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The Curious Case of Dodd–Frank, Section 1025(e)

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KEY TAKEAWAYS

Section 1025(e) of the Dodd–Frank Act gives larger banks the option of simultaneous examination and protection from retaliation by federal regulators.

A 2012 agreement between the Consumer Financial Protection Bureau (CFPB) and other regulators undermines the meaning and original intent of this section.

It is well past time for the CFPB to execute Dodd–Frank, Section 1025(e) as written.

In early 2009, Congress and the Obama Administration began to consider a legislative response to the financial crisis of 2008. On June 17, 2009, the Treasury Department issued a white paper outlining its financial regulatory reform proposals, including a proposal to create a Consumer Financial Protection Agency (CFPA).[1] On June 30, 2009, the Treasury Department delivered to Congress the Consumer Financial Protection Act of 2009, a draft bill to implement most of the features of the CFPA proposed in its white paper.[2] On July 8, 2009, Representative Barney Frank (D–MA), the Chairman of the House Committee on Financial Services, introduced H.R. 3126, a bill that initially closely tracked the Treasury Department's draft bill.[3] However, on September 22, 2009, Chairman Frank distributed a memorandum to fellow Democratic members of the Financial Services Committee outlining "possible changes to the proposed CFPA."[4] Among these changes was the following provision:

> Simultaneous and Coordinated Exams—Depository institutions will have *simultaneous federal safety and soundness and consumer compliance examinations* (unless they request exams at different times). Whatever they choose, the banking agencies and CFPA will have to coordinate and consult one another on the timing, scope and results of exams to ensure a minimum regulatory burden.[5] (Emphasis added.)

Three days later, on September 25, 2009, Chairman Frank circulated a discussion draft of the CFPA that incorporated the changes he had proposed in his memorandum, including a new provision requiring the simultaneous and coordinated examination of depository institutions. Following committee markup hearings that began on October 8, 2009,[6] substantively identical versions of the Chairman's provision were included in both H.R. 3126[7] (as Section 124) and H.R. 4173[8] (initially as Section 4204). The Chairman's provision then survived Senate and conference committee consideration of the legislation, and it was ultimately enacted as Section 1025(e) of Dodd–Frank on July 21, 2010.[9]

Dodd–Frank's Careful Division of Supervisory Responsibilities

Dodd–Frank created the Consumer Financial Protection Bureau (CFPB) and assigned it general responsibility for "supervising covered persons for compliance with Federal consumer financial law."[10] With respect to depository institutions, Dodd–Frank carefully divided supervisory authority between the CFPB and the prudential regulators—the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Federal Reserve Bank, and the National Credit Union Administration (NCUA).[11] The prudential regulators retained exclusive authority to supervise depository institutions with total assets of $10 billion or less for both safety and soundness and consumer compliance.[12] However, with respect to depository institutions with greater than $10 billion in total assets ("larger institutions"), Congress transferred the "consumer financial protection functions" of the prudential regulators to the CFPB.[13] These functions included the "exclusive authority"[14] to examine these institutions in order to assess compliance with specifically enumerated "Federal consumer financial laws,"[15] obtain information about their compliance systems and procedures, and detect and assess associated risks to consumers and markets.[16] Congress did not transfer all prudential regulators' supervisory authority to the CFPB, though; the prudential regulators retained exclusive

authority to supervise the larger institutions within their respective jurisdictions for safety and soundness concerns and certain other laws, including Section 5 of the Federal Trade Commission Act, the Fair Housing Act, the Servicemembers Civil Relief Act, and the Talent Amendment.[17]

Recognizing that this new oversight structure would create a situation in which multiple federal agencies would examine the same depository institutions—prudential regulators examining for safety and soundness on the one hand, and the CFPB examining for compliance with federal consumer financial laws on the other—Congress included certain measures in Dodd–Frank intended to minimize the cumulative regulatory burden on these institutions. For instance, Dodd–Frank, Section 1025(b)(2) states that the CFPB "shall coordinate its supervisory activities with the supervisory activities conducted by the prudential regulators," including by engaging in consultation regarding their respective examination schedules and requirements regarding reports to be submitted by the larger institutions.[18] Additionally, Congress required that the CFPB use "to the fullest extent possible" publicly available information and existing reports pertaining to the larger institutions that have been provided to a federal or state agency.[19]

