APPEAL,CLOSED,TYPE−E

U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:12−cv−01032−ESH

STATE NATIONAL BANK OF BIG SPRING et al v. GEITHNER et al
Assigned to: Judge Ellen S. Huvelle
Case in other court: 12−05247
12−05248
Cause: 28:2201 Declaratory Judgement

Date Filed: 06/21/2012
Date Terminated: 08/02/2013
Jury Demand: None
Nature of Suit: 430 Banks and Banking
Jurisdiction: U.S. Government Defendant

Plaintiff

STATE NATIONAL BANK OF BIG SPRING represented by **Gregory F. Jacob**
O'MELVENY &MYERS, LLP
1625 I Street, NW
Washington, DC 20006
(202) 383−5110
Fax: (202) 383−5414
Email: gjacob@omm.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

60 PLUS ASSOCIATION, INC. represented by **Gregory F. Jacob**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

COMPETITIVE ENTERPRISE INSTITUTE represented by **Gregory F. Jacob**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

STATE OF SOUTH CAROLINA represented by **Alan McCrory Wilson**
OFFICE OF THE SOUTH CAROLINA ATTORNEY GENERAL
1000 Aassembly Street
Room 519
Columbia, SC 29201
(803) 734−3970
LEAD ATTORNEY
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James Emory Smith , Jr.
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Email: agesmith@scag.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

STATE OF OKLAHOMA	represented by	**Edward Scott Pruitt** ATTORNEY GENERAL OF OKLAHOMA 313 NE 21st Street Oklahoma City, OK 73105 (405) 521−3921 Email: scott.pruitt@oag.ok.gov *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **Gregory F. Jacob** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **Patrick R. Wyrick** ATTORNEY GENERAL OF OKLAHOMA 313 N.E. 21st Street Oklahoma City, OK 73105 (405) 522−4448 Email: patrick.wyrick@oag.ok.gov *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*

Plaintiff

STATE OF MICHIGAN	represented by	**Gregory F. Jacob** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*

Plaintiff

STATE OF GEORGIA	represented by	**Gregory F. Jacob** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*

Plaintiff

STATE OF WEST VIRGINIA	represented by	**Gregory F. Jacob** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*

Plaintiff

STATE OF KANSAS	represented by	**Gregory F. Jacob** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*

Plaintiff

ALL PLAINTIFFS	represented by	**Gregory F. Jacob** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*

Plaintiff

STATE OF ALABAMA represented by **Gregory F. Jacob**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

STATE OF NEBRASKA represented by **Gregory F. Jacob**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

STATE OF TEXAS represented by **Gregory F. Jacob**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

STATE OF OHIO represented by **Gregory F. Jacob**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

STATE OF MONTANA represented by **Alan McCrory Wilson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Gregory F. Jacob
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

James Emory Smith , Jr.
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

TIMOTHY F. GEITHNER
In his official capacity as United States Secretary of the Treasury and ex officio Chairman of the Financial Stability Oversight Council

represented by **Bradley Heath Cohen**
U.S. DEPARTMENT OF JUSTICE
P.O. Box 883
Washington, DC 20044
(202) 305−9855
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LEAD ATTORNEY
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ATTORNEY TO BE NOTICED

Wendy M. Doty
U.S. DEPARTMENT OF JUSTICE
Civil Division
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Washington, DC 20530
(202) 616−7420
Fax: (202) 616−8470
Email: wendy.doty@usdoj.gov
TERMINATED: 06/07/2013

Defendant

U.S. DEPARTMENT OF THE TREASURY

represented by **Bradley Heath Cohen**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ethan Price Davis
(See above for address)
ATTORNEY TO BE NOTICED

Jonathan Gordon Cooper
(See above for address)
ATTORNEY TO BE NOTICED

Wendy M. Doty
(See above for address)
TERMINATED: 06/07/2013

Defendant

RICHARD CORDRAY
In his official capacity as Director of the Consumer Financial Protection Bureau, in his official capacity as ex officio Director of the Federal Deposit Insurance Corporation, and in his official capacity as ex officio member of the Financial Stability Co

represented by **Bradley Heath Cohen**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ethan Price Davis
(See above for address)
ATTORNEY TO BE NOTICED

Jonathan Gordon Cooper
(See above for address)
ATTORNEY TO BE NOTICED

Wendy M. Doty
(See above for address)
TERMINATED: 06/07/2013

Defendant

CONSUMER FINANCIAL PROTECTION BUREAU

represented by **Bradley Heath Cohen**
(See above for address)
LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Ethan Price Davis
(See above for address)
ATTORNEY TO BE NOTICED

Jonathan Gordon Cooper
(See above for address)
ATTORNEY TO BE NOTICED

Wendy M. Doty
(See above for address)
TERMINATED: 06/07/2013

Defendant

BENJAMIN BERNANKE
In his official capacity as Chairman of the Board of Governors of the Federal Reserve System, and in his official capacity as ex officio Member of the Financial Stability Oversight Council

represented by **Bradley Heath Cohen**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ethan Price Davis
(See above for address)
ATTORNEY TO BE NOTICED

Jonathan Gordon Cooper
(See above for address)
ATTORNEY TO BE NOTICED

Wendy M. Doty
(See above for address)
TERMINATED: 06/07/2013

Defendant

MARTIN GRUENBERG
In his official capacity as Vice Chairman and Acting Chairman of the Board of Directors of the Federal Deposit Insurance Corporation, and in his official capacity as ex officio Member of the Financial Stability Oversight Council

represented by **Bradley Heath Cohen**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ethan Price Davis
(See above for address)
ATTORNEY TO BE NOTICED

Jonathan Gordon Cooper
(See above for address)
ATTORNEY TO BE NOTICED

Wendy M. Doty
(See above for address)
TERMINATED: 06/07/2013

Defendant

THOMAS CURRY
In his official capacity as U.S. Comptroller of the Currency, and ex officio member of the Financial Stability Oversight Council

represented by **Bradley Heath Cohen**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ethan Price Davis
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ATTORNEY TO BE NOTICED

Jonathan Gordon Cooper
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ATTORNEY TO BE NOTICED

Wendy M. Doty
(See above for address)
TERMINATED: 06/07/2013

Defendant

MARY SCHAPIRO
In her official capacity as Chairman of the U.S. Securities and Exchange Commission and ex officio member of the Financial Stability Oversight Council

represented by **Bradley Heath Cohen**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ethan Price Davis
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ATTORNEY TO BE NOTICED

Jonathan Gordon Cooper
(See above for address)
ATTORNEY TO BE NOTICED

Wendy M. Doty
(See above for address)
TERMINATED: 06/07/2013

Defendant

GARY GENSLER
In his official capacity as Chairman of the U.S. Commodity Futures Trading Commission and ex officio member of the Financial Stability Oversight Council

represented by **Bradley Heath Cohen**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ethan Price Davis
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ATTORNEY TO BE NOTICED

Jonathan Gordon Cooper
(See above for address)
ATTORNEY TO BE NOTICED

Wendy M. Doty
(See above for address)
TERMINATED: 06/07/2013

Defendant

DEBBIE MATZ
In her official capacity as Chairman of the National Credit Union Administration Board and ex officio Member oa the Financial Stability Oversight Council

represented by **Bradley Heath Cohen**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ethan Price Davis
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ATTORNEY TO BE NOTICED

Jonathan Gordon Cooper
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ATTORNEY TO BE NOTICED

Wendy M. Doty
(See above for address)
TERMINATED: 06/07/2013

Defendant

S. ROY WOODALL
In his official capacity as Member of the

represented by **Bradley Heath Cohen**
(See above for address)

Financial Stability Oversight Council

LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ethan Price Davis
(See above for address)
ATTORNEY TO BE NOTICED

Jonathan Gordon Cooper
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ATTORNEY TO BE NOTICED

Wendy M. Doty
(See above for address)
TERMINATED: 06/07/2013

Defendant

FINANCIAL STABILITY OVERSIGHT COUNCIL

represented by **Bradley Heath Cohen**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ethan Price Davis
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ATTORNEY TO BE NOTICED

Jonathan Gordon Cooper
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ATTORNEY TO BE NOTICED

Wendy M. Doty
(See above for address)
TERMINATED: 06/07/2013

Defendant

JANET L. YELLEN
in her official capacity as Vice Chairman of the Board of Governors of the Federal

represented by **Bradley Heath Cohen**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ethan Price Davis
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ATTORNEY TO BE NOTICED

Jonathan Gordon Cooper
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ATTORNEY TO BE NOTICED

Wendy M. Doty
(See above for address)
TERMINATED: 06/07/2013

Defendant

DANIEL K. TARULLO
in his official capacity as Member of the Board of Governors of the Federal

represented by **Bradley Heath Cohen**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ethan Price Davis
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ATTORNEY TO BE NOTICED

Jonathan Gordon Cooper
(See above for address)

ATTORNEY TO BE NOTICED

Wendy M. Doty
(See above for address)
TERMINATED: 06/07/2013

Defendant

ELIZABETH DUKE
in her official capacity as Member of the Board of Governors of the Federal

represented by **Bradley Heath Cohen**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ethan Price Davis
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ATTORNEY TO BE NOTICED

Jonathan Gordon Cooper
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ATTORNEY TO BE NOTICED

Wendy M. Doty
(See above for address)
TERMINATED: 06/07/2013

Defendant

JEREMIAH NORTON
in his official capacity as Director of the Federal Deposit Insurance Corporation

represented by **Bradley Heath Cohen**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ethan Price Davis
(See above for address)
ATTORNEY TO BE NOTICED

Jonathan Gordon Cooper
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ATTORNEY TO BE NOTICED

Wendy M. Doty
(See above for address)
TERMINATED: 06/07/2013

Defendant

JEROME POWELL
in his official capacity as Member of the Board of Governors of the Federal Reserve System

represented by **Bradley Heath Cohen**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ethan Price Davis
(See above for address)
ATTORNEY TO BE NOTICED

Jonathan Gordon Cooper
(See above for address)
ATTORNEY TO BE NOTICED

Wendy M. Doty
(See above for address)
TERMINATED: 06/07/2013

Defendant

represented by

THOMAS M. HOENIG
in his official capacity as Director of the Federal Deposit Insurance Corporation

Bradley Heath Cohen
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ethan Price Davis
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ATTORNEY TO BE NOTICED

Jonathan Gordon Cooper
(See above for address)
ATTORNEY TO BE NOTICED

Wendy M. Doty
(See above for address)
TERMINATED: 06/07/2013

Defendant

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

represented by **Bradley Heath Cohen**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ethan Price Davis
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Jonathan Gordon Cooper
(See above for address)
ATTORNEY TO BE NOTICED

Wendy M. Doty
(See above for address)
TERMINATED: 06/07/2013

Defendant

FEDERAL DEPOSIT INSURANCE CORPORATION

represented by **Bradley Heath Cohen**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ethan Price Davis
(See above for address)
ATTORNEY TO BE NOTICED

Jonathan Gordon Cooper
(See above for address)
ATTORNEY TO BE NOTICED

Wendy M. Doty
(See above for address)
TERMINATED: 06/07/2013

Defendant

JEREMY B. STEIN
in his official capacity as Member of the Board of Governors of the Federal Reserve System

represented by **Bradley Heath Cohen**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ethan Price Davis
(See above for address)
ATTORNEY TO BE NOTICED

		Jonathan Gordon Cooper (See above for address) *ATTORNEY TO BE NOTICED* **Wendy M. Doty** (See above for address) *TERMINATED: 06/07/2013*

Defendant

SARAH BLOOM RASKIN *in her official capacity as Member of the Board of Governors of the Federal*	represented by	**Bradley Heath Cohen** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **Ethan Price Davis** (See above for address) *ATTORNEY TO BE NOTICED* **Jonathan Gordon Cooper** (See above for address) *ATTORNEY TO BE NOTICED* **Wendy M. Doty** (See above for address) *TERMINATED: 06/07/2013*

Movant

VICTOR WILLIAMS	represented by	**VICTOR WILLIAMS** Faculty Suite 480 CUA Law School 3600 John McCormack Washington, DC 20064 202−319−5559 PRO SE

Date Filed	#	Docket Text
06/21/2012	1	COMPLAINT against BENJAMIN BERNANKE, CONSUMER FINANCIAL PROTECTION BUREAU, RICHARD CORDRAY, THOMAS CURRY, FINANCIAL STABILITY OVERSIGHT COUNCIL, TIMOTHY GEITHNER, GARY GENSLER, MARTIN GRUENBERG, DEBBIE MATZ, MARY SCHAPIRO, U.S. DEPARTMENT OF THE TREASURY, S. ROY WOODALL (Filing fee $ 350, receipt number 4616049445) filed by 60 PLUS ASSOCIATION, INC., STATE NATIONAL BANK OF BIG SPRING, COMPETITIVE ENTERPRISE INSTITUTE. (Attachments: # 1 Civil Cover Sheet)(dr) (Entered: 06/25/2012)
06/21/2012		SUMMONS (14) Issued as to BENJAMIN BERNANKE, CONSUMER FINANCIAL PROTECTION BUREAU, RICHARD CORDRAY, THOMAS CURRY, FINANCIAL STABILITY OVERSIGHT COUNCIL, TIMOTHY GEITHNER, GARY GENSLER, MARTIN GRUENBERG, DEBBIE MATZ, MARY SCHAPIRO, U.S. DEPARTMENT OF THE TREASURY, S. ROY WOODALL, U.S. Attorney and U.S. Attorney General (dr) (Entered: 06/25/2012)
06/21/2012	2	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by STATE NATIONAL BANK OF BIG SPRING identifying Corporate Parent SNB FINANCIAL, INC. for STATE NATIONAL BANK OF BIG SPRING. (dr) (Entered: 06/25/2012)
06/27/2012	3	NOTICE of Change of Address by Gregory F. Jacob (jf,) (Entered: 06/28/2012)
08/15/2012	4	NOTICE of Appearance by Wendy M. Doty on behalf of All Defendants (Doty, Wendy) (Entered: 08/15/2012)

08/15/2012	5	Unopposed MOTION for Extension of Time to File Answer re 1 Complaint, by BENJAMIN BERNANKE, CONSUMER FINANCIAL PROTECTION BUREAU, RICHARD CORDRAY, THOMAS CURRY, FINANCIAL STABILITY OVERSIGHT COUNCIL, TIMOTHY GEITHNER, GARY GENSLER, MARTIN GRUENBERG, DEBBIE MATZ, MARY SCHAPIRO, U.S. DEPARTMENT OF THE TREASURY, S. ROY WOODALL (Attachments: # 1 Text of Proposed Order)(Doty, Wendy) (Entered: 08/15/2012)
08/15/2012		MINUTE ORDER granting 5 Motion for Extension of Time to Answer: Upon consideration of Defendants' Unopposed Motion for Extension of Time to Respondto Plaintiffs' Complaint, it is hereby ORDERED that the motion is granted, and it is further ORDERED that Defendants shall file their response to the Complaint no later than October 26, 2012. Signed by Judge Ellen S. Huvelle on August 15, 2012. (AG) (Entered: 08/15/2012)
09/20/2012	6	First Amended Complaint against BENJAMIN BERNANKE, CONSUMER FINANCIAL PROTECTION BUREAU, RICHARD CORDRAY, THOMAS CURRY, FINANCIAL STABILITY OVERSIGHT COUNCIL, TIMOTHY GEITHNER, GARY GENSLER, MARTIN GRUENBERG, DEBBIE MATZ, MARY SCHAPIRO, U.S. DEPARTMENT OF THE TREASURY, S. ROY WOODALL, Janet Yellen, Daniel Tarullo, Elizabeth Duke, Jeremiah Norton, Jerome Powell, Thomas Hoenig, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Jeremy Stein, Sarah Bloom Raskin (Filing fee $ 350 receipt number 0090−3075267) filed by STATE NATIONAL BANK OF BIG SPRING, 60 PLUS ASSOCIATION, INC., COMPETITIVE ENTERPRISE INSTITUTE, Janet Yellen, Daniel Tarullo, Elizabeth Duke, Jeremiah Norton, State of South Carolina ex rel. Alan Wilson, Jerome Powell, Thomas Hoenig, Board of Governors of the Federal Reserve System, Bill Schuette, Federal Deposit Insurance Corporation, Jeremy Stein, State of Oklahoma ex rel. Scott Pruitt, Sarah Bloom Raskin. (Attachments: # 1 Exhibit A−C)(Jacob, Gregory) Modified on 9/21/2012 (rdj). (Entered: 09/20/2012)
09/24/2012	7	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. BENJAMIN BERNANKE served on 6/28/2012; CONSUMER FINANCIAL PROTECTION BUREAU served on 6/28/2012; RICHARD CORDRAY served on 6/28/2012; THOMAS CURRY served on 6/29/2012; FINANCIAL STABILITY OVERSIGHT COUNCIL served on 6/29/2012; TIMOTHY GEITHNER served on 6/29/2012; GARY GENSLER served on 6/29/2012; MARTIN GRUENBERG served on 6/29/2012; DEBBIE MATZ served on 6/26/2012; MARY SCHAPIRO served on 6/29/2012; U.S. DEPARTMENT OF THE TREASURY served on 6/29/2012; S. ROY WOODALL served on 6/28/2012, RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 6/26/2012., RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 6/26/2012. (Answer due for ALL FEDERAL DEFENDANTS by 8/25/2012.) (Jacob, Gregory) (Entered: 09/24/2012)
10/02/2012	8	NOTICE *of Filing of Summonses Addressed to Defendants Joined as Parties in the First Amended Complaint* by 60 PLUS ASSOCIATION, INC., COMPETITIVE ENTERPRISE INSTITUTE, STATE NATIONAL BANK OF BIG SPRING re 6 Complaint,,,, (Attachments: # 1 Exhibit A − Summonses Addressed to Defendants Joined as Parties in the First Amended Complaint)(Jacob, Gregory) (Entered: 10/02/2012)
10/03/2012	9	Electronic Summons (10) Issued as to BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, ELIZABETH DUKE, FEDERAL DEPOSIT INSURANCE CORPORATION, THOMAS M. HOENIG, JEREMIAH NORTON, JEROME POWELL, SARAH BLOOM RASKIN, JEREMY B. STEIN, DANIEL K. TARULLO, JANET L. YELLEN. (Attachments: # 1 Consent Notice)(rdj) (Entered: 10/03/2012)
10/04/2012	10	NOTICE of Appearance by James Emory Smith, Jr on behalf of STATE OF SOUTH CAROLINA (Smith, James) (Entered: 10/04/2012)

10/12/2012	11	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM served on 10/9/2012; ELIZABETH DUKE served on 10/9/2012; FEDERAL DEPOSIT INSURANCE CORPORATION served on 10/9/2012; THOMAS M. HOENIG served on 10/9/2012; JEREMIAH NORTON served on 10/9/2012; JEROME POWELL served on 10/9/2012; SARAH BLOOM RASKIN served on 10/9/2012; JEREMY B. STEIN served on 10/9/2012; DANIEL K. TARULLO served on 10/9/2012; JANET L. YELLEN served on 10/9/2012 (Jacob, Gregory) (Entered: 10/12/2012)
10/19/2012	12	Consent MOTION for Extension of Time to File Answer re 6 Complaint,,,, by BENJAMIN BERNANKE, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, CONSUMER FINANCIAL PROTECTION BUREAU, RICHARD CORDRAY, THOMAS CURRY, ELIZABETH DUKE, FEDERAL DEPOSIT INSURANCE CORPORATION, FINANCIAL STABILITY OVERSIGHT COUNCIL, TIMOTHY GEITHNER, GARY GENSLER, MARTIN GRUENBERG, THOMAS M. HOENIG, DEBBIE MATZ, JEREMIAH NORTON, JEROME POWELL, SARAH BLOOM RASKIN, MARY SCHAPIRO, JEREMY B. STEIN, DANIEL K. TARULLO, U.S. DEPARTMENT OF THE TREASURY, S. ROY WOODALL, JANET L. YELLEN (Attachments: # 1 Text of Proposed Order)(Cohen, Bradley) (Entered: 10/19/2012)
10/20/2012		MINUTE ORDER granting 12 Consent Motion for Extension of Time to Answer: Upon consideration of Defendants' Consent Motion for Extension of Time to Respond to Plaintiffs' Amended Complaint, it is hereby ORDERED that the motion is granted, and it is further ORDERED that Defendants shall file their response to the Complaint no later than November 20, 2012. Signed by Judge Ellen S. Huvelle on October 20, 2012. (AG) (Entered: 10/20/2012)
10/22/2012	13	NOTICE of Appearance by Patrick R. Wyrick on behalf of STATE OF OKLAHOMA (Wyrick, Patrick) (Entered: 10/22/2012)
11/16/2012	14	Unopposed MOTION for Leave to File Excess Pages by BENJAMIN BERNANKE, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, CONSUMER FINANCIAL PROTECTION BUREAU, RICHARD CORDRAY, THOMAS CURRY, ELIZABETH DUKE, FEDERAL DEPOSIT INSURANCE CORPORATION, FINANCIAL STABILITY OVERSIGHT COUNCIL, TIMOTHY F. GEITHNER, GARY GENSLER, MARTIN GRUENBERG, THOMAS M. HOENIG, DEBBIE MATZ, JEREMIAH NORTON, JEROME POWELL, SARAH BLOOM RASKIN, MARY SCHAPIRO, JEREMY B. STEIN, DANIEL K. TARULLO, U.S. DEPARTMENT OF THE TREASURY, S. ROY WOODALL, JANET L. YELLEN (Attachments: # 1 Text of Proposed Order)(Cohen, Bradley) (Entered: 11/16/2012)
11/16/2012		MINUTE ORDER granting 14 Unopposed Motion for Leave to File Excess Pages: Upon consideration of Defendants' Unopposed Motion to File a Brief in Excess of the Page Limitation, it is hereby ORDERED that the motion is granted, and it is further ORDERED that Defendants may file a brief in support of their motion to dismiss in excess of the Courts forty−five page limitation, not to exceed fifty (50) pages. Signed by Judge Ellen S. Huvelle on November 16, 2012. (AG) (Entered: 11/16/2012)
11/20/2012	15	MOTION to Dismiss for Lack of Jurisdiction by BENJAMIN BERNANKE, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, CONSUMER FINANCIAL PROTECTION BUREAU, RICHARD CORDRAY, THOMAS CURRY, ELIZABETH DUKE, FEDERAL DEPOSIT INSURANCE CORPORATION, FINANCIAL STABILITY OVERSIGHT COUNCIL, TIMOTHY F. GEITHNER, GARY GENSLER, MARTIN GRUENBERG, THOMAS M. HOENIG, DEBBIE MATZ, JEREMIAH NORTON, JEROME POWELL, SARAH BLOOM RASKIN, MARY SCHAPIRO, JEREMY B. STEIN, DANIEL K. TARULLO, U.S. DEPARTMENT OF THE TREASURY, S. ROY WOODALL, JANET L. YELLEN (Attachments: # 1 Memorandum in Support, # 2 Text of Proposed Order)(Doty, Wendy) (Entered: 11/20/2012)
11/29/2012	16	MOTION for Extension of Time to File Response/Reply as to 15 MOTION to Dismiss for Lack of Jurisdiction by 60 PLUS ASSOCIATION, INC., COMPETITIVE ENTERPRISE INSTITUTE, STATE NATIONAL BANK OF

		BIG SPRING, STATE OF MICHIGAN, STATE OF OKLAHOMA, STATE OF SOUTH CAROLINA (Attachments: # 1 Text of Proposed Order)(Jacob, Gregory) (Entered: 11/29/2012)
11/30/2012		MINUTE ORDER granting 16 Consent Motion for Extension of Time to File Response re 15 MOTION to Dismiss for Lack of Jurisdiction: Upon consideration of Plaintiffs' Consent Motion for Extension of Time to Respond to Defendants' Motion to Dismiss, it is hereby ORDERED that the motion is GRANTED; and it is further ORDERED that Plaintiffs shall file their responses to the Defendants' Motion to Dismiss the Amended Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(1) by January 30, 2013. Signed by Judge Ellen S. Huvelle on November 30, 2012. (AG) (Entered: 11/30/2012)
11/30/2012	17	MOTION for Leave to File Amicus Brief by VICTOR WILLIAMS (Attachments: # 1 Proposed Amicus Brief)(rdj) (Entered: 12/03/2012)
12/03/2012		Set/Reset Deadlines: Response to Motion to Dismiss the Amended Complaint due by 1/30/2013 (gdf) (Entered: 12/03/2012)
01/23/2013	18	MOTION for Extension of Time to File Response/Reply as to 15 MOTION to Dismiss for Lack of Jurisdiction by 60 PLUS ASSOCIATION, INC., COMPETITIVE ENTERPRISE INSTITUTE, STATE NATIONAL BANK OF BIG SPRING, STATE OF MICHIGAN, STATE OF OKLAHOMA, STATE OF SOUTH CAROLINA (Attachments: # 1 Text of Proposed Order)(Jacob, Gregory) (Entered: 01/23/2013)
01/24/2013		MINUTE ORDER granting 18 Consent Motion for Extension of Time to File Response re 15 MOTION to Dismiss for Lack of Jurisdiction: Upon consideration of Plaintiffs' Consent Motion for Extension of Time to Respond to Defendants' Motion to Dismiss, it is hereby ORDERED that the motion is granted, and it is further ORDERED that Plaintiffs shall file their responses to the Defendants' Motion to Dismiss the Amended Complaint by February 13, 2013. Signed by Judge Ellen S. Huvelle on January 24, 2013. (AG) (Entered: 01/24/2013)
01/28/2013		Set/Reset Deadlines: Response to Defendants' Motion to Dismiss the Amended Complaint due by 2/13/2013. (gdf) (Entered: 01/28/2013)
02/13/2013	19	MOTION to Amend/Correct 6 Complaint,,,, by 60 PLUS ASSOCIATION, INC., COMPETITIVE ENTERPRISE INSTITUTE, STATE NATIONAL BANK OF BIG SPRING, STATE OF MICHIGAN, STATE OF OKLAHOMA, STATE OF SOUTH CAROLINA (Attachments: # 1 Exhibit A − Proposed Amended Complaint, # 2 Text of Proposed Order)(Jacob, Gregory) (Entered: 02/13/2013)
02/13/2013	20	NOTICE *of Filing Exhibits to Proposed Second Amended Complaint* by 60 PLUS ASSOCIATION, INC., COMPETITIVE ENTERPRISE INSTITUTE, STATE NATIONAL BANK OF BIG SPRING, STATE OF MICHIGAN, STATE OF OKLAHOMA, STATE OF SOUTH CAROLINA re 19 MOTION to Amend/Correct 6 Complaint,,,, (Attachments: # 1 Exhibit)(Jacob, Gregory) (Entered: 02/13/2013)
02/13/2013	21	MOTION to Stay re 15 MOTION to Dismiss for Lack of Jurisdiction by 60 PLUS ASSOCIATION, INC., COMPETITIVE ENTERPRISE INSTITUTE, STATE NATIONAL BANK OF BIG SPRING, STATE OF MICHIGAN, STATE OF OKLAHOMA, STATE OF SOUTH CAROLINA (Attachments: # 1 Text of Proposed Order)(Jacob, Gregory) (Entered: 02/13/2013)
02/15/2013	22	RESPONSE re 19 MOTION to Amend/Correct 6 Complaint,,,, filed by BENJAMIN BERNANKE, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, CONSUMER FINANCIAL PROTECTION BUREAU, RICHARD CORDRAY, THOMAS CURRY, ELIZABETH DUKE, FEDERAL DEPOSIT INSURANCE CORPORATION, FINANCIAL STABILITY OVERSIGHT COUNCIL, TIMOTHY F. GEITHNER, GARY GENSLER, MARTIN GRUENBERG, THOMAS M. HOENIG, DEBBIE MATZ, JEREMIAH NORTON, JEROME POWELL, SARAH BLOOM RASKIN, MARY SCHAPIRO, JEREMY B. STEIN, DANIEL K. TARULLO, U.S. DEPARTMENT OF THE TREASURY, S. ROY WOODALL, JANET L. YELLEN. (Davis, Ethan) (Entered: 02/15/2013)

02/19/2013	23	ORDER denying without prejudice 15 Plaintiffs' Motion to Dismiss for Lack of Jurisdiction; denying as moot 17 Professor Victor Williams' Motion for Leave to File Brief Amicus; granting 19 Plaintiffs' Motion for Leave to File Second Amended Complaint; denying as moot 21 Plaintiffs' Motion to Stay Briefing; directing that plaintiffs' Second Amended Complaint shall be docketed as of this date; and setting out new briefing schedule. See Order for details. Signed by Judge Ellen S. Huvelle on 2/19/13. (lcesh1) (Entered: 02/19/2013)
02/19/2013	24	SECOND AMENDED COMPLAINT against BENJAMIN BERNANKE, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, CONSUMER FINANCIAL PROTECTION BUREAU, RICHARD CORDRAY, THOMAS CURRY, ELIZABETH DUKE, FEDERAL DEPOSIT INSURANCE CORPORATION, FINANCIAL STABILITY OVERSIGHT COUNCIL, TIMOTHY F. GEITHNER, GARY GENSLER, MARTIN GRUENBERG, THOMAS M. HOENIG, DEBBIE MATZ, JEREMIAH NORTON, JEROME POWELL, SARAH BLOOM RASKIN, MARY SCHAPIRO, JEREMY B. STEIN, DANIEL K. TARULLO, U.S. DEPARTMENT OF THE TREASURY, S. ROY WOODALL, JANET L. YELLEN filed by STATE OF OKLAHOMA, STATE OF MICHIGAN, STATE OF SOUTH CAROLINA, STATE NATIONAL BANK OF BIG SPRING, 60 PLUS ASSOCIATION, INC., COMPETITIVE ENTERPRISE INSTITUTE, STATE OF GEORGIA, STATE OF WEST VIRGINIA, STATE OF KANSAS, ALL PLAINTIFFS, STATE OF ALABAMA, STATE OF NEBRASKA, STATE OF TEXAS, STATE OF OHIO.(jf,) (Entered: 02/20/2013)
02/19/2013		Set/Reset Deadlines: Motion to Dismiss the second amended complaint due by 3/5/2013. Response due by 3/19/2013 Reply due by 4/9/2013. (gdf) (Entered: 02/20/2013)
02/22/2013	25	Consent MOTION for Leave to File Excess Pages by 60 PLUS ASSOCIATION, INC., ALL PLAINTIFFS, COMPETITIVE ENTERPRISE INSTITUTE, STATE NATIONAL BANK OF BIG SPRING, STATE OF ALABAMA, STATE OF GEORGIA, STATE OF KANSAS, STATE OF MICHIGAN, STATE OF NEBRASKA, STATE OF OHIO, STATE OF OKLAHOMA, STATE OF SOUTH CAROLINA, STATE OF TEXAS, STATE OF WEST VIRGINIA (Attachments: # 1 Text of Proposed Order)(Jacob, Gregory) (Entered: 02/22/2013)
02/22/2013	26	MOTION to Dismiss for Lack of Jurisdiction by BENJAMIN BERNANKE, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, CONSUMER FINANCIAL PROTECTION BUREAU, RICHARD CORDRAY, THOMAS CURRY, ELIZABETH DUKE, FEDERAL DEPOSIT INSURANCE CORPORATION, FINANCIAL STABILITY OVERSIGHT COUNCIL, TIMOTHY F. GEITHNER, GARY GENSLER, MARTIN GRUENBERG, THOMAS M. HOENIG, DEBBIE MATZ, JEREMIAH NORTON, JEROME POWELL, SARAH BLOOM RASKIN, MARY SCHAPIRO, JEREMY B. STEIN, DANIEL K. TARULLO, U.S. DEPARTMENT OF THE TREASURY, S. ROY WOODALL, JANET L. YELLEN (Attachments: # 1 Memorandum in Support, # 2 Text of Proposed Order)(Cohen, Bradley) (Entered: 02/22/2013)
02/23/2013		MINUTE ORDER granting 25 Consent Motion for Leave to File Excess Pages. Signed by Judge Ellen S. Huvelle on February 23, 2013. (AG) (Entered: 02/23/2013)
02/27/2013	27	Memorandum in opposition to re 26 MOTION to Dismiss for Lack of Jurisdiction filed by 60 PLUS ASSOCIATION, INC., COMPETITIVE ENTERPRISE INSTITUTE, STATE NATIONAL BANK OF BIG SPRING. (Attachments: # 1 Text of Proposed Order, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Certificate of Service)(Jacob, Gregory) (Entered: 02/27/2013)
02/27/2013	28	Memorandum in opposition to re 26 MOTION to Dismiss for Lack of Jurisdiction filed by STATE OF ALABAMA, STATE OF GEORGIA, STATE OF KANSAS, STATE OF MICHIGAN, STATE OF NEBRASKA, STATE OF OHIO, STATE OF OKLAHOMA, STATE OF SOUTH CAROLINA, STATE OF TEXAS, STATE OF WEST VIRGINIA. (Attachments: # 1 Text of Proposed Order)(Pruitt, Edward) (Entered: 02/27/2013)
03/14/2013	29	NOTICE *of Filing of Supplemental Declaration in Support of Private Plaintiffs' Opposition to Defendants' Motion to Dismiss the Complaint* by 60 PLUS

		ASSOCIATION, INC., COMPETITIVE ENTERPRISE INSTITUTE, STATE NATIONAL BANK OF BIG SPRING re 27 Memorandum in Opposition, (Attachments: # 1 Declaration)(Jacob, Gregory) (Entered: 03/14/2013)
04/09/2013	30	REPLY to opposition to motion re 26 MOTION to Dismiss for Lack of Jurisdiction filed by BENJAMIN BERNANKE, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, CONSUMER FINANCIAL PROTECTION BUREAU, RICHARD CORDRAY, THOMAS CURRY, ELIZABETH DUKE, FEDERAL DEPOSIT INSURANCE CORPORATION, FINANCIAL STABILITY OVERSIGHT COUNCIL, TIMOTHY F. GEITHNER, GARY GENSLER, MARTIN GRUENBERG, THOMAS M. HOENIG, DEBBIE MATZ, JEREMIAH NORTON, JEROME POWELL, SARAH BLOOM RASKIN, MARY SCHAPIRO, JEREMY B. STEIN, DANIEL K. TARULLO, U.S. DEPARTMENT OF THE TREASURY, S. ROY WOODALL, JANET L. YELLEN. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4)(Davis, Ethan) (Entered: 04/09/2013)
04/23/2013	31	Consent MOTION for Leave to File *Surreply* by ALL PLAINTIFFS (Attachments: # 1 Text of Proposed Order)(Jacob, Gregory) (Entered: 04/23/2013)
04/23/2013		MINUTE ORDER granting 31 Motion for Leave to File: Upon consideration of Plaintiffs' Consent Motion for Leave to File a Surreply, it is hereby ORDERED that the motion is GRANTED; and it is further ORDERED that Plaintiffs' Surreply Brief shall be no more than ten pages and shall be filed no later than May 3, 2013. Signed by Judge Ellen S. Huvelle on 4/23/13. (lcesh1) (Entered: 04/23/2013)
04/23/2013		Set/Reset Deadlines: Plaintiffs' Surreply Brief due by 5/3/2013. (gdf) (Entered: 04/23/2013)
05/03/2013	32	SURREPLY to re 26 MOTION to Dismiss for Lack of Jurisdiction filed by ALL PLAINTIFFS. (Jacob, Gregory) (Entered: 05/03/2013)
05/28/2013		ORDER Setting Hearing on 26 MOTION to Dismiss for Lack of Jurisdiction : Motion Hearing set for 6/11/2013 at 2:30 PM in Courtroom 23A before Judge Ellen S. Huvelle. Signed by Judge Ellen S. Huvelle on 5/28/13. (lcesh1) (Entered: 05/28/2013)
05/29/2013		Set/Reset Hearings: Motion Hearing set for 6/11/2013 02:30 PM in Courtroom 23A before Judge Ellen S. Huvelle. (zmm,) (Entered: 05/29/2013)
06/07/2013	33	NOTICE OF SUBSTITUTION OF COUNSEL by Jonathan Gordon Cooper on behalf of All Defendants Substituting for attorney Wendy Doty (Cooper, Jonathan) (Entered: 06/07/2013)
06/10/2013	34	NOTICE *of Filing of Second Supplemental Declaration in Support of Private Plaintiffs' Opposition to Defendants' Motion to Dismiss the Complaint* by 60 PLUS ASSOCIATION, INC., COMPETITIVE ENTERPRISE INSTITUTE, STATE NATIONAL BANK OF BIG SPRING re 27 Memorandum in Opposition, (Attachments: # 1 Declaration Second Supplemental Declaration in Support of Private Plaintiffs' Opposition to Defendants' Motion to Dismiss the Complaint)(Jacob, Gregory) (Entered: 06/10/2013)
06/12/2013		Minute Entry for proceedings held before Judge Ellen S. Huvelle: Motion Hearing held on 6/12/2013 re 26 MOTION to Dismiss for Lack of Jurisdiction. Motion heard and taken under advisement. (Court Reporter Pat Kaneshiro−Miller.) (zmm,) (Entered: 06/12/2013)
06/13/2013	35	NOTICE *of Filing of Second Declaration of Jim R. Purcell* by 60 PLUS ASSOCIATION, INC., COMPETITIVE ENTERPRISE INSTITUTE, STATE NATIONAL BANK OF BIG SPRING re 27 Memorandum in Opposition, (Attachments: # 1 Declaration Declaration of Jim R. Purcell)(Jacob, Gregory) (Entered: 06/13/2013)
07/09/2013	36	NOTICE *of Filing Third Supplemental Declaration in Support of Private Plaintiffs' Opposition to Defendants' Motion to Dismiss the Complaint* by 60 PLUS ASSOCIATION, INC., COMPETITIVE ENTERPRISE INSTITUTE, STATE NATIONAL BANK OF BIG SPRING re 27 Memorandum in Opposition, (Attachments: # 1 Declaration Third Supplemental Declaration of Gregory Jacob in

