

## **Memorandum of Understanding on Supervisory Coordination**

This Memorandum of Understanding (“MOU”), dated as of May 16, 2012, is made and entered into by the Consumer Financial Protection Bureau (“CFPB”) and the Prudential Regulators, consisting of the Board of Governors of the Federal Reserve System (“Federal Reserve Board”), the Federal Deposit Insurance Corporation (“FDIC”), the National Credit Union Administration (“NCUA”), and the Office of the Comptroller of the Currency (“OCC”). (Collectively, the CFPB and the Prudential Regulators are referred to as “Agencies.”) This MOU is intended to facilitate the fulfillment of the Agencies’ responsibilities in a manner consistent with the provisions of sections 1022, 1024, and 1025 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).<sup>1</sup>

### **I. Statutory Background**

Section 1025 of the Dodd-Frank Act applies to insured depository institutions and insured credit unions<sup>2</sup> with total assets of more than \$10 billion and their affiliates (“Covered Institutions,” as defined in section III). Section 1025 provides the CFPB with exclusive authority to require reports and conduct periodic examinations of Covered Institutions to: (1) assess compliance with the requirements of Federal consumer financial laws; (2) obtain information about the activities subject to such laws and the associated compliance systems or procedures of such institutions; and (3) detect and assess associated risks to consumers and to markets for consumer financial products and services. Section 1024 provides the CFPB similar supervisory authority with respect to certain entities that are not covered under section 1025 or section 1026, which addresses supervision of insured depository institutions with total assets of \$10 billion or less.

In connection with the CFPB’s supervisory activities, section 1025 requires the CFPB to use, to the fullest extent possible, existing reports pertaining to Covered Institutions that have been provided to a Federal or State agency and public information. In addition, section 1022(c)(6) provides that the CFPB shall have “access to any report of examination or financial condition made by a” Prudential Regulator with respect to a Covered Institution or other covered person, as defined by the Dodd-Frank Act, or Service provider, upon providing reasonable assurances of confidentiality, and that a Prudential Regulator may, in its discretion, “furnish to the [CFPB] any other report or other confidential supervisory information” concerning the covered person examined by the Prudential Regulator. The Prudential Regulators are accorded the same access to the

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<sup>1</sup> This MOU does not address coordination among the Agencies regarding the CFPB’s authorities under section 1026 of the Dodd-Frank Act, such as its authority to include examiners on a sampling basis of the Prudential Regulators’ examinations of insured depository institutions with total assets of \$10 billion or less (that are not Covered Institutions) for compliance with Federal consumer financial laws. The Agencies are considering memorializing any arrangements related to the CFPB’s authorities under section 1026 in another agreement.

<sup>2</sup> For purposes of this MOU, reference to “insured depository institutions” includes insured credit unions.

CFPB's reports of examination, and any additional reports or confidential supervisory information that the CFPB, in its discretion, may provide.

Sections 1025 and 1024 also impose certain requirements addressing supervisory activities of the CFPB and the Prudential Regulators. To minimize regulatory burden, sections 1025(b)(2) and 1024(b)(3)-(4) require that the CFPB coordinate its supervisory activities with the supervisory activities conducted by the Prudential Regulators, including consultation regarding their respective schedules for examining Covered Institutions and requirements regarding reports to be submitted by Covered Institutions.

Section 1025(e)(1) requires that the CFPB and the Prudential Regulators: (1) coordinate the scheduling of examinations of Covered Institutions; (2) conduct simultaneous examinations of insured depository institutions with more than \$10 billion in assets and their insured depository institution affiliates ("Covered Depository Institutions," as defined in section III), unless the institution requests separate examinations; (3) share draft reports of examinations of Covered Institutions with the other Agency and permit the receiving Agency at least 30 days to comment on the draft report before it is made final; and (4) take into consideration any concerns raised by the other Agency before issuing the final report of examination.

The Agencies have mutually agreed to implement the statutory requirements described above in the manner outlined in the succeeding provisions of the MOU.