Dodd–Frank, Section 1025(e)

Now to the curious case of Dodd–Frank, Section 1025(e).[20] This subsection is organized into four paragraphs. The first paragraph requires that a prudential regulator and the CFPB "coordinate the scheduling of examinations" of larger institutions.[21] Additionally, the agencies "shall... conduct simultaneous examinations of each [institution], unless such institution requests examinations to be conducted separately."[22] Each agency must also "share each draft report of examination with the other agency and permit the receiving agency [at least 30 days] to comment on the draft report before such report is made final."[23] And, prior to issuing a final report of examination or taking supervisory action, each agency must "take into consideration concerns, if any, raised in the comments made by the other agency."[24]

In the second paragraph, Congress requires the CFPB to pursue agreements with state bank supervisors "to coordinate examinations, consistent with [the first] paragraph."[25] Such agreements would presumably address the simultaneous CFPB–state examination of each state-chartered depository institution with greater than $10 billion in total assets, unless such institution requests such examinations to be conducted separately, consistent with paragraph (1) of Section 1025(e).[26]

In the third paragraph, Congress sets forth a mechanism for reconciling conflicts that may arise between the CFPB and a prudential regulator during the simultaneous examination of an institution.[27] Once the agencies exchange their draft reports of examination and raise potential concerns, if the proposed supervisory determinations of the CFPB and a prudential regulator are "conflicting," the institution "may request the agencies to coordinate and present a joint statement of coordinated supervisory action."[28] If an institution requests this joint statement, the agencies are required to provide it within 30 days.[29]

In the fourth paragraph, Congress provides a mechanism by which depository institutions may enforce the requirements imposed on the agencies by paragraph three. If the CFPB and the prudential regulator do not resolve conflicting proposed supervisory determinations, or fail to issue a joint statement of coordinated supervisory action when requested, or if either of the agencies takes or attempts to take any supervisory action relating to the request for the joint statement without the consent of the other agency, Congress grants the institution the right to institute an appeal to an "independent governing panel."[30] The governing panel is comprised of three individuals: (1) a representative from the CFPB, (2) a representative from the prudential regulator involved in the examination, and (3) a representative, to be determined on a rotating basis, from one of the other prudential agencies not involved in the dispute.[31] The representative from the CFPB and the prudential regulator involved in the dispute cannot have participated in the supervisory determinations under appeal and cannot directly or indirectly report to any person who was involved.[32] The governing panel must provide the appealing institution with a final determination by majority vote of its members within 30 days, unless the institution agrees to allow more time.[33] To ensure that the CFPB and the prudential regulators do not retaliate against an institution for instituting an appeal, Congress provided that the agencies "shall prescribe rules to provide safeguards from retaliation" against the institution and its officers and employees.[34]

The Effort to Undermine the Plain Meaning of Section 1025(e) and Chairman Frank's Stated Intent

While Congress provided robust rights and protections for institutions in paragraphs three and four of Section 1025(e), these rights and protections logically applied only to the simultaneous examination process. Congress clearly vested larger institutions with the right to decide whether examinations would occur simultaneously or separately. After all, there is only

one statutory exception to the default requirement that all examinations of larger institutions be conducted simultaneously: where a larger institution specifically requests examinations to be conducted separately. In other words, absent an affirmative action by an institution, the agencies are obligated to conduct simultaneous examinations. Given this requirement, it might have been expected that once the CFPB opened its doors in July 2011, it would expressly coordinate and align its examination schedule with the prudential regulators such that the agencies would be able to credibly offer larger institutions their statutory right to decide whether to decouple scheduled simultaneous examinations. However, this would not come to pass.