		Support of Private Plaintiffs' Opposition to Defendants' Motion to Dismiss the Complaint)(Jacob, Gregory) (Entered: 07/09/2013)
07/17/2013	37	ORDER. The parties shall file supplemental briefs, as described herein, by close of business on July 19, 2013, and responses by close of business on July 22, 2013. See Order for details. Signed by Judge Ellen S. Huvelle on 7/17/13. (lcesh1) (Entered: 07/17/2013)
07/17/2013		Set/Reset Deadlines: Briefs due by 7/19/2013. Responses due by 7/22/2013. (zmm,) (Entered: 07/17/2013)
07/19/2013	38	SUPPLEMENTAL MEMORANDUM to *Private Plaintiffs' Supplemental Brief in Support of the Court's Jurisdiction Over Count II of the Second Amended Complaint* filed by 60 PLUS ASSOCIATION, INC., COMPETITIVE ENTERPRISE INSTITUTE, STATE NATIONAL BANK OF BIG SPRING. (Jacob, Gregory) (Entered: 07/19/2013)
07/19/2013	39	SUPPLEMENTAL MEMORANDUM to re 26 MOTION to Dismiss for Lack of Jurisdiction filed by BENJAMIN BERNANKE, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, CONSUMER FINANCIAL PROTECTION BUREAU, RICHARD CORDRAY, THOMAS CURRY, ELIZABETH DUKE, FEDERAL DEPOSIT INSURANCE CORPORATION, FINANCIAL STABILITY OVERSIGHT COUNCIL, TIMOTHY F. GEITHNER, GARY GENSLER, MARTIN GRUENBERG, THOMAS M. HOENIG, DEBBIE MATZ, JEREMIAH NORTON, JEROME POWELL, SARAH BLOOM RASKIN, MARY SCHAPIRO, JEREMY B. STEIN, DANIEL K. TARULLO, U.S. DEPARTMENT OF THE TREASURY, S. ROY WOODALL, JANET L. YELLEN. (Davis, Ethan) (Entered: 07/19/2013)
07/22/2013	40	RESPONSE re 26 MOTION to Dismiss for Lack of Jurisdiction *Response to Plaintiffs' Supplemental Brief* filed by BENJAMIN BERNANKE, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, CONSUMER FINANCIAL PROTECTION BUREAU, RICHARD CORDRAY, THOMAS CURRY, ELIZABETH DUKE, FEDERAL DEPOSIT INSURANCE CORPORATION, FINANCIAL STABILITY OVERSIGHT COUNCIL, TIMOTHY F. GEITHNER, GARY GENSLER, MARTIN GRUENBERG, THOMAS M. HOENIG, DEBBIE MATZ, JEREMIAH NORTON, JEROME POWELL, SARAH BLOOM RASKIN, MARY SCHAPIRO, JEREMY B. STEIN, DANIEL K. TARULLO, U.S. DEPARTMENT OF THE TREASURY, S. ROY WOODALL, JANET L. YELLEN. (Cohen, Bradley) (Entered: 07/22/2013)
07/22/2013	41	SUPPLEMENTAL MEMORANDUM to *Private Plaintiffs' 40 Response to Defendants' Supplemental Brief in Support of Their Motion to Dismiss the Second Amended Complaint* filed by 60 PLUS ASSOCIATION, INC., COMPETITIVE ENTERPRISE INSTITUTE, STATE NATIONAL BANK OF BIG SPRING. (Jacob, Gregory) (Entered: 07/22/2013)
07/25/2013	42	NOTICE OF SUPPLEMENTAL AUTHORITY by 60 PLUS ASSOCIATION, INC., COMPETITIVE ENTERPRISE INSTITUTE, STATE NATIONAL BANK OF BIG SPRING (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3)(Jacob, Gregory) (Entered: 07/25/2013)
08/01/2013	43	MEMORANDUM OPINION. Signed by Judge Ellen S. Huvelle on 8/1/13. (lcesh1) (Entered: 08/01/2013)
08/01/2013	44	ORDER granting 26 Motion to Dismiss for Lack of Jurisdiction for the reasons stated in the accompanying 43 Memorandum Opinion. Signed by Judge Ellen S. Huvelle on 8/1/13. (lcesh1) (Entered: 08/01/2013)
08/02/2013	45	NOTICE OF APPEAL TO DC CIRCUIT COURT as to 44 Order on Motion to Dismiss/Lack of Jurisdiction by 60 PLUS ASSOCIATION, INC., COMPETITIVE ENTERPRISE INSTITUTE, STATE NATIONAL BANK OF BIG SPRING. Filing fee $ 455, receipt number 0090−3421955. Fee Status: Fee Paid. Parties have been notified. (Jacob, Gregory) (Entered: 08/02/2013)
08/02/2013	46	NOTICE OF APPEAL TO DC CIRCUIT COURT as to 44 Order on Motion to Dismiss/Lack of Jurisdiction by STATE OF ALABAMA, STATE OF GEORGIA,

		STATE OF KANSAS, STATE OF MICHIGAN, STATE OF NEBRASKA, STATE OF OHIO, STATE OF OKLAHOMA, STATE OF SOUTH CAROLINA, STATE OF TEXAS, STATE OF WEST VIRGINIA. Filing fee $ 455, receipt number 0090−3422373. Fee Status: Fee Paid. Parties have been notified. (Pruitt, Edward) (Entered: 08/02/2013)
08/05/2013	47	Transmission of the Notice of Appeal, Order Appealed, and Docket Sheet to US Court of Appeals. The Court of Appeals fee was paid this date re 45 Notice of Appeal to DC Circuit Court. (rdj) (Entered: 08/05/2013)
08/05/2013	48	Transmission of the Notice of Appeal, Order Appealed, and Docket Sheet to US Court of Appeals. The Court of Appeals fee was paid this date re 46 Notice of Appeal to DC Circuit Court. (rdj) (Entered: 08/05/2013)
08/12/2013		USCA Case Number 13−5248 for 46 Notice of Appeal to DC Circuit Court, filed by STATE OF SOUTH CAROLINA, STATE OF KANSAS, STATE OF OKLAHOMA, STATE OF WEST VIRGINIA, STATE OF NEBRASKA, STATE OF TEXAS, STATE OF OHIO, STATE OF MICHIGAN, STATE OF ALABAMA, STATE OF GEORGIA. (jf,) . (Entered: 08/12/2013)
08/12/2013		USCA Case Number 13−5247 for 45 Notice of Appeal to DC Circuit Court, filed by 60 PLUS ASSOCIATION, INC., STATE NATIONAL BANK OF BIG SPRING, COMPETITIVE ENTERPRISE INSTITUTE. (jf,) . (Entered: 08/12/2013)
05/01/2014	49	TRANSCRIPT OF PROCEEDINGS before Judge Ellen S. Huvelle held on 6/12/13; Page Numbers: 1−108. Date of Issuance:5/1/14. Court Reporter/Transcriber Patricia Kaneshiro−Miller, Telephone number 202−354−3243, Court Reporter Email Address : patfromhawaii@aol.com.<P></P>For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi−page, condensed, CD or ASCII) may be purchased from the court reporter.<P>**NOTICE RE REDACTION OF TRANSCRIPTS:** The parties have twenty−one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at ww.dcd.uscourts.gov.<P></P> Redaction Request due 5/22/2014. Redacted Transcript Deadline set for 6/1/2014. Release of Transcript Restriction set for 7/30/2014.(Kaneshiro−Miller, Patricia) (Entered: 05/01/2014)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE NATIONAL BANK OF BIG SPRING
901 South Main Street
Big Spring, TX 79720;

THE 60 PLUS ASSOCIATION, INC
515 King Street
Suite 315
Alexandria, VA 22314;

and

THE COMPETITIVE ENTERPRISE INSTITUTE
1899 L Street
Floor 12
Washington, DC 20036,

Plaintiffs,

v.

TIMOTHY GEITHNER, in his official capacity as United States Secretary of the Treasury and *ex officio* Chairman of the Financial Stability Oversight Council
1500 Pennsylvania Avenue, NW
Washington, DC 20220;

U.S. DEPARTMENT OF THE TREASURY;

RICHARD CORDRAY, in his official capacity as Director of the Consumer Financial Protection Bureau, in his official capacity as *ex officio* Director of the Federal Deposit Insurance Corporation, and in his official capacity as *ex officio* member of the Financial Stability Oversight Council
1700 G Street NW
Washington, DC 20552;

THE CONSUMER FINANCIAL PROTECTION BUREAU;

BENJAMIN BERNANKE, in his official capacity as

Case No. ____________________

THE FINANCIAL STABILITY OVERSIGHT COUNCIL
1500 Pennsylvania Avenue, NW
Washington, DC 20220,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The above-captioned plaintiffs, by and through their undersigned attorneys, allege as follows:

INTRODUCTION

1. This action challenges the unconstitutional formation and operation of the Consumer Financial Protection Bureau ("CFPB"), an agency created by Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (July 21, 2010) ("Dodd-Frank Act").

2. This action challenges the unconstitutional appointment of CFPB Director Richard Cordray, appointed to office neither with the Senate's advice and consent, nor during a Senate recess.

3. Finally, this action challenges the unconstitutional creation and operation of the Financial Stability Oversight Council ("FSOC"), an inter-agency "council" created by Title I of the Dodd-Frank Act.

4. Titles I and X of the Dodd-Frank Act comprise unprecedented violations of "the basic concept of separation of powers and the checks and balances that flow from the scheme of a tripartite government," *United States v. Nixon*, 418 U.S. 683, 704 (1974), in several ways:

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE NATIONAL BANK OF BIG SPRING
901 South Main Street
Big Spring, TX 79720;

STATE OF ALABAMA, by and through LUTHER STRANGE, in his official capacity as Attorney General of Alabama
501 Washington Avenue
Montgomery, AL 36130;

STATE OF GEORGIA, by and through SAMUEL S. OLENS, ATTORNEY GENERAL OF THE STATE OF GEORGIA
40 Capitol Square SW
Atlanta, GA 30334;

STATE OF KANSAS *ex rel*. DEREK SCHMIDT, in his official capacity as Attorney General of Kansas
120 SW 10th Avenue, 2nd Floor
Topeka, KS 66612;

BILL SCHUETTE, ATTORNEY GENERAL OF THE STATE OF MICHIGAN, ON BEHALF OF THE PEOPLE OF MICHIGAN;
G. Mennen Williams Building, 7th Floor
525 W. Ottawa St.
P.O. Box 30212
Lansing, MI 48909;

STATE OF MONTANA, by and through TIMOTHY C. FOX, ATTORNEY GENERAL OF THE STATE OF MONTANA
215 North Sanders
P.O. Box 201401
Helena, MT 59620;

STATE OF NEBRASKA, by and through JON C. BRUNING, ATTORNEY GENERAL OF THE STATE OF NEBRASKA
2115 State Capitol

Case No. 1:12-cv-01032

Judge: Hon. Ellen S. Huvelle

P.O. Box 98920
Lincoln, NE 68509;

STATE OF OHIO, by and through MICHAEL DeWINE,
ATTORNEY GENERAL OF OHIO
30 East Broad Street, 14th Floor
Columbus, OH 43215;

STATE OF OKLAHOMA
EX REL. SCOTT PRUITT
in his official capacity as
Attorney General of Oklahoma
313 NE 21st Street
Oklahoma City, OK 73105;

STATE OF SOUTH CAROLINA
EX REL. ALAN WILSON
in his official capacity as
Attorney General of South Carolina
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201;

STATE OF TEXAS, by and through
GREG ABBOTT, ATTORNEY GENERAL
OF THE STATE OF TEXAS
300 W. 15th Street
Austin, TX 78701;

STATE OF WEST VIRGINIA
EX REL. PATRICK MORRISEY
in his official capacity as
Attorney General of West Virginia
State Capitol Complex,
Building 1 Room 26-E
Charleston, WV 25305;

THE 60 PLUS ASSOCIATION, INC
515 King Street
Suite 315
Alexandria, VA 22314;

and

THE COMPETITIVE ENTERPRISE INSTITUTE

1899 L Street
Floor 12
Washington, DC 20036,

Plaintiffs,

v.

NEIL S. WOLIN,[1] in his official capacity as Acting United States Secretary of the Treasury and *ex officio* Chairman of the Financial Stability Oversight Council
1500 Pennsylvania Avenue, NW
Washington, DC 20220;

U.S. DEPARTMENT OF THE TREASURY
1500 Pennsylvania Avenue, NW
Washington, DC 20220;

RICHARD CORDRAY, in his official capacity as Director of the Consumer Financial Protection Bureau, in his official capacity as *ex officio* Director of the Federal Deposit Insurance Corporation, and in his official capacity as *ex officio* member of the Financial Stability Oversight Council
1700 G Street NW
Washington, DC 20552;

THE CONSUMER FINANCIAL PROTECTION BUREAU
1700 G Street NW
Washington, DC 20552;

BENJAMIN BERNANKE, in his official capacity as Chairman of the Board of Governors of the Federal Reserve System, and in his official capacity as *ex officio* Member of the Financial Stability Oversight Council

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[1] Pursuant to Federal Rule of Civil Procedure 25(d), Acting U.S. Secretary of the Treasury Wolin has been substituted as a defendant for former Secretary Geithner, and Chairman of the U.S. Securities and Exchange Commission Walter has been substituted as a defendant for former Chairman Schapiro. Additionally, the caption has been revised to reflect Mr. Gruenberg's new office as Chairman of the Board of Directors of the Federal Deposit Insurance Corporation. Corresponding conforming changes have been made to paragraphs 45, 57, 62, and 150.

20th Street and Constitution Avenue NW
Washington, DC 20551;

JANET YELLEN, in her official capacity as Vice Chairman of the Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551;

ELIZABETH DUKE, in her official capacity as Member of the Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551;

JEROME POWELL, in his official capacity as Member of the Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551;

SARAH BLOOM RASKIN, in her official capacity as Member of the Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551;

JEREMY STEIN, in his official capacity as Member of the Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551;

DANIEL TARULLO, in his official capacity as Member of the Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551;

THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
20th Street and Constitution Avenue NW
Washington, DC 20551;

MARTIN GRUENBERG, in his official capacity as Chairman of the Board of Directors of the Federal Deposit Insurance Corporation, and in his official

capacity as *ex officio* Member of the Financial Stability Oversight Council
550 17th Street NW
Washington, DC 20429;

THOMAS HOENIG, in his official capacity as Director of the Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429;

JEREMIAH NORTON, in his official capacity as Director of the Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429;

THOMAS CURRY, in his official capacity as U.S. Comptroller of the Currency, in his official capacity as *ex officio* Director of the Federal Deposit Insurance Corporation, and in his official capacity as *ex officio* member of the Financial Stability Oversight Council
Comptroller of the Currency
Administrator of National Banks
Washington, DC 20219;

THE FEDERAL DEPOSIT INSURANCE CORPORATION
550 17th Street NW
Washington, DC 20429;

ELISSE B. WALTER, in her official capacity as Chairman of the U.S. Securities and Exchange Commission and *ex officio* member of the Financial Stability Oversight Council
100 F Street NE
Washington, DC 20549;

GARY GENSLER, in his official capacity as Chairman of the U.S. Commodity Futures Trading Commission and *ex officio* member of the Financial Stability Oversight Council
Three Lafayette Center
1155 21st Street
Washington, DC 20581;

DEBBIE MATZ, in her official capacity as Chairman of

the National Credit Union Administration Board and *ex officio* Member of the Financial Stability Oversight Council
1775 Duke Street
Alexandria, VA 22314;

S. ROY WOODALL, in his official capacity as Member of the Financial Stability Oversight Council
1500 Pennsylvania Avenue, NW
Washington, DC 20220;

and

THE FINANCIAL STABILITY OVERSIGHT COUNCIL
1500 Pennsylvania Avenue, NW
Washington, DC 20220,

Defendants.

SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The above-captioned plaintiffs, by and through their undersigned attorneys,[2] allege as follows:

INTRODUCTION

1. By this action, the Private Plaintiffs challenge the unconstitutional formation and operation of the Consumer Financial Protection Bureau ("CFPB"), an agency created by Title X

[2] This action consists of two groups of plaintiffs: the "Private Plaintiffs," consisting of State National Bank of Big Spring, the 60 Plus Association, Inc., and the Competitive Enterprise Institute; and the "State Plaintiffs," consisting of the State of Alabama, the State of Georgia, the State of Kansas, the State of Michigan, the State of Montana, the State of Nebraska, the State of Ohio, the State of Oklahoma, the State of South Carolina, the State of Texas, and the State of West Virginia. As specified in the signature block, they are represented by separate counsel. The State Plaintiffs' allegations and claims are limited to Title II of the Dodd-Frank Act, as described below.

of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (July 21, 2010) ("Dodd-Frank Act").

2. By this action, the Private Plaintiffs challenge the unconstitutional appointment of CFPB Director Richard Cordray, appointed to office neither with the Senate's advice and consent, nor during a Senate recess.

3. By this action, the Private Plaintiffs challenge the unconstitutional creation and operation of the Financial Stability Oversight Council ("FSOC"), an inter-agency "council" created by Title I of the Dodd-Frank Act.

4. By this action, the Plaintiffs challenge the unconstitutional creation and operation of a new authority for the "orderly liquidation" of financial institutions under Title II of the Dodd-Frank Act ("Orderly Liquidation Authority").

5. These Titles of the Dodd- Frank Act violate the Constitution in several ways:

6. First, the CFPB's formation and operation violates the Constitution's separation of powers. Title X of the Dodd-Frank Act delegates effectively unbounded power to the CFPB, and couples that power with provisions insulating the CFPB against meaningful checks by the Legislative, Executive, and Judicial Branches, as described in ¶¶ 51-107, below. Taken together, these provisions remove all effective limits on the CFPB Director's discretion, a violation of the separation of powers.

7. Second, the President unconstitutionally appointed Richard Cordray to be CFPB Director by refusing to secure the Senate's advice and consent while the Senate was in session, one of the few constitutional checks and balances on the CFPB left in place by the Dodd-Frank Act, as described in ¶¶ 108-118, below.

8. Third, the FSOC's formation and operation violates the Constitution's separation of powers. The FSOC has sweeping and unprecedented discretion to choose which nonbank financial companies to designate as "systemically important" (or, "too big to fail"). That designation signals that the selected companies have the implicit backing of the federal government—and, accordingly, an unfair advantage over competitors in attracting scarce, fungible investment capital. Yet the FSOC's sweeping powers and discretion are not limited by any meaningful statutory directives. And the FSOC, whose members include nonvoting state officials appointed by state regulators rather than the President, is insulated from meaningful judicial review—indeed, from all judicial review brought by third parties injured by an FSOC designation—as described in ¶¶ 119-141, below. Taken together, these provisions provide the FSOC virtually boundless discretion in making its highly consequential designations, a violation of the separation of powers.

9. Fourth, the "Orderly Liquidation Authority" violates the separation of powers. Title II of the Dodd-Frank Act empowers the Treasury Secretary to order the liquidation of a financial company with little or no advance warning, under cover of mandatory secrecy, and without either useful statutory guidance or meaningful legislative, executive, or judicial oversight. Moreover, Title II empowers the FDIC to unilaterally violate the rights of financial companies' creditors (and unilaterally choose favorites among similarly situated creditors) while carrying out that "liquidation." All of this occurs without meaningful judicial review, as described in ¶¶ 142-178, below.

10. Fifth, the Orderly Liquidation Authority violates the mandate of the Fifth Amendment to the United States Constitution that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law." The forced liquidation of a company with little

or no advance warning, in combination with the FDIC's virtually unlimited power to choose favorites among similarly situated creditors in implementing the liquidation, denies the subject company and its creditors constitutionally required notice and a meaningful opportunity to be heard before their property is taken—and likely becomes unrecoverable, as described in ¶¶ 142-178, below.

11. Sixth, the Orderly Liquidation Authority violates the requirement in Article I, Section 8, Clause 4 of the United States Constitution, that any "Laws on the subject of Bankruptcies throughout the United States" be "uniform." With no meaningful limits on the discretion conferred on the Treasury Secretary or on the FDIC, Title II not only empowers the FDIC to choose which companies will be subject to liquidation under Title II, but also confers on the FDIC unilateral authority to provide special treatment to whatever creditors the FDIC, in its sole and unbounded discretion, decides to favor, as described in ¶¶ 142-178, below.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 2201.

13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (e).

PARTIES

14. Plaintiff State National Bank of Big Spring ("Bank") is a Texas corporation and federally-chartered bank headquartered in Big Spring, Texas. The Bank opened in 1909 and currently has three locations in Big Spring, Lamesa, and O'Donnell, Texas. The Bank is a local community bank with less than $275 million in deposits and offers customers access to checking accounts, savings accounts, certificates of deposit, and individual retirement accounts.

15. Title X of the Dodd-Frank Act, and CFPB Director Richard Cordray's unconstitutional appointment to direct that agency, injure the Bank. As a result of the CFPB's

promulgation of a Final Rule regulating international remittance transfers imposing burdensome requirements on financial institutions and other providers of those services, the Bank has stopped offering those services to its customers.

16. The Bank is further injured because Title X requires the Bank to conduct its business, and make decisions about what kinds of business to conduct, without knowing whether the CFPB will retroactively announce that one or more of the Bank's consumer lending practices is "unfair," "deceptive," or "abusive" and enforce that interpretation through supervision, investigation, or enforcement activities. Title X's open-ended grant of power to the CFPB, combined with the absence of checks and balances limiting the CFPB from expansively interpreting that grant of power, creates a cloud of regulatory uncertainty that forces banks to censor their own offerings—a chilling effect that, for example, left the Bank with no safe choice but to exit the consumer mortgage business and not return until the CFPB's authority and discretion are defined with greater specificity, transparency, and accountability.

17. Indeed, statements of CFPB Director Cordray and other officials connected to the CFPB heighten the likelihood that the Bank's mortgage products could be deemed unlawful, after the fact, by the CFPB—as described in ¶¶ 51-107, below.

18. Plaintiff 60 Plus Association, Inc. ("Association") is a seven-million member, non-profit, non-partisan seniors advocacy group that is tax-exempt under Section 501(c)(4) of the Internal Revenue Code. It is devoted to advancing free markets and strengthening limits on government regulation. One of its goals is to preserve access to credit and financial products for seniors, such as mortgages and reverse mortgages. Founded in 1992, it is based in Alexandria, Virginia.

19. The Dodd-Frank Act harms the members of the 60 Plus Association in that it has reduced, and will further reduce, the range and affordability of banking, credit, investment, and savings options available to them. For example, provisions enforced by the CFPB have reduced the availability of free checking, and the number of banks offering it; they have reduced the number of companies offering mortgages; and they have increased mortgage fees.

20. The 60 Plus Association surveys its members regarding their interest in a variety of financial products that it might offer to them as benefits. These products range from investment programs and bank accounts to credit cards and insurance. The Dodd-Frank Act harms both the Association and its members by increasing the cost and reducing the availability of such products, both currently and in the near future.

21. Plaintiff Competitive Enterprise Institute ("CEI") is a tax-exempt, nonprofit public interest organization under Section 501(c)(3) of the Internal Revenue Code. It is dedicated to advancing the principles of individual liberty and limited government. To those ends, CEI engages in research, education, and advocacy efforts involving a broad range of regulatory and legal issues. It also participates in cases involving financial regulation and constitutional checks and balances, such as the separation of powers and federalism: *e.g.*, *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 130 S. Ct. 3138 (2010); *Florida v. U.S. Dep't of Health & Human Servs.*, 648 F.3d 1235 (11th Cir. 2011); and *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1 (2007). Founded in 1984, it is based in Washington, D.C.

22. CEI has checking and brokerage accounts and certificates of deposit ("CDs") in banks and brokerage firms regulated by the CFPB that qualify as systemically important under the Dodd-Frank Act as enforced by FSOC. For example, it has checking accounts and CDs at Wells Fargo, and CDs at Merrill Lynch. It also has credit cards with terms subject to regulation

by the CFPB under Dodd-Frank. The nature and cost of these accounts are jeopardized by the CFPB's sweeping regulatory authority over them and over the institutions in which they are based.

23. Plaintiff State of Alabama, by and through Luther Strange, Attorney General of the State of Alabama, is a sovereign State of the United States of America.

24. Alabama's pension funds have investments in a variety of institutions that qualify as financial companies as defined by Section 210 of the Dodd-Frank Act, rendering those companies subject to the Orderly Liquidation Authority created by Title II of the Dodd-Frank Act. A non-exhaustive list of those investments is attached to this Complaint as Exhibit A, and is incorporated into this complaint by reference. The State of Alabama is ultimately liable for the payment of pensions that have been promised to State employees, and thus any loss of property rights or investment value suffered by the State's pension funds directly harms the State of Alabama. The terms "Alabama" and "State of Alabama" are accordingly used interchangeably throughout this Complaint with the term "Alabama's pension funds."

25. Plaintiff State of Georgia, by and through Samuel S. Olens, Attorney General of the State of Georgia, is a sovereign State of the United States of America.

26. Georgia has investments in a variety of institutions that qualify as financial companies as defined by Section 210 of the Dodd-Frank Act, rendering those companies subject to the Orderly Liquidation Authority created by Title II of the Dodd-Frank Act. A non-exhaustive list of those investments is attached to this Complaint as Exhibit B, and is incorporated into this complaint by reference. The State of Georgia is directly harmed by any loss of property rights or investment value in those assets.

27. Plaintiff State of Kansas, by and through Derek Schmidt, Attorney General of the State of Kansas, is a sovereign State of the United States of America.

28. Kansas's pension funds have investments in a variety of institutions that qualify as financial companies as defined by Section 210 of the Dodd-Frank Act, rendering those companies subject to the Orderly Liquidation Authority created by Title II of the Dodd-Frank Act. A non-exhaustive list of those investments is attached to this Complaint as Exhibit C, and is incorporated into this complaint by reference. The State of Kansas is ultimately liable for the payment of pensions that have been promised to State employees, and thus any loss of property rights or investment value suffered by the State's pension funds directly harms the State of Kansas. The terms "Kansas" and "State of Kansas" are accordingly used interchangeably throughout this Complaint with the term "Kansas's pension funds."

29. Bill Schuette, Attorney General of Michigan, is bringing this action on behalf of the People of Michigan under Mich. Comp. Law § 14.28, which provides that the Michigan Attorney General may "appear for the people of [Michigan] in any other court or tribunal, in any cause or matter, civil or criminal, in which the people of [Michigan] may be a party or interested." Under Michigan's constitution, the people are sovereign. Mich. Const. art. I, § 1 ("All political power is inherent in the people. Government is instituted for their equal benefit, security, and protection."). The State of Michigan is a sovereign State of the United States of America.

30. Michigan's pension funds have investments in a variety of institutions that qualify as financial companies as defined by Section 210 of the Dodd-Frank Act, rendering those companies subject to the Orderly Liquidation Authority created by Title II of the Dodd-Frank Act. A non-exhaustive list of those investments is attached to this Complaint as Exhibit D, and

is incorporated into this complaint by reference. The State of Michigan is ultimately liable for the payment of pensions that have been promised to State employees, and thus any loss of property rights or investment value suffered by the State's pension funds directly harms the State of Michigan. The terms "Michigan" and "State of Michigan" are accordingly used interchangeably throughout this Complaint with the term "Michigan's pension funds."

31. Plaintiff State of Montana, by and through Timothy C. Fox, Attorney General of the State of Montana, is a sovereign State of the United States of America.

32. Montana's pension funds have investments in a variety of institutions that qualify as financial companies as defined by Section 210 of the Dodd-Frank Act, rendering those companies subject to the Orderly Liquidation Authority created by Title II of the Dodd-Frank Act. A non-exhaustive list of those investments is attached to this Complaint as Exhibit E, and is incorporated into this complaint by reference. The State of Montana is ultimately liable for the payment of pensions that have been promised to State employees, and thus any loss of property rights or investment value suffered by the State's pension funds directly harms the State of Montana. The terms "Montana" and "State of Montana" are accordingly used interchangeably throughout this Complaint with the term "Montana's pension funds."

33. Plaintiff State of Nebraska, by and through Jon C. Bruning, Attorney General of the State of Nebraska, is a sovereign State of the United States of America.

34. Nebraska's pension funds have investments in a variety of institutions that qualify as financial companies as defined by Section 210 of the Dodd-Frank Act, rendering those companies subject to the Orderly Liquidation Authority created by Title II of the Dodd-Frank Act. A non-exhaustive list of those investments is attached to this Complaint as Exhibit F, and is incorporated into this complaint by reference. The State of Nebraska is ultimately liable for the

payment of pensions that have been promised to State employees, and thus any loss of property rights or investment value suffered by the State's pension funds directly harms the State of Nebraska. The terms "Nebraska" and "State of Nebraska" are accordingly used interchangeably throughout this Complaint with the term "Nebraska's pension funds."

35. Plaintiff State of Ohio, by and through its Attorney General Michael DeWine, is a sovereign State of the United States of America.

36. Various governmental entities in Ohio, including the Ohio Attorney General's Office, have public monies in public investment pools that hold commercial paper and/or bonds issued by financial companies as defined by Section 210 of the Dodd-Frank Act and thereby subject to the Orderly Liquidation Authority created by Title II of the Dodd-Frank Act. A non-exhaustive list of those investments is attached to this Complaint as Exhibit G, and is incorporated into this complaint by reference. The State of Ohio is directly harmed by any loss of property rights or investment value suffered in connection with such holdings.

37. Plaintiff State of Oklahoma, by and through E. Scott Pruitt, Attorney General of the State of Oklahoma, is a sovereign State of the United States of America.

38. Oklahoma's pension funds have investments in a variety of institutions that qualify as financial companies as defined by Section 210 of the Dodd-Frank Act, rendering those companies subject to the Orderly Liquidation Authority created by Title II of the Dodd-Frank Act. A non-exhaustive list of those investments is attached to this Complaint as Exhibit H, and is incorporated into this complaint by reference. The State of Oklahoma is ultimately liable for the payment of pensions that have been promised to State employees, and thus any loss of property rights or investment value suffered by the State's pension funds directly harms the State

of Oklahoma. The terms "Oklahoma" and "State of Oklahoma" are accordingly used interchangeably throughout this Complaint with the term "Oklahoma's pension funds."

39. Plaintiff State of South Carolina, by and through Alan Wilson, Attorney General of the State of South Carolina, is a sovereign State of the United States of America.

40. South Carolina's pension funds have investments in a variety of institutions that qualify as financial companies as defined by Section 210 of the Dodd-Frank Act, rendering those companies subject to the Orderly Liquidation Authority created by Title II of the Dodd-Frank Act. A non-exhaustive list of those investments is attached to this Complaint as Exhibit I, and is incorporated into this complaint by reference. The State of South Carolina is ultimately liable for the payment of pensions that have been promised to State employees, and thus any loss of property rights or investment value suffered by the State's pension funds directly harms the State of South Carolina. The terms "South Carolina" and "State of South Carolina" are accordingly used interchangeably throughout this Complaint with the term "South Carolina's pension funds."

41. Plaintiff State of Texas, by and through Greg Abbott, Attorney General of Texas, is a sovereign State of the United States of America.

42. Texas, through the Texas Treasury Safekeeping Trust Company, has investments in a variety of institutions that qualify as financial companies as defined by Section 210 of the Dodd-Frank Act, rendering those companies subject to the Orderly Liquidation Authority created by Title II of the Dodd-Frank Act. A non-exhaustive list of those investments is attached to this Complaint as Exhibit J, and is incorporated into this complaint by reference. The State of Texas is directly harmed by any loss of property rights or investment value suffered by the Texas Treasury Safekeeping Trust Company. The terms "Texas" and "State of Texas" are accordingly

used interchangeably throughout this Complaint with the term "Texas Treasury Safekeeping Trust Company."

43. Plaintiff State of West Virginia, by and through Patrick Morrisey, Attorney General of the State of West Virginia, is a sovereign State of the United States of America.

44. The State of West Virginia has public monies, including monies in public pension funds, in investment pools that hold commercial paper and/or bonds issued by financial companies as defined by Section 210 of the Dodd-Frank Act and thereby subject to the Orderly Liquidation Authority created by Title II of the Dodd-Frank Act. A non-exhaustive list of those investments is attached to this Complaint as Exhibit K, and is incorporated into this complaint by reference. The State of West Virginia is directly harmed by any loss of property rights or investment value suffered in connection with such holdings. With regard to monies in public pension funds in particular, the State of West Virginia is liable for the payment of pensions to qualifying State employees, and thus any loss of property rights or investment value suffered by the State's pension funds directly harms the State of West Virginia.

45. Defendant Neil S. Wolin is the Acting United States Secretary of the Treasury, and the *ex officio* Chairman of the Financial Stability Oversight Council; he is located in Washington, D.C., and he is named in his official capacity.

46. Defendant U.S. Department of the Treasury is located in Washington, D.C.

47. Defendant Richard Cordray is Director of the Consumer Financial Protection Bureau, an *ex officio* Director of the Federal Deposit Insurance Corporation, and an *ex officio* member of the Financial Stability Oversight Council; he is located in Washington, D.C., and he is named in his official capacity.

48. Defendant Consumer Financial Protection Bureau is located in Washington, D.C.

49. Defendant Benjamin Bernanke is Chairman of the Board of Governors of the Federal Reserve System, and an *ex officio* member of the Financial Stability Oversight Council; he is located in Washington, D.C., and he is named in his official capacity.

50. Defendant Janet Yellen is Vice Chairman of the Board of Governors of the Federal Reserve System; she is located in Washington, D.C., and she is named in her official capacity.

51. Defendant Elizabeth Duke is a member of the Board of Governors of the Federal Reserve System; she is located in Washington, D.C., and she is named in her official capacity.

52. Defendant Jerome Powell is a member of the Board of Governors of the Federal Reserve System; he is located in Washington, D.C., and he is named in his official capacity.

53. Defendant Sarah Bloom Raskin is a member of the Board of Governors of the Federal Reserve System; she is located in Washington, D.C., and she is named in her official capacity.

54. Defendant Jeremy Stein is a member of the Board of Governors of the Federal Reserve System; he is located in Washington, D.C., and he is named in his official capacity.

55. Defendant Daniel Tarullo is a member of the Board of Governors of the Federal Reserve System; he is located in Washington, D.C., and he is named in his official capacity.

56. Defendant the Board of Governors of the Federal Reserve System is an agency of the United States, located in Washington, D.C.

57. Defendant Martin Gruenberg is Chairman of the Board of Directors of the Federal Deposit Insurance Corporation, and an *ex officio* member of the Financial Stability Oversight Council; he is located in Washington, D.C., and he is named in his official capacity.

58. Defendant Thomas Hoenig is a Director of the Federal Deposit Insurance Corporation; he is located in Washington, D.C., and he is named in his official capacity.

59. Defendant Jeremiah Norton is a Director of the Federal Deposit Insurance Corporation; he is located in Washington, D.C., and he is named in his official capacity.

60. Defendant Thomas Curry is U.S. Comptroller of the Currency, an *ex officio* Director of the Federal Deposit Insurance Corporation, and an *ex officio* member of the Financial Stability Oversight Council; he is located in Washington, D.C., and he is named in his official capacity.

61. Defendant Federal Deposit Insurance Corporation is located in Washington, D.C.

62. Defendant Elisse B. Walter is Chairman of the U.S. Securities and Exchange Commission, and an *ex officio* member of the Financial Stability Oversight Council; she is located in Washington, D.C., and she is named in her official capacity.

63. Defendant Gary Gensler is Chairman of the U.S. Commodity Futures Trading Commission, and an *ex officio* member of the Financial Stability Oversight Council; he is located in Washington, D.C., and he is named in his official capacity.

64. Defendant Debbie Matz is Chairman of the National Credit Union Administration Board, and an *ex officio* member of the Financial Stability Oversight Council; she is located in Washington, D.C., and she is named in her official capacity.

65. Defendant S. Roy Woodall is a member of the Financial Stability Oversight Council; he is located in Washington, D.C., and he is named in his official capacity.

66. Defendant Financial Stability Oversight Council is located in Washington, D.C.

THE CONSUMER FINANCIAL PROTECTION BUREAU

67. The Private Plaintiffs allege as follows, with respect to the CFPB:

68. Section 1011(a) of the Dodd-Frank Act establishes a new Consumer Financial Protection Bureau to "regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws."

69. Section 1011(a) declares the CFPB to be an "Executive agency" within the meaning of 5 U.S.C. § 105. But the same provision also declares the CFPB to be an "independent bureau" that is "established in the Federal Reserve System," which is in turn led by the Board of Governors of the Federal Reserve System ("FRB"), an "independent regulatory agency" under 44 U.S.C. § 3502(5).

Title X Delegates Effectively Unlimited Power To The CFPB To Litigate, Investigate, Regulate, and Enforce Against Practices That The CFPB Deems To Be "Unfair," "Deceptive," or "Abusive"

70. The Dodd-Frank Act grants the CFPB vast authority over consumer financial product and service firms, including Plaintiff State National Bank of Big Spring.

71. Section 1031(a) of the Dodd-Frank Act authorizes the CFPB to take any of several enumerated actions, including direct enforcement action, to prevent a covered person or service provider from committing or engaging in "unfair," "deceptive," or "abusive" practices in connection with the provision or offering of a consumer financial product or service.

72. And Section 1031(b) of the Act authorizes the CFPB to prescribe rules identifying unfair, deceptive, or abusive acts or practices under Federal law in connection with any transaction with a consumer for a consumer financial product or service.

73. But the Act provides *no* definition for "unfair" or "deceptive" acts or practices, leaving those terms to the CFPB to interpret and enforce, either through *ad hoc* litigation or through regulation. Nor is the CFPB bound by prior agencies' interpretation of similar statutory terms.

74. Nor does the Act provide meaningful limits on what the CFPB can deem an "abusive" act or practice. Section 1031(d) leaves that term to be defined by the CFPB, subject only to the requirement that the CFPB not define an act or practice to be "abusive" unless it "(1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or (2) takes unreasonable advantage of — (A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service; (B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or (C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer." Sec. 1031(d).[3] Those nominal limits offer no transparency or certainty for lenders, because the limits consist exclusively of subjective factors that can only be ascertained on a case-by-case, borrower-by-borrower, *ex post facto* basis, and can be interpreted broadly by the CFPB because the agency is subject to no effective checks or balances by the other branches.

75. In fact, the CFPB Director has himself acknowledged this. In a January 24, 2012 hearing before a subcommittee of the U.S. House Committee on Oversight and Government Reform, CFPB Director Cordray stated that the Act's use of the term "abusive" is "a little bit of a puzzle because it is a new term"; the CFPB has "been looking at it, trying to understand it, and we have determined that that is going to have to be a fact and circumstances issue; it is not something we are likely to be able to define in the abstract. Probably not useful to try to define a term like that in the abstract; we are going to have to see what kind of situations may arise where that would seem to fit the bill under the prongs."

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[3] All "Sec." citations refer to the sections of the Dodd-Frank Act.

76. The Act's open-ended grant of power over what the CFPB deems to be "unfair," "deceptive," or "abusive" lending practices is further exacerbated by the CFPB's discretion to unilaterally exempt any class of covered persons, service providers, or consumer financial products or services from the scope of any rule promulgated under Title X. Sec. 1022(b)(3).

77. While the Act allows the CFPB to define and enforce those open-ended standards through rulemaking, CFPB Director Cordray already announced (as noted above) his intention to define and enforce them primarily through ad hoc, *ex post facto* enforcement activities. That leaves regulated entities, such as State National Bank of Big Spring, at substantial risk that the CFPB will define or re-define what is legal and illegal, likely on a case-by-case, *ex post facto* basis, only *after* the bank has executed a mortgage or other consumer lending transaction.

78. The CFPB's unbridled authority to newly define what constitutes an "unfair," "deceptive," or "abusive" lending practice on a case-by-case, *ex post facto* basis, imposes severe regulatory risk upon lenders, including Plaintiff State National Bank of Big Spring, which cannot know in advance, with reasonable certainty, whether longstanding or new financial services will open them to retroactive liability according to the CFPB.

79. In pursuing practices it deems to be "unfair," "deceptive," or "abusive," the CFPB is further empowered to require insured depository institutions, including Plaintiff State National Bank of Big Spring, to provide reports to the CFPB containing "information owned or under the control of [the institution], regardless of whether such information is maintained, stored or processed by another person," for the purpose of "assess[ing] and detect[ing] risks to consumers and consumer financial markets." Sec. 1026(b).

