



1801 L Street NW, Washington, DC 20036

November 17, 2011

Re: Interagency Statement for Determining Asset Size of Institutions for Federal Consumer Financial Law Supervisory and Enforcement Purposes

Dear Chief Executive Officer:

The Consumer Financial Protection Bureau (CFPB), together with the federal prudential regulators, recently released the enclosed supervisory statement. The Statement explains how the total assets of an insured depository institution or insured credit union (“Institution”) will be measured for purposes of determining supervisory and enforcement responsibilities under sections 1025 and 1026 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank).

Under section 1025 of Dodd-Frank, the CFPB has exclusive examination authority and primary enforcement authority with respect to an Institution with total assets of more than \$10 billion and its affiliates for purposes of Federal consumer financial laws. Section 1026 confirms that the prudential regulators will retain supervisory and enforcement authority with respect to other institutions for these purposes.

In general, the Statement clarifies how asset size will be determined and the schedule for making such determinations under sections 1025 and 1026 of Dodd-Frank. Specifically, the Statement explains that the total asset figure reported in the quarterly Reports of Condition and Income (“Call Reports”) provides a consistent measure for determining an institution’s asset size. The Statement also establishes a schedule for determining the size of an Institution in order to reduce uncertainty about an institution’s primary supervisor with respect to the Federal consumer financial laws.

Consequently, the Agencies will initially look to June 30, 2011, Call Report data to determine an Institution’s asset size for purposes of sections 1025 and 1026 of Dodd-Frank. Thereafter, an Institution will not become a large institution for purposes of sections 1025 and 1026 unless it has reported total assets of greater than \$10 billion in its quarterly Call Report for four consecutive quarters – and, similarly, an Institution will not cease to be a large institution for such purposes unless it has reported total assets of \$10 billion or less in its quarterly Call Report for four consecutive quarters. The CFPB will have exclusive examination



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authority and primary enforcement authority for a large Institution and its affiliates according to this schedule.

An important commitment of the CFPB is to provide clear and transparent information regarding our supervision program. Toward that end, please do not hesitate to contact David Evans, Consumer Financial Protection Analyst, at (202) 435-7691 or david.evans@cfpb.gov if you have any questions about these matters.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'S. Antonakes', is written in a cursive style. The signature is positioned above the printed name of the signatory.

Steven L. Antonakes

Assistant Director, Large Bank Supervision

Enclosure

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

The Federal Deposit Insurance Corporation (FDIC), Federal Reserve Board (FRB), Office of the Comptroller of the Currency (OCC), and National Credit Union Administration (NCUA) (the Prudential Regulators), and the Bureau of Consumer Financial Protection (CFPB) (collectively, the Agencies), are issuing this Supervisory Statement to provide clarity and transparency on how and when the Agencies will determine the total assets of an insured depository institution or an insured credit union for purposes of their supervisory and enforcement responsibilities under sections 1025 and 1026 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank).

Background

The subject of this Supervisory Statement is supervisory and enforcement authority over insured depository institutions and insured credit unions within the meaning of Dodd-Frank (Institutions) with respect to Federal consumer financial law. Sections 1025 and 1026 of Dodd-Frank address these matters. Under section 1025, the CFPB has exclusive supervisory authority and primary enforcement authority with respect to Institutions with total assets of more than \$10 billion (Large Institutions) and any of their affiliates for purposes of Federal consumer financial law. Section 1026 confirms that the Prudential Regulators will retain supervisory and enforcement authority with respect to other Institutions for these purposes.

The Dodd-Frank Act does not specify how or when to determine total asset size for purposes of sections 1025 and 1026. However, the Agencies believe that they should adopt reasonable policies and procedures that will allow them to fulfill their responsibilities in a manner consistent with the statute's purposes. Therefore, the Agencies believe that a common measure that sets forth how the asset size of an Institution will be assessed would be useful for purposes of implementing their supervisory and enforcement responsibilities in accordance with sections 1025 and 1026. The Agencies also believe that supervised Institutions and the public would benefit from greater clarity regarding how the Agencies expect to carry out their respective supervisory and enforcement responsibilities.

Consistent with these objectives, including regulatory burden reduction, the Agencies also believe that frequent periodic assessments for determining asset size are not optimal going forward. For purposes of assessing whether an Institution is large or not, point-in-time measures that are made on a frequent basis would lead to uncertainty about the identity of the principal supervisor with respect to Federal consumer financial law in the case of Institutions with assets close to the \$10 billion threshold, since such Institutions' asset sizes will likely change over time. Moreover, frequent periodic assessments could result in a sudden shift in an Institution's principal supervisor with respect to Federal consumer financial law, thereby imposing potential increased regulatory burden on the Institution and potentially interfering with the orderly implementation of the Agencies' responsibilities with respect to Federal consumer financial law.