In May 2012, the CFPB and the prudential regulators entered into a Memorandum of Understanding (MOU) on Supervisory Coordination.[35] One objective of the MOU, according to the agencies, was to

> [a]ddress 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.[36]

In relevant part, the MOU established the following guideline for simultaneous examinations by the CFPB and the prudential regulators:

> 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.... 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.[37]

The MOU defined a "covered examination" as a "regularly planned examination for conducting Covered Supervisory Activities of Covered Institutions."[38] "Covered supervisory activities," in turn, were defined as "material supervisory activities that have the purpose of evaluating" certain

specified areas.[39] These specified areas included, for instance, compliance with the requirements of federal consumer financial laws; Section 5 of the Federal Trade Commission Act; the Fair Housing Act; and "underwriting, sales, marketing, servicing, collections, or other activities related to consumer financial products or services."[40] However, a footnote to this definition provided a broad exception from the definition of covered supervisory activities:

> 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…consumer financial products or services are not Covered Supervisory Activities.[41]

Thus, the CFPB and the prudential regulators definitionally excluded most safety and soundness examinations from Section 1025(e)'s simultaneous examination requirement. The agencies purport to justify this exclusion by claiming that it is consistent with their supervisory responsibilities and other objectives identified in the MOU, such as ensuring that they effectively and efficiently carry out their respective responsibilities. However, the agencies cite no legal authority to support the exclusion, and indeed the text and plain meaning of Dodd–Frank provides none.[42] To the contrary, Section 1025(e) requires simultaneous supervisory action without regard to the subject matter of the examinations, a conclusion that is buttressed by Chairman Frank's stated intent that "[d]epository institutions will have *simultaneous federal safety and soundness and consumer compliance examinations.*"[43] (Emphasis added.)

Additionally, the agencies purported to determine for themselves when simultaneous examinations are required. Under the statute, it is a larger institution's prerogative to request separate examinations; absent such a request, all scheduled examinations by the CFPB and a prudential regulator "shall" occur at the same time.[44] In other words, Congress gave the agencies no discretion in the matter; it is mandatory absent a decision made outside their control. However, the agencies' MOU instead asserted that examinations are "simultaneous" only if they "are *conducted* during a concurrent time period."[45] (Emphasis added.) Thus, the agencies asserted discretion to conduct separate examinations, *even where an institution does not request them*, simply by agreeing amongst themselves to schedule their examinations during different supervisory cycles. This assertion effectively nullifies Section 1025(e).

The Unsurprising Result. In June 2015, the Inspectors General for the Federal Reserve, the CFPB, the FDIC, the OCC, and the NCUA released a report detailing the findings of their limited-scope review of coordination between the CFPB and the prudential regulators.[46] The report noted that the agencies had entered into the MOU in May 2012 and, not surprisingly, found that the agencies conducted only "a limited number of simultaneous examinations."[47] The report also noted that there was no framework in place to address conflicting supervisory determinations, and that none of the regulators were aware of any such determinations made during the limited number of simultaneous examinations, meaning that no institution had ever exercised its appeal rights.[48] In response, the agencies offered the Inspectors General several reasons why conducting simultaneous examinations was challenging. For instance, they stated that the CFPB's role and interagency coordination activities are still evolving; there is limited jurisdictional overlap between examinations; exam scheduling is driven by different considerations; examinations occur at different time intervals; the CFPB has limited flexibility to adjust its examination dates; there may be resource constraints; and there is concurrent supervisory oversight of only a small number of credit unions.[49]

Even assuming that these concerns were valid (and remain so), they do not excuse the agencies from following the law as written. It is doubtful that any of the agencies would accept an "it's too difficult to comply with the law" defense from a depository institution in an examination. The agencies can request that Congress amend or repeal Section 1025(e) to the extent that they believe that compliance with it is unreasonably difficult or impossible, but there is no indication that they have done so. In the meantime, the agencies are effectively denying approximately 153 depository institutions[50] the statutory rights and protections to which Congress entitled them.