80. The CFPB is also empowered to refer activities it deems to be "a material violation of a Federal consumer financial law" to the prudential regulator of an insured

depository institution—in the case of Plaintiff State National Bank of Big Spring, the Office of the Comptroller of the Currency—"and recommend appropriate action to respond." Sec. 1026(d)(2)(A). When the CFPB makes such a referral to a prudential regulator, the prudential regulator is required to "provide a written response to the Bureau not later than 60 days thereafter." Sec. 1026(d)(2)(B).

81. The CFPB can also intervene directly in examinations conducted by the prudential regulators of insured depository institutions such as Plaintiff State National Bank of Big Spring. Specifically, the CFPB can include CFPB examiners on a sample basis in examinations conducted by the prudential regulator. Sec. 1026(c)(1). When the CFPB includes one of its examiners in an examination conducted by a prudential regulator, the regulator is required to "involve such Bureau examiner in the entire examination process," "provide all reports, records, and documentation related to the examination process … to the Bureau on a timely and continual basis," and "consider input of the Bureau concerning the scope of an examination, conduct of the examination, the contents of the examination report, the designation of matters requiring attention, and examination ratings." Sec. 1026(c)(2).

82. The CFPB thus not only has direct enforcement authorities of its own, but also substantially influences and effectively directs and controls the enforcement and examination activities of prudential regulators, by defining the terms "unfair," "deceptive," and "abusive" in ways that bind prudential regulators, both through formal regulations and through informal directives and guidance; by referring insured depository institutions to prudential regulators for investigation and requiring the prudential regulators to provide a written response to such referrals; and by inserting the CFPB and its examiners directly into the examinations conducted by prudential regulators.

83. The resulting chilling effect of the direct and indirect investigative, enforcement, and referral authorities vested in the CFPB by Title X forces lenders such as the Bank to either risk burdensome federal investigation or prosecution or curtail their own services and products.

84. For example, Title X's broad terms, as administered by the CFPB, already have forced Plaintiff Big Spring National Bank to discontinue its own mortgage lending, because its mortgage lending practices are within the CFPB's jurisdiction (*i.e.*, they are consumer financial products or services) yet the Bank cannot be reasonably certain, *ex ante*, whether the CFPB and/or the Office of the Comptroller of the Currency (influenced and directed by the CFPB, and subject to the CFPB's interpretation of the consumer financial laws) will investigate or litigate against them, deeming those practices to be "unfair," "deceptive," or "abusive" pursuant to an *ex post facto* CFPB interpretation of the law.

85. The Bank's mortgage services and products traditionally focused on real estate in the Bank's geographic area where real estate is generally bought and sold at relatively low prices, and where mortgage borrowers traditionally pay relatively large down payments; rather than charging their customers "points" for the mortgages, the Bank structured its mortgages to feature a five-year "balloon payment."

86. The Bank's mortgage business was regularly profitable, and was deemed by the Bank to be one of the best and most prudent ways to invest and make a return on the Bank's deposits.

87. Unfortunately, due to Title X's lack of meaningful limits on what constitutes an "unfair," "deceptive," or "abusive" practice, combined with the lack of checks and balances guiding and limiting the CFPB's discretion in administering those open-ended grants of power, the Bank could not be reasonably certain that continued lending on these terms would not expose

the Bank to sudden enforcement actions by the CFPB or, at the influence and direction of the CFPB, by the Office of the Comptroller of the Currency.

88. The overwhelming uncertainty inherent in Title X's open-ended grant of power to the CFPB and the lack of checks and balances limiting the CFPB's exercise of that power has been exemplified and amplified by statements from various officials stressing the breadth of the CFPB's power and the CFPB's intent to define consumer finance law on a case-by-case basis.

89. For example, on September 17, 2010, President Obama announced the appointment of Elizabeth Warren as his "Special Advisor to the Secretary of the Treasury on the Consumer Financial Protection Bureau" (*i.e.*, the initial organizer and leader of the CFPB, prior to the appointment of a CFPB Director); in making that announcement, President Obama asserted that the CFPB would "crack down on the abusive practice of unscrupulous mortgage lenders," and that "[b]asically, the Consumer Financial Protection Bureau will be a watchdog for the American consumer, charged with enforcing the toughest financial protections in history."

90. Similarly, on the very day after the President's announcement of his appointment, CFPB Director Cordray gave a press conference at a think-tank in Washington, D.C., announcing that "[o]ur team is taking complaints about credit cards and mortgages, with other products to be added as we move forward," and that to act upon "outrageous" stories from mortgage borrowers and other named and unnamed members of the public "is exactly what the consumer bureau is here to do."

91. Similarly, in a March 14, 2012 address Director Cordray reiterated that the CFPB would continue to "address the origination of mortgages, including loan originator compensation and the origination of high-priced mortgages."

92. In each of these statements, and others, CFPB Director Cordray and other CFPB officials have validated and reinforced responsible lenders' reasonable fears that Title X empowers the CFPB to aggressively interpret its open-ended statutory mandate to retroactively punish good-faith consumer lending practices—which the CFPB can do because of the lack of checks and balances limiting the agency's discretion.

93. These and other statements justify the Bank's reasonable, good-faith concerns about the threat of liability established by the CFPB on a case-by-case, *ex post facto* basis.

94. Accordingly, in light of Title X's grant of effectively unlimited power to the CFPB, the Bank ceased its consumer mortgage lending operations on or about October 2010, and it continues to decline to re-enter the market for offering consumer mortgages, including mortgages with "balloon payments," as well as "character loans"—loans based not only on quantitative estimates of the borrower's ability to pay and the resale value of collateral property but also the borrower's known credibility and character—in light of the risks and uncertainty imposed by CFPB's unlimited powers and lack of checks and balances.

95. To re-enter the mortgage market would entail not just the aforementioned assumption of risk by the Bank, given the uncertain nature of CFPB enforcement and investigation under Title X, as well as the CFPB's ability directly and indirectly to influence the examinations and enforcement activities of the Office of the Comptroller of the Currency, but also the burdens of substantially increased compliance costs, as State National Bank of Big Spring—a small community bank—would be forced to constantly monitor and predict the CFPB's regulatory priorities and legal interpretations.

96. Furthermore, the Bank would be required to comply with the extensive mortgage disclosure rules the CFPB is poised to adopt. The CFPB recently promulgated a set of proposed

rules on mortgage disclosures. *See* Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z), 77 Fed. Reg. 51,116 (Aug. 23, 2012).

The CFPB's Other Substantive Powers

97. In addition to the CFPB's open-ended power to define and prosecute what it deems to be "unfair," "deceptive," or "abusive" practices, the CFPB also is empowered under Title X to enforce myriad pre-existing statutes, and to "supervise" certain classes of banks.

The CFPB's Authority To Administer Pre-Existing Statutes

98. The Act commits to the CFPB's jurisdiction myriad pre-existing "Federal consumer financial laws" heretofore administered by other executive or independent agencies.

99. Specifically, the Act authorizes the CFPB to "regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws," including the power to promulgate rules "necessary or appropriate to enable the [CFPB] to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof." Sec. 1011(a), 1022(b)(1).

100. According to Section 1002(12) & (14) of the Act, the "Federal consumer financial laws" include: the Alternative Mortgage Transaction Parity Act, of 1982, 12 U.S.C. § 3801 *et seq.*; the Consumer Leasing Act of 1976, 15 U.S.C. § 1667, *et seq.*; the Electronic Fund Transfer Act, 15 U.S.C. § 1693 *et seq.* (except with respect to section 920); the Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*; the Fair Credit Billing Act, 15 U.S.C. § 1666 *et seq.*; the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (except with respect to sections 615(e) and 628); the Home Owners Protection Act of 1998, 12 U.S.C. § 4901 *et seq.*; the Fair Debt Collections Practices Act, 15 U.S.C. § 1692 *et seq.*; subsections (b) through (f) of section 43 of the Federal

Deposit Insurance Act, 12 U.S.C. § 1831t(c)-(f); sections 502 through 509 of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6802-6809 (except section 505 as it applies to section 501(b)); the Home Mortgage Disclosure Act of 1975, 12 U.S.C. § 2801 *et seq*; the Homeownership and Equity Protection Act of 1994, 15 U.S.C. § 1601; the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 *et seq.*; the S.A.F.E. Mortgage Licensing Act of 2008, 12 U.S.C. § 5101 *et seq.*; the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*; the Truth in Savings Act, 12 U.S.C. § 4301 *et seq.*; section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111-8); the Interstate Land Sales Full Disclosure Act, 15 U.S.C. § 1701; and several laws for which authority of enforcement is transferred to the CFPB, and rules or orders prescribed by the CFPB under its statutory authority.

101. Accordingly, the Dodd-Frank Act transfers to the CFPB authority over aspects of consumer financial products and services previously exercised by a range of other federal agencies—including the FRB, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the FDIC, the Federal Trade Commission, the National Credit Union Administration, and the Department of Housing and Urban Development.

102. The CFPB's interpretation of these existing statutes has already caused injury to State National Bank of Big Spring. On February 7, 2012, the CFPB published in the *Federal Register* its Final Rule with respect to international remittance transfers, pursuant to which the Bank's customers in the United States could send money to family members overseas. *See* Electronic Fund Transfers, 77 Fed. Reg. 6194 (Feb. 7, 2012) (to be codified at 12 C.F.R. pt. 1005). The Final Rule imposed substantial new disclosure and compliance requirements on the Bank, which increase the cost of providing these services to the Bank's customers to an unsustainable level. On May 23, 2012, the Bank's Board of Directors instituted a policy to cease

providing these remittance transfer services to its consumers because of the increased costs arising out of the CFPB's Final Rule.

103. The CFPB thus asserted and exercised authority to regulate the Bank's international wire transfers.

The CFPB's Supervisory Authority

104. Section 1024 of the Dodd-Frank Act vests the CFPB with exclusive authority to prescribe rules, issue guidance, conduct examinations, require reports or issue exemptions with respect to covered non-depository institutions under the Federal consumer financial laws. Sec. 1024(d).

105. Section 1025 vests the CFPB with exclusive authority to require reports and conduct periodic examinations of insured depository institutions or credit unions with total assets of more than $10 billion and any affiliate thereof or service provider thereto. Sec. 1025(b), (d). Likewise, the Act vests the CFPB with primary authority to enforce Federal consumer financial laws with respect to insured depository institutions or credit unions with total assets of more than $10 billion and any affiliate thereof or service provider thereto. Sec. 1025(c).

106. The Dodd-Frank Act grants the FRB authority to delegate to the CFPB its authority to examine persons subject to the jurisdiction of the FRB for compliance with Federal consumer financial laws. Sec. 1012(c)(1). Once the FRB has delegated examination authority to the CFPB, the FRB may not intervene in any matter or proceeding before the Director, including examinations or enforcement actions, or appoint, direct, or remove any officer or employee of the CFPB, including the Director. *Id.*

107. Title X also gives the CFPB the authority to supervise an entity that: (1) offers or provides origination, brokerage, or servicing of consumer loans secured by real estate: (2) is a

"larger participant of a market for other consumer financial products or services;" (3) the CFPB determines after notice to the entity and opportunity for response may be engaging in conduct that poses risks to consumers with regard to the provision of consumer financial products or services; (4) offers to any consumer a private education loan; or (5) offers to a consumer a payday loan. Sec. 1024(a)(1).

Title X Grants The CFPB Aggressive Investigation And Enforcement Powers

108. Subtitle E of Title X of the Dodd-Frank Act sets forth the CFPB's enforcement authority. Section 1052 authorizes the CFPB to engage in investigations, to issue subpoenas for the attendance and testimony of witnesses and production of documents and materials, to issue civil investigative demands, and to commence judicial proceedings to compel compliance with those demands.

109. Section 1053 of the Dodd-Frank Act authorizes the CFPB to conduct hearings and adjudicative proceedings to ensure or enforce compliance with the Act, any rules promulgated thereunder, or any other Federal law the CFPB is authorized to enforce.

110. Subject to limitations described in other provisions of Title X, Section 1054 authorizes the CFPB to commence a civil action against any person whom it deems to have violated a Federal consumer financial law, and to seek all legal and equitable relief, including a permanent or temporary injunction, as permitted by law.

The Dodd-Frank Act Eliminates The Checks And Balances That Could Otherwise Limit The CFPB's Exercise of Those Broad, Undefined Powers

111. As noted above, in addition to granting the CFPB effectively unlimited rulemaking, enforcement, and supervisory powers over "unfair," "deceptive," or "abusive" lending practices, Title X of the Dodd-Frank Act also eliminates the Constitution's fundamental checks and balances that would ordinarily limit or channel the agency's use of that power.

Those checks and balances are necessary to prevent the CFPB from expansively and aggressively interpreting its open-ended mandate; the absence of those checks and balances, combined with the open-ended grant of power, constitutes a violation of the separation of powers.

112. First, Congress has no “power of the purse” over the CFPB, because the Act authorizes the CFPB to fund itself by unilaterally claiming funds from the FRB.

113. Specifically, the Director of the CFPB, who cannot be removed at the pleasure of the President, determines for himself the amount of funding the CFPB receives from the FRB; then the FRB must transfer those funds to the CFPB. Sec. 1017(a)(1).

114. The Act authorizes the CFPB to claim an increasing percentage of the Federal Reserve System’s 2009 operating expenses, beginning in fiscal year 2011 at up to 10 percent of those expenses, and reaching up to 12 percent in fiscal year 2013 and thereafter. This amount will be adjusted for inflation. Sec. 1017(a)(2)(B).

115. Because the Federal Reserve System’s 2009 operating expenses were $4,980,000,000, the CFPB Director will be empowered to unilaterally requisition up to $597,600,000 in 2013 and thereafter, adjusted for inflation. *See* Board of Governors of the Federal Reserve System, 96th Annual Report 491 (2009), *available at* http://www.federalreserve.gov/boarddocs/rptcongress/annual09/pdf/ar09.pdf; *see also* CFPB, FY 2013 Budget Justification 7 (2012), *available at* http://files.consumerfinance.gov/f/2012/02/budget-justification.pdf.

116. In other words, the CFPB’s automatic budget authority is nearly double the Federal Trade Commission’s entire budget request to Congress for fiscal year 2013 (*i.e.*, $300

million). *See* FTC, Fiscal Year 2013 Congressional Budget Justification (2012), *available at* http://www.ftc.gov/ftc/oed/fmo/2013_CBJ.pdf.

117. In addition to allowing the CFPB to fund itself, Title X goes so far as to explicitly *prohibit* the House and Senate Appropriations Committees from even attempting to "review" the CFPB's self-funded budget. Sec. 1017(a)(2)(C).

118. Second, in addition to the Act's elimination of Congress's "power of the purse," the Act also insulates the CFPB Director from presidential oversight.

119. Specifically, once the CFPB Director is appointed by the President with the advice and consent of the Senate, Sec. 1011(b)(1)-(2), he receives a five-year term in office and may be removed by the President only for "inefficiency, neglect of duty, or malfeasance in office." Sec. 1011(c)(2), (3).

120. The absence of this check is particularly significant because all of the powers of the Bureau are vested solely in the CFPB Director, without the moderating influence of other commissioners, officials, or governors on the decisions of the CFPB, as is the case with other administrative agencies that are vested with quasi-legislative and quasi-judicial powers.

121. The judicial branch's oversight power is also reduced, because the Dodd-Frank Act requires the courts to grant the same deference to the CFPB's interpretation of Federal consumer financial laws that they would "if the Bureau were the only agency authorized to apply, enforce, interpret, or administer the provisions of such Federal consumer financial law." Sec. 1022(b)(4)(B).

122. The CFPB's regulatory authority is further insulated from accountability to the very agency in which it is housed. Section 1012(c) provides that no rule or order promulgated by

the CFPB shall be subject to approval or review by the FRB, and that the FRB shall not delay or prevent the issuance of any rule or order promulgated by the CFPB.

123. In sum, Title X eliminates the fundamental checks and balances that would ordinarily serve to limit the CFPB's expansive interpretation of its open-ended statutory mandate against State National Bank of Big Spring and other responsible lenders. This violates the Constitution's separation of powers.

RICHARD CORDRAY'S APPOINTMENT AS CFPB DIRECTOR

124. The Private Plaintiffs allege as follows, with respect to the appointment of CFPB Director Richard Cordray:

125. Richard Cordray was appointed CFPB Director without the Senate's advice and consent, and without a Senate recess.

126. Specifically, on January 4, 2012, President Obama announced that he was using his "recess appointment" power to appoint Richard Cordray as the Director of the CFPB, an unconstitutional act that circumvented one of the only few remaining (and minimal) checks on the CFPB's formation and operation.

127. The appointment of Mr. Cordray is unconstitutional because the Senate was not in "recess," as required to give effect to the President's power to make recess appointments. This is so for at least three reasons:

128. First, the Constitution gives the Senate the exclusive power to determine its rules, and the Senate declared itself to be in session;

129. Second, the House of Representatives had not consented to a Senate adjournment of longer than three days, as it must to effect a recess;

130. And third, the Senate passed significant economic policy legislation during the session that the executive branch alleged to be a recess.

131. The Constitution gives the Senate the sole authority to declare when it is, and is not, in session, subject only to House consent. The Constitution expressly vests in each House of Congress the exclusive power to "determine the rules of its Proceedings." U.S. Const. art. I, § 5, cl. 2.

132. As Senator Ron Wyden stated on the floor of the Senate on December 17, 2011, the Senate agreed by unanimous consent to continue its 111th Session from December 20, 2011 through January 3, 2012; and to begin its 112th Session on January 3, as required by Section 2 of the Twentieth Amendment to the United States Constitution, and continue that session at least through January 23, 2012. 157 Cong. Rec. S8783-8784 (Dec. 17, 2011).

133. These sessions were substantive. For example, during these sessions Congress passed a major piece of economic policy legislation, perhaps President Obama's most significant legislative priority of the fall of 2011, the Temporary Payroll Tax Cut Continuation Act of 2011, by unanimous consent. *See* 157 Cong. Rec. S8789 (Dec. 23, 2011) (Sen. Reid). The President signed the bill into law the next day. This decision to continue in session, rather than recess, was necessary to discharge the Senate's obligations under both the Twentieth Amendment and Article I, Section 5, Clause 4 of the Constitution, which prohibits one House of Congress from adjourning for more than three days without the consent of the other. The House of Representatives had not consented to adjournment.

134. The President's attempt to "recess"-appoint CFPB Director Cordray in this context was unprecedented and unconstitutional.

THE FINANCIAL STABILITY OVERSIGHT COUNCIL

135. The Private Plaintiffs allege as follows, with respect to the FSOC:

136. Title I of the Dodd-Frank Act establishes the FSOC, an interagency "council" with sweeping power and effectively unbridled discretion.

The Organization of FSOC

137. The FSOC is a 15-member body with broad executive powers. The FSOC is chaired by the Secretary of the Treasury. Its other nine voting members, under Section 111(b)(1), are:

- the Chairman of the Securities & Exchange Commission;
- the Chairman of the Commodities Futures Trading Commission;
- the Chairman of the FRB;
- the Chairman of the FDIC;
- the Comptroller of the Currency;
- the Director of the CFPB;
- the Director of the Federal Housing Finance Agency;
- the Chairman of the National Credit Union Administration Board; and
- an independent member appointed by the President having "insurance expertise."

138. In addition to the ten voting members, the FSOC also has five nonvoting members: the Director of the Office of Financial Research (a newly created office within the Department of the Treasury); the Director of the Federal Insurance Office; a state insurance commissioner; a state banking supervisor; and a state securities commissioner.

139. Of the non-voting members, no member of the Executive Branch of the federal government has a role in appointing the three state officials to the FSOC; rather, the state

officials are to be "designated" for two-year terms "by a selection process determined by the State insurance commissioners," "State banking supervisors," or "State securities commissioners," respectively. Sec. 111(b)(2), 111(c)(1).

140. Non-voting members of the FSOC cannot be excluded from any of the proceedings, meetings, discussions, or deliberations of the FSOC unless necessary to protect confidential supervisory information submitted by financial institutions to regulatory agencies. Sec. 111(b)(3).

The FSOC Has Effectively Unlimited Discretion To Pick Which Nonbank Financial Companies Are "Systemically Important"

141. By a two-thirds vote of the FSOC's voting members (with the affirmative vote of the Treasury Secretary), the FSOC may determine that a "U.S. nonbank financial company" could, if in distress, "pose a threat to the financial stability of the United States." Sec. 113(a).

142. As the FSOC (like countless commentators and analysts) recognizes, those determinations by the FSOC announce, in substance, that the designated nonbank financial companies "are, or are likely to become, *systemically important*." *See* 76 Fed. Reg. 64,264, 64,267 (Oct. 18, 2011) (emphasis added).

143. By designating a nonbank financial company as "systemically important," the FSOC subjects the company to the possibility of heightened federal oversight. *See* Sec. 115. But the designation also confers a substantial competitive advantage upon the selected company—and it imposes concomitant competitive disadvantage upon the company's competitors.

144. Specifically, financial companies that receive a "systemic importance" designation will be seen by the investing public as less risky (because they are seen as having the

implicit backing of the government), and therefore those companies will be able to attract capital—in terms of both debt and equity investment—at an artificially low rate.

145. The benefits awaiting FSOC-designated systemically important financial institutions ("SIFIs") are well documented in economic literature. Banks perceived by the public as "systemically important" (or, "too big to fail") enjoy a substantial advantage over their competitors in terms of their respective cost-of-capital. *See, e.g.*, David A. Price, "Sifting for SIFIs," Region Focus, Federal Reserve Bank of Richmond (2011), *available at* www.richmondfed.org/publications/research/region_focus/2011/q2/pdf/federal_reserve.pdf; Joseph Noss & Rhiannon Sowerbutts, *The Implicit Subsidy of Banks* 6 (Bank of England Financial Stability Paper No. 15, May 2012), *available at* http://www.bankofengland.co.uk/publications/Documents/fsr/fs_paper15.pdf.

146. Furthermore, this dynamic was illustrated by Defendant Bernanke in a March 2010 speech. Noting that "one of the greatest threats to the diversity and efficiency of our financial system is the pernicious problem of financial institutions that are deemed 'too big to fail,'" he warned that "if a firm is publicly perceived as too big, or interconnected, or systemically critical for the authorities to permit its failure, its creditors and counterparties have less incentive to evaluate the quality of the firm's business model, its management, and its risk-taking behavior. As a result, such firms face limited market discipline, allowing them to obtain funding on better terms than the quality or riskiness of their business would merit and giving them incentives to take on excessive risks."

147. Finally, Bernanke added that "[h]aving institutions that are too big to fail also creates competitive inequities that may prevent our most productive and innovative firms from prospering."

148. The FSOC's power to formally designate nonbank SIFIs will do for nonbanks what unofficial SIFI status long has done for unofficial SIFIs: give them a direct cost-of-capital subsidy not enjoyed by the other companies competing for scarce, fungible capital—such as Plaintiff State National Bank of Big Spring. Indeed, formal SIFI designations promulgated by the FSOC will enhance any direct cost-of-capital subsidy previously enjoyed by institutions considered by some in capital markets to enjoy unofficial SIFI status, by removing uncertainty as to the government's views on their SIFI status, and will extend this direct cost-of-capital subsidy to institutions not previously considered by those in capital markets to enjoy unofficial SIFI status.

149. Accordingly, Plaintiff State National Bank of Big Spring is injured by the FSOC's official designation of "systemically important" nonbank financial companies, because each additional designation will require the Bank to compete with yet another financial company—*i.e.*, a newly designated nonbank financial company—that is able to attract scarce, fungible investment capital at artificially low cost.

150. By former Treasury Secretary and Defendant Geithner's own admission, the FSOC's nonbank SIFI designations are imminent: On February 2, 2012, Secretary Geithner announced that, "[t]his year, the Council will make the first of these designations."

151. Despite all of the consequences riding upon the FSOC's determination, the Dodd-Frank Act gives the FSOC unlimited discretion in making those determinations.

152. After listing several broad standards for the FSOC to consider in making its determinations (*e.g.*, that the company's "scope, size, scale, concentration, interconnectedness, or mix of activities . . . could pose a threat to the financial stability of the United States," Sec. 113(a)(1)), Title I opens the door to unlimited other considerations by authorizing the FSOC to

consider "any other risk-related factors that [the FSOC] deems appropriate" in subjecting a company to this stringent oversight. Sec. 113(a)(2)(K).

153. Accordingly, the nominal standards prescribed by Title I of the Dodd-Frank Act impose no limits on the FSOC's designation of nonbank financial companies as "systemically important."

The FSOC's Determinations Are Not Subject To Meaningful Judicial Review

154. Because the FSOC has open-ended discretion to designate nonbank financial companies as systemically important, it is all the more important that the courts be available to review the FSOC's conclusions and analysis. But instead, Title I closes the courthouse doors to those who object to the FSOC's legal interpretations.

155. Specifically, a party designated by the FSOC as systemically important may appeal to federal district court, but its appeal is limited to the question of whether the FSOC's determination is "arbitrary and capricious." Sec. 113(h). Whereas courts are normally permitted to review administrative agency decisions to determine whether they are "in accordance with law," *cf.* 5 U.S.C. 706(2)(A), Section 113 eliminates this important judicial review criterion.

156. And even more importantly, Title I provides *no* right of judicial review for a third party—*i.e.*, State National Bank of Big Spring, or other market participants—to challenge the FSOC's systemic-importance designation of another company, even if the FSOC designation puts that third-party at a competitive disadvantage in terms of relative cost-of-capital.

157. Accordingly, even though the FSOC's determinations that certain nonbank financial companies are systemically important will place Plaintiff State National Bank of Big Spring at yet further competitive disadvantage, Title I denies it the right to challenge any aspect of the nonbanks' FSOC designation.

ORDERLY LIQUIDATION AUTHORITY

158. Title II of the Dodd-Frank Act empowers the Treasury Secretary and the FDIC to entirely liquidate a financial company and to pick and choose favorites among creditors in the liquidation process.

159. Upon a two-thirds vote of the FRB and the FDIC Board, these two agencies may recommend to the Secretary of the Treasury that the Secretary initiate a process through which a financial company is entered into FDIC receivership and ultimately liquidated.

160. The Secretary may initiate the Orderly Liquidation Authority if he finds:

(1) the financial company is "*in default* or *in danger of default*";

(2) the company's failure and resolution would "have *serious adverse effects* on *financial stability* in the United States";

(3) "no *viable* private sector alternative is *available* to prevent the default of" the company;

(4) the effects of this action on the interests of creditors, counterparties, and shareholders are "*appropriate*" given the impact any action taken under the Act would have on financial stability in the United States;

(5) action taken under Title II would avoid or mitigate adverse effects on creditors;

(6) a Federal regulatory agency has ordered the financial company to convert all of its convertible debt instruments that are subject to regulatory order; and

(7) the company is a financial company as defined in § 201 of the Act.

Sec. 203(b) (emphasis added).

161. These standards offer no meaningful or enforceable limits or direction. None of the italicized terms in the previous paragraph is defined in the Dodd-Frank Act.

162. The Treasury Secretary can liquidate a financial company under Title II even if the company was not previously designated by the FSOC as "systemically important." *See* Sec. 201(a)(11)(A) (defining "financial company" for purposes of Sec. 203(b) liquidation determination).

163. While Title II speaks of "orderly liquidation," the FDIC's powers and discretion are vastly broader than simply winding down the company:

164. First, the FDIC may merge the company with another company, or sell substantially all of the company's assets, "without obtaining any approval, assignment, or consent[.]" Sec. 210(a)(1)(G).

165. Second, the FDIC can also transfer assets and claims to a "bridge financial company" owned and controlled by the FDIC, with virtually unlimited discretion. Sec. 210(h)(1)(A).

166. Third, the FDIC is permitted to repudiate any contract it views as "burdensome." Sec. 210(c)(1).

167. Finally, the FDIC is given blanket authority to "take any action" it chooses to treat similarly-situated creditors differently, if the FDIC determines that disparate treatment is necessary to "initiate and continue operations essential to implementation of the receivership or any bridge financial company," to maximize the value of the liquidated company's assets, to "maximize the present value return from the sale or other disposition of the assets of the covered financial company," or to "minimize the amount of any loss realized upon the sale or other disposition of" the liquidated company's assets. Sec. 210(b)(4).

168. As such, the Orderly Liquidation Authority involves the "adjustment of a [potentially] failing debtor's obligations," "includes the power to discharge the debtor from his contracts and legal liabilities," and governs the relations between a potentially insolvent debtor and his creditors. *Ry. Labor Executives' Ass'n v. Gibbons*, 455 U.S. 457, 466 (1982) (internal quotation marks omitted). Title II thus constitutes an exercise of Congress's power under the Bankruptcy Clause.

169. Each of the plaintiff States has invested in, and is a creditor of, either directly or through the State's pension fund(s), financial companies that are subject to resolution under the Orderly Liquidation Authority. *See* Exhibits A-K.

170. On its face, Section 210(b)(4) of the Act abrogates the rights under the U.S. Bankruptcy Code of creditors of institutions that could be liquidated, destroying a valuable property right held by creditors—including the State Plaintiffs—under bankruptcy law, contract law, and other laws, prior to the Dodd-Frank Act. Section 210(b)(4) exposes those creditors to the risk that their credit holdings could be arbitrarily and discriminatorily extinguished in a Title II liquidation, and without notice or input. Title II's destruction of a property right held by each of the State Plaintiffs harms each State, and is itself a significant, judicially cognizable injury that would be remedied by a judicial order declaring Title II unconstitutional.

171. In addition to destroying the State Plaintiffs' valuable property rights, Title II exposes the State Plaintiffs to a present and ongoing substantial risk of direct economic harm, in the event of the Treasury Secretary's and FDIC's liquidation of a financial company for which a State Plaintiff is a creditor. Such a liquidation can happen at any time, and would happen without advance warning; indeed, the State Plaintiffs would be barred, as a matter of law, from being told of the liquidation until after the Treasury Secretary's liquidation order goes into effect.

Thus, the State Plaintiffs would not have any adequate opportunity to raise a constitutional challenge to protect their interests in the event an orderly liquidation occurred.

172. For creditors who, like the State Plaintiffs, invest in the debt of multiple financial institutions, the Dodd-Frank Act's elimination of creditor rights is all the more injurious, as it multiplies the risk that a creditor will realize actual financial loss in a liquidation under Title X: Even assuming *arguendo* that there is a relatively low risk that any single financial company will someday be liquidated, States invested in the debt of many financial companies face the aggregate risk that any one of those companies could be liquidated.

Judicial Review of The Treasury Secretary's Liquidation Decision Is Subject to Draconian Limits

173. Despite Title II's grant of vast authority to the Treasury Secretary, Title II severely limits judicial oversight of the Secretary's exercise of his powers under the Orderly Liquidation Authority.

174. When the targeted company refuses to acquiesce to the Treasury Secretary's determination that the company shall be liquidated under Title II, the Treasury Secretary enforces his decision by petitioning the U.S. District Court for the District of Columbia for an order affirming his decision.

175. This judicial review is subject to draconian limitations that render it little more than a rubber stamp:

176. First, upon the filing of the petition by the Treasury Secretary, the District Court must conduct a hearing and issue a final decision on the merits "within *24 hours* of receipt of the petition." Sec. 202(a)(1)(A)(v) (emphasis added).

177. Second, the hearing must be conducted "[o]n a strictly confidential basis, and without any prior public disclosure," depriving the public (including creditors) of the

transparency of the judicial system and the ability to participate in the limited judicial process provided for in Title II. Sec. 202(a)(1)(A)(iii).

178. Third, Title II of the Dodd-Frank Act severely limits the *scope* of judicial review available. The District Court deciding the Treasury Secretary's Title II liquidation petition may review only the Secretary's findings that (1) the company is a "financial company" and (2) the company "is in default or in danger of default." Sec. 202(a)(1)(A)(iii). The Court is accordingly *prohibited* from reviewing five of the seven factors upon which the lawfulness of the Secretary's decision turns. A company subject to the Secretary's Title II liquidation decision has no right to mount any challenge to the Secretary's determination that its default would "have serious adverse effects on financial stability in the United States," that "no viable private sector alternative is available to prevent the default of" the company; or that the effects of the Secretary's decision on the interests of creditors, counterparties, and shareholders are "appropriate." *See* Sec. 203(b). Thus, a company challenging the Secretary of the Treasury's decision cannot argue that the Secretary's decision violated or misinterpreted the law.

179. Fourth, with respect to the only two determinations that the District Court may review, the Court is limited to considering whether the Secretary's decision was arbitrary and capricious. Sec. 202(a)(1)(A)(iii).

180. Fifth, if the District Court fails to overturn the Secretary's decision within the limited 24-hour period provided for in the Act, the Secretary's petition is "granted by operation of law." Sec. 202(a)(1)(A)(v).

181. Sixth, appellate review is limited. The U.S. Court of Appeals for the District of Columbia Circuit is confined to the same narrow arbitrary and capricious review that binds the District Court's review of the Secretary's liquidation decision.

182. Seventh, the company to be liquidated may not secure a stay of the Secretary's decision, or the FDIC's receivership activities, while the appeal is pending. It is entirely possible, perhaps even likely, that the FDIC will complete liquidation of the company, thereby mooting the appellate court's review, before the D.C. Circuit can reach a decision on the merits. Sec. 202(a)(1)(B).

183. Furthermore, the draconian limits on a liquidated company's right of judicial review pale in comparison to the limits imposed on the *creditors'* right to judicial-review: creditors enjoy *no* right to judicial review of the Treasury Secretary's liquidation determination under Title II.

184. Indeed, Local Civil Rule 85 of the U.S. District Court for the District of Columbia, promulgated for the specific purpose of governing judicial review of Title II liquidation determinations, makes *no* allowance for participation by third parties in contested Title II proceedings; rather, the District Court will adjudicate the matter "on a confidential basis and without public disclosure" as prescribed by the Dodd-Frank Act. Local Civ. R. 85(g).

185. Because a Title II proceeding is subject to mandatory secrecy, Sec. 202(a)(1)(A)(iii), creditors will not know of a contested liquidation determination until the 24-hour district court proceedings are complete.

186. And because a company may simply choose to accept the Treasury Secretary's Title II liquidation determination—indeed, a company may in fact *request* liquidation—that company's creditors will have *no* opportunity to contest a "friendly" liquidation, even if that liquidation subjects the creditor to the immediate risk of financial loss.

187. Accordingly, as creditors, the States of Alabama, Georgia, Kansas, Michigan, Montana, Nebraska, Ohio, Oklahoma, South Carolina, Texas, and West Virginia would have no

right or opportunity to intervene in the 24-hour district court review of a Treasury Secretary's contested liquidation determination, nor any right or opportunity to file their own judicial challenges to a liquidation.

188. Moreover, Title II eliminates the remedy ordinarily available to persons whose property rights are confiscated by the Government—*i.e.*, the Tucker Act, 28 U.S.C. § 1491. Title II caps the possible compensation available to aggrieved parties at artificially low levels. Sec. 210(d)-(e).

189. In sum, by authorizing the Treasury Secretary to order the liquidation of a company not in default, yet requiring the courts to calculate compensation in light of a purely hypothetical default scenario, Title II presents a substantial likelihood that the aggrieved creditors' ultimate cash recovery will not be "the full and perfect equivalent in money of the property taken," *Blanchette v. Conn. Gen. Ins. Corp.*, 419 U.S. 102, 150 (1973) (quotation omitted), but rather a cash recovery "close to zero," Douglas G. Baird & Edward R. Morrison, *Dodd-Frank for Bankruptcy Lawyers*, 19 Am. Bankr. Inst. L. Rev. 287, 316 (2011).

Orderly Liquidation Is Not Subject To Congress's "Power of the Purse"

190. The Dodd-Frank Act establishes an "Orderly Liquidation Fund" ("OLF") to fund the FDIC's operations as receiver—including orderly liquidation of covered financial companies, payment of administrative expenses, and the payment of principal and interest by the FDIC on debt it issues to cover shortfalls. Sec. 210(n).

191. Once the Treasury Secretary has designated a company for FDIC receivership, the FDIC funds its support and management of the company through the OLF. Sec. 210(n).

192. The Dodd-Frank Act insulates the Orderly Liquidation Authority from the appropriations process by providing that "[a]ll funds expended in the liquidation of a financial

company under this title shall be recovered from the disposition of assets of such financial company," or shall be recouped via assessments on other financial companies. Sec. 212(b).

193. The Dodd-Frank Act contemplates that if the assets of a company being liquidated are insufficient to cover the costs of the company's liquidation, the FDIC can incur debt obligations, which it would later repay through assessments on the financial-services industry. Specifically, the FDIC is authorized to borrow money from the Treasury, but must repay that amount by levying "assessments" on the company's creditors, and, if necessary, bank holding companies and nonbank financial companies designated by the FSOC as systemically risky. Sec. 210(n), (o). Neither the issuance of debt nor the levy of assessment requires Congressional approval. Sec. 210(o).

194. By funding the Orderly Liquidation Authority outside of the normal appropriations process, the Dodd-Frank Act limits legislative oversight of the liquidation authority.

COUNT I
(Violation of the Separation of Powers – Title X)

195. The Private Plaintiffs reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

196. The Constitution provides that all "legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." U.S. Const. art. I, § 1.

197. The Constitution further provides that "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law…" U.S. Const. art. I, § 9.

198. Furthermore, the Constitution provides that the "executive Power shall be vested in a President," U.S. Const. art. II, § 1, and that "he shall take Care that the Laws be faithfully

executed," U.S. Const. art. II, § 3. Those provisions vest all executive power, including the power to enforce the law, in the President of the United States.

199. By delegating effectively unlimited power to the CFPB, by eliminating Congress's own "power of the purse" over the CFPB, by eliminating the President's power to remove the CFPB Director at will, and by limiting the courts' judicial review of the CFPB's actions and legal interpretations, Title X of the Dodd-Frank Act violates the Constitution's separation of powers.

200. Neither Congress nor the President can negate those structural constitutional requirements by signing or enacting (and thereby acceding to) Title X. "Perhaps an individual President"—or Congress—"might find advantages in tying his own hands," the Supreme Court recently noted, "[b]ut the separation of powers does not depend on the views of individual Presidents"—or particular Congresses. *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 130 S. Ct. 3138, 3155 (2010). The Constitution's separation of powers does not depend "on whether 'the encroached-upon branch approves the encroachment.'" *Id.* (quoting *New York v. United States*, 505 U.S. 144, 182 (1992)).

201. Neither the President nor Congress may "choose to bind [their] successors by diminishing their powers, nor can [they] escape responsibility for [their] choices by pretending that they are not [their] own." *Id.*

202. "The diffusion of power" away from Congress and the President, to the independent CFPB, "carries with it a diffusion of accountability. . . . Without a clear and effective chain of command, the public cannot 'determine on whom the blame or the punishment of a pernicious measure, or series of pernicious measures ought really to fall." *Id.* (quoting The Federalist No. 70, p. 476 (J. Cooke ed. 1961) (A. Hamilton).