Determination of Total Assets for Institutions Under Sections 1025 and 1026 of Dodd-Frank

To determine total asset size for purposes of sections 1025 and 1026 of Dodd-Frank, the Agencies have looked to existing measures that are used to determine asset size for other purposes. The most common measure of the asset size of an insured depository institution is the total assets reported in the Institution's quarterly reports of condition, or Call Reports, which are required to be filed pursuant to section 7(a)(3) of the Federal Deposit Insurance Act.¹ The Agencies believe that it is appropriate to use Call Report data to determine an Institution's asset size for purposes of sections 1025 and 1026 of Dodd-Frank.²

The Agencies also believe that they need to adopt a method of measuring asset size that will not create unwarranted levels of uncertainty or short-term volatility regarding the identity of any Institution's primary supervisor with respect to Federal consumer financial law. Such a method already has been adopted and is in effect for all insured depository institutions for purposes of FDIC deposit insurance assessments. The FDIC recognizes an insured depository institution as a "Large Institution" for these purposes if it reports assets of \$10 billion or more in its quarterly Call Report for four consecutive quarters. If the insured depository institution meets this criterion, it is reclassified as a Large Institution for such purposes beginning in the following quarter. The Agencies believe that this common standard is appropriate to adapt for use in determining the asset size of an Institution for purposes of sections 1025 and 1026.

The June 30, 2011 Call Report data represent uniformly reported data for Institutions on the reporting date closest to the date that authority for the Federal consumer protection laws was transferred to the CFPB. Consequently, the Agencies will look to June 30, 2011, Call Report data to determine an Institution's asset size for purposes of sections 1025 and 1026 of Dodd-Frank initially. Thereafter, an Institution will not become a Large Institution for purposes of sections 1025 and 1026 unless it has reported total assets of greater than \$10 billion in its quarterly Call Report for four consecutive quarters – and, similarly, an Institution will not cease to be a Large Institution for such purposes unless it has reported total assets of \$10 billion or less in its quarterly Call Report for four consecutive quarters. Thus, as a general matter:

- If an Institution had total assets of greater than \$10 billion as of June 30, 2011, and subsequently reported total assets of \$10 billion or less for four consecutive quarters, the Institution would no longer be subject to the CFPB's supervisory or enforcement authority as a Large Institution, beginning in the following quarter. To illustrate, an Institution with total assets of more than \$10 billion as of June 30, 2011, would be subject to the CFPB's supervision and enforcement authority with respect to Federal consumer financial law, regardless of its previous asset size. If it subsequently reported total assets below \$10 billion for the next four consecutive quarterly Call

¹ See 12 CFR 327.8 (b).

² The total assets of an insured credit union would be determined using quarterly call reports required to be filed with the NCUA pursuant to 12 CFR 741.6 (a)(2).

Reports (September 30, 2011, December 31, 2011, March 31, 2012 and June 30, 2012), the Institution would no longer be subject to the CFPB's supervisory or enforcement authority as a Large Institution, starting July 1, 2012.

- If an Institution had total assets of \$10 billion or less as of June 30, 2011, and subsequently reported total assets in excess of \$10 billion in four consecutive quarterly Call Reports, the Institution would become subject to the CFPB's supervisory and enforcement authority as a Large Institution with respect to Federal consumer financial law beginning in the following quarter.
- If, in the case of an acquisition, merger, or combination involving an Institution occurring after June 30, 2011, where each of the constituent entities has total assets of \$10 billion or less before the transaction, the Agencies will review the combined assets of the constituent entities for the four quarters prior to the transaction to determine if the resulting Institution is a Large Institution as necessary. For example, if two Institutions merge, and neither constituent Institution has total assets of greater than \$10 billion, the resulting Institution generally would be subject to the CFPB's supervisory and enforcement authority with respect to Federal consumer financial law beginning in the first full quarter after the merger is consummated if the combined total assets reported by the two Institutions were more than \$10 billion in each of the four consecutive quarterly Call Reports prior to the merger. However, if the combined total assets reported by the two Institutions were not more than \$10 billion in each of the four consecutive quarterly Call Reports prior to the merger, the resulting Institution would not be considered a Large Institution subject to the CFPB's supervisory and enforcement authority with respect to Federal consumer financial law. Subsequently, the resulting Institution would become subject to the CFPB's supervisory and enforcement authority with respect to Federal consumer financial law as a Large Institution if it has reported total assets of greater than \$10 billion in its quarterly Call Report for four consecutive quarters.