What Can Be Done to Resolve the Curious Case of Dodd–Frank, Section 1025(e)?

It is not surprising that little progress has been made in implementing Dodd–Frank, Section 1025(e) over the past decade. On the one hand, the CFPB and prudential regulators naturally wish to maintain their own autonomous supervisory programs, but if a meaningful number of larger institutions began to assert their right to simultaneous examinations by declining to request separate examinations, the agencies would be required to significantly revise and standardize their exam prioritization and scheduling processes. Thus, bureaucratic inertia, coupled with strong institutional

incentives, explain the agencies' reticence to implement Section 1025(e). On the other hand, larger institutions and banking trade associations do not appear to have made the implementation of Section 1025(e) a policy priority. This is likely because under present circumstances, most larger institutions naturally prefer separate examinations by the CFPB and their prudential regulators, and even those that would prefer simultaneous examinations do not insist on them because they fear retaliation by their examiners.

However, circumstances could change. For instance, in the future a CFPB under different leadership could take a hyper-aggressive approach to supervision, and also interpret the requirements of federal consumer financial law in ways that are at odds with court precedent or settled agency guidance.[51] In such a hypothetical situation, given that such proceedings are non-public and remain confidential, a larger institution may consider whether to insist on simultaneous examinations, whereby the CFPB's preliminary examination findings must be shared with the institution's prudential regulator, and to the extent that the CFPB's view of the law conflicts with the prudential regulator's view, the institution may appeal the CFPB's conflicting preliminary findings to the independent governing panel for review and resolution. The prospect of potential review of exam findings by one, and as many as two, other supervisory agencies may deter an agency from going rogue, and thereby help to promote the consistent administration of law by federal financial regulators.

Nevertheless, agencies committed to the rule of law must eventually grapple with Dodd–Frank, Section 1025(e) as written. To make meaningful progress toward implementing this statute, the CFPB and the prudential regulators can take three meaningful initial steps:

1. **The agencies must promulgate the anti-retaliation rules required by Dodd–Frank, Section 1025(e)(4)(E).** Only with these protections in place can paragraphs three and four of Section 1025(e) operate as intended by Congress.

2. **The agencies can revise the 2012 Supervisory MOU to ensure compliance with Section 1025(e).** The revised MOU should state that, in accordance with Section 1025(e)(1)(B), unless a larger institution specifically requests separate examinations, *all* examinations (including safety and soundness examinations) of larger institutions by the CFPB and prudential regulators will be conducted simultaneously (meaning, at the same time). The revised MOU should then establish the formal process by which an institution may request that

the agencies conduct planned simultaneous examinations separately. At a minimum, institutions must be given (1) a reasonable period of time within which to decide whether to submit a request; (2) sufficient information to make an informed decision regarding the request, including the purpose and scope of the planned examinations; and (3) adequate assurances that where an institution does not request separate examinations before the expiration of the decision period (thereby resulting in simultaneous examinations of that institution), such inaction will not be held against the institution by the agencies' examiners.

3. **The CFPB could recommit to fulfill its obligation under Section 1025(e)(2) to pursue agreements with state bank supervisors to coordinate examinations, consistent with Section 1025(e)(1),** including by conducting simultaneous examinations of state-chartered depository institutions with greater than $10 billion in assets unless such institutions request separate examinations.[52]

Of course, if the agencies decline to take these steps, additional actions could be taken by other parties. For instance, an interested party may file a petition for rulemaking with the agencies under the Administrative Procedure Act (APA) asking the agencies to promulgate Section 1025(e)(4)(E)'s mandatory anti-retaliation safeguards. A party with standing may also file a complaint for declaratory and injunctive relief under the APA for unlawfully withholding and unreasonably delaying agency action due to the agencies' failure to promulgate the mandatory rules.[53]

As another example, an interested Member of Congress could request an audit by the Government Accountability Office or a full-scope review by the Inspectors General for the CFPB and the prudential regulators to determine whether the agencies are complying with Section 1025(e). And finally, as a result of the U.S. Supreme Court's recent decision in *Seila Law*, the President (through the Office of Management and Budget) could order the CFPB Director to implement Section 1025(e).

