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Five Federal Agencies Sign Memorandum of Understanding on Coordination of Dodd-Frank Supervisory Obligations

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On June 4, 2012, the Consumer Financial Protection Bureau ("CFPB"), along with the four other federal agencies designated as Prudential Regulators — the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency — released a Memorandum of Understanding (the "Memorandum") clarifying how the five agencies will coordinate their supervision and examination of U.S. financial institutions in a manner consistent with the Dodd?Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").

Dodd-Frank provides the CFPB with exclusive authority to require reports and conduct periodic examinations of certain insured depository and non-depository institutions in coordination with the Prudential Regulators. Under Section 1024, the CFPB may undertake such activities with respect to non?depository persons covered by the Dodd-Frank Act that offer or provide residential mortgage loan origination, brokerage or servicing, private education loans or payday loans, and also non-depository covered persons that are "larger participants" in markets for other consumer financial products or services. Section 1025 provides that the CFPB may exercise supervisory authority over insured depository institutions and insured credit unions with total assets of more than $10 billion, as well as those institutions' affiliates.

Under the Memorandum, the CFPB and Prudential Regulators will coordinate their examinations of financial institutions, which shall include scheduling such examinations, conducting simultaneous examinations of depository institutions covered by Dodd-Frank unless an institution requests otherwise, and sharing draft reports of examinations for comment by the CFPB and other Prudential Regulators. The agencies will also conduct other supervisory activities and share material supervisory information concerning the following:

- Compliance with the requirements of Federal consumer financial laws and associated compliance systems or procedures in order to detect and assess risks to consumers and to markets for financial markets and services.
- Compliance with Section 5 of the Federal Trade Commission Act, the Fair Housing Act, statutes relating to credit to service members and the military, and other Federal laws that are not Federal consumer financial laws.
- Consumer compliance risk management programs and systems, including vendor management.
- Underwriting, sales, marketing, servicing, collections, and other activities related to consumer financial products or services.
- Such other matters related to the preceding upon which the CFPB and a Prudential Regulator may mutually agree.

In accordance with the applicable confidentiality requirements under Dodd-Frank, the CFPB and Prudential Regulators will circulate to each other material supervisory information including:

- Drafts and final versions of supervisory correspondence, memoranda of understanding relating to the agencies' supervisory activities, and appeals of material supervisory determinations that relate to the agencies' actions and responses.
- Drafts of Examination final reports for comment by the CFPB and other Prudential Regulators. (Any agency that receives a draft Examination final report shall have at least 30 days after receipt to comment on the draft findings and conclusions concerning an Examination before the examining agency may issue the report in its final form.)
- Final reports of Examinations, including reports of Examinations related to safety and soundness and financial condition.
- Other material supervisory information that the CFPB and a Prudential Regulator agree to share.

Notwithstanding the goals of the Memorandum, concern has been expressed that the level of enhanced supervision arising from Dodd-Frank and the CFPB will be unduly burdensome.

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