Experian and TransUnion, often referred to as the “Big Three.” There should be little doubt that these three CRAs are “larger participants” in a market for consumer financial services or products. These three nationwide CRAs literally control the access to credit, as well as other basic life necessities such as insurance and employment, for nearly every single American.

Indeed, the websites of these three nationwide CRAs, as well as their trade association, the Consumer Data Industry Association (CDIA), provide ample evidence that they are “larger participants.”

CDIA – According to CDIA, “One billion credit cards are in use in the United States today. A similar number of consumer credit reports are issued annually in the United States. Four and a half billion pieces of data are entered monthly into credit records. Each of the consumer credit reporting systems — Equifax, Experian, and TransUnion — maintains 200 million credit files, which are used by independent credit reporting agencies across the United States.”⁴⁴

Equifax – Equifax boasts that it “employs approximately 7,000 people in 15 countries through North America, Latin America and Europe.”⁴⁵ It has a market capitalization of \$4.2 billion and earned \$1.86 billion in revenue in 2010.⁴⁶

Experian - Experian touts itself as “a global leader in consumer and business credit reporting and marketing services and a constituent of the United Kingdom's FTSE 100 index, with revenues in

⁴⁴ CDIA, About CDIA, at <http://www.cdiaonline.org/about/index.cfm?unItemNumber=515> (last visited July 21, 2011).

⁴⁵ Equifax, Company Profile, at http://www.equifax.com/about_equifax/company_profile/en_us (last visited July 21, 2011).

⁴⁶ Equifax, 2010 Annual Report at i, at http://www.equifax.com/investor_center/en_us (click Equifax 2010 Annual Report) (last visited July 21, 2011).

excess of US\$4 billion. We support clients in more than 65 countries and employ more than 15,500 people in 38 countries.”⁴⁷

TransUnion – According to TransUnion’s website, the company:

- Provides solutions to approximately 45,000 businesses
- Reaches businesses and consumers in 23 countries
- Maintains credit histories on approximately 500 million consumers and businesses worldwide.⁴⁸

4. The Biggest Providers of Credit Scoring Models Should be Considered “Larger Participants.”

As most Americans know, the credit report is just part of the puzzle. Access to credit depends on having a good credit score too. Credit scores are the all-important number that can make or break a consumer financially. As the CFPB has remarked: “[c]redit scores are ubiquitous in the consumer credit marketplace. Lenders use them to determine not only whether to grant credit but also what amount of credit to provide and on what terms.”⁴⁹

The largest providers of the computer programs for these all-important numbers should be considered “larger participants” and supervised by the CFPB. These include FICO: the CFPB itself has noted that “[o]ne industry observer estimates that FICO had over 90 percent of the market share in 2010 of scores sold to firms for use in credit-related decisions.”⁵⁰ It should also include VantageScore, the company formed as a joint venture by the Big Three nationwide CRAs.

There is no question that credit scoring model developers can be categorized as providers of “consumer products or services.” That term includes products or services for “collecting, *analyzing*, maintaining, or providing consumer report information ... used or expected to be used in connection with any decision regarding the offer or provision of a consumer financial product or service.” Clearly a scoring model “analyzes” consumer report information for the purpose of a decision to offer or deny credit products.

5. The CFPB Should Define Specialty CRAs, Resellers, Furnishers, Other Types of CRAs, and Data Processers as Separate Markets.

There are a number of other sectors relevant to “consumer reports” that the CFPB should define as “markets” for the purposes of Dodd-Frank Section 1024(a)(1)(B).

⁴⁷ Experian, About Experian, at <http://www.experian.com/corporate/about-experian.html> (last visited July 21, 2011).

⁴⁸ TransUnion, Fast Facts (sidebar) at <http://www.transunion.com/corporate/aboutUs/aboutUs.page> (last visited July 21, 2011).

⁴⁹ Consumer Financial Protection Bureau, The Impact of Differences Between Consumer- and Creditor-Purchased Credit Scores – Report to Congress, July 19, 2011, at 5.

⁵⁰ *Id.* at 6.

a. Nationwide Specialty CRAs

Any specialty CRA that offers a consumer financial product or service on a nationwide basis should be covered as a larger participant. The FCRA defines “nationwide specialty consumer reporting agency” as any CRA that “compiles and maintains files on consumers on a nationwide basis relating to” medical records, tenant history, check writing history, employment history, or insurance claims.⁵¹

The main category of this “market” that the CFPB has authority to supervise is check-verification and check-writing history CRAs. Under Section 1002(15)(A)(iv) of the Dodd-Frank Act, the provision of deposit accounts is a consumer financial product, as is the processing of payments. Thus, these CRAs should be considered to offer consumer financial services or products as well, since they provide consumer reports used in a decision to offer deposit accounts or to accept payment. Finally, some of these CRAs, such as Telecheck, also act as check guaranty and collection services when a check is returned due to non-sufficient funds, and would be covered under Section 1002(15)(A)(vi) of the Dodd-Frank Act.