Conclusion

Chairman Frank made perfectly clear that the purpose of permitting larger depository institutions to choose between simultaneous or separate federal safety-and-soundness and consumer compliance examinations is to "ensure a minimum regulatory burden." Dodd–Frank, Section 1025(e)

effectuates Chairman Frank's intent by giving institutions that choice, by requiring agencies conducting simultaneous examinations to exchange preliminary exam findings, and by enabling institutions to appeal from conflicting findings to an independent governing panel, free from the fear of retaliation by examiners.

Over the past decade, federal financial regulators have largely ignored these statutory requirements. While there is much to debate on Dodd–Frank itself, especially the wisdom of Congress in continuing to abandon its powers to a vast and often unaccountable administrative state, there should be no debate regarding the obligation of federal agencies to execute the law as written. It is well past time for the CFPB and federal prudential regulators to resolve the curious case of Dodd–Frank, Section 1025(e).

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Endnotes

1. U.S. Department of the Treasury, "Financial Regulatory Reform, A New Foundation: Rebuilding Financial Supervision and Regulation," undated, pp. 7, 14, 15, and 55–71, https://www.treasury.gov/initiatives/Documents/FinalReport_web.pdf (accessed November 5, 2020).
2. News release, "Administration's Regulatory Reform Agenda Moves Forward: Legislation for Strengthening Consumer Protection Delivered to Capitol Hill," U.S. Department of the Treasury, June 30, 2009, https://www.treasury.gov/press-center/press-releases/Pages/tg189.aspx (accessed November 4, 2020), and "Title X—Consumer Financial Protection Agency Act of 2009," draft bill, https://www.llsdc.org/assets/DoddFrankdocs/adm-bill-t10.pdf (accessed November 4, 2020).
3. Consumer Financial Protection Agency Act of 2009, H.R. 3126, 111th Cong., https://www.congress.gov/bill/111th-congress/house-bill/3126?q=%7B%22search%22%3A%5B%22H.R.+3126%22%5D%7D&s=3&r=1 (accessed November 5, 2020).
4. See, for example, Rachelle Younglai, "Text: Excerpts from Lawmaker's Memo on Consumer Agency," Reuters, September 22, 2009, https://www.reuters.com/article/us-financial-regulation-text-sb/text-excerpts-from-lawmakers-memo-on-consumer-agency-idUKTRE58L6QT20090922 (accessed November 5, 2020), and Silla Brush, "Rep. Frank Tweaks Consumer Financial Agency Legislation," *The Hill*, September 22, 2009, https://thehill.com/business-a-lobbying/59881-rep-frank-touts-support-for-financial-agency (accessed November 4, 2020).
5. Younglai, "Text: Excerpts from Lawmaker's Memo on Consumer Agency."
6. News release, "Committee to Begin Consideration of Financial Regulatory Reform Legislation," U.S. House Committee on Financial Services, October 8, 2009, https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=382763 (accessed November 5, 2020).