## **II. Objectives**

A. The objectives of this MOU are to:

1. Address the requirements of section 1025(e) of the Dodd-Frank Act, including establishing which examination schedules must be coordinated, which examinations must be conducted simultaneously, what it means to conduct an examination simultaneously, and how insured depository institutions may request to opt out of simultaneous examinations;
2. Establish voluntary arrangements for coordination and cooperation between the CFPB and the Prudential Regulators, consistent with the respective authorities and business needs of each, with respect to the areas described in sections III.C. and D;
3. Minimize unnecessary regulatory burden on Covered Institutions;
4. Avoid unnecessary duplication of effort;
5. Ensure that the CFPB and the Prudential Regulators effectively and efficiently carry out their respective responsibilities;

6. Decrease the risk of conflicting supervisory directives by the CFPB and Prudential Regulators; and
  7. Increase the potential for synergies and alignment of related supervisory activities of the CFPB and the Prudential Regulators.
- B. This MOU is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the CFPB or the Prudential Regulators, nor does it limit or modify in any way the CFPB's or any Prudential Regulator's authority to engage in, or bring, supervisory, enforcement, or other actions, under applicable laws or to interpret those laws.

### **III. Definitions**

A. Covered Depository Institution means:

1. Insured depository institutions with more than \$10 billion in total assets<sup>3</sup> ("Large Depository Institutions"); and
2. Insured depository institutions with \$10 billion or less in total assets that are affiliates of Large Depository Institutions.

B. Covered Institutions means:

1. Covered Depository Institutions; and
2. Other affiliates of Large Depository Institutions.<sup>4</sup>

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<sup>3</sup> The total assets of an insured depository institution are measured in accordance with the Supervisory Statement: Determination of Depository Institution and Credit Union Asset Size for Purposes of Sections 1025 and 1026 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, issued by the Agencies on November 17, 2011. See, e.g., [http://files.consumerfinance.gov/f/2012/01/CFPB\\_Institutions\\_Size\\_Letter\\_11-17-2011.pdf](http://files.consumerfinance.gov/f/2012/01/CFPB_Institutions_Size_Letter_11-17-2011.pdf).

<sup>4</sup> Pursuant to this MOU, the appropriate Prudential Regulators supervise insured depository institutions with \$10 billion or less in total assets for compliance with Federal consumer financial laws ("Small Independent Depository Institutions") unless the institution is an affiliate of a Large Depository Institution ("Small Affiliated Depository Institution"), in which case the CFPB supervises it for compliance with such laws. With respect to a nondepository subsidiary of a Small Independent Depository Institution ("Nondepository Subsidiary"), the Agencies will treat the Nondepository Subsidiary as a Covered Institution for purposes of sections IV and V of the MOU, by sharing information and coordinating Covered Examinations and Covered Supervisory Activities related to the Nondepository Subsidiary. The Prudential Regulators and the CFPB will notify each other, as applicable, before engaging in a Covered Supervisory Activity or Covered Examination with respect to a Nondepository Subsidiary. If the CFPB notifies the Prudential Regulator that it will examine or take supervisory or enforcement action relating to Federal consumer financial laws against any Nondepository Subsidiary, the Prudential Regulator will defer to the CFPB on matters relating to supervision or enforcement of the Federal consumer financial laws. The CFPB and the Federal Reserve Board plan to separately memorialize their arrangements to coordinate supervisory activities related to holding companies and their subsidiaries.

C. Covered Supervisory Activities are material supervisory activities that have the purpose of evaluating the following areas at Covered Institutions:

1. Compliance with the requirements of Federal consumer financial laws; obtaining information about the activities subject to such laws and the associated compliance systems or procedures of such institutions; and detecting and assessing risks to consumers and to markets for consumer financial products and services;
2. Compliance with section 5 of the Federal Trade Commission Act, the Fair Housing Act, the Servicemembers Civil Relief Act, the Talent Amendment<sup>5</sup> and other Federal laws that are not Federal consumer financial laws and that specifically and directly regulate the manner of offering or providing, or content or terms and conditions of, any consumer financial product or service, and their implementing regulations;
3. Consumer compliance risk management programs and systems, including vendor management;
4. Underwriting, sales, marketing, servicing, collections or other activities related to consumer financial products or services;<sup>6</sup> and
5. Such other matters related to the above upon which the CFPB and a Prudential Regulator mutually agree.

D. Covered Examination means:

1. Regularly planned examinations for conducting Covered Supervisory Activities of Covered Institutions, including:
  - a. Point-in-time examinations that are scheduled in advance to occur at regular periodic intervals which yield a Covered Report of Examination;
  - b. Targeted reviews scheduled in advance as part of an Agency's continuous supervision program, the results of which will be included in a Covered Report of Examination; or

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<sup>5</sup> The Talent Amendment refers to the consumer protection provisions in section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (codified at 10 USC § 987) and its implementing regulations at 32 C.F.R. Part 232.