203. While the Supreme Court has approved the constitutionality of certain removals of checks or balances in *isolation*—*e.g.*, a limit on the President's power to remove certain officers—the Court has never held that it is constitutional to remove all of the checks and balances that Title X removes, *and* to combine that lack of checks and balances with the open-ended statutory powers that Title X provides the CFPB—thereby effectively granting unlimited discretion to the agency.

204. And so while the Supreme Court has "previously upheld limited restrictions on" individual checks and balances, the CFPB's "novel structure does not merely add to the [CFPB's] independence, but transforms it." *Free Enter. Fund*, 130 S. Ct. at 3154.

205. Accordingly, Title X's delegation of unlimited power to the CFPB, together with the Title X's elimination of the necessary checks and balances upon the CFPB's exercise of that power, is unconstitutional, must be declared unconstitutional, and must be enjoined.

206. Because the Bank is directly subject to the CFPB's authority, Title X's violation of the separation of powers creates a "here-and-now" injury entitling the Bank to judicial review to ensure that the standards to which it is subject "will be enforced only by a constitutional agency accountable to the Executive." *Free Enter. Fund,* 130 S. Ct. at 3164 (quoting *Bowsher v. Synar*, 478 U.S. 714, 727 n.5 (1986)).

COUNT II
(Appointments Clause - CFPB)

207. The Private Plaintiffs reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

208. President Obama's appointment of Defendant Cordray as director of the CFPB violates the Appointments Clause of the Constitution. The Constitution provides that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint

Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose appointments are not herein otherwise provided for." U.S. Const. art. II, § 2, cl. 2.

209. The CFPB possesses significant powers over the market for consumer financial products and services and participants in that market including (but not limited to) issuing rules, orders and guidance implementing federal consumer financial law and supervising covered persons for compliance with federal consumer financial law. The CFPB Director is authorized to employ personnel as may be deemed necessary to carry out the business of the CFPB. It is the Director of the CFPB who has ultimate authority to exercise any power vested in the CFPB under law, and the Director may delegate such authority to any duly authorized employee, representative, or agent. The CFPB Director is an Officer of the United States and, indeed, a principal Officer of the United States.

210. The Constitution expressly vests in each House of Congress the exclusive power to "determine the rules of its Proceedings." U.S. Const. art. I, § 5, cl. 2.

211. As discussed above, on December 17, 2011, the Senate voted by unanimous consent to remain in session during the period between December 20, 2011 and January 23, 2012. The Senate's schedule provided for a series of sessions, and the *Congressional Record* indicates that those sessions actually occurred. *See* 153 Cong. Rec. S1 (Jan. 3, 2012), S3 (Jan. 6, 2012), S5 (Jan. 10, 2012), S7 (Jan. 13, 2012), S9 (Jan. 17, 2012), S11 (Jan. 20, 2012).

212. During these sessions, Congress passed the Temporary Payroll Tax Cut Continuation Act of 2011 on December 23, 2011. President Obama signed that legislation, never protesting that it was invalidly enacted due to a congressional recess.

213. The Constitution requires that "[n]either House, during the [s]ession of Congress, shall, without the Consent of the other, adjourn for more than three days." U.S. Const. art. I, § 5, cl. 4. The House of Representatives never consented to a Senate adjournment of longer than three days, as it must to effect a recess.

214. Because the Senate, by its own vote, pursuant to its own actions, and based on the inaction of the House of Representatives, was in session when President Obama nominated Mr. Cordray to the position of CFPB Director, and because the President nonetheless did not secure its "advice and consent" for the Cordray nomination, Mr. Cordray's appointment to the CFPB is unconstitutional.

215. Because the Bank is directly subject to the CFPB Director's authority, the unconstitutional appointment of the CFPB Director creates a "here-and-now" injury entitling the Bank to judicial review to ensure that the standards to which it is subject "will be enforced only by a constitutional agency accountable to the Executive." *Free Enter. Fund* , 130 S. Ct. at 3164 (quoting *Bowsher*, 478 U.S. at 727 n.5).

COUNT III
(Separation of Powers – Title I)

216. The Private Plaintiffs reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

217. The Constitution provides that all "legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." U.S. Const. art. 1, § 1.

218. Furthermore, the Constitution provides that the "executive Power shall be vested in a President," U.S. Const. art. II, § 1, and that "he shall take Care that the Laws be faithfully

executed," U.S. Const. art. II, § 3. Those provisions vest all executive power, including the power to enforce the law, in the President of the United States.

219. Title I of the Dodd-Frank Act grants the FSOC effectively unlimited power, and eliminates the judiciary's ability to exercise meaningful judicial review of the FSOC's execution of that power—especially in cases where a competitor of the FSOC-designated company seeks to challenge the designation.

220. In addition to vesting executive power in the President, the Constitution also mandates that he, or the heads of executive departments, "shall appoint" all "Officers of the United States." U.S. Const. art. II, § 2, cl. 2. But the FSOC includes non-voting members, such as insurance and banking officials, who are not appointed by the President or anyone in the executive branch, yet participate in its deliberations and proceedings. *See* Sec. 111(b)(2),(c)(1); ¶¶ 122-124, *supra*. For all of these reasons, Title I of the Dodd-Frank Act violates the Constitution's separation of powers.

221. As set forth in ¶¶ 119-141, *supra*, Congress cannot negate those structural constitutional requirements by enacting (and thereby acceding to) Title I. "The [Constitution's] separation of powers does not depend" on whether "'the encroached-upon branch approves the encroachment.'" *Free Enter. Fund*, 130 S. Ct. at 3155 (quoting *New York*, 505 U.S. at 182). Congress may not "choose to bind [its] successors by diminishing their powers, nor can [it] escape responsibility for [its] choices by pretending that they are not [its] own." *Id.*

222. "The diffusion of power" away from Congress, to the independent FSOC, "carries with it a diffusion of accountability. . . . Without a clear and effective chain of command, the public cannot 'determine on whom the blame or the punishment of a pernicious measure, or

series of pernicious measures ought really to fall." *Id.* (quoting The Federalist No. 70, p. 476 (J. Cooke ed. 1961) (A. Hamilton)).

223. Title I's open-ended grant of power and discretion to the FSOC, combined with the elimination of the indispensable check of judicial review on the FSOC's judgments, and the inclusion of members who are neither appointed by the President nor confirmed by the Senate, gives the FSOC unfettered discretion in determining which nonbank financial companies will be designated "systemically important." That structure "does not merely add to the [FSOC's] independence, but transforms it." *Free Enter. Fund*, 130 S. Ct. at 3154.

224. Accordingly, Title I of the Dodd-Frank Act, violates the Constitution's separation of powers, must be declared unconstitutional, and must be enjoined.

225. Judicial review is necessary to prevent imminent injury to the Bank, which suffers competitive harm each time the FSOC designates any institution that competes with it for capital as "systemically important."

COUNT IV
(Separation of Powers – Title II)

226. The Private Plaintiffs reallege and incorporate by reference the allegations contained in all of the preceding paragraphs; the State Plaintiffs reallege and incorporate by reference the allegations contained in ¶¶ 4, 9-13, 23-50, and 142-178, with respect to Title II of the Dodd-Frank Act.

227. The Constitution provides that all "legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." U.S. Const. art. 1, § 1.

228. The Constitution further provides that "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." U.S. Const., art. I, § 9, cl. 7.

229. The Constitution also provides that the "executive Power shall be vested in a President," U.S. Const. art. II, § 1, and that "he shall take Care that the Laws be faithfully executed," U.S. Const. art. II, § 3. Those provisions vest all executive power, including the power to enforce the law, in the President of the United States.

230. In addition, the Constitution provides that the "judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." U.S. Const. art. III, § 1.

231. As set forth above, Title II of the Dodd-Frank Act delegates effectively unlimited power to the Treasury Secretary to determine that a company should be liquidated under the Orderly Liquidation Authority and to the FDIC in carrying out that liquidation.

232. Furthermore, Title II eliminates all meaningful checks upon and balances against the power granted to the Treasury Secretary and the FDIC. Congress wields no power of the purse over Title II proceedings, and the President cannot terminate the FDIC's proceedings.

233. In addition, judicial review of the Treasury Secretary's determinations either is subject to draconian limitations (in the case of the 24-hour proceedings available for a company contesting its own liquidation) or is prohibited altogether (with respect to five of the seven factors on which the lawfulness of the Secretary's action turns and in the case of a creditor seeking to intervene in a contested liquidation determination or to protest a "friendly" liquidation).

234. With respect to the creditors of liquidated companies, Title II not only prohibits judicial review of the Treasury Secretary's liquidation determination; it also restricts judicial review of the FDIC's compensation determination.

235. Accordingly, Title II's delegation of authority to the Treasury Secretary and FDIC, with the accompanying elimination of checks and balances, violates the Constitution's separation of powers.

236. As set forth in ¶¶ 142-178, *supra*, Congress cannot negate those structural constitutional requirements by enacting (and thereby acceding to) Title II. The Constitution's separation of powers does not depend "on whether 'the encroached-upon branch approves the encroachment.'" *Free Enter. Fund*, 130 S. Ct. at 3155.

237. Congress may not "choose to bind [its] successors by diminishing their powers, nor can [they] escape responsibility for [its] choices by pretending that they are not [its] own." *Id.*

238. "The diffusion of power" away from Congress, to the Treasury Secretary and independent FDIC, "carries with it a diffusion of accountability. . . . Without a clear and effective chain of command, the public cannot 'determine on whom the blame or the punishment of a pernicious measure, or series of pernicious measures ought really to fall." *Id.* (quoting The Federalist No. 70, p. 476 (J. Cooke ed. 1961) (A. Hamilton).

239. While the Supreme Court may have approved the constitutionality of any single removal of a check or balance in isolation—*e.g.*, a limit on the Congress's power of the purse—the Court has never approved all of Title II's delegations, and eliminations of checks and balances, in a single law. In particular, the Supreme Court has never sustained the constitutionality of a statute that prohibits any meaningful judicial review of the Government's action in the manner of Title II of the Dodd-Frank Act. Title II's combinations of delegations, and eliminations of checks and balances, is unprecedented and unconstitutional. *Cf. Free Enter. Fund*, 130 S. Ct. at 3153 ("we have previously upheld limited restrictions on the President's

removal power. In those cases, however, only one level of protected tenure separated the President from an officer exercising executive power. . . . This novel structure does not merely add to the Board's independence, but transforms it.")

240. Accordingly, Title II's delegation of unlimited power to the Treasury Secretary and FDIC, with the elimination of meaningful judicial review of the execution of that power, violates the separation of powers, must be declared unconstitutional, and must be enjoined.

241. Judicial review is necessary to restore the rights of the State Plaintiffs and other creditors that previously existed under bankruptcy law and other laws but that were nullified by Title II.

242. Review is also necessary to prevent the States from suffering sudden financial losses in liquidation for which they would not receive prior notice.

243. The State Plaintiffs are entitled to "special solicitude" with respect to their standing to challenge Title II's nullification of their rights. *Massachusetts v. EPA*, 549 U.S. 497, 520 (2007).

COUNT V
(Due Process – Title II)

244. The Private Plaintiffs reallege and incorporate by reference the allegations contained in all of the preceding paragraphs; the State Plaintiffs reallege and incorporate by reference the allegations contained in ¶¶ 4, 9-13, 23-50, 142-178, and 210-227, with respect to Title II of the Dodd-Frank Act.

245. As set forth above, Title II of the Dodd-Frank Act delegates effectively unlimited power to the Treasury Secretary to determine that a company should be liquidated under the Orderly Liquidation Authority, and to the FDIC to choose favorites among similarly situated creditors in carrying out that liquidation.

246. In addition, judicial review of the Treasury Secretary's determinations either is subject to draconian limitations (in the case of the 24-hour proceedings available for a company contesting its own liquidation) or is prohibited altogether (with respect to five of the seven factors on which the lawfulness of the Secretary's action turns and in the case of a creditor seeking to intervene in a contested liquidation determination or to protest a "friendly" liquidation).

247. With respect to the creditors of liquidated companies, Title II not only prohibits judicial review of the Treasury Secretary's liquidation determination; it also restricts judicial review of the FDIC's compensation determination.

248. Title II thus fails to provide both companies facing liquidation and their creditors, all of whom are likely to have their property taken during the course of a liquidation, the "notice and a meaningful opportunity to be heard" that is the "core of due process." *LaChance v. Erickson*, 522 U.S. 262, 266 (1998).

249. Accordingly, Title II's delegation of unlimited power to the Treasury Secretary and FDIC, without meaningful judicial review of the execution of that power, violates the Due Process Clause, must be declared unconstitutional, and must be enjoined.

COUNT VI
(Bankruptcy Uniformity – Title II)

250. The Private Plaintiffs reallege and incorporate by reference the allegations contained in all of the preceding paragraphs; the State Plaintiffs reallege and incorporate by reference the allegations contained in ¶¶ 4, 9-13, 23-50, 142-178, and 210-232, with respect to Title II of the Dodd-Frank Act.

251. As set forth above, Title II of the Dodd-Frank Act delegates effectively unlimited power to the Treasury Secretary to determine that a company should be liquidated under the

Orderly Liquidation Authority, and to the FDIC to choose favorites among similarly situated creditors in carrying out that liquidation. Title II constitutes an exercise of Congress's power under the Bankruptcy Clause.

252. Furthermore, Title II eliminates all meaningful checks upon and balances against the Treasury Secretary's determinations and the FDIC's actions. Congress wields no power of the purse over Title II proceedings; the President cannot terminate the FDIC's proceedings. In addition, judicial review of the Treasury Secretary's determinations either is subject to draconian limitations (in the case of the 24-hour proceedings available for a company contesting its own liquidation) or is prohibited altogether (with respect to five of the seven factors on which the lawfulness of the Secretary's action turns and in the case of a creditor seeking to intervene in a contested liquidation determination or to protest a "friendly" liquidation).

253. Title II thus authorizes the Treasury Secretary and the FDIC to craft from whole cloth a new regime for liquidating each company subjected to the Orderly Liquidation Authority. Title II empowers the executive to decide not only whether a company will be subjected to that authority in the first instance but also which creditors will be favored among others in the liquidation process, and it provides for no meaningful limits on, or review of, the executive's exercise of discretion in either regard. The "orderly liquidation" authority thereby allows similarly situated creditors to be treated completely differently based on the whim of the executive, without any advance warning or meaningful constraints.

254. With respect to the creditors of liquidated companies, Title II not only prohibits judicial review of the Treasury Secretary's liquidation determination; it also restricts judicial review of the FDIC's compensation determination.

255. Title II's delegation of unlimited power to the Treasury Secretary and the FDIC, without meaningful judicial review of the execution of that power, constitutes a non-uniform law of bankruptcy that must be declared unconstitutional and must be enjoined.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for the following relief:

256. The Private Plaintiffs pray for an order and judgment declaring unconstitutional the provisions of the Act creating and empowering the CFPB, and enjoining Defendants Cordray and the CFPB from exercising any powers delegated to them by Title X of the Act;

257. The Private Plaintiffs pray for an order and judgment declaring unconstitutional Richard Cordray's appointment as CFPB director, and enjoining Cordray from carrying out any of the powers delegated to the office of CFPB Director by the Act;

258. The Private Plaintiffs pray for an order and judgment declaring unconstitutional the provisions of the Act creating and empowering the FSOC, and enjoining Defendants from exercising any powers delegated to them by Title I of the Act;

259. Plaintiffs pray for an order and judgment declaring unconstitutional the provisions of the Act creating and empowering the Orderly Liquidation Authority, and enjoining Defendants from exercising any powers delegated to them by Title II of the Act;

260. Plaintiffs pray for costs and attorneys' fees pursuant to any applicable statute or authority; and

261. Plaintiffs pray for any other relief this Court deems just and appropriate, to remedy the Plaintiffs' respective claims.

Dated: February 13, 2013

Respectfully submitted,

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Exhibit A

Non-Exhaustive List of Investments Held by the Pension Funds of the State of Alabama

American Express Co.

American International Group

Axis Capital Holdings

Bank of America Corp.

Bank One Corp.

Bear Stearns Cos.

Cantor Fitzgerald LP

Citigroup Inc.

General Electric Capital Corp.

Goldman Sachs Group, Inc.

Jefferies Group Inc.

JP Morgan Chase & Company

JP Morgan Chase Bank

Merrill Lynch & Co.

Morgan Stanley & Co.

Protective Life Corp.

Torchmark Corp.

Exhibit B

Non-Exhaustive List of Investments Held by the Pension Funds of the State of Georgia

Ace Ina Holdings

Aflac Inc.

American Express Centurion

Bank of America Corp.

Berkshire Hathaway

Citigroup Inc.

FMR LLC

General Electric Capital Corp.

Goldman Sachs Group, Inc.

HSBC USA Inc.

JP Morgan Chase Bank

JP Morgan Chase & Company

Met Life Global Funding

Morgan Stanley

New York Life Global

Principal Life Global

US Bancorp

Wells Fargo & Company

Exhibit C

Non-Exhaustive List of Investments Held by the Pension Funds of the State of Kansas

Allstate Life Global Funding

Ally Financial Inc.

Alterra Finance LLC

American Express Bank FSB

American Express Credit Corp.

American International Group

Ameriprise Financial Inc.

AmSouth Bank

Anadarko Finance Co.

Bank of America Corp.

Bear Stearns Cos.

Berkshire Hathaway Finance, Inc.

Capital One Bank USA

Capital One Financial Corp.

CDW Finance Corp.

Chubb Corp.

CIT Group Inc.

Citigroup Inc.

CNA Financial Corp.

Countrywide Financial Corp.

Discover Bank

Discover Financial Services

E*TRADE Financial Corp.

Fifth Third Bancorp

Ford Motor Credit Co.

General Electric Capital Corp.

General Motors Financial Co.

Genworth Financial Inc.

Goldman Sachs Group, Inc.

Hartford Financial Services

HSBC Finance Corp.

HSBC USA Inc.

Huntington Bancshares Inc.

Janus Capital Group Inc.

Jefferies Group Inc.

JP Morgan Chase & Co.

Keycorp

Merrill Lynch & Co.

MetLife, Inc.

Morgan Stanley & Co.

National City Bank of Cleveland

PNC Financial Services Group

PNC Funding Corp.

Principal Financial Group

Prudential Financial Inc.

Raymond James Financial

Regions Banks

Reinsurance Group of America

Residential Capital LLC

Springleaf Finance Corp.

State Street Corp.

SunTrust Banks, Inc.

Synovus Financial Corp.

Teco Finance Inc.

UnionBanCal Corp.

Unum Group

US Bancorp

Wachovia Corp.

Wells Fargo & Co.

Western Union Co.

Exhibit D

Non-Exhaustive List of Investments Held by the Pension Funds of the State of Michigan

Bank of America Corp.

Bank of New York Mellon Corp.

Bear Stearns Cos.

Citigroup Inc.

Goldman Sachs Group, Inc.

HSBC Bank

JP Morgan Chase & Co.

Merrill Lynch & Co.

Morgan Stanley & Co.

Wells Fargo & Co.

Exhibit E

Non-Exhaustive List of Investments Held by the Pension Funds of the State of Montana

American International Group

BB&T Corporation

Bank of America Corp.

Cantor Fitzgerald LP

Citigroup Inc.

Ford Motor Credit Co.

GE Capital Corp

JP Morgan Chase & Co.

Jefferies Group Inc.

Liberty Mutual Group Inc.

Merrill Lynch & Co.

Met Life Global Funding

Morgan Stanley

Prudential Financial Inc.

State Street Bank & Trust Corp.

SunTrust Banks, Inc.

Wachovia Corp.

Exhibit F

Non-Exhaustive List of Investments Held by the Pension Funds of the State of Nebraska

Ally Financial Inc.

American Express Co.

American International Group

Bank of America Corp.

Bank of New York Mellon Corp.

BB&T Corporation

Bear Stearns Cos.

Berkshire Hathaway Inc.

Capital One Financial Corp.

CIT Group Inc.

Citigroup Inc.

Credit Suisse Holdings (USA), Inc.

Discover Financial Services

General Electric Capital Corp.

Genworth Global

Goldman Sachs Group

HSBC Finance

Jefferies Group Inc.

John Hancock Glob Funding II

JP Morgan Chase & Co.

Keycorp

Mass Mutual Global Funding

Mellon Bank

Merrill Lynch & Co.

MetLife, Inc.

Met Life Global Funding

Morgan Stanley

New York Life

Northern Trust Corp.

Principal Life

Prudential Financial Inc.

PNC Bank NA

PNC Funding Corp.

Charles Schwab Corp.

State Street Corp.

SunTrust Banks, Inc.

TD Ameritrade Holding Corp.

TIAA Global

Travelers Cos Inc.

USAA Capital Corp.

US Bancorp

Wachovia Bank

Wells Fargo & Co.

Exhibit G

Non-Exhaustive List of Investments as described for the State of Ohio

JP Morgan Chase & Co.

PNC Bank, NA

US Bancorp

Wells Fargo & Co.

Exhibit H

Non-Exhaustive List of Investments Held by the Pension Funds of the State of Oklahoma

Allstate Life Global Funding

Ally Auto Receivables Trust

Bank of America Corp.

Bayview Financial Holdings, L.P.

Berkshire Hathaway Finance, Inc.

Capital One Financial Corp.

CIT Group Inc.

Citigroup Inc.

CNO Financial Group, Inc.

Credit Suisse Holdings (USA), Inc.

Credit Suisse Securities (USA), LLC

Educational Funding of the South, Inc.

General Electric Capital Corp.

General Electric Capital Services, Inc.

Goldman Sachs Group, Inc.

J.P. Morgan Commercial Mortgage Inc.

JPMorgan Chase & Co.

Lincoln National Corporation

Lloyds Banking Group (USA) PLC

Merrill Lynch Mortgage Investors, Inc.

MetLife, Inc.

Morgan Stanley & Co.

Nationwide Mutual Insurance Co.

New York Life Corp.

Park Place Securities, Inc.

PNC Bancorp, Inc.

RBS Holdings USA Inc.

SLM Corporation

Structured Asset Securities Corp.

Trip Rail Master Funding LLC

UBS Americas Inc.

Wells Fargo & Company

Exhibit I

Non-Exhaustive List of Investments Held by the Pension Funds of the State of South Carolina

Bank of America Corp.

Bank of New York Mellon Corp.

Branch Bank & Trust Corp.

Capital One Financial Corp.

Citigroup Inc.

Fifth Third Bancorp

Goldman Sachs Group, Inc.

JP Morgan Chase & Co.

Keycorp

Merrill Lynch & Co.

Morgan Stanley & Co.

PNC Funding Corp.

State Street Corp.

SunTrust Banks, Inc.

US Bancorp

Wachovia Corp.

Wells Fargo & Co.

Exhibit J

Non-Exhaustive List of Investments Held by the Texas Treasury Safekeeping Trust Company

Citigroup Inc.

JP Morgan Chase & Co.

Exhibit K

Non-Exhaustive List of Investments Held by the Pension Funds of the State of West Virginia

Bank of America Corp.

Bank of New York Mellon Corp.

Citigroup Inc.

General Electric Capital Corp.

Goldman Sachs Group Inc.

HSBC Finance Corp.

Morgan Stanley

State Street Bank & Trust Co.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE NATIONAL BANK OF BIG SPRING *et al.*,	)	
Plaintiffs,	)	
v.	)	Case No. 1:12-cv-01032 (ESH)
NEAL S. WOLIN, in his official capacity as Acting United States Secretary of the Treasury and *ex officio* Chairperson of the Financial Stability Oversight Council, *et al.*,	)	
Defendants.[1]	)	

DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT
<u>PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(1)</u>

Pursuant to Federal Rule of Civil Procedure 12(b)(1), Defendants hereby move this Court to dismiss the Second Amended Complaint. A brief in support of this motion and a proposed order are submitted herewith.

Respectfully submitted,

STUART F. DELERY
Principal Deputy Assistant Attorney General

RONALD C. MACHEN JR.
United States Attorney

IAN HEATH GERSHENGORN
Deputy Assistant Attorney General

SUSAN K. RUDY
Assistant Director
Federal Programs Branch

<u>*s/ Bradley H. Cohen*</u>
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Assistant General Counsel
RACHEL RODMAN

[1] Under Fed. R. Civ. P. 25(d), Neal S. Wolin and Elisse B. Walter have been substituted in their respective official capacities as defendants in this case.

failing companies without any loss to taxpayers, and imposed limitations on certain trading activity. *Id.* The Act changed the pre-existing regulatory structure by creating several new governmental entities, by eliminating others, and by transferring regulatory authority among agencies.[3]

I. THE CONSUMER FINANCIAL PROTECTION BUREAU

A. ESTABLISHMENT AND LEADERSHIP

Title X of Dodd-Frank established the Consumer Financial Protection Bureau in order to ensure "that all consumers have access to markets for consumer financial products and services and that markets for [such] services are fair, transparent, and competitive." 12 U.S.C. § 5511(a). Prior to Dodd-Frank, the statutory authority to regulate consumer financial products and services was spread among seven different federal agencies. *See* S. Rep. No. 111-176, at 10 (2010). This fragmentation of authority was viewed as a contributing factor to the recent financial crisis, *see id.*, and Congress responded by creating the Bureau, a single agency with the authority and accountability to ensure that Federal consumer financial law[4] is "comprehensive, fair, and vigorously enforced," *see* H.R. Rep. No. 111-517, at 730 (2010).

The Bureau is an independent agency within the Federal Reserve System. 12 U.S.C. § 5491(a). It is headed by a Director who is appointed by the President with the advice and

[3] *See* Dodd-Frank §§ 111-23, 124 Stat. at 1392-1412 (creating the Council); *id.* §§ 151-56, 124 Stat. at 1412-20 (creating the Office of Financial Research); *id.* §§ 1001-1100H, 124 Stat. at 1955-2113 (creating the Bureau); *id.* §§ 312-13, 124 Stat. at 1521-23 (eliminating the Office of Thrift Supervision ("OTS") and transferring its authority to the OCC, the Board of Governors of the Federal Reserve System ("Federal Reserve Board" or "Board"), and the Federal Deposit Insurance Corporation ("FDIC")); *id.* §§ 1061-67, 124 Stat. at 2035-56 (transferring certain existing regulatory authority from seven different federal agencies to the Bureau).

[4] Under Dodd-Frank, the term "Federal consumer financial law" includes certain pre-existing "enumerated consumer laws," 12 U.S.C. § 5481(12), the provisions of Title X, the laws for which authorities are transferred under subtitles F and H of Title X, and all rules or orders prescribed by the Bureau under these laws and authorities. *Id.* § 5481(14).

factors. Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, 77 Fed. Reg. 21637 (Apr. 11, 2012). The Council has not, however, made any SIFI designations pursuant to its authority under Title I. *See* U.S. Government Accountability Office ("GAO"), "Agencies Continue Rulemakings for Clarifying Specific Provisions of Orderly Liquidation Authority" (July 2012), at http://www.gao.gov/assets/600/592318.pdf ("[N]onbank financial companies' . . . have yet to be designated.").

III. THE ORDERLY LIQUIDATION AUTHORITY

Title II of Dodd-Frank established a process for "liquidat[ing] failing financial companies that pose a significant risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard." 12 U.S.C. § 5384(a). During the recent financial crisis, "[w]hen Lehman Brothers declared bankruptcy, the markets panicked and the crisis escalated. With no other means to resolve large, complex and interconnected financial firms, the government was left with few options other than to provide massive assistance to prop up failing companies in an effort to prevent the crisis from spiraling into a great depression." *See* S. Rep. No. 111-176, at 43 (2010). In order to avoid "the undesirable choice . . . between bankruptcy of a large, complex financial company that would disrupt markets and damage the economy, and bailout of such financial company that would expose taxpayers to losses and undermine market discipline," Congress established the orderly liquidation authority. *Id.* at 4. Despite this new authority, the Act incorporates "a strong presumption that the bankruptcy process will continue to be used to close and unwind failing financial companies, including large, complex ones." *Id.*

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE NATIONAL BANK OF BIG SPRING *et al.*, Plaintiffs, v. TIMOTHY GEITHNER, in his official capacity as United States Secretary of the Treasury and *ex officio* Chairman of the Financial Stability Oversight Council, *et al.*, Defendants.	Case No. 1:12-cv-01032 (ESH) Judge: Hon. Ellen S. Huvelle

DECLARATION OF JIM R. PURCELL

In Accordance with 28 U.S.C. § 1746, I, Jim R. Purcell, declare as follows, under the pains and penalties of perjury:

1. I am the Chairman of the Board and CEO of the State National Bank of Big Spring in Big Spring, Texas ("the Bank"). I have served as CEO since 1988 and became Chairman of the Board in 2012.

2. I served as President of the Bank from 1988 to 2012.

3. I am familiar with the Bank's legal compliance practices, remittance services, and mortgage lending.

Compliance Practices

4. The regulatory and enforcement authority conferred on and exercised by the Consumer Financial Protection Bureau (the "Bureau" or "CFPB") under the Dodd-Frank Act has required the Bank to incur significant legal compliance costs.

5. In the year 2012, for example, the Bank incurred $231,000 in compliance costs.

That includes costs for compliance personnel (including an outside auditor), compliance software, and compliance education.

6. In particular, the Bank's annual compliance costs in 2012 included over $2,500 to send a representative to the Texas Bankers Association Compliance School. That training covered, among other things, the Bureau's regulations governing electronic funds transfers and mortgage disclosures.

7. In addition, after the Dodd-Frank Act was passed, the Bank determined that it needed to stay informed of the regulatory requirements that would be adopted by the CFPB and other agencies under the Act. The Bureau's authority to enforce its views of "unfair, deceptive, or abusive" practices ex post facto further made it necessary to stay abreast of its interpretations, announcements, and enforcement actions. For this reason the Bank began to subscribe to a service from the Texas Bankers Association, the Compliance Alliance, that keeps the Bank informed of the activities and pronouncements of Government agencies that regulate the Bank, including the Bureau, as well as their impact on the Bank. Attached to this declaration are true and correct copies of marketing materials the Bank received from the Compliance Alliance to induce the Bank to subscribe to its service, which specifically note that the service is necessary because of the Dodd-Frank Act and CFPB. The Bank found these materials persuasive.

8. The Bank used the Compliance Alliance service to aid in its understanding of the CFPB's rules governing international remittance transfers, mortgage disclosures, and ability-to-pay requirements, as well as to stay abreast of Bureau interpretations and enforcement actions. Attached to this declaration are true and correct copies of materials the Bank has received from the Compliance Alliance.

9. The Compliance Alliance subscription costs the Bank $9,900 annually. The

original subscription price was $12,000, but so many institutions signed up for the service that the Compliance Alliance was able to lower its fees. The Compliance Alliance now has customer banks in 18 States and is sponsored by 16 state banking associations.

10. The Bank also responded to the Dodd-Frank Act by subscribing to the compliance service TriNovus, paying $2,340 for a one-year subscription in 2011.

Remittance Transfers

11. Until May 22, 2012, the Bank offered international remittance transfers to consumers and businesses that requested them. The Bank regularly offered more than 25 transfers a year and has offered up to 70 transfers a year.

12. From May 1, 2011 to April 30, 2012, for example, the Bank offered 18 international consumer remittance transfers and 8 mixed use transfers.

13. On February 7, 2012, the CFPB published a rule governing the provision of international remittance transfers. Electronic Fund Transfers, 77 Fed. Reg. 6194 (Feb. 7, 2012) (to be codified at 12 C.F.R. pt. 1005) ("the Remittance Rule").

14. The 18 international consumer remittance transfers the Bank offered from May 2011-2012 are covered by the Remittance Rule. For the 8 mixed-use transfers offered during that period, the Bank does not have the details necessary to determine whether they would be covered by the Rule.

15. On May 22, 2012, the Bank determined that it would not be able to comply with the requirements of the Bureau's Remittance Rule and still offer international consumer remittance transfers at a profit.

16. On June 21, 2012, the Bank filed this suit.

17. On August 20, 2012, the Bureau revised the Remittance Rule to include a safe

harbor exemption for providers that perform 100 or fewer international consumer remittance transfers per calendar year. Electronic Fund Transfers, 77 Fed. Reg. 50244 (Aug. 20, 2012).

18. On November 27, 2012, in response to the Bureau's revision of the Remittance Rule, the Bank adopted an exception to its policy barring international consumer remittance transfers under which the Bank may offer those transfers but will never perform more than 99 such transfers in any given year. The Bank did so in order to fall within the Remittance Rule exception for banks performing under 100 international consumer remittance transfers annually.

19. But for the Remittance Rule, the Bank would offer an international consumer remittance transfer to any customer that requested it, even if the Bank exceeded 100 transfers each year.

20. The Bureau's Remittance Rule has caused the Bank financial harm. The Bank lost income on the international consumer remittance transfers it declined to offer after the adoption of the original Rule. In addition, the revised Remittance Rule limits the Bank's opportunity to expand that transfer business in the future. The Rule therefore has placed the Bank at a competitive disadvantage vis-à-vis other (typically larger) banks that can afford to offer remittances under the Rule without limitation, a service expected of a lending institution from its existing and prospective customers.

Mortgage Lending

21. In addition to authorizing the CFPB to regulate remittance transfers, the Dodd-Frank Act prohibits unfair, deceptive, and abusive consumer financial practices and authorizes the Bureau to identify what those practices entail and to take or recommend enforcement against institutions that engage in such practices. 12 U.S.C. § 5531(a)-(b).

22. The Director of the Bureau, Richard Cordray, has acknowledged the abstract

nature of the term "abusive," explaining in a January 24, 2012 hearing before a subcommittee of the U.S. House Committee on Oversight and Government Reform, that it is "a little bit of a puzzle because it is a new term" and is "not something [the Bureaus is] likely to be able to define in the abstract. Probably not useful to try to define a term like that in the abstract; we are going to have to see what kind of situations may arise where that would seem to fit the bill under the prongs."

23. Government officials have repeatedly stated that the Bureau's enforcement efforts will focus on mortgage lending practices. President Obama stated that the Bureau would "crack down on the abusive practice of unscrupulous mortgage lenders" on September 17, 2010. In March 2012, Director Cordray reiterated the Bureau's intention to "address the origination of mortgages, including loan originator compensation and the origination of high-priced mortgages."

24. Up until the last quarter of 2010, the Bank offered consumers several types of mortgages, including mortgages with five-year balloon payments and "character loans," which are loans based on the borrower's known character in addition to estimates of the borrower's ability to repay.

25. Before leaving the market, the Bank offered several loans at interest rates that were at least 1.5% higher than the Average Prime Offer Rate, as calculated with reference to the "Average Prime Offer Rates – Fixed" listed at http://www.ffiec.gov/ratespread/aportables.htm. Had it continued to offer consumer mortgage loans, it would have expected many of them to be of this character.

26. Based on statements Government officials made after the enactment of Dodd-Frank concerning the Bureau's authority over mortgage practices and the limits the Bureau could

impose on those practices, the Bank became concerned that the Bureau might retroactively deem its mortgage loans abusive. The Bank is a local, community bank, and it operates under different internal guidelines than other financial institutions. For example, the Bank's charter specifically provides that the Bank will serve the community, and the Bank therefore focuses on serving the needs of the community. The Bank does not sell its loans. As a result, the Bank has offered mortgages to its customers, based on its knowledge of their character and circumstances, that other institutions have been (and still today would likely be) unwilling to provide. The Bank would continue this practice of serving the community if it were to reenter the mortgage market.

27. For example, if the Bank were approached by a young couple whose income alone did not suggest ability to repay under traditional standards, but the Bank knew the parents of the couple were members of the community who themselves would be willing and able to pay for the mortgage, even if they were not themselves on the note, the Bank would be willing and able to offer that couple the mortgage. But the Bank would be concerned that the Bureau, looking at only the figures directly involved in such a loan, and not the unique circumstances the Bank evaluates as a community banker making that loan, would deem it abusive.

28. As another example, the Bank in the past made a loan with a 50% debt-to-income ratio to a borrower because the Bank had engaged in past transactions with the customer and knew that the customer—a single head-of-household whose credit had been negatively impacted by a previous relationship—would repay the obligations the customer incurred, even if the customer's former spouse had not.

29. When the Bank became concerned that it could not safely offer mortgages consistent with the Bureau's authority under the Dodd-Frank Act, the Bank expressed its concerns to officials at its prudential regulator, the Office of the Comptroller of the Currency (the

"OCC"). The OCC provided the Bank with no reassurance that it could remain in the market without fear of prosecution under the Bank's then-current practices.

30. In the last quarter of 2010, the Bank decided to exit the consumer mortgage business and determined that it would no longer offer any consumer mortgage loans. The Bank did so due to fear that those loans would be subject to enforcement action under the Dodd-Frank Act because they might be deemed to violate the prohibition against unfair, deceptive, and abusive practices.

31. The Bank also recognized that if it attempted to stay in the consumer mortgage market, it would have to incur significant additional costs to comply with proposed regulations governing mortgage loans, and thus would not be able to offer them in the cost-effective manner to which it was previously accustomed.

32. For example, if the Bank were to reenter the mortgage market and offer the terms it previously provided on consumer mortgage loans, many of the mortgages would constitute higher-priced covered transactions under the Bureau's new regulations. That means the loans would not fall within the safe harbor created by the Bureau pursuant to which the Bank could not be held liable to the borrower or to the Government on the theory that it did not adequately consider the borrower's ability to repay. The Bureau's regulations providing the Bank with only a rebuttable presumption of an adequate investigation, but otherwise leaving it subject to the costs of litigation, would require the Bank to reconsider whether it could offer the customer the loan at all and would impose an additional risk factor that would affect the costs and structure of the loan if the Bank were to offer it.

33. The Bank's inability to offer mortgages has harmed it financially in a number of ways. First, the Bank's mortgage business was regularly profitable. It was one of the best and

most prudent ways to invest and earn a return on the Bank's deposits and also one of the best ways for the Bank to reinvest in the community. The Bank's alternative use of funds is not as profitable.

34. Moreover, the Bank can no longer offer the full array of mortgage services existing and prospective customers expect of a lending institution, putting the Bank at a competitive disadvantage.

35. Finally, the Bureau's new rules governing mortgage foreclosure increase the Bank's costs of doing business. On January 17, 2013, the Bureau issued a rule that governs, among other things, the mortgage loan foreclosure process. *See* Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X) (Jan. 17, 2013), *available at* http://www.consumerfinance.gov/regulations/2013-real-estate-settlement-procedures-act-regulation-x-and-truth-in-lending-act-regulation-z-mortgage-servicing-final-rules/. Under this rule, "[a] small servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless a borrower's mortgage loan obligation is more than 120 days delinquent." *Id.* at 696 (to be codified at 12 CFR §1024.41(j)).