7. Consumer Financial Protection Agency Act of 2009, H.R. 3126, 111th Cong., § 124 (2009), https://www.congress.gov/bill/111th-congress/house-bill/3126 (accessed November 12, 2020).
8. Dodd–Frank Wall Street Reform and Consumer Protection Act, H.R. 4173, 111th Cong., § 4204 (2009), https://www.congress.gov/bill/111th-congress/house-bill/4173 (accessed November 12, 2020).
9. Public Law No. 111–203, now codified at 12 U.S. Code 5515(e).
10. Section 1021(c)(4), now codified at 12 U.S. Code 5511(c)(4). See also Section 1012(a)(10), now codified at 12 U.S. Code 5492(a)(10): "The Bureau is authorized to establish the general policies of the Bureau with respect to…implementing the Federal consumer financial laws through…examinations."
11. See Section 1001(24), now codified at 12 U.S. Code 5481(24).
12. Sections 1061(c)(1)(B) and 1026, now codified at 12 U.S. Code 5581(c)(1)(B) and 5516. The CFPB may include examiners on a sampling basis of the examinations performed by prudential regulators to assess compliance with the requirements of federal consumer financial law and to require reports from institutions with $10 billion or less in total assets in limited contexts. See 1026(b), (c), now codified at 12 U.S. Code 5516(b), (c).
13. Section 1061, now codified at 12 U.S. Code 5581.
14. Section 1025(b)(1), now codified at 12 U.S. Code 5515(b)(1).
15. Section 1002(12), (14), now codified at 12 U.S. Code 5481(12), (14).
16. Section 1025(b), now codified at 12 U.S. Code 5515(b).
17. The Talent Amendment refers to section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (codified at 10 U.S. Code § 987) and its implementing regulations at 32 CFR Part 232.
18. Section 1025(b)(2), now codified at 12 U.S. Code 5515(b)(2).
19. Section 1025(b)(3), now codified at 12 U.S. Code 5515(b)(3). The CFPB is also specifically granted "access to any report of examination or financial condition made by a" prudential regulator. See Section 1022(c)(6), now codified at 12 U.S. Code 5512(c)(6).
20. As a possible indication of the importance that Congress placed on Section 1025(e), it is one of only three provisions within Subtitle B of Dodd–Frank that became effective immediately, on July 21, 2010. These provisions were the CFPB's rulemaking authority, its nonbank supervisory authority, and Section 1025(e) (but not the remainder of its large-bank supervisory authority under Section 1025(a)-(d)). All other general powers of the CFPB under Subtitle B became effective a year later, on July 21, 2011.
21. Section 1025(e)(1)(A), now codified at 12 U.S. Code 5515(e)(1)(A).
22. Section 1025(e)(1)(B), now codified at 12 U.S. Code 5515(e)(1)(B).
23. Section 1025(e)(1)(C), now codified at 12 U.S. Code 5515(e)(1)(C).
24. Section 1025(e)(1)(D), now codified at 12 U.S. Code 5515(e)(1)(D).
25. Section 1025(e)(2), now codified at 12 U.S. Code 5515(e)(2).