<sup>6</sup> Generally, other safety and soundness supervisory activities such as examinations of asset quality of lending, liquidity, financial condition and performance, capital adequacy, deposit insurance, information technology, securitization and financial and capital market operations that do not assess underwriting, sales, marketing, servicing, collections, or other activities related to consumer financial products or services are not Covered Supervisory Activities.

- c. Such other matters related to the above with respect to which the CFPB and a Prudential Regulator mutually agree.
- E. Covered Report of Examination means a report of a Covered Examination that concludes a supervisory cycle and yields a Compliance, CAMELS, or RFI rating.<sup>7</sup>
- F. Consumer financial product or service, covered person, Federal consumer financial law, and Service provider, all have the same meaning as defined in Title X of the Dodd-Frank Act.

#### **IV. Guidelines for Simultaneous and Coordinated Examinations by the CFPB and the Prudential Regulators and Other Coordinated Activities**

##### A. Coordination of Covered Examinations of Covered Institutions

1. The Prudential Regulators and the CFPB will each designate a point of contact for each Covered Institution for purposes of this MOU.
2. The Prudential Regulator and the CFPB points of contact will consult regarding the scheduling of Covered Examinations of each Covered Institution and will agree to a reasonable timetable for sharing scheduling information for the coming year (or supervisory cycle, as applicable). To carry out such consultation, the Prudential Regulator and the CFPB points of contact will share information about the scope, estimated start date and duration, and estimated staffing of each Covered Examination. Once a schedule for the year (or supervisory cycle, as applicable) has been established, the points of contact will promptly notify each other of any material changes.
3. The Prudential Regulators and the CFPB also will share with each other any Covered Examination request letters to Covered Institutions relating to Covered Examinations.
4. The Prudential Regulators and the CFPB generally will carry out Covered Examinations of Covered Depository Institutions in a simultaneous manner. For purposes of this MOU, examinations are “simultaneous” if material portions of Covered Examinations by the Prudential Regulator and the CFPB are conducted during a concurrent time period pursuant to each Agency’s procedures in order to further the objectives of this MOU, although more overlap may occur on a voluntary basis. Furthermore,

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<sup>7</sup> CAMELS ratings refer to the depository institution ratings of capital adequacy, asset quality, management, earnings, liquidity, and bank’s sensitivity to market risk assigned by the Prudential Regulators (and includes the CAMEL rating assigned by the NCUA). RFI ratings refer to the holding company ratings, including savings and loan holding companies, of risk management, financial condition, and potential impacts assigned by the Federal Reserve. This definition incorporates any superseding rating or modifications to these ratings.

portions of examinations conducted concurrently by the CFPB and a Prudential Regulator may be carried out either on-site at Covered Depository Institutions or off-site at other locations. However, consistent with the objectives of this MOU and the Agencies' supervisory responsibilities, if either the CFPB or the appropriate Prudential Regulator does not conduct a Covered Examination of a Covered Depository Institution in the same supervisory cycle, the other Agency with jurisdiction may examine the Covered Depository Institution as appropriate.

- a. Covered Examinations of Covered Depository Institutions under continuous supervision by an Agency will be considered simultaneous if one or more targeted reviews scheduled during a supervisory cycle are conducted simultaneously by the CFPB and a Prudential Regulator.
  - b. The Agencies generally will schedule Covered Examinations that occur on a point-in-time basis simultaneously.
  - c. Where one Agency examines a Covered Depository Institution as part of a program of continuous supervision, but another examines it on a point-in-time basis, the Agencies generally will schedule the point-in-time examination to occur simultaneously with at least one targeted review conducted as part of the continuous supervision carried out by the other Agency.
  - d. Nothing in this MOU shall be construed to require a Prudential Regulator and the CFPB to conduct any Covered Examination jointly.
5. Pursuant to section 1025(e)(1)(B), a Covered Depository Institution may request that Covered Examinations by the Prudential Regulator and the CFPB be conducted separately. The following process will apply to such requests.
- a. The applicable Prudential Regulator and the CFPB will notify each Covered Depository Institution of Covered Examinations that have been scheduled to occur simultaneously each year (or supervisory cycle as applicable) and such notice will provide a reasonable opportunity and time period for the institution to request that such examinations not be conducted simultaneously.
  - b. Unless a Covered Depository Institution requests a longer time period, an opt-out request will remain in effect until the next time when the CFPB and the applicable Prudential Regulator plan a simultaneous exam of that institution.