36. Although the Bank no longer makes new consumer mortgage loans, it still holds several such loans from previous years that have yet to be satisfied. Under Texas law, the Bank could initiate foreclosure proceedings on such a loan, should the borrower default, if the borrower did not cure that default within 20 days of a letter notifying him of the delinquency. *See* Tex. Prop. Code Ann. § 51.002(a), (b), (d) (West 2012). After those 20 days expired, the Bank could post a foreclosure notice at the courthouse, file the notice with the county clerk, and notify the borrower of the foreclosure sale, which could be held as soon as 21 days thereafter. *Id.* Even if the Bank does not intend to actually foreclose on a defaulted borrower, posting a

foreclosure notice at the courthouse soon after a default can be a useful tool to induce such a borrower to get current on their payments—but the Bank is now prohibited by the Bureau's new rule from doing so for 120 days. The Bureau's new rule will increase the Bank's costs by drawing out the process by which the Bank may seek to recover on a defaulted loan.

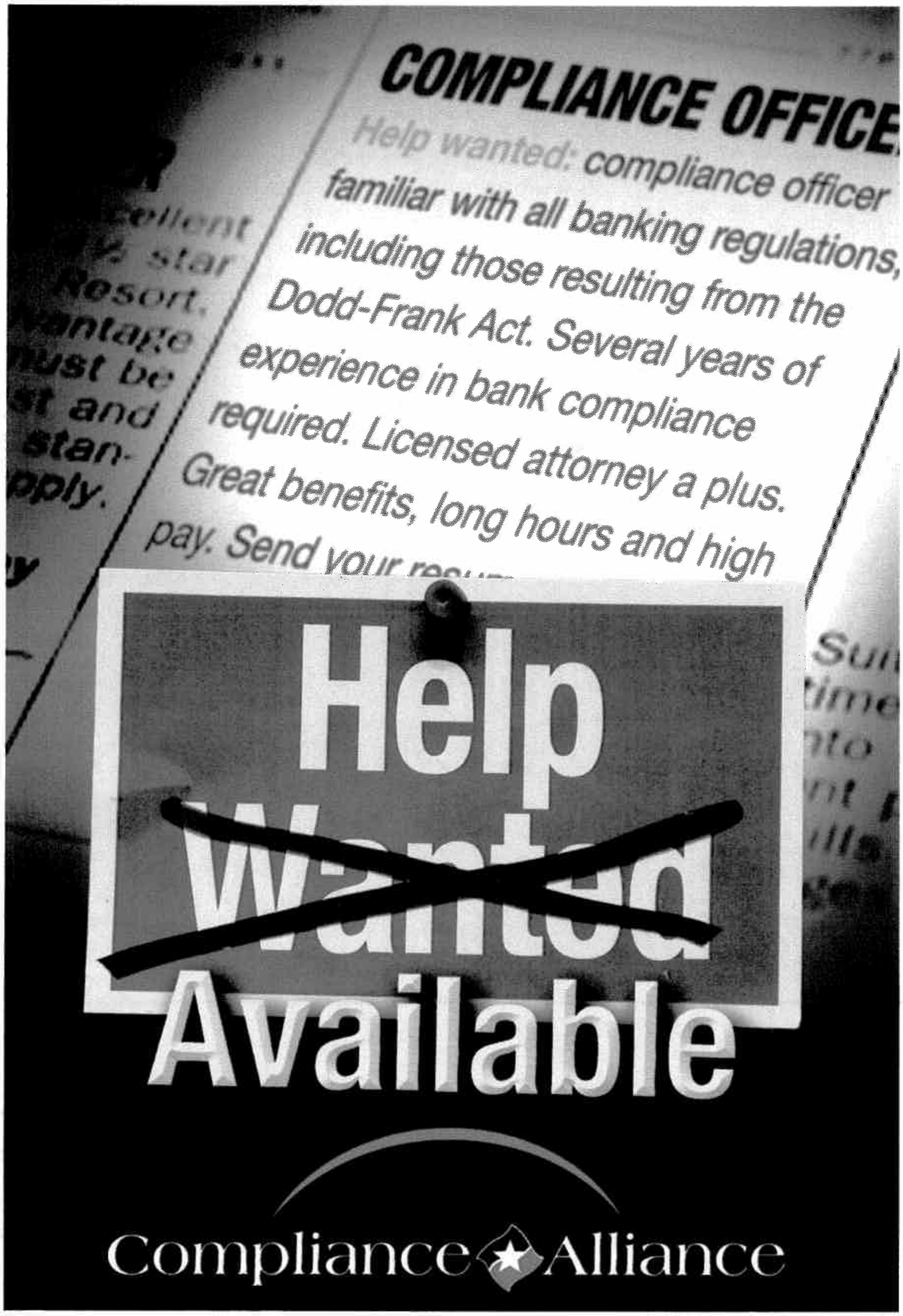
37. Any new loans the Bank would make would also be subject to the Bureau's foreclosure limitations.

38. But for the Bureau, its rules, and its enforcement authority, the Bank would reenter the consumer mortgage and remittance markets without limitation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 12, 2013, at Big Spring, Texas.

Jim R. Purcell


COMPLIANCE OFFICE
Help wanted: compliance officer familiar with all banking regulations, including those resulting from the Dodd-Frank Act. Several years of experience in bank compliance required. Licensed attorney a plus. Great benefits, long hours and high pay. Send your
Help
~~Wanted~~
Available
Compliance Alliance

Compliance Alliance

Are the hundreds of new and changing rules and regulations forcing you to hire additional staff to keep your bank in compliance?

Compliance officers receive an average salary of $62,000 plus benefits. Bank attorneys are paid upwards of $100,000. The risk of noncompliance is too great to not get help.

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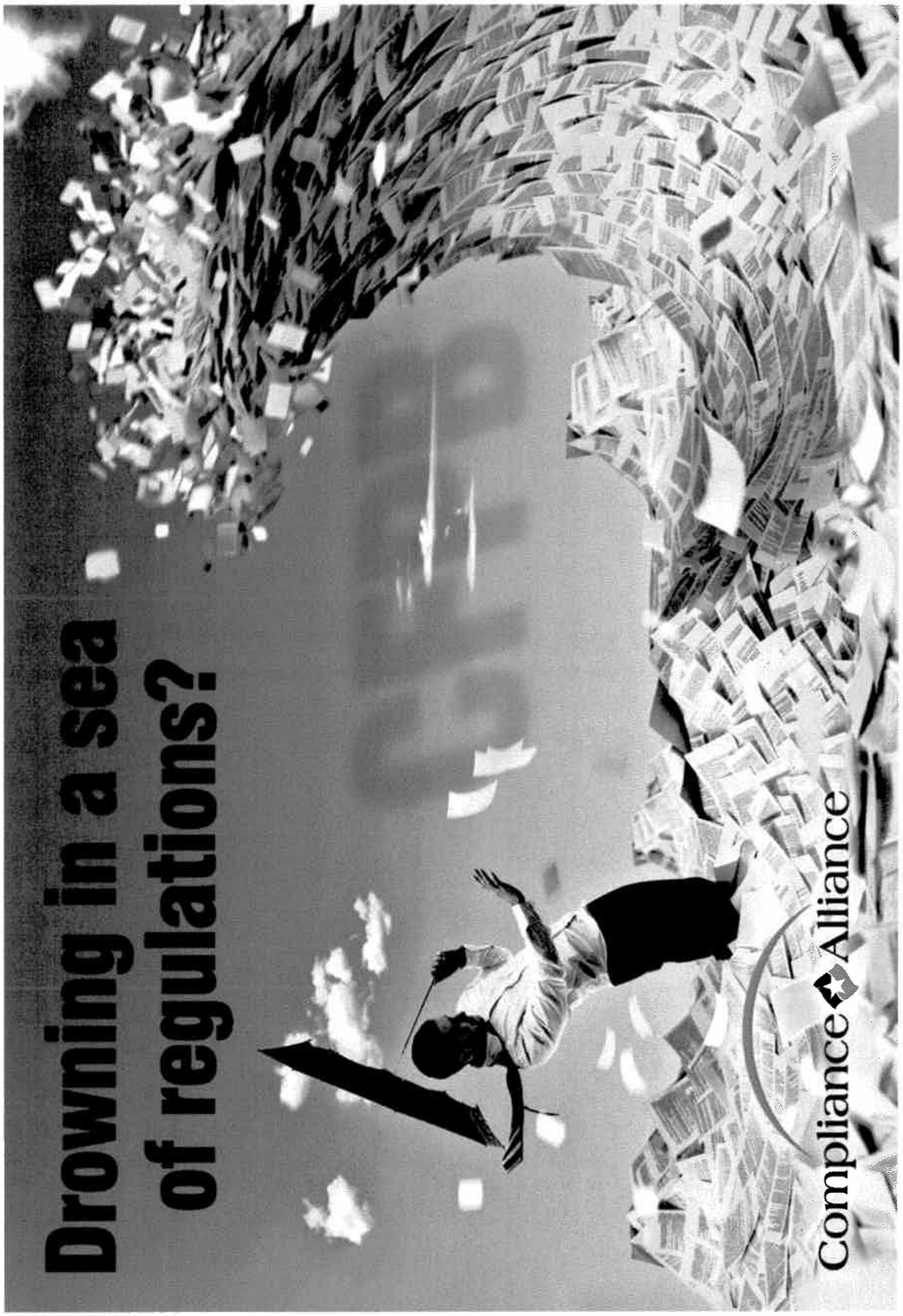

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Has the onset of regulatory changes made your bank struggle to keep its head above water?

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Compliance Alliance

A SUBSIDIARY OF THE TEXAS BANKERS ASSOCIATION

The Industry – Ready or Not – *It's Coming*...

- You have undoubtedly heard and read much about the compliance and operational impacts of the Dodd-Frank Act.
- The Dodd-Frank Act will have a significant and costly effect on traditional banks.
- Banks should pay close attention to the rules, regulations and statements that come from the newly created CFPB and other regulatory banking agencies.
- Each of these new compliance mandates will affect consumer financial products and services and enterprise risk management throughout the bank.

Compliance Alliance

Survey Says…

- Survey results indicated that banks plan to hire or redirect one or more FTEs to handle compliance needs

- Average salary for a compliance officer is $62,000 plus benefits (Based on TBA Salary Survey)

Research Says…

TBA is a member-driven Association that strives to meet our members' needs. When we saw the insurmountable compliance burden grow for our members, we set out to help our members navigate through the complexity of the compliance maze.

- **Held a Compliance Focus Group meeting in 2010, comprised of 16 banking compliance personnel from TBA member banks across the state to explore ways to ease the compliance and regulatory burdens on banks.**
- **Surveyed our TBA Board of Directors to get feedback on their plans to adapt to the compliance and operational impacts of the Dodd-Frank Act.**

Compliance Alliance

What we found…

Compliance Focus Group

Focus Group Findings:

- **Understaffed.** Bank employees spreading compliance duties across departments to accommodate the load
- **Hard to track.** Bankers' need for a simple calendar to track all things compliance and the mandatory effective dates
- **Mundane tasks.** There is an enormous amount of tedious tasks related to taking a new regulation from introduction to policy
- **Trusted source.** There are other compliance website resources out there, but can they be trusted?
- **One location.** Other compliance websites may have one or two beneficial resource tools, but there is not one site that offers it all, which creates multiple and time consuming web searches. There is a need for a one-stop, up-to-date and trusted website
- **Full Capacity.** Compliance staff are already overloaded with the current level of regulations – How will they survive the 200+ coming?
- **Extra Set of Hands.** Compliance staff repeatedly reported the need for an extra set of hands. Hiring is one option, but leveraging the expertise and economies of scale with a trusted and knowledgeable third party will be more economical and free up existing staff's time to take on more.

What we do…

Compliance Alliance Benefits:

- Cliff Notes on New Regulations (White Papers)
- Policy Templates
- Procedures
- Processes
- Action Plans
- Lending Matrices
- Compliance Hotline

Compliance Alliance

What we do...

Compliance Alliance Benefits:

- Cheat Sheets
- Checklists
- Worksheets
- Compliance Calendar
- Risk Assessment Tools
- Tracking Tools
- Review of Advertising and Marketing
- Review of Website

Compliance Alliance

What we do…

Compliance Alliance Benefits:

- Evaluate new products to ensure compliance
- Review Disclosures
- Training Tools
- Statutes
- Regulations
- Rules
- Interpretations
- Compliance Webinars
- Compliance Newsletter

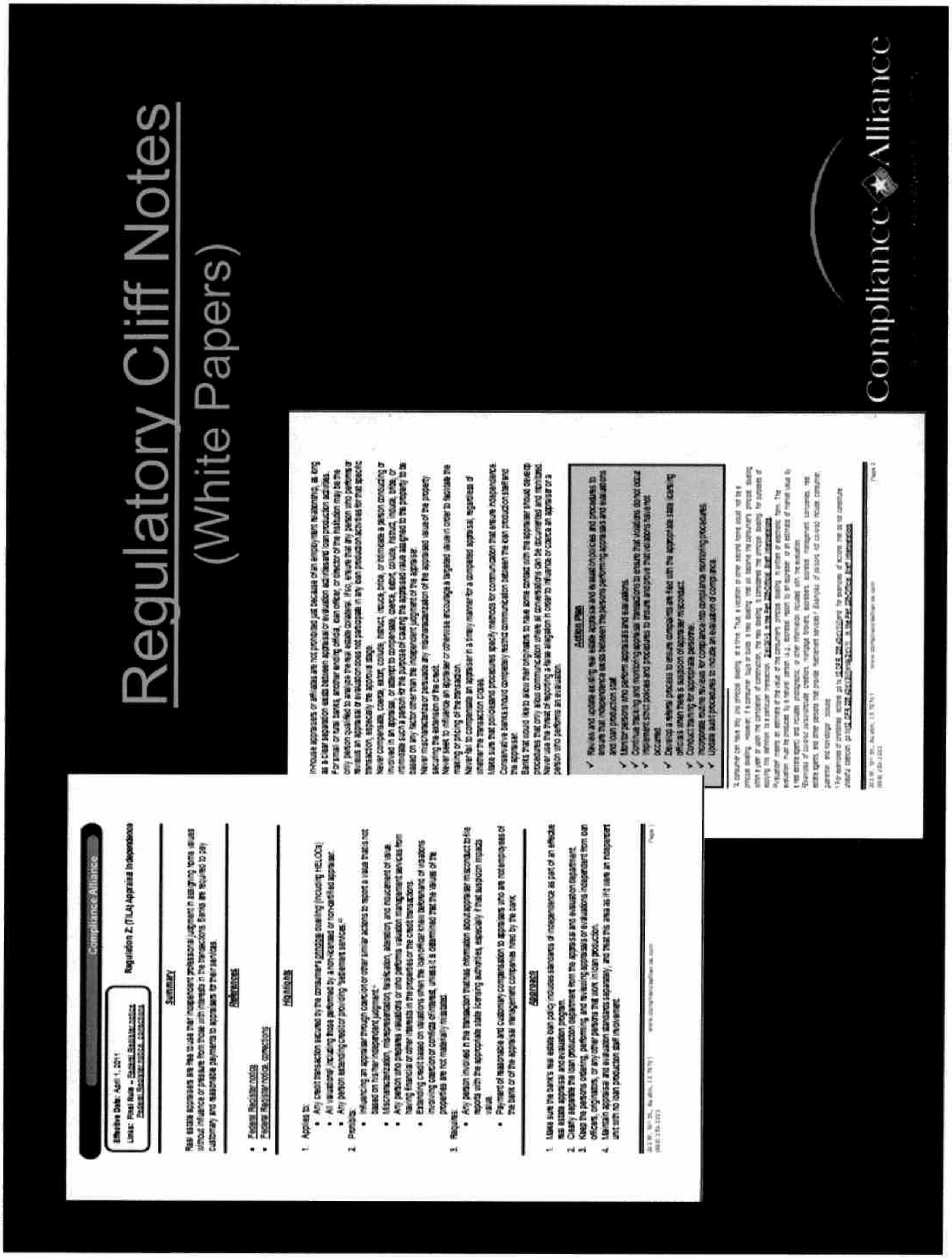
Compliance Alliance

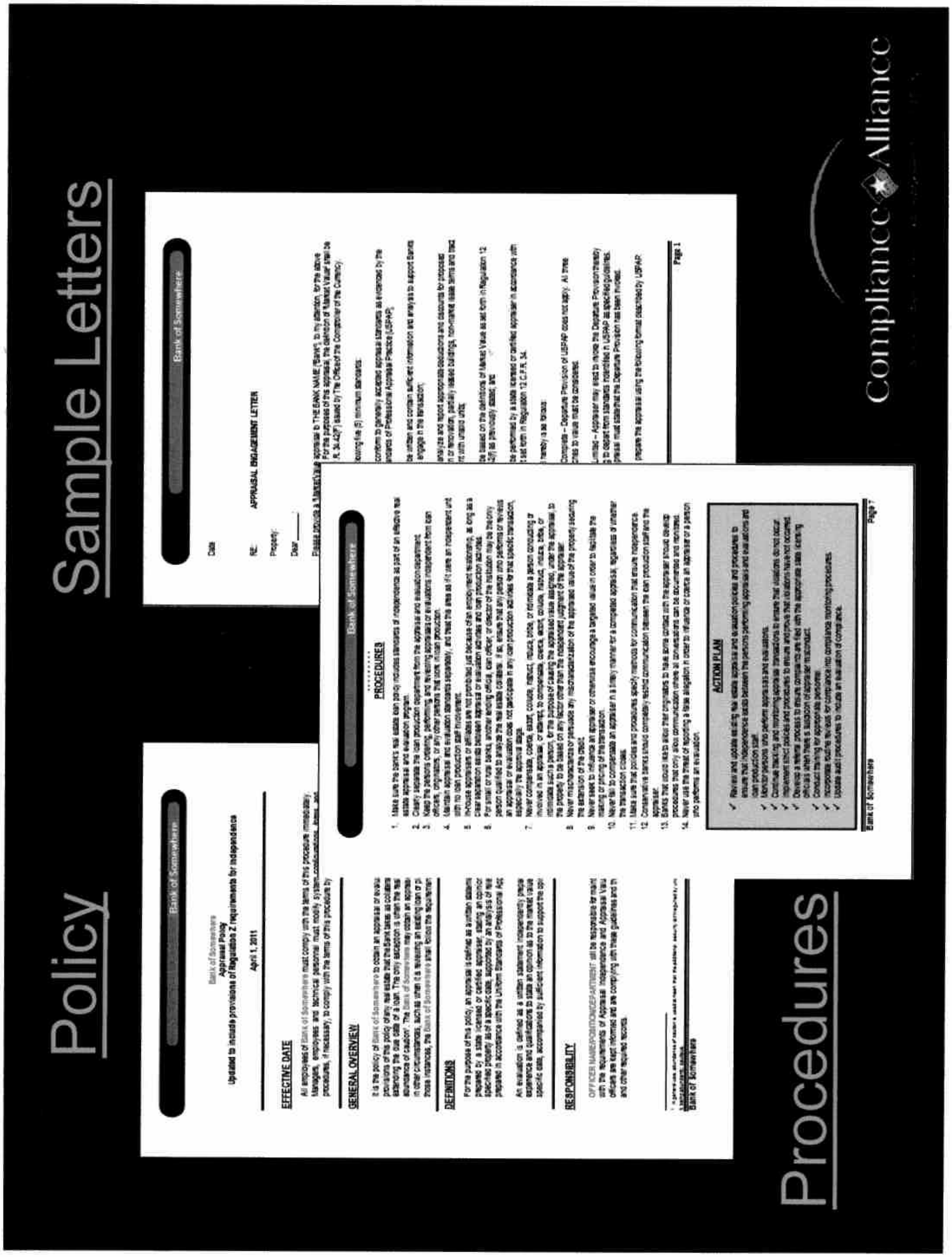
What we do…

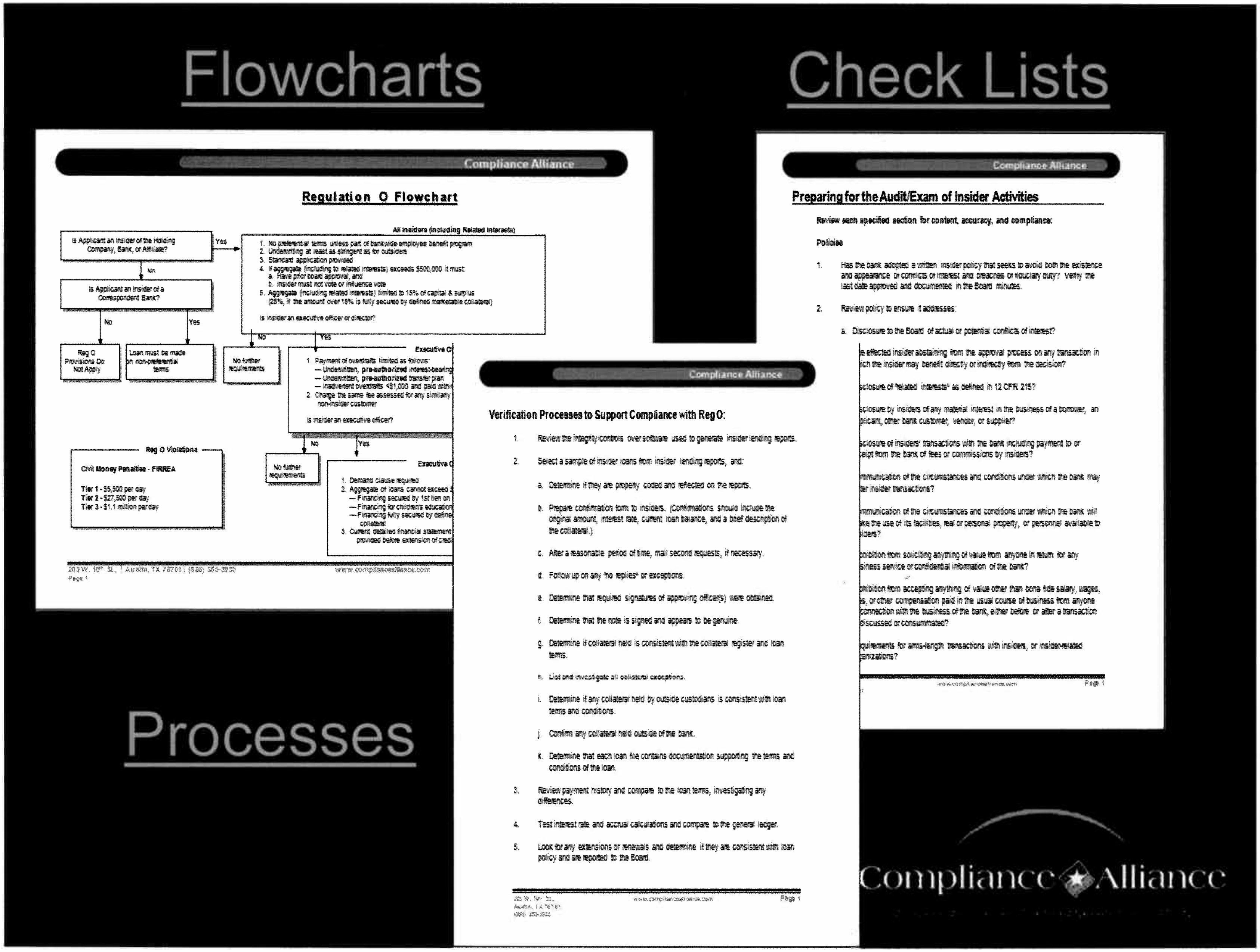
Compliance Alliance Benefits:

- Forms
- Notices
- Website
- Notification of changes, updates, and news
- FAQs
- And more to come…

Compliance Alliance


Regulatory Cliff Notes
(White Papers)
Compliance Alliance


Policy
Sample Letters
Procedures
Bank of Somewhere
APPRAISAL ENGAGEMENT LETTER
PROCEDURES
ACTION PLAN
EFFECTIVE DATE
GENERAL OVERVIEW
DEFINITIONS
RESPONSIBILITY
Compliance Alliance


Flowcharts
Check Lists
Processes
Compliance Alliance
Regulation O Flowchart
Is Applicant an insider of the Holding Company, Bank, or Affiliate?
Yes
No
Is Applicant an insider of a Correspondent Bank?
No
Yes
Reg O Provisions Do Not Apply
Loan must be made on non-preferential terms
All Insiders (including Related Interests)
1. No preferential terms unless part of bankwide employee benefit program
2. Underwriting at least as stringent as for outsiders
3. Standard application provided
4. If aggregate (including to related interests) exceeds $500,000 it must:
a. Have prior board approval, and
b. Insider must not vote or influence vote
5. Aggregate (including related interests) limited to 15% of capital & surplus (25%, if the amount over 15% is fully secured by defined marketable collateral)
Is insider an executive officer or director?
No
Yes
No further requirements
1. Payment of overdrafts limited as follows:
— Underwritten, pre-authorized interest-bearing
— Underwritten, pre-authorized transfer plan
— Inadvertent overdrafts <$1,000 and paid withi
2. Charge the same fee assessed for any similarly non-insider customer
Is insider an executive officer?
No
Yes
No further requirements
1. Demand clause required
2. Aggregate of loans cannot exceed
— Financing secured by 1st lien on
— Financing for children's education
— Financing fully secured by define collateral
3. Current detailed financial statement provided before extension of cred
Reg O Violations
Civil Money Penalties - FIRREA
Tier 1 - $5,500 per day
Tier 2 - $27,500 per day
Tier 3 - $1.1 million per day
203 W. 10th St., | Austin, TX 78701 | (888) 353-3933
www.compliancealliance.com
Page 1
Preparing for the Audit/Exam of Insider Activities
Review each specified section for content, accuracy, and compliance:
Policies
1. Has the bank adopted a written insider policy that seeks to avoid both the existence and appearance of conflicts of interest and breaches of fiduciary duty? Verify the last date approved and documented in the Board minutes.
2. Review policy to ensure it addresses:
a. Disclosure to the Board of actual or potential conflicts of interest?
Verification Processes to Support Compliance with Reg O:
1. Review the integrity/controls over software used to generate insider lending reports.
2. Select a sample of insider loans from insider lending reports, and:
a. Determine if they are properly coded and reflected on the reports.
b. Prepare confirmation form to insiders. (Confirmations should include the original amount, interest rate, current loan balance, and a brief description of the collateral.)
c. After a reasonable period of time, mail second requests, if necessary.
d. Follow up on any "no replies" or exceptions.
e. Determine that required signatures of approving officer(s) were obtained.
f. Determine that the note is signed and appears to be genuine.
g. Determine if collateral held is consistent with the collateral register and loan terms.
h. List and investigate all collateral exceptions.
i. Determine if any collateral held by outside custodians is consistent with loan terms and conditions.
j. Confirm any collateral held outside of the bank.
k. Determine that each loan file contains documentation supporting the terms and conditions of the loan.
3. Review payment history and compare to the loan terms, investigating any differences.
4. Test interest rate and accrual calculations and compare to the general ledger.
5. Look for any extensions or renewals and determine if they are consistent with loan policy and are reported to the Board.
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Another Training Tool

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Regulatory Policy & Training Requirements and Penalties

Regulation	Policies **	Training	Penalties for non compliance
Regulation B, Equal Credit Opportunity Act	Expected	Strongly Recommended For New Account and Loan Personnel	• FIRREA Penalties Civil liability: • Actual damages • Punitive damages: a. $10,000 in individual cases, b. the lesser of $500,000 or 1% of the creditor's net worth in class action suits • Attorney's fees
Regulation C, Home Mortgage Disclosure Act	Expected	Recommended Regularly For New Account and Loan Personnel (Consumer Compliance Handbook Examination Manual p 122)	• FIRREA Penalties
Regulation D, Reserve Requirements of Depository Institutions	Expected	Recommended Regularly For New Account Personnel	• FIRREA Penalties: Civil penalties are available; Federal Reserve may waive penalties exempt for gross negligence or willful noncompliance
Regulation E, Electronic Fund Transfer Act	Expected	Recommended Regularly For Teller and New Account Personnel (Consumer Compliance Handbook Examination Manual, pg 25)	• FIRREA Penalties Civil liability: • Actual damages • Court costs and attorney's fees Criminal liability: • Fines up to $5,000 and/or imprisonment of up to one year for knowingly giving false information • Fines up to $10,000 and/or imprisonment for 10 years for forgery, counterfeiting, and stealing debit devices
Flood Insurance **Flood Disaster Protection Act**	Expected 12 CFR 208.25	Recommended Regularly For New Account and Loan Personnel 12 CFR 208.25	• FIRREA Penalties Statutory penalties: • $385 per violation • Up to $125,000 per lender per, calendar year Potential of negligence liability if lender does not comply with the act and the borrower's property is damaged or destroyed
Regulation M, Consumer Leasing			- FIRREA Penalties Civil liability: • Actual damages • Court costs, attorney's fees • Statutory damages ($100 to $1,000) • Class Actions ($500,000 or 1% of the creditor's net worth, whichever is less) Criminal liability

Risk Assessment Tools

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Fair Lending Risk Assessments

Directions: In this Assessment, summarize the factors supporting the Level of Risk, the Aggregate Level, and the Direction by checking Low, Moderate, or High ... , or High boxes in the Totals Box below to determine your bank's overall

Quantity of Risk

High	L	M	H	Comments
...able volume of consumer ...ld be discouraging to				
...products offered (e.g., sub-...ortgages, etc). Prime and ... offered appear similar.				
...licy exceptions/overrides.				
...ows a high level of subjective ...actors.				
...rities among approval/denial ... basis groups.				
...ithdrawn/incomplete ...ohibited basis groups.				
...s in lending patterns identified ...e.				

...alliance.com Page 1

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Overall Compliance Risk Assessments

Directions:
In this Assessment, summarize the factors supporting the Level of Risk, the Aggregate Level, and the Direction by checking Low, Moderate, or High for each category. Then, total the number of check marks for each of the Low, Moderate, or High boxes in the Totals Box below to determine your bank's overall risk. Please be sure to also note comments regarding your bank's status for each category.

QUANTITY OF COMPLIANCE RISK INDICATORS

LOW	MODERATE	HIGH	L	M	H	COMMENTS
Violations or noncompliance issues are insignificant, as measured by their number or seriousness.	The frequency or severity of violations or noncompliance is reasonable.	Violations or noncompliance expose the company to significant impairment of reputation, value, earnings, or business opportunity.				
The institution has a good record of compliance. The bank has a strong control structure that has proven effective. Compliance management systems are sound and minimize the likelihood of excessive or serious future violations or noncompliance.	The institution has a satisfactory record of compliance. Compliance management systems are adequate to avoid significant or frequent violations or noncompliance.	The institution has an unsatisfactory record of compliance. Compliance management systems are deficient and reflect an inadequate commitment to risk management.				
Management fully understands all aspects of compliance risk and exhibits a clear commitment to compliance. The commitment is communicated throughout the institution.	Management reasonably understands the key aspects of compliance risk. Its commitment to compliance is reasonable and satisfactorily communicated.	Management does not understand, or has chosen to ignore, key aspects of compliance risk. The importance of compliance is not emphasized or communicated throughout the organization.				

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Cheatsheets

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Quick Reference Info Chart for Corporate Accounts

STYLE OF ACCOUNT AND OWNERSHIP OF FUNDS	The account should be styled in the legal name of the entity[1]. For example: • Food Market, Inc. • Food Market, Corporation • Food Market, Inc., DBA Sunset Produce (assumed name certificate required)
TAXPAYER IDENTIFICATION NUMBER (TIN) REQUIREMENTS	EIN is required, and SSNs are never permissible. Certification of the EIN is provided by the officer of the corporation.
DOCUMENTATION	The following documentation should be obtained at the time the account is opened: 1. Signature card signed by those persons authorized to sign on the account; 2. EIN certification signed by one of the officers of the corporation; 3. Certificate of Corporate Resolution (TX)[2]; 4. Certified copy of Certificate of Formation (or Articles of Incorporation if formed before January 1, 2006), and Certificate of Filing (TX); 5. Certificate of Authority for foreign corporations (TX); 6. Assumed name certificate if applicable (TX, CIP).
INFORMATION	The following CIP information is required: 1. Name of corporation; 2. Address of corporation; 3. EIN; and 4. Corporate Resolution. **Tip:** Find or verify proof of corporation's legal existence and assumed name documentation on the Texas Secretary of State's (SOS's) website, http://www.sos.state.tx.us/. **Tip:** Obtain the name and address of the corporation's registered agent.[3] This can be found on the SOS's website. **Tip:** To add/remove signers a financial institution will need a new corporate resolution and a new signature card. **FDIC Corporate AccountsCoverage Limits:** ✓ $ 250,000 per corporation

[1] Legal name of the entity includes the form of organization.
[2] (TX) means under Texas law.
[3] A registered agent may be a business or individual designated to receive service of process when a business entity is a party in a legal action such as a lawsuit or summons.

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Quick Reference Info Chart for Revocable Living Trust Accounts

STYLE OF ACCOUNT AND OWNERSHIP OF FUNDS	***The account should be styled either in the name of the trust or in the name(s) of the trustee(s).*** For example: • John Doe Revocable Living Trust, John Doe, Trustee; or • Doe Family Trust, John Doe, Trustee ***The funds in the trust account are owned by the grantor. Trustees just manage the trust.***
TAXPAYER IDENTIFICATION NUMBER (TIN) REQUIREMENTS	Either the grantor's SSN (trustee must have grantor sign the SSN certification), or EIN certified by the trustee.
DOCUMENTATION	***Documents should be obtained at the time a deposit account is opened.*** Documents include: 1. Signature card signed only by the trustee(s); 2. TIN (SSN) or EIN certification; 3. Trust Authorization and Agreement; and 4. A copy of the trust agreement, or certificate of trust (affidavit). ***The certificate of trust should include*** (sample model): 1. Trust date; 2. Names of trustee and successor trustees, if any; 3. Name and address of each beneficiary; 4. Powers granted to the trustee; and 5. Indemnification[1] of the bank.
INFORMATION	***The following CIP information is required from the grantor(s) at the time the deposit account is opened:*** 1. Name; 2. Date of birth; 3. Physical address of residence; 4. Appropriate TIN; and 5. Proof of trust indicate. ***FDIC Coverage Limits:*** ✓ $ 250,000 for each named beneficiary, or the total amount allocated to each beneficiary, whichever is greater. ✓ Trustees, co-trustees, and successor trustees are not relevant.

[1] Under Texas Statute, the indemnification should specify that, "The bank is not liable for administering the account as provided by the certificate of trust, even if the certificate of trust is contrary to the terms of the trust agreement, unless the bank has actual knowledge of the terms of the trust agreement."

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Loan Matrix

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CHARACTERISTICS OF LOAN REQUEST				REG B		FCRA	REG C	REG Z							RESPA					REG AA	REG H
TYPE OF SECURITY	USE OF SECURITY	USE OF PROCEEDS	INS. DISC.	WRITTEN APP.	NOTICE OF RIGHT TO RECEIVE COPY OF APPRAISAL	NOTICE TO HOME LOAN APPLICANT	(GOV. MON. INFO) HMDA	HOME EQUITY BROCHURE & PROGRAM DISC.	ARM BOOKLET & PROGRAM DISC.	HOEPA (NA if purchase)	HPML CHECK LIST	EARLY TIL DISC.	TIL DISC.	RIGHT TO RESCIND	BUYING YOUR HOME BOOKLET	GOOD FAITH ESTIMATE	MTG. SERV. DISC. (1ST LIENS ONLY)	HUD-1 OR HUD-1A	INITIAL ESCROW STMT. (if escrow)	NOTICE TO CO-SIGNER	FLOOD CHECK
Consumer goods, raw land, unsecured	Consumer use	Purchase	X	Personal									X							X	
		Refinance	X	Personal									X							X	
		Equity	X	Personal									X							X	
	Business use	Purchase, refi, equity		CAA*																	
Residential dwelling of 1-4 families, or a mobile home (less than 25 acres)	Primary Residence	Purchase	X	URLA	X	X	X		X**		X	X	X		X*	X*	X*	X*	If Escrow	X	X
		Refinance	X	URLA	X	X	X		X**	X	X	X	X	X		X*	X*	X*	If Escrow	X	X
		Home Improvement	X	URLA	X	X	X		X**	X	X	X	X	X		X*	If 1st lien	X*	If Escrow	X	X
		Bridge to Purchase		Home Equity	X	X						X	X	X						X	X
		Home Equity (non-HMDA)	X	Home Equity	X	X			X**	X	X	X	X	X		X*	If 1st lien	X*	If Escrow	X	X
		HELOC (open end)(& 2nd home)	X	Home Equity	X	X		X						X						X	X
		Business or Ag		CAA*	X	XX	If HMDA														X
	Rental House	Purchase, refi, improvement		CAA*	X	XX	X														X
		Home Equity-consumer	X	Home Equity	X	X			X**			X	X			X*	If 1st lien	X*	If Escrow	X	X
		Home Equity-business		CAA*	X	XX															X
	Secondary or other residence	Purchase, refi, improvement	X	URLA	X	X	X					X	X		X*	X*	X*	X*	If Escrow	X	X
		Home Equity	X	Home Equity	X	X						X	X			X*	If 1st lien	X*	If Escrow	X	X
Residential dwelling of 1-4 families, or a mobile home (25 acres or more)	Primary Residence	Purchase	X	URLA	X	X	X		X**		X	X	X							X	X
		Refinance	X	URLA	X	X	X		X**	X	X	X	X	X						X	X
		Home Improvement	X	URLA	X	X	X		X**	X	X	X	X	X						X	X
		Home Equity (non-HMDA)	X	Home Equity	X	X			X**	X	X	X	X	X						X	X
		HELOC (open end)	X	Home Equity	X	X		X						X						X	X
		Business or Ag		CAA*	X	XX	If HMDA														X
Raw Land	Primary Residence	Construction to Permanent	X	URLA	X	X	X		X**		X	X	X		X*	X*	X*	X*	If Escrow	X	X

Current Compliance Alliance Staff Experience

- One Attorney with 18 Years Banking Experience
- One Attorney with 9 Years Banking Experience
- One Compliance Specialist with 13 years at OCC and 14 years of Compliance and Auditing Experience
- One Compliance Specialist with 25 years of Bank Compliance Experience

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npliancealliance.com/news/CFPBIssuesRuletoProtectConsumersfromIrresponsibleMortgageLending

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CFPB Issues Rule To Protect Consumers From Irresponsible Mortgage Lending

01/10/13

CFPB Issues Rule to Protect Consumers from Irresponsible Mortgage Lending

Today the Consumer Financial Protection Bureau (CFPB) adopted a new rule that will protect consumers from irresponsible mortgage lending by requiring lenders to ensure prospective buyers have the ability to repay their mortgage. The rule also protects borrowers from risky lending practices such as "no doc" and "interest only" features that contributed to many homeowners ending up in delinquency and foreclosure after the 2008 housing collapse.

"When consumers sit down at the closing table, they shouldn't be set up to fail with mortgages they can't afford," said CFPB Director Richard Cordray. "Our Ability-to-Repay rule protects borrowers from the kinds of risky lending practices that resulted in so many families losing their homes. This common-sense rule ensures responsible borrowers get responsible loans."

Leading up to the mortgage crisis, certain lenders originated mortgages to consumers without considering their ability to repay the loans. The gradual deterioration in underwriting standards led to dramatic increases in mortgage delinquencies and rates of foreclosures. What followed was the collapse of the housing market in 2008 and the subsequent financial crisis. The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act created broad-based changes to how creditors make loans and included new ability-to-repay requirements, which the CFPB is charged with implementing. Read more.