Some of the larger check-writing and check-verification CRAs include ChexSystems, Certegy Check Services, and TeleCheck. The first two are owned by FIS, while TeleCheck is owned by First Data, a Fortune 500 technology and payments processing company “serving more than 6 million merchant locations, thousands of card issuers and millions of consumers worldwide.”⁵² First Data also manages prepaid card operations for employers and retailers, and processes credit and debit card transactions. It also operates the STAR Network for ATM/debit transactions.

b. Resellers

Under the FCRA, a reseller is a CRA that:

“assembles and merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies concerning any consumer for purposes of furnishing such information to any third party, to the extent of such activities; and
(2) does not maintain a database of the assembled or merged information from which new consumer reports are produced.”⁵³

In some cases, it is a consumer report from a reseller and not the Big Three nationwide CRAs that is used by a lender or other user of consumer reports. For example, many mortgage lenders use “tri-merge” resellers in their decisions to approve or deny a mortgage loan. Thus, we believe that resellers should be defined as a market, and the larger resellers should be supervised by the CFPB.

⁵¹ Section 603(x) of the FCRA, 15 U.S.C. § 1681a(x).

⁵² First Data, First Data Fact, at http://www.firstdata.com/en_us/about-first-data/media/first-data-facts.html (last visited July 21, 2011).

⁵³ 15 U.S.C. §1681a(u) (Section 603(u) of the FCRA).

c. Furnishers

Another category of actors under the FCRA are furnishers of information. Many of the larger furnishers of information, such as large banks and debt collectors, will be supervised by CFPB for other reasons. However, at least one category of furnishers do not fall into some other supervision category – vendors of public records information, such as LexisNexis (formerly Choicepoint/ Hogan Information Services/National Data Retrieval).

Public records vendors are furnishers and providers of financial services or products because they “provide . . . other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering of provision of a consumer financial product or service.”⁵⁴ Public records are certainly “account information” if they pertain to a lawsuit or judgment regarding a credit or deposit account.⁵⁵

Because the information ends up in credit reports issued by the Big Three nationwide CRAs, it can play a significant role in whether a consumer is approved or denied for credit. Thus a vendor that compiles this information and sells it to the Big Three nationwide CRAs should be considered a furnisher, as well as an entity that provides consumer financial products or services, and furnishers should be defined as a market.

d. Other Types of CRAs That Operate on National Basis

There are a number of other CRAs that operate on a national basis that are not considered “nationwide” or “specialty nationwide” CRAs as defined under Sections 603(p) and 603(x) of the FCRA. These CRAs should be defined as another market, and the CFPB should supervise the larger participants of this market.

One example is TeleTrack, which is a CRA used by payday lenders and other fringe credit providers, discussed further below. Another example is Accurint for Collections. While LexisNexis claims that “Accurint® for Collections does not constitute a ‘consumer report’ as that term is defined in the federal Fair Credit Reporting Act,”⁵⁶ at least one federal district court has held that it is a CRA.⁵⁷ As this court noted, debt collection of a credit account is considered an authorized purpose under Section 604(a)(3)(A) of the FCRA, and thus information on a consumer’s general reputation or personal characteristics used for that purpose would a consumer report under Section 603(d)(1).

⁵⁴ Dodd-Frank § 1002(15)(A)(ix).

⁵⁵ It is true that “retrieval” of public records is not considered a “consumer financial product or service” under the “catch-all” provision at § 1002(15)(A)(xi) of Dodd-Frank, because it is excluded by § 1002(15)(b)(i). However, that provision does not prevent these furnishers from being considered providers of a financial product or service under § 1002(15)(A)(ix) of Dodd-Frank as providers of account information. See Section § 1002(15)(B)(ii) (nothing in § 1002(15)(B)(i) shall limit authority of CFPB under § 1002(15)(A)(ix) or FCRA). Furthermore, public records vendors do more than simply retrieve the records. They format the records so that the records can be incorporated into consumer files in the databases of the nationwide CRAs.

⁵⁶ LexisNexis Risk Solutions, Accurint® for Collections, at <http://www.lexisnexis.com/risk/solutions/contact-locate/skip-tracing-accurint-collections.aspx> (last visited July 21, 2011).

⁵⁷ *Adams v. LexisNexis Risk & Information Analytics Group, Inc.* 2010 WL 1931135 (D.N.J. May 12, 2010).

