



# JONES DAY COMMENTARY

## CONSUMER FINANCIAL PROTECTION BUREAU'S MEMORANDUM OF UNDERSTANDING IS A FIRST STEP TOWARD EFFICIENCY

On January 4, 2011, the Consumer Financial Protection Bureau (“CFPB”), through its sponsors in the Treasury Department, and the Conference of State Bank Supervisors (“CSBS”) signed a memorandum of understanding (“MOU”) relating to information sharing and coordinated regulatory efforts. The framework of the MOU, if all relevant state agencies become signatories, likely will lead to increased efficiency for the regulators and decreased compliance costs for the regulated entities. The MOU also likely will assist in continuing the trend of multistate and multi-agency enforcement actions against violators, especially if state attorneys general sign similar agreements. Companies should take action now to determine which state laws and regulations will apply to them after the CFPB Transfer Date of July 21, 2011 and to ensure compliance with those laws.

### MOU

The purpose of the MOU is to establish a framework for coordination of the supervision and regulation of

providers of consumer financial products and services. Although the CFPB press release stated that the MOU applied to “non-depository mortgage lenders, mortgage servicers, private student lenders, and payday lenders,” these types of institutions are not explicitly referenced in the agreement.

The parties agreed to:

- Coordinate and share information regarding the practices used by state regulators for onsite and offsite examinations, information requests, and training programs (including annual meetings regarding procedures);
- Efficiently use the resources of the CFPB and CSBS, including the coordination of supervisory activities;
- Promote efficient information sharing from both supervisory activities and customer complaints;
- Effectively enforce federal consumer financial laws and state consumer protection laws; and
- Minimize the regulatory burden on multistate providers of consumer financial products.

## EFFECT OF AGREEMENT

The MOU likely will lead to considerable efficiencies for the CFPB as it executes its role as the primary supervisor and examiner “over non-depository institutions that broker, originate or service mortgage and home equity loans” pursuant to Dodd-Frank. In addition, the compliance burden on these non-depository institutions should lessen if the state and federal regulators succeed in setting uniform examination standards and coordinate their examination activities.

To maximize the potential compliance benefit to the regulated entities, the CFPB and CSBS must secure all applicable state regulatory agencies, including attorneys general, as signatories to the agreement. In certain states, including California and Texas, non-depository mortgage lenders are regulated by a separate agency from depository institutions. In other states, the respective attorneys general have primary regulatory authority over, for example, payday lenders. Enabling uniform cooperation among all state agencies with supervisory or examination authority will greatly diminish industry concern regarding multiple regulators.

The greatest initial impact from the MOU, however, likely will be in the area of enforcement. The MOU calls for both the exchange of information obtained during compliance reviews and information received from consumer complaints. Such sharing of information likely will lead to an increase in coordinated regulatory or enforcement action against violators. By means of this MOU, the appointment of former Ohio Attorney General Richard Cordray as the CFPB’s enforcement director, and other ongoing cooperative efforts between the Bureau and state attorneys general, the CFPB has signaled its intention to use these partnerships to strengthen both their hands. Thus, it would not be surprising to see state attorneys general sign this or a similar information sharing agreement to take full advantage of such coordinated efforts.

## WHAT COMPANIES SHOULD DO NOW

Companies that provide consumer financial products and services should conduct a review of state statutes and regulations covering their products to determine applicability and assess compliance prior to July 21, 2011. For a more detailed discussion of the Dodd-Frank Act’s changes to preemption standards and procedural requirements, please refer to Jones Day’s White Paper on the Dodd-Frank Act (*available at [www.jonesday.com/financial\\_reform\\_Dodd-Frank](http://www.jonesday.com/financial_reform_Dodd-Frank)*).

## LAWYER CONTACTS

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our “Contact Us” form, which can be found at [www.jonesday.com](http://www.jonesday.com).

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