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CFPB Launches Inquiry On Campus Financial Products

01/31/13

CFPB Launches Inquiry on Campus Financial Products

The Consumer Financial Protection Bureau (CFPB) announced that it is launching an inquiry into the impact of financial products marketed to students through colleges and universities. The CFPB intends to use the information gathered to determine whether these arrangements are in the best interest of students.

"We have seen many colleges establish relationships with financial institutions to offer banking services to their students," said CFPB Director Richard Cordray. "The Bureau wants to find out whether students using college-endorsed banking products are getting a good deal."

The Credit CARD Act of 2009 (CARD Act) restricted financial institutions from using certain types of marketing practices on college campuses. The CARD Act also made agreements between credit card issuers and institutions of higher education subject to public disclosure. However, less is known about arrangements regarding other products marketed to students. To better understand the market, the CFPB is publishing today a Notice and Request for Information on the topic of campus financial products. Campus financial products include student identification cards that double as debit cards, cards used to access scholarships and student loans, and school-affiliated bank accounts. Read more.

Read Other news

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Compliance Alliance

April 10, 2012

Email to a friend

REMEMBER CONSUMER COMPLAINTS WHEN REVIEWING YOUR OVERDRAFT PROGRAM

In the wake of the comment period ending for overdrafts, we wanted to address an important component to remember when reviewing your overdraft program, whether it is automated or ad hoc.

If you have been out in the trenches you know that customers seem to have shorter fuses these days. Aggravation and stress levels seem higher than normal. Right in the middle of the aggravation, the regulatory agencies are going to make sure the stakes for keeping our customers happy have never been higher, especially now that the new Consumer Financial Protection Bureau has "gone live."

One of the first icons that any visitor to the Consumer Financial Protection Bureau's home page sees is a reddish box labeled "Submit a credit card complaint." That is just the first complaint reporting function the Bureau plans.

"The Dodd-Frank Act directs the CFPB to facilitate the collection and monitoring of and response to consumer complaints regarding certain financial products and services. These complaints and consumers' inquiries will help the CFPB identify areas of concern and will help the CFPB in its supervision and other responsibilities."

How the Bureau will handle complaints remains to be seen. But bank regulators have already stepped up their own attention to consumer complaints, both those filed with the agencies and those made to banks directly. New channels for complaints, ranging from tweets on Twitter and demonstrative videos on YouTube to angry blogs and more, underscore that consumer dissatisfaction with their financial services providers have entered a new age.

The message to remember is ... Don't wait for Washington to come to you. Before you get a visit from the regulators or the Department of Justice, your bank should have a process in place to address consumer complaints. The complaints that are coming in should be being used as an early warning system to protect customers and the bank from an unintentional problem. It is important to note that anything the customers are telling the banks, good or bad, can be used to "control our destiny." Don't wait for the Consumer Financial Protection Bureau or other regulatory agencies to notify the bank that they have received numerous complaints about your overdraft checking program.

Complaints represent an opportunity to spot weaknesses, places where the bank needs to improve processes, procedures, or, where those are correct, communication with consumers so they understand what is going on. Regulators' exam procedures now stress not only that examiners review a bank's complaints management process, but weigh how well the bank is dealing with what its systems track.

The Federal Reserve exam manual procedure states: "Determine whether the bank reviews consumer complaints to identify potential compliance problems and negative trends that have the potential to be unfair or deceptive. Determine whether the bank reviews concentrations of complaints about the same product or about bank conduct in order to identify potential areas of concern."

It is not unusual for consumers, when first sending a letter of complaint, for instance, to ramp things up immediately. They not only write to the bank, but carbon copy all banking regulators.

A strong complaint management system will give a bank an overview of six critical factors:

1. Overall volume of complaints.

2. Number of open complaints at a given time, versus resolved complaints.

3. Number of complaints open for a given length of time.

4. Number of complaints where the issue involved has resulted in regulatory violations.

5. Concentrations of complaints tied to a specified area of the bank.

6. The number of complaints arising from a specific source among the bank's operations.

In some areas of banking compliance and regulation, a "dispute" and a "complaint" are not the same thing (for example: electronic funds transfer transactions). Don't confuse disputes with complaints, but don't let a dispute go unresolved and turn into a complaint.

Complaints have always been a serious matter, but they have grown more critical to a bank's compliance record because banking regulators are playing hard ball these days.

When regulators see multiple complaints that all fall into the same area, they may regard this as a pattern or practice of behavior by the bank.

Complaints can wind up as exam issues and be written into the formal report as a "matter requiring attention," and it has been reported that examiners may follow up independently of formal visits to determine how the bank is following up on complaints.

It is important to note that patterns that indicate systemic issues may result in regulatory referrals to the Department of Justice, and even morph into "UDAAP" under the Dodd-Frank Act. (UDAP stood for "Unfair or Deceptive Acts and Practices," while UDAAP underscores the expansion of the standard to "Unfair Deceptive and Abusive Acts and Practices.")

That being said, the banks should not assume they have done something wrong just because a complaint has been received, but if the bank was in the wrong, self-identification will weigh in the bank's favor when regulators examine the bank's complaint record and its impact on overall compliance issues.

The goals of a complaint handling system range from tracking them so they are dealt with to providing an appropriate overview to various levels of bank leadership.

One of the regulators' key interests when reviewing complaint handling systems is whether senior management and the board are given "meaningful data" on customer complaints. Only reporting numbers is not enough. We recommend that complaint reports include the following elements:

• Summaries of significant items,

• Status of complaints,

• Age of pending complaints awaiting resolution,

• Lines of business and bank regions impacted by complaints,

• Regulations impacted by complaints,

• Trends in complaints, and

• Opportunities for improvement.

Once this information is received and reported, the bank can use this information to improve the affected product or line of business.

Compliance Alliance, Inc.
Phone: 888-353-3933 | Feedback

Compliance Alliance

May 30, 2012

Email to a friend

THE CFPB TAKES AIM AT CURTAILING RULES FOR MORTGAGES

I am sure you have heard the news regarding one of the CFPB's latest proposals, specifically regarding flat fee compensation instead of origination fees being tied to a loan amount. On May 8, 2012, the Consumer Financial Protection Bureau (CFPB) said it plans to propose tighter mortgage lending regulations that would limit the ability of banks to charge specified transaction fees to consumers when they buy a house.

If you recall, on March 9, 2012, the CFPB announced that they will propose residential mortgage loan origination (MLO) rules this summer with a goal of adopting the final rules by January 2013. According to the CFPB, these rules will make it easier for consumers to understand mortgage costs and compare loans in order to get the best deal.

Director Richard Cordray stated that "Mortgages today often come with so many different types of fees and points that it can be hard to compare offers. We want to bring greater transparency to the market so consumers can clearly see their options and choose the loan that is right for them."

The CFPB is considering proposals that would:

- Require an interest-rate reduction when consumers elect to pay discount points;
- Require lenders to offer consumers a no-discount-point loan option;
- Ban origination charges that vary with the size of the loan;
- Implement federal standards for qualification of loan originators; and
- Reconfirm the prohibition on paying steering incentives to mortgage loan originators.

The CFPB also has plans to convene a Small Business Review Panel that will meet with a group of representatives of the small financial services providers that would be directly affected by the proposals under consideration.

In my opinion, the most concerning proposals issued by the CFPB are the complete ban on dual compensation of loan origination, the potential flat charge per loan originated, regardless of size, and the limitations on upfront payments of discount points, origination points, or fees. While the CFPB may create some exemptions related to the points and fees provision if it finds that doing so would be "in the interest of consumers and in the public interest," the Bureau believes generally that points and fees present the possibility of consumer confusion. Thus, by providing

no exemptions, lenders would be forced to offer no-point, no-fee loans and to recover their administrative costs through the rate over time, rather than through upfront payments.

The CFPB's lack of forethought as to the overall effect these types of bans will have on the consumers ability to actually availability of consumer credit and the mortgage industry as a whole is disturbing.

Similarly, with regard to the licensing requirements, the CFPB's suggestion of one size fits all, namely, that licensing requirements will be the same for all originators (e.g., banks, thrifts, mortgage brokers, nonprofit organizations), will likely increase problems in implementation and effectiveness. These types of ultimatums, invariably, will cause small businesses to struggle, given the increased regulatory burdens and limitations. Further, the availability of consumer credit to borrowers seeking smaller mortgages may decrease if banks are not able to seek some sort of guaranteed compensation for the risk they incur to offer credit to many of their customers.

These proposals will be reviewed by the public and a small-business panel to be convened by the consumer bureau. This panel is a requirement of Dodd-Frank, as a way of trying to limit the effect of new regulations on small businesses.

After taking comments, the bureau will formally propose the rules this summer and, after another round of comments, hopes to make them permanent by January.

Please take the time to write a comment letter addressing these concerns.

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Exhibit D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE NATIONAL BANK OF BIG SPRING *et al.*, Plaintiffs, v. NEIL S. WOLIN, in his official capacity as Acting United States Secretary of the Treasury and *ex officio* Chairman of the Financial Stability Oversight Council 1500 Pennsylvania Avenue, NW Washington, DC 20220, *et al.*, Defendants.	)	Case No. 1:12-cv-01032 (ESH) Judge: Hon. Ellen S. Huvelle

DECLARATION OF GREGORY JACOB IN SUPPORT OF PRIVATE PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(1)

Under 28 U.S.C. § 1746, I, Gregory Jacob, state:

1. I am a partner with the law firm of O'Melveny & Myers LLP. I represent Plaintiffs State National Bank, the Competitive Enterprise Institute, and the 60 Plus Association ("Plaintiffs") in the above-entitled action, and I am admitted to practice in the United States District Court for the District of Columbia.

2. I submit this declaration in support of Private Plaintiffs' Opposition to Defendants' Motion to Dismiss the Second Amended Complaint ("Motion") in the above-entitled action. I have personal knowledge of the matters set forth in this declaration, and if called to testify to the facts stated herein, I could and would do so

competently.

3. Attached hereto as Exhibit 1 is a true and correct copy of a January 1, 2013, letter from Senators Sherrod Brown and David Vitter to Gene L. Dodaro, Comptroller General of the United States, which is offered in support of the Motion.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 27th day of February 2013, at Minneapolis, Minnesota

s/Gregory Jacob
Gregory Jacob

Exhibit 1

United States Senate
WASHINGTON, DC 20510

January 1, 2013

The Honorable Gene L. Dodaro
Comptroller General of the United States
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Comptroller General Dodaro:

There is broad bipartisan support for the position that we must end "too big to fail" (TBTF) government policies, whereby the U.S. government provides financial support to large financial institutions to protect them from failures of their own making. The largest Wall Street megabanks enjoy protection from a "safety net" – a variety of explicit and implicit guarantees that their profits will be enjoyed by private parties and the costs will be paid by taxpayers.[1] Wall Street megabanks, their shareholders, and their bondholders expect the U.S. government to step in during a crisis and provide capital to keep them in business. The implicit – and in some cases explicit – taxpayer-funded safety net provides subsidies to these large financial institutions.

Though Congress has enacted financial sector reforms that its supporters, both in Congress and the Administration, intended to mitigate the TBTF problem, we are concerned that these measures may not be sufficient to eliminate government support for the largest bank holding companies. Federal Reserve Board Governor Daniel Tarullo recently lamented, "to the extent that a growing systemic footprint increases perceptions of at least some residual too-big-to-fail quality in such a firm, notwithstanding the panoply of measures in Dodd-Frank and our regulations, there may be funding advantages for the firm, which reinforces the impulse to grow."[2]

We therefore request that GAO conduct a study of the economic benefits that bank holding companies (BHCs) with more than $500 billion in consolidated assets receive as a result of actual or perceived government support. Specifically, we ask that you study:

1. *The favorable pricing of the debt of these bank holding companies, relative to their risk profile resulting from the perception that such institutions will receive Government support in the event of any financial stress;*

---

[1] *See, e.g.*, Remarks By Paul A. Volcker Before The Statutory Congress Of The European People's Parties, Bonn, Germany, Dec. 9, 2009 ("One consistent response has been to protect and support national commercial banking systems with a combination of regulation and a so-called 'safety net', including deposit insurance and a central bank able and willing to serve as a 'lender of last resort'. The central idea is to provide liquidity to troubled but solvent institutions while protecting individual depositors.").
[2] *See* Remarks by Daniel K. Tarullo, At the Distinguished Jurist Lecture, University of Pennsylvania Law School, Philadelphia, Pennsylvania, October 10, 2012.

In short, the largest banks are able to borrow more cheaply than they otherwise would, based upon their risk profiles.[3] According to the Federal Reserve Bank of Dallas, "TBTF banks' sheer size and their presumed guarantee of government help in time of crisis have provided a significant edge—perhaps a percentage point or more—in the cost of raising funds."[4]

The IMF estimates that banks larger than $100 billion have about a 50 basis points (bps) funding advantage over banks in the $10-100 billion range.[5] The *Wall Street Journal* editorial board noted that, in 2010, "[t]he funding advantage enjoyed by banks with more than $100 billion in assets over those in the $10-$100 billion range rose from 71 basis points in the first quarter to 78 basis points in the third quarter ... The advantage increased to 81 in the fourth quarter."[6]

There have already been significant studies of the effects that explicit and implicit government guarantees have on institutions' ability to borrow in the capital markets. Several academic studies have sought to calculate the precise borrowing advantages enjoyed by the largest banks, ranging from 10 to 88 bps and providing billions of dollars in economic benefits.[7]

2. *Any favorable funding or economic treatment resulting from an increase in the credit rating for these BHCs, as a result of express, implied, or perceived Government support;*

Credit rating agencies have stated that they will consider the likelihood of government support when determining an institution's credit rating.[8] Government support provides five of the six

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[3] *See* Anat R. Admati, Peter M. DeMarzo, Martin F. Hellwig & Paul Pfleiderer, *Fallacies, Irrelevant Facts, and Myths in the Discussion of Capital Regulation: Why Bank Equity is Not Expensive*, Stanford University Working Paper No. 86 (Mar. 2011) at 22.

[4] Rosenblum, *supra*, at 17.

[5] *See* İnci Ötker-Robe, Aditya Narain, Anna Ilyina, & Jay Surti, *The Too-Important-to-Fail Conundrum: Impossible to Ignore and Difficult to Resolve*, IMF SDN/11/12, May 27, 2011 at 6, Figure 1.

[6] Review & Outlook, *Still Too Big, Still Can't Fail*, WALL ST. J. (Mar. 5, 2011).

[7] *See* Andrew G. Haldane, Executive Director, Financial Stability, Bank of England, "The $100 Billion Question", Comments at the Institute of Regulation & Risk, Hong Kong, Mar. 30, 2010 at 5; *see also* International Monetary Fund, *A Fair And Substantial Contribution By The Financial Sector: Final Report For The G-20*, June 2010, at 55-56 (estimating that government support provides "too big to fail" institutions with a funding benefit between 10 and 50 bps, with an average of about 20 bps); *see also* Santiago Carbo-Valverde, Edward J. Kane & Francisco Rodriguez-Fernandez, *Safety-Net Benefits Conferred On Difficult-To-Fail-And-Unwind Banks In The US And EU Before And During The Great Recession*, Paolo Baffi Centre Research Paper Series No. 2011-95, at 9-10 (finding that "too big to fail" banks receive a safety net subsidy between 10 and 22 bps per dollar of assets, and also show more leverage); *see also* A. Joseph Warburton & Deniz Anginer, "The End of Market Discipline? Investor Expectations of Implicit State Guarantees" 4 (Nov. 18, 2011) (finding that large banks had an annual funding cost advantage of approximately 16 bps before the financial crisis, increasing to 88 bps during the crisis, and peaking at more than 100 bps in 2008. The authors estimate the total value of the implicit government subsidy at about $4 billion per year before the financial crisis, $60 billion during the crisis, and a high of $84 billion in 2008) *available at* http://ssrn.com/abstract=1961656; *see also* Dean Baker & Travis MacArthur, *The Value of the "Too Big to Fail" Big Bank Subsidy*, Center for Economic and Policy Research (2009) (estimating that, at the time of the financial crisis, banks with assets in excess of $100 billion had an average borrowing advantage of 78 bps, implying a subsidy of $34.1 billion a year).

[8] *See* Standard & Poor's, *The U.S. Government Says Support For Banks Will Be Different "Next Time"—But Will It?*, 9-10 (July, 2011)("Ultimately, in our views of new legislation and regulation, we need to consider the long track-record of extraordinary support that may be essential for a handful of institutions despite government reluctance to offer such support.").

largest banks with a boost in their credit ratings of one to three notches.[9] Though this perceived support is lower than it had been before the financial crisis, it clearly still exists.[10]

Some estimate that implicit governmental guarantees provide a subsidy of 3.10 percent per year to the cost of equity capital for the largest banks, and impose a 3.25 percent tax on the smallest banks, amounting to an annual subsidy of $4.71 billion per bank.[11] By doubling the size of its market capitalization, a bank receives a subsidy of 68 bps.[12]

The credit rating bump resulting from government support may not just allow TBTF megabanks to borrow at lower rates. This boost may also results in more favorable terms for their financial contracts, including posting less margin behind their derivatives contracts.

3. *Any economic benefit to these BHCs resulting from the ownership of, or affiliation with, an insured depository institution;*

Support, such as FDIC deposit insurance, provides insured depository institution affiliates of bank holding companies with government support, both real and perceived. Markets believe that, despite existing deposit insurance caps, all deposits of the largest backs are ultimately protected.[13]

Government support also provides insured depository institutions with higher credit ratings that can encourage institutions to shift activities into these subsidiaries. For example, Bank of America moved $15 trillion in derivatives contracts from its broker-dealer, Merrill Lynch, to its insured depository institution affiliate in response to a credit downgrade. The result is that taxpayers would subsidize, and ultimately backstop, potentially risky investments. This move reportedly saved the bank $3.3 billion in additional collateral payments.[14]

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[9] *See* Susanne Craig & Peter Eavis, *Three Major Banks Prepare for Possible Credit Downgrades*, N.Y. TIMES DEALBOOK, Mar. 29, 2012, *available at* http://dealbook.nytimes.com/2012/03/29/three-major-banks-prepare-for-possible-credit-downgrades.

[10] *See* Esther L. George, President and Chief Executive Officer, Federal Reserve Bank of Kansas City, "Looking Ahead: Financial Stability and Microprudential Supervision" 6, Levy Economics Institute of Bard College, 21st Annual Hyman P. Minsky Conference, New York, N.Y., Apr. 11, 2012 ("These ratings advantages continue to exist after the crisis—albeit at a notch or two less now, and investors have reason to believe that similar advantages may yet exist.").

[11] *See* Priyank Gandhi & Hanno Lustig, *Size Anomalies in U.S. Bank Stock Returns: A Fiscal Explanation*, NBER Working Paper 16553 (2010) at 5.

[12] *See id.*, at 26 ("[A] 100% increase in the size of market cap relative to GDP … increases the subsidy by 68 bps per annum.").

[13] *See* Nathaniel Popper & Jessica Silver-Greenberg, *Big Depositors Seek a New Safety Net*, N.Y. TIMES, Dec. 31, 2012 at BU1 ("For the nation's largest banks, there is a widely shared assumption that the government would be forced to provide a backstop to protect depositors in a crisis, as it did in 2008. 'Implicitly or explicitly, most of this money is going to still be guaranteed,' said Bruce Hinkle, an executive with Farin & Associates, a consulting firm that works with banks."); *see also id.* ("The vast majority of the holdings in these accounts are above the $250,000 limit and are held in the nation's largest banks. That money is expected to stay put no matter what, in part because corporations and municipalities widely believe that the government will step in if those large banks encounter trouble, effectively considering them too big to fail.").

[14] *See* Bob Ivry, Hugh Son & Christine Harper, *BofA Said to Split Regulators Over Moving Merrill Derivatives to Bank Unit*, BLOOMBERG, Oct. 18, 2011 *available at:* http://www.bloomberg.com/news/2011-10-18/bofa-said-to-split-regulators-over-moving-merrill-derivatives-to-bank-unit.html. Moody reportedly considered cutting Bank of

When the Federal Reserve granted a 23A exemption to Goldman Sachs Bank in 2009, Goldman moved its multi-purpose derivatives dealer into its insured bank affiliate. Likewise, Morgan Stanley converted to a bank holding company, and received a 23A exemption for its derivatives business. And JPMorgan Chase Bank, N.A., currently holds 99 percent of the notional derivatives of JPMorgan Chase & Co.[15]

Morgan Stanley is reportedly considering similar measures in response to a threatened downgrade by Moody's.[16] Such a downgrade could require Morgan Stanley to post as much as $6.5 billion over the course of a year.[17]

4. *Any economic benefit resulting from the status of these BHCs as a bank holding company, including access to the discount window of the Board of Governors of the Federal Reserve System; and*

The sweep of the government safety net was expanded during the financial crisis of 2008, when Goldman Sachs and Morgan Stanley converted to bank holding companies, in large part to participate in Federal Reserve programs, including the Federal Reserve's discount window.[18] This development was, "widely interpreted as a clear signal that the federal government would not let either of them fail."[19]

The Federal Reserve also made a series of decisions to exempt insured banks from Section 23A of the Federal Reserve Act, and extend the safety net of bank holding companies to repurchase agreements, or "repos," and derivative dealing activities.[20] Professor Saule Omarova has argued that, "the Board dismantled the entire section 23A regime in order to make an emergency transfusion of the federal subsidy into the shadow banking system."[21]

5. *Any economic benefit to these BHCs received through extraordinary Government actions taken during the financial crisis, including actions taken to prop up the government-sponsored enterprises and the insurer American Insurance Group (AIG).*

The benefits of the safety net were on display during the financial crisis, with the largest megabanks receiving a disproportionate amount of assistance. One IMF report found that an institution's size plays a key role in authorities' decisions about whether the bank receives a bailout in the event of distress.[22] It should therefore come as no surprise that 190 financial firms

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America's rating further, potentially requiring up to $4.5 billion in additional cash and collateral. *See* Craig & Eavis, *supra*.

[15] *See* Office of the Comptroller of the Currency, OCC's Quarterly Report on Bank Trading and Derivatives Activities Second Quarter 2011, at Table 1, Table 2.

[16] *See* Tracy Alloway, *Morgan Stanley Tries to Stave off Ratings Cut*, FINANCIAL TIMES, Apr. 5, 2012, *available at* http://www.ft.com/intl/cms/s/0/99979138-7e67-11e1-b20a-00144feab49a.html#axzz1rAjV9Gao.

[17] *See* Craig & Eavis, *supra*.

[18] *See* Saule T. Omarova, *From Gramm-Leach-Bliley To Dodd-Frank: The Unfulfilled Promise of Section 23A of the Federal Reserve Act*, 89 N.C. L. REV. 1683, 1745-46 (2011).

[19] *Id.*, at 1746.

[20] *See id.*, at 1735-41; *see also id.*, at 1745-50.

[21] *Id.*, at 1690.

[22] *See* Ötker-Robe, Narain, Ilyina, & Surti, *supra*, at 8.

borrowed $1.2 trillion from the Federal Reserve from 2007 to 2009,[23] with the six biggest U.S. banks borrowing as much as $460 billion and accounting for 63 percent of the average daily debt to the Fed.[24] The same six firms also received $160 billion in Troubled Asset Relief Program (TARP) funds.[25] According to the Congressional Oversight Panel for TARP (COP), the six largest banks received a total of $1.27 trillion in government support.[26]

Commentators have noted that a loan to an underwater bank is a long-shot investment whose substantial downside easily justifies a 15% to 20% return, comparable to the rates charged on risky sovereign bonds.[27] But the Fed's emergency lending was not nearly so stringent – for example, the Federal Reserve's Term Auction Facility maxed out at an interest rate of 4.67 percent.[28] The result is that failing banks can borrow money far more cheaply than the market would bear. Comparing net interest margins for these loans and the loans made by banks, *Bloomberg* estimates that the six largest banks made $4.8 billion in profit from these loans–equal to 23 percent of their combined net income during those two years.[29]

Some suggest that other central bank policies provide significant subsidies to struggling banks well after the financial crisis.[30] For example, a recent paper by the Federal Reserve Bank of New York found that, despite extraordinary purchases of mortgage-backed securities, there is currently a 115 bps spread between primary and secondary mortgage rates.[31] The paper estimates that mortgage loan rates are 70 bps higher than they should be based upon secondary market prices, and conclude that this results in profits for mortgage lenders.[32]

TARP also provided megabanks with significant benefits. The COP concluded that "Treasury paid substantially more for the assets it purchased under the TARP than their then-current market value."[33] This provided the six biggest megabanks with a subsidy of $25 billion.[34]

The largest banks also benefit from the bailouts of Fannie Mae and Freddie Mac, which will cost taxpayers the most of any action taken during the financial crisis. The two companies have received nearly $187 billion in taxpayer assistance and their conservator projects that the two

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[23] *See* Bob Ivry, Bradley Keoun & Phil Kuntz, *Secret Fed Loans Gave Banks Undisclosed $13B*, BLOOMBERG, Nov. 27, 2011 available at http://www.bloomberg.com/news/2011-11-28/secret-fed-loans-undisclosed-to-congress-gave-banks-13-billion-in-income.html.
[24] *See id.*
[25] *See id.*
[26] *See* Congressional Oversight Panel, *March Oversight Report: The Final Report of the Congressional Oversight Panel* 36 (Mar. 2011).
[27] *See* Kane, *supra*, at 6.
[28] *See* Board of Governors of the Federal Reserve, Term Auction Facility Data, available at http://www.federalreserve.gov/newsevents/files/taf.xls.
[29] *See* Ivry, Keoun & Kuntz *supra.*
[30] *See* Yalman Onaran, ZOMBIE BANKS: HOW BROKEN BANKS AND DEBTOR NATIONS ARE CRIPPLING THE GLOBAL ECONOMY 67 (Bloomberg Press, 2012).
[31] *See* Andreas Fuster & David Lucca, "Why Isn't the Thirty-Year Fixed-Rate Mortgage at 2.6 Percent?", Liberty Street Economics, Dec. 31, 2012 available at http://libertystreeteconomics.newyorkfed.org/2012/12/why-isnt-the-thirty-year-fixed-rate-mortgage-at-26-percent-.html.
[32] *See id.*
[33] *See* Congressional Oversight Panel, *supra*, at 39.
[34] *See id.*

companies will require $191 billion to $209 billion by the end of 2015.[35] The two companies' market share for the first half of 2012 spiked to 77 percent meaning that that, when combined with Ginnie Mae who securitizes government-backed loans, the taxpayer is guaranteeing 100 percent of the mortgages originated.[36]

These are just some examples of the issues that we hope that you will examine in your study. Thank you for your prompt attention to this request, and we look forward to working with you as you move forward on this important study. Please contact Graham Steele on Senator Brown's staff at (202) 224-3215 or Travis Johnson on Senator Vitter's staff at (202) 224-4623 if you have any questions.

Sincerely,

Sherrod Brown David Vitter

Sherrod Brown
Chairman
Financial Institutions and
Consumer Protection Subcommittee
Committee on Banking, Housing,
and Urban Affairs

David Vitter
Ranking Member
Economic Policy Subcommittee
Committee on Banking, Housing,
and Urban Affairs

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[35] *See* Federal Housing Finance Agency, Projections of the Enterprises' Financial Performance, Oct. 2012.
[36] *See* Federal Housing Finance Agency, Conservator's Report on Enterprises' Financial Performance, Second Quarter 2012.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE NATIONAL BANK OF BIG SPRING, *et al.*,

Plaintiffs,

v.

NEIL S. WOLIN, in his official capacity as Acting United States Secretary of the Treasury and *ex officio* Chairman of the Financial Stability Oversight Council, 1500 Pennsylvania Avenue, NW, Washington, DC 20220, *et al.*,

Defendants.

Case No. 1:12-cv-01032 (ESH)

Judge: Hon. Ellen S. Huvelle

STATE PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT

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review." *Nat'l Ass'n of Home Builders*, 440 F.3d at 465 (quotation marks and brackets omitted); *see also AT&T Corp. v. FCC*, 349 F.3d 692, 700 (D.C. Cir. 2003).[13]

The State Plaintiffs, on the other hand, would suffer immense hardship if judicial review were deferred. Title II's abrogation of the Bankruptcy Code's guarantee of equal treatment for similarly situated creditors deprives the State Plaintiffs and other creditors of their prior certainty that, in the event of financial turbulence, their claims against a failing financial company will be resolved equitably, in accordance with well-established *ex ante* rules for the nondiscriminatory treatment of similarly situated creditors. *See supra* pp. 14-24. This is an actual, immediate injury that will burden them every day until they receive a judicial remedy.

But even more importantly, denying judicial review of the State Plaintiffs' constitutional claims until after a Title II liquidation occurs would in fact prevent them from *ever* raising those constitutional claims. Dodd-Frank expressly prohibits the courts from reaching these constitutional issues after a liquidation occurs.

First, the State Plaintiffs would not be able to raise their constitutional claims in a challenge to the Treasury Secretary's liquidation determination. As previously noted, they are barred from even knowing about, let alone participating in, the district court's initial review of his determination. *See supra* pp. 8-10. Moreover, the *only* issues that the courts can review are whether the liquidated company was a "financial company" within the meaning of the statutory definition, and whether the company was "in default or in danger of default." *See* Dodd-Frank

[13] If anything, immediate judicial review would *promote* the public interest, including the courts' and Government's own institutional interests, by clarifying the laws that govern the liquidation of financial companies before such a liquidation actually occurs. The FDIC itself, in first promulgating the regulations administering Title II's orderly liquidation authority, stressed the need to "provide clarity and certainty with respect to how key components of the orderly liquidation authority will be implemented . . . ." *See* FDIC, *Orderly Liquidation Authority*, 76 Fed. Reg. 16324, 16325 (Mar. 23, 2011) (notice of proposed rulemaking).

§§ 202(a)(1)(A)(iii) (district court), 202(a)(2)(A)(iv) (court of appeals), 202(a)(2)(B)(iv) (Supreme Court), 12 U.S.C. §§ 5382(a)(1)(A)(iii), 5382(a)(2)(A)(iv), 5382(a)(2)(B)(iv).

Second, courts reviewing the FDIC's subsequent actions carrying out a Title II liquidation would also be precluded from adjudicating Title II's constitutionality. The FDIC is empowered to determine creditors' claims against the liquidated company, Dodd-Frank § 210(a)(2)(A), 12 U.S.C. § 5390(a)(2)(A), and the district courts are given jurisdiction to review the FDIC's determinations, *id.* § 210(a)(4)(A), 12 U.S.C. § 5390(a)(4)(A), but Title II does not authorize either the FDIC or the court to adjudicate the very constitutionality of Title II itself.

Indeed, in appeals of the FDIC's determination of claims, Title II expressly limits claimants' remedies to "money damages determined in accordance with" the formula prescribed by Title II. *Id.* § 210(e), 12 U.S.C. § 5390(e). Therefore, creditors cannot obtain either injunctive relief to block operation of the statute or a *de novo* determination of the full loss of value due to the constitutional violation, pursuant to the Tucker Act, 28 U.S.C. § 1491.

Finally, once liquidation occurs, the State Plaintiffs cannot raise these claims in a collateral action in another court. Title II prohibits all courts from "tak[ing] any action to restrain or affect the exercise of powers or functions of the [FDIC]" in carrying out the liquidation, except for the aforementioned appeals of the FDIC's determinations. Dodd-Frank § 210(e), 12 U.S.C. § 5390(e). The aforementioned, limited appeals of the Treasury Secretary's determination and the FDIC's subsequent actions are the only means of judicial review available to creditors, and neither would provide the State Plaintiffs with the relief requested by their Complaint.

In sum, the choice is not between litigating these constitutional claims either before a liquidation occurs or after a liquidation occurs, as the Government Defendants suggest. *See* Mot. to Dismiss at 49. The "choice is between addressing the challenge in its current setting or permanently *withholding* judicial review" of Title II's constitutionality. *Int'l Union v. Brock*, 783 F.2d 237, 252 (D.C. Cir. 1986) (emphasis in original). Faced with such a draconian choice, "the hardship of permanently foreclosing review is clearly sufficient to make the challenge ripe." *Id.* at 253; *see also Village of Bensenville v. FAA*, 376 F.3d 1114, 1120 (D.C. Cir. 2004).

The State Plaintiffs' injury is actual and urgent. Title II abrogates a bedrock protection that States and other creditors once enjoyed under law. That abrogation is an injury in and of itself, and it also casts substantial uncertainty over the States' funds, a precious resource for hardworking taxpayers and hardworking government employees who expect the States' monies to be invested, fostered, and above all else protected. To prevent judicial review of Title II at this time, and thus to expose the State Plaintiffs to an ongoing risk of immediate, immense financial loss in Title II proceedings without advance notice or adequate procedural protection, would impose immensely burdensome hardships on the State Plaintiffs.

CONCLUSION

The Government Defendants stress the benefits that Title II was intended to promote. *See* Mot. to Dismiss at 12. But they fail to acknowledge the corresponding costs that Title II imposed upon creditors, including the State Plaintiffs, who have been deprived of the Bankruptcy Code's long-guaranteed protections. Title II abrogated their statutory right to equal treatment among similarly situated creditors. The State Plaintiffs' purely legal claims are ripe, and they can be litigated only in the current pre-liquidation posture. The State Plaintiffs respectfully request that the court deny the Government's motion to dismiss and allow the parties to proceed to the merits of this case.

Respectfully submitted,

/s/ E. Scott Pruitt

EXHIBIT 3

Dollar amounts in thousands			
b. All loans and leases (reported in Schedule RC-C, part I, items 1 through 10, column B, above) EXCLUDING closed-end loans secured by first liens on 1-4 family residential properties (reported in Schedule RC-C, part I, item 1.c.(2)(a), column B, above) with a remaining maturity or next repricing date of:			M.2.b.
1. Three months or less	RCONA570	**10,607**	M.2.b.1.
2. Over three months through 12 months	RCONA571	**5,880**	M.2.b.2.
3. Over one year through three years	RCONA572	**11,362**	M.2.b.3.
4. Over three years through five years	RCONA573	**4,431**	M.2.b.4.
5. Over five years through 15 years	RCONA574	**1,754**	M.2.b.5.
6. Over 15 years	RCONA575	**0**	M.2.b.6.
c. Loans and leases (reported in Schedule RC-C, part I, items 1 through 10, column B, above) with a REMAINING MATURITY of one year or less (excluding those in nonaccrual status)	RCONA247	**16,191**	M.2.c.
3. Loans to finance commercial real estate, construction, and land development activities (not secured by real estate) included in Schedule RC-C, part I, items 4 and 9, column B	RCON2746	**1,204**	M.3.
4. Adjustable rate closed-end loans secured by first liens on 1-4 family residential properties (included in Schedule RC-C, part I, item 1.c.(2)(a), column B)	RCON5370	**0**	M.4.
5. Loans secured by real estate to non-U.S. addressees (domicile) (included in Schedule RC-C, part I, items 1.a through 1.e, column B)	RCONB837	**NR**	M.5.
6. Outstanding credit card fees and finance charges included in Schedule RC-C, part I, item 6.a	RCONC391	**NR**	M.6.
7. Purchased credit-impaired loans held for investment accounted for in accordance with FASB ASC 310-30 (former AICPA Statement of Position 03-3) (exclude loans held for sale):			M.7.
a. Outstanding balance	RCONC779	**0**	M.7.a.
b. Carrying amount included in Schedule RC-C, part I, items 1 through 9	RCONC780	**0**	M.7.b.
8. Closed-end loans with negative amortization features secured by 1-4 family residential properties:			M.8.
a. Total carrying amount of closed-end loans with negative amortization features secured by 1-4 family residential properties (included in Schedule RC-C, part I, items 1.c.(2)(a) and 1.c.(2)(b))	RCONF230	**0**	M.8.a.
b. Total maximum remaining amount of negative amortization contractually permitted on closed-end loans secured by 1-4 family residential properties	RCONF231	**NR**	M.8.b.
c. Total amount of negative amortization on closed-end loans secured by 1-4 family residential properties included in the carrying amount reported in Memorandum item 8.a above	RCONF232	**NR**	M.8.c.
9. Loans secured by 1-4 family residential properties in process of foreclosure (included in Schedule RC-C, part I, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b))	RCONF577	**0**	M.9.
10. Loans measured at fair value (included in Schedule RC-C, part I, items 1 through 9):			M.10.
a. Loans secured by real estate:			M.10.a.
1. Construction, land development, and other land loans	RCONF578	**NR**	M.10.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF579	**NR**	M.10.a.2.
3. Secured by 1-4 family residential properties:			M.10.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF580	**NR**	M.10.a.3.a.
b. Closed-end loans secured by 1-4 family residential properties:			M.10.a.3.b.
1. Secured by first liens	RCONF581	**NR**	M.10.a.3.b.1.
2. Secured by junior liens	RCONF582	**NR**	M.10.a.3.b.2.
4. Secured by multifamily (5 or more) residential properties	RCONF583	**NR**	M.10.a.4.
5. Secured by nonfarm nonresidential properties	RCONF584	**NR**	M.10.a.5.
b. Commercial and industrial loans	RCONF585	**NR**	M.10.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.10.c.
1. Credit cards	RCONF586	**NR**	M.10.c.1.
2. Other revolving credit plans	RCONF587	**NR**	M.10.c.2.

