

## Consumer Financial Protection Bureau

## § 1090.102

*Affiliated company* means any company (other than an insured depository institution or insured credit union) that controls, is controlled by, or is under common control with, a person.

(1) For purposes of this definition “company” means any corporation, limited liability company, business trust, general or limited partnership, proprietorship, cooperative, association, or similar organization.

(2) A person has control over another person if:

(i) The person directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities or similar ownership interest of the other person;

(ii) The person controls in any manner the election of a majority of the directors, trustees, members, or general partners of the other person; or

(iii) The person directly or indirectly exercises a controlling influence over the management or policies of the other person.

*Assistant Director* means the Bureau’s Assistant Director for Nonbank Supervision or her or his designee. The Director of the Bureau may perform the functions of the Assistant Director under this part. In the event there is no such Assistant Director, the Director of the Bureau may designate an alternative Bureau employee to fulfill the duties of the Assistant Director under this part.

*Bureau* means the Bureau of Consumer Financial Protection.

*Completed fiscal year* means a tax year including any fiscal year, calendar year, or short tax year. “Fiscal year,” “calendar year,” “tax year,” and “short tax year” have the meanings attributed to them by the IRS as set forth in IRS Publication 538, which provides that:

(1) A “fiscal year” is 12 consecutive months ending on the last day of any month except December 31.

(2) A “calendar year” is 12 consecutive months ending on December 31.

(3) A “tax year” is an annual accounting period for keeping records and reporting income and expenses, or, if appropriate, a short tax year. An annual accounting period does not include a short tax year.

(4) A “short tax year” is a tax year of less than 12 months.

*Consumer* means an individual or an agent, trustee, or representative acting on behalf of an individual.

*Consumer financial product or service* means any financial product or service, as defined in 12 U.S.C. 5481(15), that is described in one or more categories under:

(1) 12 U.S.C. 5481(15)(A) and is offered or provided for use by consumers primarily for personal, family, or household purposes; or

(2) Clause (i), (iii), (ix), or (x) of 12 U.S.C. 5481(15)(A) and is delivered, offered, or provided in connection with a consumer financial product or service referred to in paragraph (1) of this definition.

*Dodd-Frank Act* means the Dodd-Frank Wall Street Reform and Consumer Protection Act.

*Larger participant* means a nonbank covered person that has met a test under subpart B of this part within the period provided in §1090.102 of this part.

*Nonbank covered person* means, except for persons described in 12 U.S.C. 5515(a) and 5516(a):

(1) Any person that engages in offering or providing a consumer financial product or service; and

(2) Any affiliate of a person that engages in offering or providing a consumer financial product or service if such affiliate acts as a service provider to such person.

*Person* means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

*Supervision and supervisory activity* mean the Bureau’s exercise, or intended exercise, of supervisory authority, including by initiating or undertaking an examination, or requiring a report of a person, pursuant to 12 U.S.C. 5514.

[77 FR 42898, July 20, 2012, as amended at 80 FR 37526, June 30, 2015]

### **§ 1090.102 Status as larger participant subject to supervision.**

A person qualifying as a larger participant under subpart B of this part shall not cease to be a larger participant under this part until two years

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from the first day of the tax year in which the person last met the applicable test under subpart B.

### § 1090.103 Assessing status as a larger participant.

(a) If a person receives a written communication from the Bureau initiating a supervisory activity pursuant to 12 U.S.C. 5514, such person may respond by asserting that the person does not meet the definition of a larger participant of a market covered by this part within 45 days of the date of the communication. Such response must be sent to the Assistant Director by electronic transmission at the address included in the communication and must include an affidavit setting forth an explanation of the basis for the person's assertion that it does not meet the definition of larger participant of a market covered by this part and therefore is not subject to the Bureau's supervisory authority under 12 U.S.C. 5514. In addition, a person may include with the response copies of any records, documents, or other information on which the person relied in making the assertion.

(b) A person shall be deemed to have waived the opportunity, at any time that it may dispute that it qualifies as a larger participant, to rely on any argument, records, documents, or other information that it fails to submit to the Assistant Director under paragraph (a) of this section. A person who fails to respond to the Bureau's written communication within 45 days will be deemed to have acknowledged that it is a larger participant.

(c) The Assistant Director shall review the affidavit, any attached records, documents, or other information submitted pursuant to paragraph (a) of this section, and any other information the Assistant Director deems relevant, and thereafter send by electronic transmission to the person a statement explaining whether the person meets the definition for a larger participant of a market covered by this part.

(d) At any time, including prior to issuing the written communication referred to in paragraph (a) of this section, the Assistant Director may require that a person provide to the Bu-

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reau such records, documents, and information as the Assistant Director may deem appropriate to assess whether a person qualifies as a larger participant. Persons must provide the requisite records, documents, and other information to the Bureau within the time period specified in the request.

(e) The Assistant Director, in her or his discretion, may modify any time-frame prescribed by this section on her or his own initiative or for good cause shown.

### Subpart B—Markets

#### § 1090.104 Consumer Reporting Market.

(a) *Market-Related definitions.*

*Annual receipts* means receipts calculated as follows:

(i) *Receipts* means “total income” (or in the case of a sole proprietorship, “gross income”) plus “cost of goods sold” as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms (such as Form 1120 for corporations; Form 1120S and Schedule K for S corporations; Form 1120, Form 1065 or Form 1040 for LLCs; Form 1065 and Schedule K for partnerships; Form 1040, Schedule C for sole proprietorships). Receipts do not include net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers and excluding taxes levied on the entity or its employees; and amounts collected for another (but fees earned in connection with such collections are receipts). Items such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes are included in receipts.

(ii) *Period of measurement.* (A) Annual receipts of a person that has been in business for three or more completed fiscal years means the total receipts of the person over its three most recently completed fiscal years divided by three.

(B) Annual receipts of a person that has been in business for less than three completed fiscal years means the total receipts of the person for the period the person has been in business divided by