- c. A Covered Depository Institution's request for separate examinations does not prevent the Prudential Regulator and the CFPB from independently determining their examination schedules, consistent with their respective statutory authorities and responsibilities.
6. The CFPB supervisory functions are most efficiently and effectively performed when affiliated entities under its jurisdiction are examined concurrently. However, some affiliated Covered Depository Institutions are supervised by different Prudential Regulators. Consequently, there may be instances in which it is not possible to coordinate the examination schedules of multiple Agencies to achieve simultaneous reviews of all affected Covered Depository Institutions. In these instances, the CFPB may ask that an affiliated Covered Depository Institution request that it not have a simultaneous examination by the CFPB and its Prudential Regulator so that the CFPB may examine the institution concurrently with its other Covered Depository Institution affiliates.
7. The CFPB and the Prudential Regulators will share drafts of Covered Reports of Examination of Covered Institutions for comment. A "draft" for purposes of this sharing requirement means a draft in substantially the form in which the Agency intends to issue the report to a Covered Institution, pending receipt and consideration of comments from the other Agency. The receiving Agency will have at least 30 days after receipt to comment on the draft findings and conclusions concerning Covered Examinations before the issuing Agency issues the final Covered Report of Examination. When the Agency providing the draft Covered Report of Examination requests more expedited review, the receiving Agency will consider the request and promptly notify the requesting Agency whether it can be accommodated. If an Agency fails to transmit comments within 30 days of receipt of a draft Covered Report of Examination (or within an agreed-upon time period for expedited review), it will be presumed not to have any comments, and the transmitting Agency will finalize the Covered Report of Examination accordingly.
8. Prior to issuing a final Covered Report of Examination to a Covered Institution with findings and conclusions from a Covered Examination or taking a supervisory action in connection with the results of a Covered Examination, the CFPB and the Prudential Regulator shall take into consideration concerns, if any, raised in the comments made by the other Agency concerning the Covered Examination.
9. The Prudential Regulators and the CFPB will share additional information relating to Covered Examinations as they deem appropriate in order to advance the objectives of this MOU. Consistent with those objectives, additional coordination may occur on a voluntary basis subject to mutually agreed protocols between a Prudential Regulator and the CFPB.

## B. Other Coordinated Activities

1. The Prudential Regulator and the CFPB points of contact also will provide each other with the maximum practicable prior notice of any Covered Supervisory Activity that is not scheduled as part of the annual scheduling of Covered Examinations of Covered Institutions. Such notice shall reflect the scope, estimated duration, and estimated staffing of the activity.
2. Consistent with the Objectives of this MOU, additional coordination may occur on a voluntary basis subject to mutually agreed protocols between a Prudential Regulator and the CFPB.
3. The CFPB and Prudential Regulators will coordinate in connection with examinations that relate to Covered Supervisory Activities of Covered Institutions' Service providers, including consulting regarding: examination schedules; the availability and sharing of material supervisory information related to, and reports required from, such entities.

## V. Information Sharing

A. The CFPB and Prudential Regulators have executed Information Sharing Memoranda of Understanding (“Confidentiality MOUs”) that provide all Agencies with reasonable assurances that supervisory information will be treated in a confidential manner, as required by section 1022(c)(6)(B) and (C) of the Dodd-Frank Act.<sup>8</sup> Pursuant to these Confidentiality MOUs, or any superseding or amended MOU providing reasonable assurances of confidentiality, the CFPB and the respective Prudential Regulator will share the following information:

1. Material supervisory information that relates to Covered Supervisory Activities or Covered Examinations of Covered Institutions, including final versions of:
  - a. Supervisory letters or similar formal supervisory correspondence that convey the results of Covered Supervisory Activities;
  - b. Supervisory actions, including memoranda of understanding that relate to Covered Supervisory Activities; and
  - c. Appeals of material supervisory determinations that relate to Covered Supervisory Activities and the relevant Agency’s response(s).

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<sup>8</sup> The Agencies also note that confidentiality and sharing of supervisory information is addressed in their respective rules. *See, generally*, CFPB, 12 CFR Part 1070; Federal Reserve Board, 12 CFR Part 261; FDIC, 12 CFR Part 309; NCUA, 12 CFR Part 792; OCC, 12 CFR Part 4.