Dollar amounts in thousands			
b. All loans and leases (reported in Schedule RC-C, part I, items 1 through 10, column B, above) EXCLUDING closed-end loans secured by first liens on 1-4 family residential properties (reported in Schedule RC-C, part I, item 1.c.(2)(a), column B, above) with a remaining maturity or next repricing date of:			M.2.b.
1. Three months or less	RCONA570	3,859	M.2.b.1.
2. Over three months through 12 months	RCONA571	23,044	M.2.b.2.
3. Over one year through three years	RCONA572	10,790	M.2.b.3.
4. Over three years through five years	RCONA573	4,282	M.2.b.4.
5. Over five years through 15 years	RCONA574	1,942	M.2.b.5.
6. Over 15 years	RCONA575	0	M.2.b.6.
c. Loans and leases (reported in Schedule RC-C, part I, items 1 through 10, column B, above) with a REMAINING MATURITY of one year or less (excluding those in nonaccrual status)	RCONA247	26,696	M.2.c.
3. Loans to finance commercial real estate, construction, and land development activities (not secured by real estate) included in Schedule RC-C, part I, items 4 and 9, column B	RCON2746	753	M.3.
4. Adjustable rate closed-end loans secured by first liens on 1-4 family residential properties (included in Schedule RC-C, part I, item 1.c.(2)(a), column B)	RCON5370	0	M.4.
5. Loans secured by real estate to non-U.S. addressees (domicile) (included in Schedule RC-C, part I, items 1.a through 1.e, column B)	RCONB837	NR	M.5.
6. Outstanding credit card fees and finance charges included in Schedule RC-C, part I, item 6.a	RCONC391	NR	M.6.
7. Purchased credit-impaired loans held for investment accounted for in accordance with FASB ASC 310-30 (former AICPA Statement of Position 03-3) (exclude loans held for sale):			M.7.
a. Outstanding balance	RCONC779	0	M.7.a.
b. Carrying amount included in Schedule RC-C, part I, items 1 through 9	RCONC780	0	M.7.b.
8. Closed-end loans with negative amortization features secured by 1-4 family residential properties:			M.8.
a. Total carrying amount of closed-end loans with negative amortization features secured by 1-4 family residential properties (included in Schedule RC-C, part I, items 1.c.(2)(a) and 1.c.(2)(b))	RCONF230	0	M.8.a.
b. Total maximum remaining amount of negative amortization contractually permitted on closed-end loans secured by 1-4 family residential properties	RCONF231	NR	M.8.b.
c. Total amount of negative amortization on closed-end loans secured by 1-4 family residential properties included in the carrying amount reported in Memorandum item 8.a above	RCONF232	NR	M.8.c.
9. Loans secured by 1-4 family residential properties in process of foreclosure (included in Schedule RC-C, part I, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b))	RCONF577	0	M.9.
10. Loans measured at fair value (included in Schedule RC-C, part I, items 1 through 9):			M.10.
a. Loans secured by real estate:			M.10.a.
1. Construction, land development, and other land loans	RCONF578	NR	M.10.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF579	NR	M.10.a.2.
3. Secured by 1-4 family residential properties:			M.10.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF580	NR	M.10.a.3.a.
b. Closed-end loans secured by 1-4 family residential properties:			M.10.a.3.b.
1. Secured by first liens	RCONF581	NR	M.10.a.3.b.1.
2. Secured by junior liens	RCONF582	NR	M.10.a.3.b.2.
4. Secured by multifamily (5 or more) residential properties	RCONF583	NR	M.10.a.4.
5. Secured by nonfarm nonresidential properties	RCONF584	NR	M.10.a.5.
b. Commercial and industrial loans	RCONF585	NR	M.10.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.10.c.
1. Credit cards	RCONF586	NR	M.10.c.1.
2. Other revolving credit plans	RCONF587	NR	M.10.c.2.

Dollar amounts in thousands			
b. All loans and leases (reported in Schedule RC-C, part I, items 1 through 10, column B, above) EXCLUDING closed-end loans secured by first liens on 1-4 family residential properties (reported in Schedule RC-C, part I, item 1.c.(2)(a), column B, above) with a remaining maturity or next repricing date of:			M.2.b.
1. Three months or less	RCONA570	**5,872**	M.2.b.1.
2. Over three months through 12 months	RCONA571	**15,084**	M.2.b.2.
3. Over one year through three years	RCONA572	**10,467**	M.2.b.3.
4. Over three years through five years	RCONA573	**4,468**	M.2.b.4.
5. Over five years through 15 years	RCONA574	**1,843**	M.2.b.5.
6. Over 15 years	RCONA575	**0**	M.2.b.6.
c. Loans and leases (reported in Schedule RC-C, part I, items 1 through 10, column B, above) with a REMAINING MATURITY of one year or less (excluding those in nonaccrual status)	RCONA247	**20,720**	M.2.c.
3. Loans to finance commercial real estate, construction, and land development activities (not secured by real estate) included in Schedule RC-C, part I, items 4 and 9, column B	RCON2746	**960**	M.3.
4. Adjustable rate closed-end loans secured by first liens on 1-4 family residential properties (included in Schedule RC-C, part I, item 1.c.(2)(a), column B)	RCON5370	**0**	M.4.
5. Loans secured by real estate to non-U.S. addressees (domicile) (included in Schedule RC-C, part I, items 1.a through 1.e, column B)	RCONB837	**NR**	M.5.
6. Outstanding credit card fees and finance charges included in Schedule RC-C, part I, item 6.a	RCONC391	**NR**	M.6.
7. Purchased impaired loans held for investment accounted for in accordance with FASB ASC 310-30 (former AICPA Statement of Position 03-3) (exclude loans held for sale):			M.7.
a. Outstanding balance	RCONC779	**0**	M.7.a.
b. Carrying amount included in Schedule RC-C, part I, items 1 through 9	RCONC780	**0**	M.7.b.
8. Closed-end loans with negative amortization features secured by 1-4 family residential properties:			M.8.
a. Total carrying amount of closed-end loans with negative amortization features secured by 1-4 family residential properties (included in Schedule RC-C, part I, items 1.c.(2)(a) and 1.c.(2)(b))	RCONF230	**0**	M.8.a.
b. Total maximum remaining amount of negative amortization contractually permitted on closed-end loans secured by 1-4 family residential properties	RCONF231	**NR**	M.8.b.
c. Total amount of negative amortization on closed-end loans secured by 1-4 family residential properties included in the carrying amount reported in Memorandum item 8.a above	RCONF232	**NR**	M.8.c.
9. Loans secured by 1-4 family residential properties in process of foreclosure (included in Schedule RC-C, part I, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b))	RCONF577	**0**	M.9.
10. Loans measured at fair value (included in Schedule RC-C, part I, items 1 through 9):			M.10.
a. Loans secured by real estate:			M.10.a.
1. Construction, land development, and other land loans	RCONF578	**NR**	M.10.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF579	**NR**	M.10.a.2.
3. Secured by 1-4 family residential properties:			M.10.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF580	**NR**	M.10.a.3.a
b. Closed-end loans secured by 1-4 family residential properties:			M.10.a.3.b
1. Secured by first liens	RCONF581	**NR**	M.10.a.3.b.1.
2. Secured by junior liens	RCONF582	**NR**	M.10.a.3.b.2.
4. Secured by multifamily (5 or more) residential properties	RCONF583	**NR**	M.10.a.4.
5. Secured by nonfarm nonresidential properties	RCONF584	**NR**	M.10.a.5.
b. Commercial and industrial loans	RCONF585	**NR**	M.10.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.10.c.
1. Credit cards	RCONF586	**NR**	M.10.c.1.
2. Other revolving credit plans	RCONF587	**NR**	M.10.c.2.

Dollar amounts in thousands			
b. All loans and leases (reported in Schedule RC-C, part I, items 1 through 10, column B, above) EXCLUDING closed-end loans secured by first liens on 1-4 family residential properties (reported in Schedule RC-C, part I, item 1.c.(2)(a), column B, above) with a remaining maturity or next repricing date of:			M.2.b.
1. Three months or less	RCONA570	4,627	M.2.b.1.
2. Over three months through 12 months	RCONA571	9,260	M.2.b.2.
3. Over one year through three years	RCONA572	10,773	M.2.b.3.
4. Over three years through five years	RCONA573	5,155	M.2.b.4.
5. Over five years through 15 years	RCONA574	253	M.2.b.5.
6. Over 15 years	RCONA575	0	M.2.b.6.
c. Loans and leases (reported in Schedule RC-C, part I, items 1 through 10, column B, above) with a REMAINING MATURITY of one year or less (excluding those in nonaccrual status)	RCONA247	13,669	M.2.c.
3. Loans to finance commercial real estate, construction, and land development activities (not secured by real estate) included in Schedule RC-C, part I, items 4 and 9, column B	RCON2746	724	M.3.
4. Adjustable rate closed-end loans secured by first liens on 1-4 family residential properties (included in Schedule RC-C, part I, item 1.c.(2)(a), column B)	RCON5370	0	M.4.
5. Loans secured by real estate to non-U.S. addressees (domicile) (included in Schedule RC-C, part I, items 1.a through 1.e, column B)	RCONB837	NR	M.5.
6. Outstanding credit card fees and finance charges included in Schedule RC-C, part I, item 6.a	RCONC391	NR	M.6.
7. Purchased impaired loans held for investment accounted for in accordance with FASB ASC 310-30 (former AICPA Statement of Position 03-3) (exclude loans held for sale):			M.7.
a. Outstanding balance	RCONC779	0	M.7.a.
b. Carrying amount included in Schedule RC-C, part I, items 1 through 9	RCONC780	0	M.7.b.
8. Closed-end loans with negative amortization features secured by 1-4 family residential properties:			M.8.
a. Total carrying amount of closed-end loans with negative amortization features secured by 1-4 family residential properties (included in Schedule RC-C, part I, items 1.c.(2)(a) and 1.c.(2)(b))	RCONF230	0	M.8.a.
b. Total maximum remaining amount of negative amortization contractually permitted on closed-end loans secured by 1-4 family residential properties	RCONF231	NR	M.8.b.
c. Total amount of negative amortization on closed-end loans secured by 1-4 family residential properties included in the carrying amount reported in Memorandum item 8.a above	RCONF232	NR	M.8.c.
9. Loans secured by 1-4 family residential properties in process of foreclosure (included in Schedule RC-C, part I, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b))	RCONF577	0	M.9.
10. Loans measured at fair value (included in Schedule RC-C, part I, items 1 through 9):			M.10.
a. Loans secured by real estate:			M.10.a.
1. Construction, land development, and other land loans	RCONF578	NR	M.10.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF579	NR	M.10.a.2.
3. Secured by 1-4 family residential properties:			M.10.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF580	NR	M.10.a.3.a
b. Closed-end loans secured by 1-4 family residential properties:			M.10.a.3.b
1. Secured by first liens	RCONF581	NR	M.10.a.3.b.1
2. Secured by junior liens	RCONF582	NR	M.10.a.3.b.2
4. Secured by multifamily (5 or more) residential properties	RCONF583	NR	M.10.a.4.
5. Secured by nonfarm nonresidential properties	RCONF584	NR	M.10.a.5.
b. Commercial and industrial loans	RCONF585	NR	M.10.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.10.c.
1. Credit cards	RCONF586	NR	M.10.c.1.
2. Other revolving credit plans	RCONF587	NR	M.10.c.2.

Dollar amounts in thousands			
b. All loans and leases (reported in Schedule RC-C, part I, items 1 through 10, column B, above) EXCLUDING closed-end loans secured by first liens on 1-4 family residential properties (reported in Schedule RC-C, part I, item 1.c.(2)(a), column B, above) with a remaining maturity or next repricing date of:			M.2.b.
1. Three months or less	RCONA570	8,550	M.2.b.1.
2. Over three months through 12 months	RCONA571	6,912	M.2.b.2.
3. Over one year through three years	RCONA572	10,794	M.2.b.3.
4. Over three years through five years	RCONA573	4,290	M.2.b.4.
5. Over five years through 15 years	RCONA574	137	M.2.b.5.
6. Over 15 years	RCONA575	0	M.2.b.6.
c. Loans and leases (reported in Schedule RC-C, part I, items 1 through 10, column B, above) with a REMAINING MATURITY of one year or less (excluding those in nonaccrual status)	RCONA247	15,202	M.2.c.
3. Loans to finance commercial real estate, construction, and land development activities (not secured by real estate) included in Schedule RC-C, part I, items 4 and 9, column B	RCON2746	1,441	M.3.
4. Adjustable rate closed-end loans secured by first liens on 1-4 family residential properties (included in Schedule RC-C, part I, item 1.c.(2)(a), column B)	RCON5370	0	M.4.
5. Loans secured by real estate to non-U.S. addressees (domicile) (included in Schedule RC-C, part I, items 1.a through 1.e, column B)	RCONB837	NR	M.5.
6. Outstanding credit card fees and finance charges included in Schedule RC-C, part I, item 6.a	RCONC391	NR	M.6.
7. Purchased impaired loans held for investment accounted for in accordance with FASB ASC 310-30 (former AICPA Statement of Position 03-3) (exclude loans held for sale):			M.7.
a. Outstanding balance	RCONC779	0	M.7.a.
b. Carrying amount included in Schedule RC-C, part I, items 1 through 9	RCONC780	0	M.7.b.
8. Closed-end loans with negative amortization features secured by 1-4 family residential properties:			M.8.
a. Total carrying amount of closed-end loans with negative amortization features secured by 1-4 family residential properties (included in Schedule RC-C, part I, items 1.c.(2)(a) and 1.c.(2)(b))	RCONF230	0	M.8.a.
b. Total maximum remaining amount of negative amortization contractually permitted on closed-end loans secured by 1-4 family residential properties	RCONF231	NR	M.8.b.
c. Total amount of negative amortization on closed-end loans secured by 1-4 family residential properties included in the carrying amount reported in Memorandum item 8.a above	RCONF232	NR	M.8.c.
9. Loans secured by 1-4 family residential properties in process of foreclosure (included in Schedule RC-C, part I, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b))	RCONF577	0	M.9.
10. Loans measured at fair value (included in Schedule RC-C, part I, items 1 through 9):			M.10.
a. Loans secured by real estate:			M.10.a.
1. Construction, land development, and other land loans	RCONF578	NR	M.10.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF579	NR	M.10.a.2.
3. Secured by 1-4 family residential properties:			M.10.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF580	NR	M.10.a.3.a
b. Closed-end loans secured by 1-4 family residential properties:			M.10.a.3.b
1. Secured by first liens	RCONF581	NR	M.10.a.3.b.1.
2. Secured by junior liens	RCONF582	NR	M.10.a.3.b.2.
4. Secured by multifamily (5 or more) residential properties	RCONF583	NR	M.10.a.4.
5. Secured by nonfarm nonresidential properties	RCONF584	NR	M.10.a.5.
b. Commercial and industrial loans	RCONF585	NR	M.10.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.10.c.
1. Credit cards	RCONF586	NR	M.10.c.1.
2. Other revolving credit plans	RCONF587	NR	M.10.c.2.

Dollar amounts in thousands			
b. All loans and leases (reported in Schedule RC-C, part I, items 1 through 10, column B, above) EXCLUDING closed-end loans secured by first liens on 1-4 family residential properties (reported in Schedule RC-C, part I, item 1.c.(2)(a), column B, above) with a remaining maturity or next repricing date of:			M.2.b.
1. Three months or less	RCONA570	3,415	M.2.b.1.
2. Over three months through 12 months	RCONA571	11,735	M.2.b.2.
3. Over one year through three years	RCONA572	6,796	M.2.b.3.
4. Over three years through five years	RCONA573	7,775	M.2.b.4.
5. Over five years through 15 years	RCONA574	0	M.2.b.5.
6. Over 15 years	RCONA575	0	M.2.b.6.
c. Loans and leases (reported in Schedule RC-C, part I, items 1 through 10, column B, above) with a REMAINING MATURITY of one year or less (excluding those in nonaccrual status)	RCONA247	14,857	M.2.c.
3. Loans to finance commercial real estate, construction, and land development activities (not secured by real estate) included in Schedule RC-C, part I, items 4 and 9, column B	RCON2746	1,578	M.3.
4. Adjustable rate closed-end loans secured by first liens on 1-4 family residential properties (included in Schedule RC-C, part I, item 1.c.(2)(a), column B)	RCON5370	0	M.4.
5. Loans secured by real estate to non-U.S. addressees (domicile) (included in Schedule RC-C, part I, items 1.a through 1.e, column B)	RCONB837	NR	M.5.
6. Outstanding credit card fees and finance charges included in Schedule RC-C, part I, item 6.a	RCONC391	NR	M.6.
7. Purchased impaired loans held for investment accounted for in accordance with FASB ASC 310-30 (former AICPA Statement of Position 03-3) (exclude loans held for sale):			M.7.
a. Outstanding balance	RCONC779	0	M.7.a.
b. Carrying amount included in Schedule RC-C, part I, items 1 through 9	RCONC780	0	M.7.b.
8. Closed-end loans with negative amortization features secured by 1-4 family residential properties:			M.8.
a. Total carrying amount of closed-end loans with negative amortization features secured by 1-4 family residential properties (included in Schedule RC-C, part I, items 1.c.(2)(a) and 1.c.(2)(b))	RCONF230	0	M.8.a.
b. Total maximum remaining amount of negative amortization contractually permitted on closed-end loans secured by 1-4 family residential properties	RCONF231	NR	M.8.b.
c. Total amount of negative amortization on closed-end loans secured by 1-4 family residential properties included in the carrying amount reported in Memorandum item 8.a above	RCONF232	NR	M.8.c.
9. Loans secured by 1-4 family residential properties in process of foreclosure (included in Schedule RC-C, part I, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b))	RCONF577	0	M.9.
10. Loans measured at fair value (included in Schedule RC-C, part I, items 1 through 9):			M.10.
a. Loans secured by real estate:			M.10.a.
1. Construction, land development, and other land loans	RCONF578	NR	M.10.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF579	NR	M.10.a.2.
3. Secured by 1-4 family residential properties:			M.10.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF580	NR	M.10.a.3.a.
b. Closed-end loans secured by 1-4 family residential properties:			M.10.a.3.b.
1. Secured by first liens	RCONF581	NR	M.10.a.3.b.1.
2. Secured by junior liens	RCONF582	NR	M.10.a.3.b.2.
4. Secured by multifamily (5 or more) residential properties	RCONF583	NR	M.10.a.4.
5. Secured by nonfarm nonresidential properties	RCONF584	NR	M.10.a.5.
b. Commercial and industrial loans	RCONF585	NR	M.10.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.10.c.
1. Credit cards	RCONF586	NR	M.10.c.1.
2. Other revolving credit plans	RCONF587	NR	M.10.c.2.

Dollar amounts in thousands			
5. Over five years through 15 years	RCONA568	0	M.2.a.5.
6. Over 15 years	RCONA569	0	M.2.a.6.
b. All loans and leases (reported in Schedule RC-C, part I, items 1 through 10, column B, above) EXCLUDING closed-end loans secured by first liens on 1-4 family residential properties (reported in Schedule RC-C, part I, item 1.c.(2)(a), column B, above) with a remaining maturity or next repricing date of:			M.2.b.
1. Three months or less	RCONA570	6,503	M.2.b.1.
2. Over three months through 12 months	RCONA571	16,240	M.2.b.2.
3. Over one year through three years	RCONA572	7,019	M.2.b.3.
4. Over three years through five years	RCONA573	7,785	M.2.b.4.
5. Over five years through 15 years	RCONA574	87	M.2.b.5.
6. Over 15 years	RCONA575	0	M.2.b.6.
c. Loans and leases (reported in Schedule RC-C, part I, items 1 through 10, column B, above) with a REMAINING MATURITY of one year or less (excluding those in nonaccrual status)	RCONA247	22,615	M.2.c.
3. Loans to finance commercial real estate, construction, and land development activities (not secured by real estate) included in Schedule RC-C, part I, items 4 and 9, column B	RCON2746	710	M.3.
4. Adjustable rate closed-end loans secured by first liens on 1-4 family residential properties (included in Schedule RC-C, part I, item 1.c.(2)(a), column B)	RCON5370	0	M.4.
5. Loans secured by real estate to non-U.S. addressees (domicile) (included in Schedule RC-C, part I, items 1.a through 1.e, column B)	RCONB837	NR	M.5.
6. Outstanding credit card fees and finance charges included in Schedule RC-C, part I, item 6.a	RCONC391	NR	M.6.
7. Purchased impaired loans held for investment accounted for in accordance with FASB ASC 310-30 (former AICPA Statement of Position 03-3) (exclude loans held for sale):			M.7.
a. Outstanding balance	RCONC779	0	M.7.a.
b. Carrying amount included in Schedule RC-C, part I, items 1 through 9	RCONC780	0	M.7.b.
8. Closed-end loans with negative amortization features secured by 1-4 family residential properties:			M.8.
a. Total carrying amount of closed-end loans with negative amortization features secured by 1-4 family residential properties (included in Schedule RC-C, part I, items 1.c.(2)(a) and 1.c.(2)(b))	RCONF230	0	M.8.a.
b. Total maximum remaining amount of negative amortization contractually permitted on closed-end loans secured by 1-4 family residential properties	RCONF231	NR	M.8.b.
c. Total amount of negative amortization on closed-end loans secured by 1-4 family residential properties included in the carrying amount reported in Memorandum item 8.a above	RCONF232	NR	M.8.c.
9. Loans secured by 1-4 family residential properties in process of foreclosure (included in Schedule RC-C, part I, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b))	RCONF577	0	M.9.
10. Loans measured at fair value (included in Schedule RC-C, part I, items 1 through 9):			M.10.
a. Loans secured by real estate:			M.10.a.
1. Construction, land development, and other land loans	RCONF578	NR	M.10.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF579	NR	M.10.a.2.
3. Secured by 1-4 family residential properties:			M.10.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF580	NR	M10a3a
b. Closed-end loans secured by 1-4 family residential properties:			M10a3b
1. Secured by first liens	RCONF581	NR	M10a3b1
2. Secured by junior liens	RCONF582	NR	M10a3b2
4. Secured by multifamily (5 or more) residential properties	RCONF583	NR	M.10.a.4.
5. Secured by nonfarm nonresidential properties	RCONF584	NR	M.10.a.5.
b. Commercial and industrial loans	RCONF585	NR	M.10.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.10.c.

Dollar amounts in thousands			
5. Over five years through 15 years	RCONA568	0	M.2.a.5.
6. Over 15 years	RCONA569	0	M.2.a.6.
b. All loans and leases (reported in Schedule RC-C, part I, items 1 through 10, column B, above) EXCLUDING closed-end loans secured by first liens on 1-4 family residential properties (reported in Schedule RC-C, part I, item 1.c.(2)(a), column B, above) with a remaining maturity or next repricing date of:			M.2.b.
1. Three months or less	RCONA570	4,788	M.2.b.1.
2. Over three months through 12 months	RCONA571	13,524	M.2.b.2.
3. Over one year through three years	RCONA572	6,766	M.2.b.3.
4. Over three years through five years	RCONA573	7,144	M.2.b.4.
5. Over five years through 15 years	RCONA574	54	M.2.b.5.
6. Over 15 years	RCONA575	0	M.2.b.6.
c. Loans and leases (reported in Schedule RC-C, part I, items 1 through 10, column B, above) with a REMAINING MATURITY of one year or less (excluding those in nonaccrual status)	RCONA247	17,992	M.2.c.
3. Loans to finance commercial real estate, construction, and land development activities (not secured by real estate) included in Schedule RC-C, part I, items 4 and 9, column B	RCON2746	732	M.3.
4. Adjustable rate closed-end loans secured by first liens on 1-4 family residential properties (included in Schedule RC-C, part I, item 1.c.(2)(a), column B)	RCON5370	0	M.4.
5. Loans secured by real estate to non-U.S. addressees (domicile) (included in Schedule RC-C, part I, items 1.a through 1.e, column B)	RCONB837	NR	M.5.
6. Outstanding credit card fees and finance charges included in Schedule RC-C, part I, item 6.a	RCONC391	NR	M.6.
7. Purchased impaired loans held for investment accounted for in accordance with FASB ASC 310-30 (former AICPA Statement of Position 03-3) (exclude loans held for sale):			M.7.
a. Outstanding balance	RCONC779	0	M.7.a.
b. Carrying amount included in Schedule RC-C, part I, items 1 through 9	RCONC780	0	M.7.b.
8. Closed-end loans with negative amortization features secured by 1-4 family residential properties:			M.8.
a. Total carrying amount of closed-end loans with negative amortization features secured by 1-4 family residential properties (included in Schedule RC-C, part I, items 1.c.(2)(a) and 1.c.(2)(b))	RCONF230	0	M.8.a.
b. Total maximum remaining amount of negative amortization contractually permitted on closed-end loans secured by 1-4 family residential properties	RCONF231	NR	M.8.b.
c. Total amount of negative amortization on closed-end loans secured by 1-4 family residential properties included in the carrying amount reported in Memorandum item 8.a above	RCONF232	NR	M.8.c.
9. Loans secured by 1-4 family residential properties in process of foreclosure (included in Schedule RC-C, part I, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b))	RCONF577	0	M.9.
10. Loans measured at fair value (included in Schedule RC-C, part I, items 1 through 9):			M.10.
a. Loans secured by real estate:			M.10.a.
1. Construction, land development, and other land loans	RCONF578	NR	M.10.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF579	NR	M.10.a.2.
3. Secured by 1-4 family residential properties:			M.10.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF580	NR	M.10.a.3.a
b. Closed-end loans secured by 1-4 family residential properties:			M.10.a.3.b
1. Secured by first liens	RCONF581	NR	M.10.a.3.b.1.
2. Secured by junior liens	RCONF582	NR	M.10.a.3.b.2.
4. Secured by multifamily (5 or more) residential properties	RCONF583	NR	M.10.a.4.
5. Secured by nonfarm nonresidential properties	RCONF584	NR	M.10.a.5.
b. Commercial and industrial loans	RCONF585	NR	M.10.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.10.c.

Dollar amounts in thousands			
8. Closed-end loans with negative amortization features secured by 1-4 family residential properties:			M.8.
a. Total carrying amount of closed-end loans with negative amortization features secured by 1-4 family residential properties (included in Schedule RC-C, part I, items 1.c.(2)(a) and 1.c.(2)(b))	RCONF230	**0**	M.8.a.
b. Total maximum remaining amount of negative amortization contractually permitted on closed-end loans secured by 1-4 family residential properties	RCONF231	**NR**	M.8.b.
c. Total amount of negative amortization on closed-end loans secured by 1-4 family residential properties included in the carrying amount reported in Memorandum item 8.a above	RCONF232	**NR**	M.8.c.
9. Loans secured by 1-4 family residential properties in process of foreclosure (included in Schedule RC-C, part I, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b))	RCONF577	**0**	M.9.
10. Loans measured at fair value (included in Schedule RC-C, part I, items 1 through 9):			M.10.
a. Loans secured by real estate:			M.10.a.
1. Construction, land development, and other land loans	RCONF578	**NR**	M.10.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF579	**NR**	M.10.a.2.
3. Secured by 1-4 family residential properties:			M.10.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF580	**NR**	M10a3a
b. Closed-end loans secured by 1-4 family residential properties:			M10a3b
1. Secured by first liens	RCONF581	**NR**	M10a3b1
2. Secured by junior liens	RCONF582	**NR**	M10a3b2
4. Secured by multifamily (5 or more) residential properties	RCONF583	**NR**	M.10.a.4.
5. Secured by nonfarm nonresidential properties	RCONF584	**NR**	M.10.a.5.
b. Commercial and industrial loans	RCONF585	**NR**	M.10.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.10.c.
1. Credit cards	RCONF586	**NR**	M.10.c.1.
2. Other revolving credit plans	RCONF587	**NR**	M.10.c.2.
3. Other consumer loans (includes single payment, installment, and all student loans)	RCONF588	**NR**	M.10.c.3.
d. Other loans	RCONF589	**NR**	M.10.d.
11. Unpaid principal balance of loans measured at fair value (reported in Schedule RC-C, part I, Memorandum item 10):			M.11.
a. Loans secured by real estate:			M.11.a.
1. Construction, and land development, and other land loans	RCONF590	**NR**	M.11.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF591	**NR**	M.11.a.2.
3. Secured by 1-4 family residential properties:			M.11.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF592	**NR**	M11a3a
b. Closed-end loans secured by 1-4 family residential properties:			M11a3b
1. Secured by first liens	RCONF593	**NR**	M11a3b1
2. Secured by junior liens	RCONF594	**NR**	M11a3b2
4. Secured by multifamily (5 or more) residential properties	RCONF595	**NR**	M.11.a.4.
5. Secured by nonfarm nonresidential properties	RCONF596	**NR**	M.11.a.5.
b. Commercial and industrial loans	RCONF597	**NR**	M.11.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.11.c.
1. Credit cards	RCONF598	**NR**	M.11.c.1.
2. Other revolving credit plans	RCONF599	**NR**	M.11.c.2.
3. Other consumer loans (includes single payment, installment, and all student loans)	RCONF600	**NR**	M.11.c.3.
d. Other loans	RCONF601	**NR**	M.11.d.

Dollar amounts in thousands			
8. Closed-end loans with negative amortization features secured by 1-4 family residential properties:			M.8.
a. Total carrying amount of closed-end loans with negative amortization features secured by 1-4 family residential properties (included in Schedule RC-C, part I, items 1.c.(2)(a) and 1.c.(2)(b))	RCONF230	**0**	M.8.a.
b. Total maximum remaining amount of negative amortization contractually permitted on closed-end loans secured by 1-4 family residential properties	RCONF231	**NR**	M.8.b.
c. Total amount of negative amortization on closed-end loans secured by 1-4 family residential properties included in the carrying amount reported in Memorandum item 8.a above	RCONF232	**NR**	M.8.c.
9. Loans secured by 1-4 family residential properties in process of foreclosure (included in Schedule RC-C, part I, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b))	RCONF577	**0**	M.9.
10. Loans measured at fair value (included in Schedule RC-C, part I, items 1 through 9):			M.10.
a. Loans secured by real estate:			M.10.a.
1. Construction, land development, and other land loans	RCONF578	**NR**	M.10.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF579	**NR**	M.10.a.2.
3. Secured by 1-4 family residential properties:			M.10.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF580	**NR**	M.10.a.3.a.
b. Closed-end loans secured by 1-4 family residential properties:			M.10.a.3.b.
1. Secured by first liens	RCONF581	**NR**	M.10.a.3.b.1.
2. Secured by junior liens	RCONF582	**NR**	M.10.a.3.b.2.
4. Secured by multifamily (5 or more) residential properties	RCONF583	**NR**	M.10.a.4.
5. Secured by nonfarm nonresidential properties	RCONF584	**NR**	M.10.a.5.
b. Commercial and industrial loans	RCONF585	**NR**	M.10.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.10.c.
1. Credit cards	RCONF586	**NR**	M.10.c.1.
2. Other revolving credit plans	RCONF587	**NR**	M.10.c.2.
3. Other consumer loans (includes single payment, installment, and all student loans)	RCONF588	**NR**	M.10.c.3.
d. Other loans	RCONF589	**NR**	M.10.d.
11. Unpaid principal balance of loans measured at fair value (reported in Schedule RC-C, part I, Memorandum item 10):			M.11.
a. Loans secured by real estate:			M.11.a.
1. Construction, and land development, and other land loans	RCONF590	**NR**	M.11.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF591	**NR**	M.11.a.2.
3. Secured by 1-4 family residential properties:			M.11.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF592	**NR**	M.11.a.3.a.
b. Closed-end loans secured by 1-4 family residential properties:			M.11.a.3.b.
1. Secured by first liens	RCONF593	**NR**	M.11.a.3.b.1.
2. Secured by junior liens	RCONF594	**NR**	M.11.a.3.b.2.
4. Secured by multifamily (5 or more) residential properties	RCONF595	**NR**	M.11.a.4.
5. Secured by nonfarm nonresidential properties	RCONF596	**NR**	M.11.a.5.
b. Commercial and industrial loans	RCONF597	**NR**	M.11.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.11.c.
1. Credit cards	RCONF598	**NR**	M.11.c.1.
2. Other revolving credit plans	RCONF599	**NR**	M.11.c.2.
3. Other consumer loans (includes single payment, installment, and all student loans)	RCONF600	**NR**	M.11.c.3.
d. Other loans	RCONF601	**NR**	M.11.d.

Dollar amounts in thousands			
8. Closed-end loans with negative amortization features secured by 1-4 family residential properties:			M.8.
a. Total carrying amount of closed-end loans with negative amortization features secured by 1-4 family residential properties (included in Schedule RC-C, part I, items 1.c.(2)(a) and 1.c.(2)(b))	RCONF230	**0**	M.8.a.
b. Total maximum remaining amount of negative amortization contractually permitted on closed-end loans secured by 1-4 family residential properties	RCONF231	**NR**	M.8.b.
c. Total amount of negative amortization on closed-end loans secured by 1-4 family residential properties included in the carrying amount reported in Memorandum item 8.a above	RCONF232	**NR**	M.8.c.
9. Loans secured by 1-4 family residential properties in process of foreclosure (included in Schedule RC-C, part I, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b))	RCONF577	**0**	M.9.
10. Loans measured at fair value (included in Schedule RC-C, part I, items 1 through 9):			M.10.
a. Loans secured by real estate:			M.10.a.
1. Construction, land development, and other land loans	RCONF578	**NR**	M.10.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF579	**NR**	M.10.a.2.
3. Secured by 1-4 family residential properties:			M.10.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF580	**NR**	M10a3a
b. Closed-end loans secured by 1-4 family residential properties:			M10a3b
1. Secured by first liens	RCONF581	**NR**	M10a3b1
2. Secured by junior liens	RCONF582	**NR**	M10a3b2
4. Secured by multifamily (5 or more) residential properties	RCONF583	**NR**	M.10.a.4.
5. Secured by nonfarm nonresidential properties	RCONF584	**NR**	M.10.a.5.
b. Commercial and industrial loans	RCONF585	**NR**	M.10.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.10.c.
1. Credit cards	RCONF586	**NR**	M.10.c.1.
2. Other revolving credit plans	RCONF587	**NR**	M.10.c.2.
3. Other consumer loans (includes single payment, installment, and all student loans)	RCONF588	**NR**	M.10.c.3.
d. Other loans	RCONF589	**NR**	M.10.d.
11. Unpaid principal balance of loans measured at fair value (reported in Schedule RC-C, part I, Memorandum item 10):			M.11.
a. Loans secured by real estate:			M.11.a.
1. Construction, and land development, and other land loans	RCONF590	**NR**	M.11.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF591	**NR**	M.11.a.2.
3. Secured by 1-4 family residential properties:			M.11.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF592	**NR**	M11a3a
b. Closed-end loans secured by 1-4 family residential properties:			M11a3b
1. Secured by first liens	RCONF593	**NR**	M11a3b1
2. Secured by junior liens	RCONF594	**NR**	M11a3b2
4. Secured by multifamily (5 or more) residential properties	RCONF595	**NR**	M.11.a.4.
5. Secured by nonfarm nonresidential properties	RCONF596	**NR**	M.11.a.5.
b. Commercial and industrial loans	RCONF597	**NR**	M.11.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.11.c.
1. Credit cards	RCONF598	**NR**	M.11.c.1.
2. Other revolving credit plans	RCONF599	**NR**	M.11.c.2.
3. Other consumer loans (includes single payment, installment, and all student loans)	RCONF600	**NR**	M.11.c.3.
d. Other loans	RCONF601	**NR**	M.11.d.

Dollar amounts in thousands			
8. Closed-end loans with negative amortization features secured by 1-4 family residential properties:			M.8.
a. Total carrying amount of closed-end loans with negative amortization features secured by 1-4 family residential properties (included in Schedule RC-C, part I, items 1.c.(2)(a) and 1.c.(2)(b))	RCONF230	0	M.8.a.
b. Total maximum remaining amount of negative amortization contractually permitted on closed-end loans secured by 1-4 family residential properties	RCONF231	NR	M.8.b.
c. Total amount of negative amortization on closed-end loans secured by 1-4 family residential properties included in the carrying amount reported in Memorandum item 8.a above	RCONF232	NR	M.8.c.
9. Loans secured by 1-4 family residential properties in process of foreclosure (included in Schedule RC-C, part I, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b))	RCONF577	0	M.9.
10. Loans measured at fair value (included in Schedule RC-C, part I, items 1 through 9):			M.10.
a. Loans secured by real estate:			M.10.a.
1. Construction, land development, and other land loans	RCONF578	NR	M.10.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF579	NR	M.10.a.2.
3. Secured by 1-4 family residential properties:			M.10.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF580	NR	M10a3a
b. Closed-end loans secured by 1-4 family residential properties:			M10a3b
1. Secured by first liens	RCONF581	NR	M10a3b1
2. Secured by junior liens	RCONF582	NR	M10a3b2
4. Secured by multifamily (5 or more) residential properties	RCONF583	NR	M.10.a.4.
5. Secured by nonfarm nonresidential properties	RCONF584	NR	M.10.a.5.
b. Commercial and industrial loans	RCONF585	NR	M.10.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.10.c.
1. Credit cards	RCONF586	NR	M.10.c.1.
2. Other revolving credit plans	RCONF587	NR	M.10.c.2.
3. Other consumer loans (includes single payment, installment, and all student loans)	RCONF588	NR	M.10.c.3.
d. Other loans	RCONF589	NR	M.10.d.
11. Unpaid principal balance of loans measured at fair value (reported in Schedule RC-C, part I, Memorandum item 10):			M.11.
a. Loans secured by real estate:			M.11.a.
1. Construction, and land development, and other land loans	RCONF590	NR	M.11.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF591	NR	M.11.a.2.
3. Secured by 1-4 family residential properties:			M.11.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF592	NR	M11a3a
b. Closed-end loans secured by 1-4 family residential properties:			M11a3b
1. Secured by first liens	RCONF593	NR	M11a3b1
2. Secured by junior liens	RCONF594	NR	M11a3b2
4. Secured by multifamily (5 or more) residential properties	RCONF595	NR	M.11.a.4.
5. Secured by nonfarm nonresidential properties	RCONF596	NR	M.11.a.5.
b. Commercial and industrial loans	RCONF597	NR	M.11.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.11.c.
1. Credit cards	RCONF598	NR	M.11.c.1.
2. Other revolving credit plans	RCONF599	NR	M.11.c.2.
3. Other consumer loans (includes single payment, installment, and all student loans)	RCONF600	NR	M.11.c.3.
d. Other loans	RCONF601	NR	M.11.d.

Dollar amounts in thousands			
a. Total carrying amount of closed-end loans with negative amortization features secured by 1-4 family residential properties (included in Schedule RC-C, part I, items 1.c.(2)(a) and 1.c.(2)(b))	RCONF230	0	M.8.a.
b. Total maximum remaining amount of negative amortization contractually permitted on closed-end loans secured by 1-4 family residential properties	RCONF231	NR	M.8.b.
c. Total amount of negative amortization on closed-end loans secured by 1-4 family residential properties included in the carrying amount reported in Memorandum item 8.a above	RCONF232	NR	M.8.c.
9. Loans secured by 1-4 family residential properties in process of foreclosure (included in Schedule RC-C, part I, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b))	RCONF577	0	M.9.
10. Loans measured at fair value (included in Schedule RC-C, part I, items 1 through 9):			M.10.
a. Loans secured by real estate:			M.10.a.
1. Construction, land development, and other land loans	RCONF578	NR	M.10.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF579	NR	M.10.a.2.
3. Secured by 1-4 family residential properties:			M.10.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF580	NR	M.10.a.3.a.
b. Closed-end loans secured by 1-4 family residential properties:			M.10.a.3.b.
1. Secured by first liens	RCONF581	NR	M.10.a.3.b.1.
2. Secured by junior liens	RCONF582	NR	M.10.a.3.b.2.
4. Secured by multifamily (5 or more) residential properties	RCONF583	NR	M.10.a.4.
5. Secured by nonfarm nonresidential properties	RCONF584	NR	M.10.a.5.
b. Commercial and industrial loans	RCONF585	NR	M.10.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.10.c.
1. Credit cards	RCONF586	NR	M.10.c.1.
2. Other revolving credit plans	RCONF587	NR	M.10.c.2.
3. Other consumer loans (includes single payment, installment, and all student loans)	RCONF588	NR	M.10.c.3.
d. Other loans	RCONF589	NR	M.10.d.
11. Unpaid principal balance of loans measured at fair value (reported in Schedule RC-C, part I, Memorandum item 10):			M.11.
a. Loans secured by real estate:			M.11.a.
1. Construction, and land development, and other land loans	RCONF590	NR	M.11.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF591	NR	M.11.a.2.
3. Secured by 1-4 family residential properties:			M.11.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF592	NR	M.11.a.3.a.
b. Closed-end loans secured by 1-4 family residential properties:			M.11.a.3.b.
1. Secured by first liens	RCONF593	NR	M.11.a.3.b.1.
2. Secured by junior liens	RCONF594	NR	M.11.a.3.b.2.
4. Secured by multifamily (5 or more) residential properties	RCONF595	NR	M.11.a.4.
5. Secured by nonfarm nonresidential properties	RCONF596	NR	M.11.a.5.
b. Commercial and industrial loans	RCONF597	NR	M.11.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.11.c.
1. Credit cards	RCONF598	NR	M.11.c.1.
2. Other revolving credit plans	RCONF599	NR	M.11.c.2.
3. Other consumer loans (includes single payment, installment, and all student loans)	RCONF600	NR	M.11.c.3.
d. Other loans	RCONF601	NR	M.11.d.