26. The CFPB is party to several agreements with the Conference of State Bank Supervisors governing the coordination and conduct of supervisory activities, including activities relating to larger institutions, but these agreements to do not address simultaneous examinations of these institutions. See, for example, Consumer Financial Protection Bureau, "Memorandum of Understanding Between the Consumer Financial Protection Bureau, the Conference of State Bank Supervisors, and Other Signatories Hereto on the Sharing of Information for Consumer Protection Purposes," January 4, 2011, https://www.csbs.org/sites/default/files/2017-11/CFPB%20CSBS%20MOU.pdf (accessed November 6, 2020), and Consumer Financial Protection Bureau, "2013 CFPB–State Supervisory Coordination," May 7, 2013, https://files.consumerfinance.gov/f/201305_cfpb_state-supervisory-coordination-framework.pdf (accessed November 6, 2020).
27. Section 1025(e)(3), now codified at 12 U.S. Code 5515(e)(3).
28. Ibid., subparagraph (A).
29. Ibid., subparagraph (B).
30. Section 1025(e)(4)(A), now codified at 12 U.S. Code 5515(e)(4)(A). The appeal process does not apply to a determination by a prudential regulator to appoint a conservator or receiver for an insured depository institution or a liquidating agent for an insured credit union, as the case may be, or a decision to take action pursuant to Section 38 of the Federal Deposit Insurance Act (12 U.S. Code) or Section 212 of the Federal Credit Union Act (12 U.S. Code 1790a), as applicable. See 1025(e)(4)(F), now codified at 12 U.S. Code 5515(e)(4)(F).
31. Section 1025(e)(4)(B), now codified at 12 U.S. Code 5515(e)(4)(B).
32. Ibid.
33. Section 1025(e)(4)(C)(ii)(II), now codified at 12 U.S. Code 5515(e)(4)(C)(ii)(II). The governing panel must publish such final determinations, with appropriate redactions of information that would be exempt from publication under the Freedom of Information Act (5 U.S. Code 552). See Section 1025(e)(4)(D), now codified at 12 U.S. Code 5515(e)(4)(D).
34. Section 1025(e)(4)(E), now codified at 12 U.S. Code 5515(e)(4)(E).
35. Consumer Financial Protection Bureau, "Memorandum of Understanding on Supervisory Coordination," May 16, 2012, https://files.consumerfinance.gov/f/201206_CFPB_MOU_Supervisory_Coordination.pdf (accessed November 6, 2020).
36. Ibid., p. 2.
37. Ibid., p. 5.
38. Ibid., pp. 4 and 5.
39. Ibid., p. 4.
40. Ibid.
41. Ibid., p. 4, fn. 6.
42. Dodd–Frank provides no express authority for federal agencies to alter the requirements of Section 1025(e) by MOU. While Dodd–Frank does not define the word "simultaneous," it is commonly defined to mean "Happening, existing, or done *at the same time*."(Emphasis added.) *The American Heritage Dictionary of the English Language*, 5th Ed., https://ahdictionary.com/word/search.html?q=simultaneous (accessed November 6, 2020). Dodd–Frank uses the words "simultaneous" or "simultaneously" in five instances outside Section 1025(e), and each use of the word describes an action taken, or event occurring, at the same time. See Section 210(c)(8)(D)(v)(I), now codified at 12 U.S. Code 5390(c)(8)(D)(v)(I); Section 719(b)(2), now codified at 15 U.S. Code 8307(b)(2); Section 737(a)(4), now codified at 7 U.S. Code 6a(a)(4)(B) and 6a(a)(5)(B)(ii); and Section 1463(a), now codified at 12 U.S. Code 2605(l)(4).
43. Younglai, "Text: Excerpts from Lawmaker's Memo on Consumer Agency."
44. Section 1025(e)(1)(A), now codified at 12 U.S. Code 5515(e)(1)(A).
45. Consumer Financial Protection Bureau, "Memorandum of Understanding on Supervisory Coordination," p. 5.
46. U.S. Department of the Treasury, Offices of Inspector General, "Coordination of Responsibilities Among the Consumer Financial Protection Bureau and the Prudential Regulators—Limited Scope Review," June 2015, https://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIG-CA-15-017.pdf (accessed November 6, 2020).
47. Ibid., p. 6.
48. Ibid., pp. 8 and 9.
49. Ibid., pp. 6 and 7.
50. The CFPB publishes a list of depository institutions and affiliates subject to its Section 1025 supervisory authority based on asset data reported in Call Reports. (The FDIC requires every national bank, state member bank, insured state nonmember bank, and savings association to submit quarterly Reports of Condition and Income, also known as Call Reports). For more information, and for the current list based on June 30, 2020, Call Report data, see Consumer Financial Protection Bureau, "Institutions Subject to CFPB Supervisory Authority," https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/institutions/ (accessed November 12, 2020).

51. This has happened in the past. See, for example, Brian Johnson, "RESPA Section 8—the CFPB and the President Should Act Now to Restore the Rule of Law," Heritage Foundation *Backgrounder* No. 3514, July 28, 2020, https://www.heritage.org/sites/default/files/2020-07/BG3514.pdf.
52. Section 1025(e)(2), now codified at 12 U.S. Code 5515(e)(2).
53. Compare to the complaint filed against the CFPB in 2019 by the California Reinvestment Coalition et al. for failing to implement Section 1071 of Dodd–Frank: *California Reinvestment Coalition, National Association for Latino Community Asset Builders, Deborah Lynn Field, and Reshonda Young v. Kathleen L. Kraninger, Director, Consumer Financial Protection Bureau*, 2019, https://democracyforward.org/wp-content/uploads/2020/02/1071-amended-complaint.pdf (accessed November 6, 2020).