2. Final Reports of Examination, including any reports of examination related to safety and soundness, and reports of financial condition (and any revisions to such reports made by the Agency) that pertain to any Covered Institution, any insured depository institution with total assets of \$10 billion or less (“Small Depository Institution”), any other covered person, or any Service provider, as consistent with the respective Agency’s jurisdiction; and
  3. Other material supervisory information that the CFPB and a Prudential Regulator agree to share. The Agencies mutually recognize the benefit of cooperative approaches to Covered Supervisory Activities, including sharing additional information in connection with Covered Supervisory Activities. Consequently, the CFPB and Prudential Regulator points of contact will regularly consult about the availability and sharing of such information, including final self-assessments, action plans, and portfolio file reviews required by an Agency to be provided by Covered Institutions (as well as final Agency responses to such material).
- B. The supervisory information described in this section V generally will be shared when it is transmitted to or received from a Covered Institution or as soon as practicable thereafter. However, any final reports of examination described in section V.A.2., above, that pertain to: (a) a Small Depository Institution; (b) its affiliate (that is a covered person); or (c) its Service provider, to the extent such entities are not affiliated with a Large Depository Institution, will be provided to the CFPB by the respective Prudential Regulator upon the CFPB’s request.
- C. After receiving the information described in this section V, each Agency will make a good faith effort to communicate any comments or concerns raised by the information as soon as practicable.
- D. In addition to sharing the information described in this section V, the CFPB and the applicable Prudential Regulator, through their points of contact, agree to collaborate, cooperate, and share information in areas of common supervisory interests. To the extent practicable and as appropriate in the particular circumstances, the CFPB and the applicable Prudential Regulator each will endeavor to inform the other, in advance where feasible and otherwise as soon as practicable, of issues that may impact the supervisory interests of the other Agency.
- E. In accordance with section 1025(a)(3) of the Dodd-Frank Act, and for purposes of minimizing regulatory burden, the CFPB will, to the fullest extent possible, use reports pertaining to a Covered Institution that have been provided or required to have been provided to a Federal or State agency, and information that has been reported publicly.

## **VI. Treatment of CRA Activities**

The Prudential Regulators will routinely share CRA performance evaluation schedules as part of the annual scheduling of Covered Examinations of Covered Institutions. When a Prudential Regulator evaluates a depository institution's CRA performance, the Prudential Regulator and the CFPB may mutually agree that the Prudential Regulator will conduct the CRA evaluation, and the CFPB will conduct a Covered Examination, simultaneously. Such activities, when applicable, will be carried out pursuant to the protocols described in sections IV.A.4-5. In such cases, the Prudential Regulators will share information about "small business loans" that a Covered Institution has reported pursuant to section \_\_.42(b)(1) of the CRA regulations. However, because a CRA performance evaluation is not a Report of Examination for purposes of this MOU, it is not subject to the 30-day comment period described in section IV.A.7.

## **VII. Execution, Amendment, and Termination**

- A. This MOU is effective upon signature by representatives of all the Agencies. It may be executed in separate counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which taken together constitute one and the same Agreement. Moreover, this MOU may be amended, or additional or other protocols may be added, by mutual agreement of the parties hereto. However, unless this MOU is terminated by all the Agencies, termination by one Agency shall not affect its application to another Agency. To be effective, any termination of this MOU with respect to one Agency must be made in writing by an authorized representative of the Agency to all of the Agencies.
- B. The Agencies agree to establish a process for designated senior management personnel to resolve promptly any issues relating to carrying out this MOU.
- C. The Agencies agree to review the operation of the MOU as of the first anniversary of its execution and to consider revisions needed to better accomplish the Objectives set forth in section II.

IN WITNESS WHEREOF, the Agencies have caused this MOU to be executed by their duly authorized representatives.

Board of Governors of the Federal Reserve System

BY: Elizabeth A. Duke

Elizabeth A. Duke

Member, Board of Governors of the Federal Reserve System

DATE: 5/16/12

Consumer Financial Protection Bureau

BY: Richard Cordray

Richard Cordray  
Director

DATE: 5/3/2012

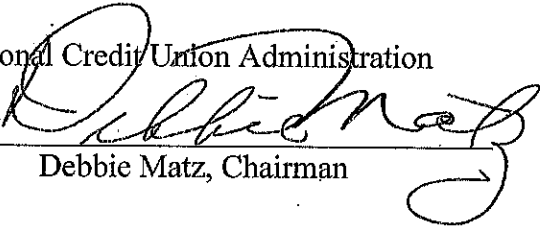
Federal Deposit Insurance Corporation

BY: Martin J. Gruenberg  
Martin J. Gruenberg  
Acting Chairman

DATE: 5/14/12

National Credit Union Administration

BY:

  
Debbie Matz, Chairman

DATE:

May 16, 2012

Office of the Comptroller of the Currency

BY: 

Thomas J. Curry

Comptroller of the Currency

DATE: 5-10-12