Furthermore, as discussed above in Section C.2, if a company is a larger participant, the CFPB should supervise the entire company, or at least its database and information segments. In addition to LexisNexis and FIS, as discussed in Section C.2 above, other CRAs that operate on a national basis and should be considered larger participants include:

Axciom—Axciom is a large technology, marketing and database services provider, with over \$1 billion in revenues in 2010 and 6,600 employees.⁵⁸ Its products include:

- Multichannel Marketing
- Data: “With more than 32 billion data records updated each month, Axciom is the industry leader in compiling, managing and applying consumer and business data for marketing, privacy and security”
- Technology Leadership: “We currently manage over 20 billion customer and prospect records and integrate over 4 billion customer records each day”
- Identity Solutions: “Our comprehensive data and up-to-date technology help authorities search for criminals, help institutions locate debtors, and help banks and retailers prevent identity theft and other fraud”
- Employee Background Screening
- Privacy: “suppressing three billion potential privacy violations per year across media; our expertise helps companies develop successful, privacy-compliant strategies for managing consumer information”⁵⁹

Corelogic—Corelogic is a large conglomerate, similar to LexisNexis and FIS above, with a marketplace capitalization of \$1.8 billion. Corelogic states that it:

“is a leading provider of consumer, financial and property information, analytics and services to business and government CoreLogic has built the largest and most comprehensive U.S. real estate, mortgage application, fraud, and loan performance databases and is a recognized leading provider of mortgage and automotive credit reporting, property tax, valuation, flood determination, and geospatial analytics and services. More than one million users rely on CoreLogic to assess risk, support underwriting, investment and marketing decisions, prevent fraud, and improve business performance in their daily operations”⁶⁰

Some of the products and divisions of CoreLogic include:

TeleTrack – TeleTrack is a CRA used by payday lenders, rent-to-own stores and subprime lenders. The FTC recently announced a settlement against TeleTrack in an enforcement action over TeleTrack’s sale of consumer reports for marketing purposes, in violation of the

⁵⁸ Axciom Corp., 2011 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, at 11, F-4.

⁵⁹ About Axciom, at http://www.axciom.com/about_us/Pages/AboutAxciom.aspx (last visited July 21, 2011).

⁶⁰ CoreLogic, About CoreLogic, 2011, at http://www.corelogic.com/about-us/asset_upload_file613_2137.pdf (last visited July 21, 2011).

FCRA.⁶¹ According to its website “The Teletrack specialty credit platform offers companies an extended set of credit and fraud risk solutions beginning with its own proprietary data assets, which include more than 240 million consumer credit records representing approximately 39 million unique consumers. In addition, these extended solutions include a variety of external data services and scores, including public records, bank account information, and traditional credit performance data.”⁶²

Credco – Credco is a tri-merge reseller of credit reports. According to CoreLogic, Credco is “a credit reporting agency and leading provider of specialized credit reports, is in the business of providing the critical data companies need to make credit decisions.” It offers the “Instant Merge” credit report which merges consumer report information from the Big Three nationwide CRAs using “Credco’s patented Merge Logic to create a more streamlined and comprehensive credit report.”⁶³

Anthem – Anthem is a tri-merge reseller. According to CoreLogic, “[t]he Anthem Report first utilizes any available bureau data as a baseline when you order an Instant Merge credit report on a borrower who has a thin or no credit file. It then supplements any bureau data with non-traditional credit data, such as rent payments, utility bills and phone bills. The result is a fully compliant credit reporting solution that meets or exceeds mortgage loan underwriting and due diligence requirements, including HUD, FHA, Fannie Mae and Freddie Mac.”⁶⁴

SafeRent – This is one of the largest tenant history screening databases in the country, formerly known as First Advantage SafeRent. In turn, FirstAdvantage SafeRent had acquired the tenant screening CRA known as U.D. Registry.

e. Data Processers

There are a number of companies that provide furnishers, especially small and medium size financial institutions, with data processor services to assist those institutions in furnishing information to the Big Three nationwide CRAs. The most notable example is FIS, discussed above in Section (V)(C)(2). These data processors may be responsible for the systems, processes, data field definitions and other programming that enable furnishers to report information to the nationwide CRAs using one of the Metro formats. As such, we understand that they also may be responsible for some of the errors in credit reports caused by such furnishers. The CFPB should define these “data processors” as a market, and supervise the larger participants in this market.

⁶¹ Federal Trade Commission, Consumer Reporting Agency to Pay \$1.8 Million for Fair Credit Reporting Act Violations, June 27, 2011, at <http://www.ftc.gov/opa/2011/06/teletrack.shtml> (last visited July 21, 2011).

⁶² CoreLogic TeleTrack, Company, at <http://www.teletrack.com/company.html> (last visited July 21, 2011).

⁶³ CoreLogic Credco Company History, at <http://www.credco.com/company.aspx?mid=1006&cid=580>. (last visited July 21, 2011).

⁶⁴ CoreLogic, Anthem Report, at <http://www.corelogic.com/products/anthem-report.aspx> (last visited July 21, 2011).