Dollar amounts in thousands

a. Total carrying amount of closed-end loans with negative amortization features secured by 1-4 family residential properties (included in Schedule RC-C, part I, items 1.c.(2)(a) and 1.c.(2)(b))	RCONF230	0	M.8.a.
b. Total maximum remaining amount of negative amortization contractually permitted on closed-end loans secured by 1-4 family residential properties	RCONF231	NR	M.8.b.
c. Total amount of negative amortization on closed-end loans secured by 1-4 family residential properties included in the carrying amount reported in Memorandum item 8.a above	RCONF232	NR	M.8.c.
9. Loans secured by 1-4 family residential properties in process of foreclosure (included in Schedule RC-C, part I, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b))	RCONF577	0	M.9.
10. Loans measured at fair value (included in Schedule RC-C, part I, items 1 through 9):			M.10.
a. Loans secured by real estate:			M.10.a.
1. Construction, land development, and other land loans	RCONF578	NR	M.10.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF579	NR	M.10.a.2.
3. Secured by 1-4 family residential properties:			M.10.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF580	NR	M.10.a.3.a
b. Closed-end loans secured by 1-4 family residential properties:			M.10.a.3.b
1. Secured by first liens	RCONF581	NR	M.10.a.3.b.1.
2. Secured by junior liens	RCONF582	NR	M.10.a.3.b.2
4. Secured by multifamily (5 or more) residential properties	RCONF583	NR	M.10.a.4.
5. Secured by nonfarm nonresidential properties	RCONF584	NR	M.10.a.5.
b. Commercial and industrial loans	RCONF585	NR	M.10.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.10.c.
1. Credit cards	RCONF586	NR	M.10.c.1.
2. Other revolving credit plans	RCONF587	NR	M.10.c.2.
3. Other consumer loans (includes single payment, installment, and all student loans)	RCONF588	NR	M.10.c.3.
d. Other loans	RCONF589	NR	M.10.d.
11. Unpaid principal balance of loans measured at fair value (reported in Schedule RC-C, part I, Memorandum item 10):			M.11.
a. Loans secured by real estate:			M.11.a.
1. Construction, and land development, and other land loans	RCONF590	NR	M.11.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF591	NR	M.11.a.2.
3. Secured by 1-4 family residential properties:			M.11.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF592	NR	M.11.a.3.a
b. Closed-end loans secured by 1-4 family residential properties:			M.11.a.3.b
1. Secured by first liens	RCONF593	NR	M.11.a.3.b.1.
2. Secured by junior liens	RCONF594	NR	M.11.a.3.b.2
4. Secured by multifamily (5 or more) residential properties	RCONF595	NR	M.11.a.4.
5. Secured by nonfarm nonresidential properties	RCONF596	NR	M.11.a.5.
b. Commercial and industrial loans	RCONF597	NR	M.11.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.11.c.
1. Credit cards	RCONF598	NR	M.11.c.1.
2. Other revolving credit plans	RCONF599	NR	M.11.c.2.
3. Other consumer loans (includes single payment, installment, and all student loans)	RCONF600	NR	M.11.c.3.
d. Other loans	RCONF601	NR	M.11.d.

Dollar amounts in thousands			
a. Total carrying amount of closed-end loans with negative amortization features secured by 1-4 family residential properties (included in Schedule RC-C, part I, items 1.c.(2)(a) and 1.c.(2)(b))	RCONF230	0	M.8.a.
b. Total maximum remaining amount of negative amortization contractually permitted on closed-end loans secured by 1-4 family residential properties	RCONF231	NR	M.8.b.
c. Total amount of negative amortization on closed-end loans secured by 1-4 family residential properties included in the carrying amount reported in Memorandum item 8.a above	RCONF232	NR	M.8.c.
9. Loans secured by 1-4 family residential properties in process of foreclosure (included in Schedule RC-C, part I, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b))	RCONF577	0	M.9.
10. Loans measured at fair value (included in Schedule RC-C, part I, items 1 through 9):			M.10.
a. Loans secured by real estate:			M.10.a.
1. Construction, land development, and other land loans	RCONF578	NR	M.10.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF579	NR	M.10.a.2.
3. Secured by 1-4 family residential properties:			M.10.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF580	NR	M.10.a.3.a.
b. Closed-end loans secured by 1-4 family residential properties:			M.10.a.3.b.
1. Secured by first liens	RCONF581	NR	M.10.a.3.b.1.
2. Secured by junior liens	RCONF582	NR	M.10.a.3.b.2.
4. Secured by multifamily (5 or more) residential properties	RCONF583	NR	M.10.a.4.
5. Secured by nonfarm nonresidential properties	RCONF584	NR	M.10.a.5.
b. Commercial and industrial loans	RCONF585	NR	M.10.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.10.c.
1. Credit cards	RCONF586	NR	M.10.c.1.
2. Other revolving credit plans	RCONF587	NR	M.10.c.2.
3. Other consumer loans (includes single payment, installment, and all student loans)	RCONF588	NR	M.10.c.3.
d. Other loans	RCONF589	NR	M.10.d.
11. Unpaid principal balance of loans measured at fair value (reported in Schedule RC-C, part I, Memorandum item 10):			M.11.
a. Loans secured by real estate:			M.11.a.
1. Construction, and land development, and other land loans	RCONF590	NR	M.11.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF591	NR	M.11.a.2.
3. Secured by 1-4 family residential properties:			M.11.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF592	NR	M.11.a.3.a.
b. Closed-end loans secured by 1-4 family residential properties:			M.11.a.3.b.
1. Secured by first liens	RCONF593	NR	M.11.a.3.b.1.
2. Secured by junior liens	RCONF594	NR	M.11.a.3.b.2.
4. Secured by multifamily (5 or more) residential properties	RCONF595	NR	M.11.a.4.
5. Secured by nonfarm nonresidential properties	RCONF596	NR	M.11.a.5.
b. Commercial and industrial loans	RCONF597	NR	M.11.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.11.c.
1. Credit cards	RCONF598	NR	M.11.c.1.
2. Other revolving credit plans	RCONF599	NR	M.11.c.2.
3. Other consumer loans (includes single payment, installment, and all student loans)	RCONF600	NR	M.11.c.3.
d. Other loans	RCONF601	NR	M.11.d.

Dollar amounts in thousands			
a. Total carrying amount of closed-end loans with negative amortization features secured by 1-4 family residential properties (included in Schedule RC-C, part I, items 1.c.(2)(a) and 1.c.(2)(b))	RCONF230	0	M.8.a.
b. Total maximum remaining amount of negative amortization contractually permitted on closed-end loans secured by 1-4 family residential properties	RCONF231	NR	M.8.b.
c. Total amount of negative amortization on closed-end loans secured by 1-4 family residential properties included in the carrying amount reported in Memorandum item 8.a above	RCONF232	NR	M.8.c.
9. Loans secured by 1-4 family residential properties in process of foreclosure (included in Schedule RC-C, part I, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b))	RCONF577	0	M.9.
10. Loans measured at fair value (included in Schedule RC-C, part I, items 1 through 9):			M.10.
a. Loans secured by real estate:			M.10.a.
1. Construction, land development, and other land loans	RCONF578	NR	M.10.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF579	NR	M.10.a.2.
3. Secured by 1-4 family residential properties:			M.10.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF580	NR	M.10.a.3.a
b. Closed-end loans secured by 1-4 family residential properties:			M.10.a.3.b
1. Secured by first liens	RCONF581	NR	M.10.a.3.b.1.
2. Secured by junior liens	RCONF582	NR	M.10.a.3.b.2.
4. Secured by multifamily (5 or more) residential properties	RCONF583	NR	M.10.a.4.
5. Secured by nonfarm nonresidential properties	RCONF584	NR	M.10.a.5.
b. Commercial and industrial loans	RCONF585	NR	M.10.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.10.c.
1. Credit cards	RCONF586	NR	M.10.c.1.
2. Other revolving credit plans	RCONF587	NR	M.10.c.2.
3. Other consumer loans (includes single payment, installment, and all student loans)	RCONF588	NR	M.10.c.3.
d. Other loans	RCONF589	NR	M.10.d.
11. Unpaid principal balance of loans measured at fair value (reported in Schedule RC-C, part I, Memorandum item 10):			M.11.
a. Loans secured by real estate:			M.11.a.
1. Construction, and land development, and other land loans	RCONF590	NR	M.11.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF591	NR	M.11.a.2.
3. Secured by 1-4 family residential properties:			M.11.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF592	NR	M.11.a.3.a
b. Closed-end loans secured by 1-4 family residential properties:			M.11.a.3.b
1. Secured by first liens	RCONF593	NR	M.11.a.3.b.1.
2. Secured by junior liens	RCONF594	NR	M.11.a.3.b.2.
4. Secured by multifamily (5 or more) residential properties	RCONF595	NR	M.11.a.4.
5. Secured by nonfarm nonresidential properties	RCONF596	NR	M.11.a.5.
b. Commercial and industrial loans	RCONF597	NR	M.11.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.11.c.
1. Credit cards	RCONF598	NR	M.11.c.1.
2. Other revolving credit plans	RCONF599	NR	M.11.c.2.
3. Other consumer loans (includes single payment, installment, and all student loans)	RCONF600	NR	M.11.c.3.
d. Other loans	RCONF601	NR	M.11.d.

Dollar amounts in thousands			
a. Total carrying amount of closed-end loans with negative amortization features secured by 1-4 family residential properties (included in Schedule RC-C, part I, items 1.c.(2)(a) and 1.c.(2)(b))	RCONF230	0	M.8.a.
b. Total maximum remaining amount of negative amortization contractually permitted on closed-end loans secured by 1-4 family residential properties	RCONF231	NR	M.8.b.
c. Total amount of negative amortization on closed-end loans secured by 1-4 family residential properties included in the carrying amount reported in Memorandum item 8.a above	RCONF232	NR	M.8.c.
9. Loans secured by 1-4 family residential properties in process of foreclosure (included in Schedule RC-C, part I, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b))	RCONF577	0	M.9.
10. Loans measured at fair value (included in Schedule RC-C, part I, items 1 through 9):			M.10.
a. Loans secured by real estate:			M.10.a.
1. Construction, land development, and other land loans	RCONF578	NR	M.10.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF579	NR	M.10.a.2.
3. Secured by 1-4 family residential properties:			M.10.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF580	NR	M.10.a.3.a.
b. Closed-end loans secured by 1-4 family residential properties:			M.10.a.3.b.
1. Secured by first liens	RCONF581	NR	M.10.a.3.b.1.
2. Secured by junior liens	RCONF582	NR	M.10.a.3.b.2.
4. Secured by multifamily (5 or more) residential properties	RCONF583	NR	M.10.a.4.
5. Secured by nonfarm nonresidential properties	RCONF584	NR	M.10.a.5.
b. Commercial and industrial loans	RCONF585	NR	M.10.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.10.c.
1. Credit cards	RCONF586	NR	M.10.c.1.
2. Other revolving credit plans	RCONF587	NR	M.10.c.2.
3. Other consumer loans (includes single payment, installment, and all student loans)	RCONF588	NR	M.10.c.3.
d. Other loans	RCONF589	NR	M.10.d.
11. Unpaid principal balance of loans measured at fair value (reported in Schedule RC-C, part I, Memorandum item 10):			M.11.
a. Loans secured by real estate:			M.11.a.
1. Construction, and land development, and other land loans	RCONF590	NR	M.11.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF591	NR	M.11.a.2.
3. Secured by 1-4 family residential properties:			M.11.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF592	NR	M.11.a.3.a.
b. Closed-end loans secured by 1-4 family residential properties:			M.11.a.3.b.
1. Secured by first liens	RCONF593	NR	M.11.a.3.b.1.
2. Secured by junior liens	RCONF594	NR	M.11.a.3.b.2.
4. Secured by multifamily (5 or more) residential properties	RCONF595	NR	M.11.a.4.
5. Secured by nonfarm nonresidential properties	RCONF596	NR	M.11.a.5.
b. Commercial and industrial loans	RCONF597	NR	M.11.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.11.c.
1. Credit cards	RCONF598	NR	M.11.c.1.
2. Other revolving credit plans	RCONF599	NR	M.11.c.2.
3. Other consumer loans (includes single payment, installment, and all student loans)	RCONF600	NR	M.11.c.3.
d. Other loans	RCONF601	NR	M.11.d.

Dollar amounts in thousands			
a. Total carrying amount of closed-end loans with negative amortization features secured by 1-4 family residential properties (included in Schedule RC-C, part I, items 1.c.(2)(a) and 1.c.(2)(b))	RCONF230	0	M.8.a.
b. Total maximum remaining amount of negative amortization contractually permitted on closed-end loans secured by 1-4 family residential properties	RCONF231	NR	M.8.b.
c. Total amount of negative amortization on closed-end loans secured by 1-4 family residential properties included in the carrying amount reported in Memorandum item 8.a above	RCONF232	NR	M.8.c.
9. Loans secured by 1-4 family residential properties in process of foreclosure (included in Schedule RC-C, part I, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b))	RCONF577	0	M.9.
10. Loans measured at fair value (included in Schedule RC-C, part I, items 1 through 9):			M.10.
a. Loans secured by real estate:			M.10.a.
1. Construction, land development, and other land loans	RCONF578	0	M.10.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF579	0	M.10.a.2.
3. Secured by 1-4 family residential properties:			M.10.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF580	0	M.10.a.3.a.
b. Closed-end loans secured by 1-4 family residential properties:			M.10.a.3.b.
1. Secured by first liens	RCONF581	0	M.10.a.3.b.1.
2. Secured by junior liens	RCONF582	0	M.10.a.3.b.2.
4. Secured by multifamily (5 or more) residential properties	RCONF583	0	M.10.a.4.
5. Secured by nonfarm nonresidential properties	RCONF584	0	M.10.a.5.
b. Commercial and industrial loans	RCONF585	0	M.10.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.10.c.
1. Credit cards	RCONF586	0	M.10.c.1.
2. Other revolving credit plans	RCONF587	0	M.10.c.2.
3. Other consumer loans (includes single payment, installment, and all student loans)	RCONF588	0	M.10.c.3.
d. Other loans	RCONF589	0	M.10.d.
11. Unpaid principal balance of loans measured at fair value (reported in Schedule RC-C, part I, Memorandum item 10):			M.11.
a. Loans secured by real estate:			M.11.a.
1. Construction, and land development, and other land loans	RCONF590	0	M.11.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF591	0	M.11.a.2.
3. Secured by 1-4 family residential properties:			M.11.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF592	0	M.11.a.3.a.
b. Closed-end loans secured by 1-4 family residential properties:			M.11.a.3.b.
1. Secured by first liens	RCONF593	0	M.11.a.3.b.1.
2. Secured by junior liens	RCONF594	0	M.11.a.3.b.2.
4. Secured by multifamily (5 or more) residential properties	RCONF595	0	M.11.a.4.
5. Secured by nonfarm nonresidential properties	RCONF596	0	M.11.a.5.
b. Commercial and industrial loans	RCONF597	0	M.11.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.11.c.
1. Credit cards	RCONF598	0	M.11.c.1.
2. Other revolving credit plans	RCONF599	0	M.11.c.2.
3. Other consumer loans (includes single payment, installment, and all student loans)	RCONF600	0	M.11.c.3.
d. Other loans	RCONF601	0	M.11.d.

Dollar amounts in thousands

a. Total carrying amount of closed-end loans with negative amortization features secured by 1-4 family residential properties (included in Schedule RC-C, part I, items 1.c.(2)(a) and 1.c.(2)(b))	RCONF230	0	M.8.a.
b. Total maximum remaining amount of negative amortization contractually permitted on closed-end loans secured by 1-4 family residential properties	RCONF231	NR	M.8.b.
c. Total amount of negative amortization on closed-end loans secured by 1-4 family residential properties included in the carrying amount reported in Memorandum item 8.a above	RCONF232	NR	M.8.c.
9. Loans secured by 1-4 family residential properties in process of foreclosure (included in Schedule RC-C, part I, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b))	RCONF577	0	M.9.
10. Loans measured at fair value (included in Schedule RC-C, part I, items 1 through 9):			M.10.
a. Loans secured by real estate:			M.10.a.
1. Construction, land development, and other land loans	RCONF578	0	M.10.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF579	0	M.10.a.2.
3. Secured by 1-4 family residential properties:			M.10.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF580	0	M.10.a.3.a.
b. Closed-end loans secured by 1-4 family residential properties:			M.10.a.3.b.
1. Secured by first liens	RCONF581	0	M.10.a.3.b.1.
2. Secured by junior liens	RCONF582	0	M.10.a.3.b.2.
4. Secured by multifamily (5 or more) residential properties	RCONF583	0	M.10.a.4.
5. Secured by nonfarm nonresidential properties	RCONF584	0	M.10.a.5.
b. Commercial and industrial loans	RCONF585	0	M.10.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.10.c.
1. Credit cards	RCONF586	0	M.10.c.1.
2. Other revolving credit plans	RCONF587	0	M.10.c.2.
3. Other consumer loans (includes single payment, installment, and all student loans)	RCONF588	0	M.10.c.3.
d. Other loans	RCONF589	0	M.10.d.
11. Unpaid principal balance of loans measured at fair value (reported in Schedule RC-C, part I, Memorandum item 10):			M.11.
a. Loans secured by real estate:			M.11.a.
1. Construction, and land development, and other land loans	RCONF590	0	M.11.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF591	0	M.11.a.2.
3. Secured by 1-4 family residential properties:			M.11.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF592	0	M.11.a.3.a.
b. Closed-end loans secured by 1-4 family residential properties:			M.11.a.3.b.
1. Secured by first liens	RCONF593	0	M.11.a.3.b.1.
2. Secured by junior liens	RCONF594	0	M.11.a.3.b.2.
4. Secured by multifamily (5 or more) residential properties	RCONF595	0	M.11.a.4.
5. Secured by nonfarm nonresidential properties	RCONF596	0	M.11.a.5.
b. Commercial and industrial loans	RCONF597	0	M.11.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.11.c.
1. Credit cards	RCONF598	0	M.11.c.1.
2. Other revolving credit plans	RCONF599	0	M.11.c.2.
3. Other consumer loans (includes single payment, installment, and all student loans)	RCONF600	0	M.11.c.3.
d. Other loans	RCONF601	0	M.11.d.

Dollar amounts in thousands			
a. Total carrying amount of closed-end loans with negative amortization features secured by 1-4 family residential properties (included in Schedule RC-C, part I, items 1.c.(2)(a) and 1.c.(2)(b))	RCONF230	0	M.8.a.
b. Total maximum remaining amount of negative amortization contractually permitted on closed-end loans secured by 1-4 family residential properties	RCONF231	NR	M.8.b.
c. Total amount of negative amortization on closed-end loans secured by 1-4 family residential properties included in the carrying amount reported in Memorandum item 8.a above	RCONF232	NR	M.8.c.
9. Loans secured by 1-4 family residential properties in process of foreclosure (included in Schedule RC-C, part I, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b))	RCONF577	0	M.9.
10. Loans measured at fair value (included in Schedule RC-C, part I, items 1 through 9):			M.10.
a. Loans secured by real estate:			M.10.a.
1. Construction, land development, and other land loans	RCONF578	0	M.10.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF579	0	M.10.a.2.
3. Secured by 1-4 family residential properties:			M.10.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF580	0	M.10.a.3.a.
b. Closed-end loans secured by 1-4 family residential properties:			M.10.a.3.b.
1. Secured by first liens	RCONF581	0	M.10.a.3.b.1.
2. Secured by junior liens	RCONF582	0	M.10.a.3.b.2.
4. Secured by multifamily (5 or more) residential properties	RCONF583	0	M.10.a.4.
5. Secured by nonfarm nonresidential properties	RCONF584	0	M.10.a.5.
b. Commercial and industrial loans	RCONF585	0	M.10.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.10.c.
1. Credit cards	RCONF586	0	M.10.c.1.
2. Other revolving credit plans	RCONF587	0	M.10.c.2.
3. Other consumer loans (includes single payment, installment, and all student loans)	RCONF588	0	M.10.c.3.
d. Other loans	RCONF589	0	M.10.d.
11. Unpaid principal balance of loans measured at fair value (reported in Schedule RC-C, part I, Memorandum item 10):			M.11.
a. Loans secured by real estate:			M.11.a.
1. Construction, and land development, and other land loans	RCONF590	0	M.11.a.1.
2. Secured by farmland (including farm residential and other improvements)	RCONF591	0	M.11.a.2.
3. Secured by 1-4 family residential properties:			M.11.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RCONF592	0	M.11.a.3.a.
b. Closed-end loans secured by 1-4 family residential properties:			M.11.a.3.b.
1. Secured by first liens	RCONF593	0	M.11.a.3.b.1.
2. Secured by junior liens	RCONF594	0	M.11.a.3.b.2.
4. Secured by multifamily (5 or more) residential properties	RCONF595	0	M.11.a.4.
5. Secured by nonfarm nonresidential properties	RCONF596	0	M.11.a.5.
b. Commercial and industrial loans	RCONF597	0	M.11.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			M.11.c.
1. Credit cards	RCONF598	0	M.11.c.1.
2. Other revolving credit plans	RCONF599	0	M.11.c.2.
3. Other consumer loans (includes single payment, installment, and all student loans)	RCONF600	0	M.11.c.3.
d. Other loans	RCONF601	0	M.11.d.

EXHIBIT 4

The State National Bank of Big Spring

901 Main Street
Big Spring, TX 79720
FDIC Certificate #: 3103 **Bank Charter Class:** N

Definition	**The State National Bank of Big Spring Big Spring, TX December 31, 2012**	**The State National Bank of Big Spring Big Spring, TX September 30, 2012**
Noncurrent loans to loans		
Percent of loans noncurrent		
1 **Total loans & leases**	**0**	**0**
2 All real estate loans	0	0
3 Construction and development	N/A	0
4 Commercial real estate	0	0
5 Multifamily residential real estate	N/A	N/A
6 1-4 family residential	0	0
7 Home equity	N/A	N/A
8 All other family	0	0
9 Commercial & industrial loans	0	0
10 Loans to individuals	0	0
11 Credit cards	N/A	N/A
12 Other loans to individuals	0	0
13 All other loans & leases (including farm)	0	0
Memoranda:		
14 Commercial real estate loans not secured by real estate	0	0
15 Percent of Noncurrent loans that are wholly or partially guaranteed by the U.S. government	N/A	N/A

NOTE: Prior to 2001, this information is not presented for individual banks with assets of less than $300 million because of reporting inconsistencies. However, aggregate data which includes these reporters are available.

The State National Bank of Big Spring

901 Main Street
Big Spring, TX 79720
FDIC Certificate #: 3103 **Bank Charter Class:** N

Definition		The State National Bank of Big Spring Big Spring, TX June 30, 2012	The State National Bank of Big Spring Big Spring, TX March 31, 2012
Noncurrent loans to loans			
	Percent of loans noncurrent		
1	**Total loans & leases**	**0**	**0.02%**
2	All real estate loans	0	0
3	Construction and development	0	0
4	Commercial real estate	0	0
5	Multifamily residential real estate	N/A	N/A
6	1-4 family residential	0	0
7	Home equity	N/A	N/A
8	All other family	0	0
9	Commercial & industrial loans	0	0.05%
10	Loans to individuals	0	0
11	Credit cards	N/A	N/A
12	Other loans to individuals	0	0
13	All other loans & leases (including farm)	0	0
	Memoranda:		
14	Commercial real estate loans not secured by real estate	0	0
15	Percent of Noncurrent loans that are wholly or partially guaranteed by the U.S. government	N/A	0

NOTE: Prior to 2001, this information is not presented for individual banks with assets of less than $300 million because of reporting inconsistencies. However, aggregate data which includes these reporters are available.

The State National Bank of Big Spring

901 Main Street
Big Spring, TX 79720
FDIC Certificate #: 3103 **Bank Charter Class:** N

Definition		The State National Bank of Big Spring Big Spring, TX December 31, 2011	The State National Bank of Big Spring Big Spring, TX September 30, 2011
	Noncurrent loans to loans		
	Percent of loans noncurrent		
1	**Total loans & leases**	**0.02%**	**0.03%**
2	All real estate loans	0	0
3	Construction and development	0	0
4	Commercial real estate	0	0
5	Multifamily residential real estate	N/A	N/A
6	1-4 family residential	0	0
7	Home equity	N/A	N/A
8	All other family	0	0
9	Commercial & industrial loans	0.05%	0.07%
10	Loans to individuals	0	0
11	Credit cards	N/A	N/A
12	Other loans to individuals	0	0
13	All other loans & leases (including farm)	0	0
	Memoranda:		
14	Commercial real estate loans not secured by real estate	0	0
15	Percent of Noncurrent loans that are wholly or partially guaranteed by the U.S. government	0	0

NOTE: Prior to 2001, this information is not presented for individual banks with assets of less than $300 million because of reporting inconsistencies. However, aggregate data which includes these reporters are available.

The State National Bank of Big Spring

901 Main Street
Big Spring, TX 79720
FDIC Certificate #: 3103 **Bank Charter Class:** N

Definition		The State National Bank of Big Spring Big Spring, TX June 30, 2011	The State National Bank of Big Spring Big Spring, TX March 31, 2011
Noncurrent loans to loans			
	Percent of loans noncurrent		
1	**Total loans & leases**	**0.03%**	**0.04%**
2	All real estate loans	0	0
3	Construction and development	0	0
4	Commercial real estate	0	0
5	Multifamily residential real estate	N/A	N/A
6	1-4 family residential	0	0
7	Home equity	N/A	N/A
8	All other family	0	0
9	Commercial & industrial loans	0.07%	0.09%
10	Loans to individuals	0	0
11	Credit cards	N/A	N/A
12	Other loans to individuals	0	0
13	All other loans & leases (including farm)	0	0
	Memoranda:		
14	Commercial real estate loans not secured by real estate	0	0
15	Percent of Noncurrent loans that are wholly or partially guaranteed by the U.S. government	0	0

NOTE: Prior to 2001, this information is not presented for individual banks with assets of less than $300 million because of reporting inconsistencies. However, aggregate data which includes these reporters are available.

The State National Bank of Big Spring

901 Main Street
Big Spring, TX 79720
FDIC Certificate #: 3103 **Bank Charter Class:** N

Definition		The State National Bank of Big Spring Big Spring, TX December 31, 2010	The State National Bank of Big Spring Big Spring, TX September 30, 2010
	Noncurrent loans to loans		
	Percent of loans noncurrent		
1	**Total loans & leases**	**0.03%**	**0**
2	All real estate loans	0	0
3	Construction and development	0	0
4	Commercial real estate	0	0
5	Multifamily residential real estate	N/A	N/A
6	1-4 family residential	0	0
7	Home equity	N/A	N/A
8	All other family	0	0
9	Commercial & industrial loans	0.09%	0
10	Loans to individuals	0	0
11	Credit cards	N/A	N/A
12	Other loans to individuals	0	0
13	All other loans & leases (including farm)	0	0
	Memoranda:		
14	Commercial real estate loans not secured by real estate	0	0
15	Percent of Noncurrent loans that are wholly or partially guaranteed by the U.S. government	0	N/A

NOTE: Prior to 2001, this information is not presented for individual banks with assets of less than $300 million because of reporting inconsistencies. However, aggregate data which includes these reporters are available.

The State National Bank of Big Spring

901 Main Street
Big Spring, TX 79720
FDIC Certificate #: 3103 **Bank Charter Class:** N

Definition	The State National Bank of Big Spring Big Spring, TX June 30, 2010	The State National Bank of Big Spring Big Spring, TX March 31, 2010
Noncurrent loans to loans		
Percent of loans noncurrent		
1 **Total loans & leases**	**0.37%**	**0**
2 All real estate loans	0	0
3 Construction and development	0	0
4 Commercial real estate	0	0
5 Multifamily residential real estate	N/A	N/A
6 1-4 family residential	0	0
7 Home equity	N/A	N/A
8 All other family	0	0
9 Commercial & industrial loans	0	0
10 Loans to individuals	0	0
11 Credit cards	N/A	N/A
12 Other loans to individuals	0	0
13 All other loans & leases (including farm)	0.98%	0
Memoranda:		
14 Commercial real estate loans not secured by real estate	0	0
15 Percent of Noncurrent loans that are wholly or partially guaranteed by the U.S. government	100.00%	N/A

NOTE: Prior to 2001, this information is not presented for individual banks with assets of less than $300 million because of reporting inconsistencies. However, aggregate data which includes these reporters are available.

The State National Bank of Big Spring

901 Main Street
Big Spring, TX 79720
FDIC Certificate #: 3103 **Bank Charter Class:** N

Definition		**The State National Bank of Big Spring Big Spring, TX December 31, 2009**	**The State National Bank of Big Spring Big Spring, TX September 30, 2009**
Noncurrent loans to loans			
	Percent of loans noncurrent		
1	**Total loans & leases**	**0**	**0**
2	All real estate loans	0	0
3	Construction and development	0	0
4	Commercial real estate	0	0
5	Multifamily residential real estate	N/A	N/A
6	1-4 family residential	0	0
7	Home equity	N/A	N/A
8	All other family	0	0
9	Commercial & industrial loans	0	0
10	Loans to individuals	0	0
11	Credit cards	N/A	N/A
12	Other loans to individuals	0	0
13	All other loans & leases (including farm)	0	0
	Memoranda:		
14	Commercial real estate loans not secured by real estate	0	0
15	Percent of Noncurrent loans that are wholly or partially guaranteed by the U.S. government	N/A	N/A

NOTE: Prior to 2001, this information is not presented for individual banks with assets of less than $300 million because of reporting inconsistencies. However, aggregate data which includes these reporters are available.

The State National Bank of Big Spring

901 Main Street
Big Spring, TX 79720
FDIC Certificate #: 3103 **Bank Charter Class:** N

	Definition	**The State National Bank of Big Spring Big Spring, TX June 30, 2009**	**The State National Bank of Big Spring Big Spring, TX March 31, 2009**
	Noncurrent loans to loans		
	Percent of loans noncurrent		
1	**Total loans & leases**	**0**	**0.12%**
2	All real estate loans	0	0.45%
3	Construction and development	0	0
4	Commercial real estate	0	0
5	Multifamily residential real estate	N/A	N/A
6	1-4 family residential	0	0
7	Home equity	N/A	N/A
8	All other family	0	0
9	Commercial & industrial loans	0	0
10	Loans to individuals	0	0
11	Credit cards	N/A	N/A
12	Other loans to individuals	0	0
13	All other loans & leases (including farm)	0	0
	Memoranda:		
14	Commercial real estate loans not secured by real estate	0	0
15	Percent of Noncurrent loans that are wholly or partially guaranteed by the U.S. government	N/A	0

NOTE: Prior to 2001, this information is not presented for individual banks with assets of less than $300 million because of reporting inconsistencies. However, aggregate data which includes these reporters are available.

The State National Bank of Big Spring

901 Main Street
Big Spring, TX 79720
FDIC Certificate #: 3103 **Bank Charter Class:** N

Definition		**The State National Bank of Big Spring Big Spring, TX December 31, 2008**	**The State National Bank of Big Spring Big Spring, TX September 30, 2008**
Noncurrent loans to loans			
	Percent of loans noncurrent		
1	**Total loans & leases**	**0.11%**	**0.10%**
2	All real estate loans	0.46%	0.46%
3	Construction and development	0	0
4	Commercial real estate	0	0
5	Multifamily residential real estate	N/A	N/A
6	1-4 family residential	0	0
7	Home equity	N/A	N/A
8	All other family	0	0
9	Commercial & industrial loans	0	0
10	Loans to individuals	0	0.05%
11	Credit cards	N/A	N/A
12	Other loans to individuals	0	0.05%
13	All other loans & leases (including farm)	0	0
	Memoranda:		
14	Commercial real estate loans not secured by real estate	0	0
15	Percent of Noncurrent loans that are wholly or partially guaranteed by the U.S. government	0	0

NOTE: Prior to 2001, this information is not presented for individual banks with assets of less than $300 million because of reporting inconsistencies. However, aggregate data which includes these reporters are available.

The State National Bank of Big Spring

901 Main Street
Big Spring, TX 79720
FDIC Certificate #: 3103 **Bank Charter Class:** N

Definition	**The State National Bank of Big Spring Big Spring, TX June 30, 2008**	**The State National Bank of Big Spring Big Spring, TX March 31, 2008**
Noncurrent loans to loans		
Percent of loans noncurrent		
1 **Total loans & leases**	**0.15%**	**0.23%**
2 All real estate loans	0.67%	0.88%
3 Construction and development	0	0
4 Commercial real estate	0	0
5 Multifamily residential real estate	N/A	N/A
6 1-4 family residential	0	0
7 Home equity	N/A	N/A
8 All other family	0	0
9 Commercial & industrial loans	0	0
10 Loans to individuals	0	0.03%
11 Credit cards	N/A	N/A
12 Other loans to individuals	0	0.03%
13 All other loans & leases (including farm)	0.02%	0
Memoranda:		
14 Commercial real estate loans not secured by real estate	0	0
15 Percent of Noncurrent loans that are wholly or partially guaranteed by the U.S. government	0	0

NOTE: Prior to 2001, this information is not presented for individual banks with assets of less than $300 million because of reporting inconsistencies. However, aggregate data which includes these reporters are available.

The State National Bank of Big Spring

901 Main Street
Big Spring, TX 79720
FDIC Certificate #: 3103 **Bank Charter Class:** N

Definition		The State National Bank of Big Spring Big Spring, TX December 31, 2007	The State National Bank of Big Spring Big Spring, TX September 30, 2007
	Noncurrent loans to loans		
	Percent of loans noncurrent		
1	**Total loans & leases**	**0.18%**	**0.14%**
2	All real estate loans	0.78%	0.59%
3	Construction and development	0	0
4	Commercial real estate	0	0
5	Multifamily residential real estate	N/A	N/A
6	1-4 family residential	0	0
7	Home equity	N/A	N/A
8	All other family	0	0
9	Commercial & industrial loans	0	0.01%
10	Loans to individuals	0.07%	0
11	Credit cards	N/A	N/A
12	Other loans to individuals	0.07%	0
13	All other loans & leases (including farm)	0	0.02%
	Memoranda:		
14	Commercial real estate loans not secured by real estate	0	0
15	Percent of Noncurrent loans that are wholly or partially guaranteed by the U.S. government	0	0

NOTE: Prior to 2001, this information is not presented for individual banks with assets of less than $300 million because of reporting inconsistencies. However, aggregate data which includes these reporters are available.

The State National Bank of Big Spring

901 Main Street
Big Spring, TX 79720
FDIC Certificate #: 3103 **Bank Charter Class:** N

Definition	The State National Bank of Big Spring Big Spring, TX June 30, 2007	The State National Bank of Big Spring Big Spring, TX March 31, 2007
Noncurrent loans to loans		
Percent of loans noncurrent		
1 **Total loans & leases**	**0.29%**	**0.42%**
2 All real estate loans	0.57%	0.70%
3 Construction and development	0	0
4 Commercial real estate	0	0
5 Multifamily residential real estate	N/A	N/A
6 1-4 family residential	0	0
7 Home equity	N/A	N/A
8 All other family	0	0
9 Commercial & industrial loans	0.01%	0.02%
10 Loans to individuals	0.10%	0.10%
11 Credit cards	N/A	N/A
12 Other loans to individuals	0.10%	0.10%
13 All other loans & leases (including farm)	0.32%	0.63%
Memoranda:		
14 Commercial real estate loans not secured by real estate	0	0
15 Percent of Noncurrent loans that are wholly or partially guaranteed by the U.S. government	0	0

NOTE: Prior to 2001, this information is not presented for individual banks with assets of less than $300 million because of reporting inconsistencies. However, aggregate data which includes these reporters are available.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE NATIONAL BANK OF BIG SPRING *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	Case No. 1:12-cv-01032 (ESH)
JACOB J. LEW, in his official capacity as	)	
United States Secretary of the Treasury and *ex*	)	Judge: Hon. Ellen S. Huvelle
officio Chairman of the Financial Stability	)	
Oversight Council	)	
1500 Pennsylvania Avenue, NW	)	
Washington, DC 20220, *et al.*,	)	
	)	
Defendants.	)	

SECOND SUPPLEMENTAL DECLARATION OF GREGORY JACOB IN SUPPORT OF PRIVATE PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(1)

Under 28 U.S.C. § 1746, I, Gregory Jacob, state:

1. I am a partner with the law firm of O'Melveny & Myers LLP. I represent Plaintiffs State National Bank, the Competitive Enterprise Institute, and the 60 Plus Association ("Private Plaintiffs") in the above-entitled action, and I am admitted to practice in the United States District Court for the District of Columbia.

2. I submit this supplemental declaration in support of Private Plaintiffs' Opposition to Defendants' Motion to Dismiss the Second Amended Complaint ("Motion") in the above-entitled action. I have personal knowledge of the matters set forth in this declaration, and if called to testify to the facts stated herein, I could and would do so competently.

3. Attached hereto as Exhibit 1 is a true and correct copy of the complaint the Consumer Financial Protection Bureau ("CFPB" or "Bureau") filed in *CFPB v. American Debt Settlement Solutions, Inc.*, No. 09:13-cv-80548 (S.D. Fla. May 30, 2013). The complaint alleges that the defendant debt-relief company engaged a practice that, according to the CFPB, is "abusive" and prohibited by 12 U.S.C. § 5536(a)(1).

4. Attached hereto as Exhibit 2 is a true and correct copy of the proposed order the CFPB submitted to the court in *American Debt Settlement Solutions*. That order would, among other things, enter a judgment for equitable monetary relief and damages in the amount of $499,247.96 (which would be suspended pending the defendant's satisfaction of specified obligations), and impose a civil penalty of $15,000. Ex. 2, at 12-13.

5. Attached hereto as Exhibit 3 is a true and correct copy of an article by Jeff Bater, *Council Votes on Proposed Determinations of NonBank SIFIs; Doesn't Name Firms*, Bloomberg BNA Securities Law Daily, June 4, 2013, and accompanying email from the Treasury Department containing statements from the Treasury Secretary and a Treasury Spokesperson. The article and statements confirm that, as authorized by 12 U.S.C. § 5323 (Section 113 of the Dodd-Frank Act), the Financial Stability Oversight Council ("FSOC") voted on June 3, 2013 to make proposed determinations that a set of nonbank financial companies are systemically important financial institutions ("SIFIs"). Each company subject to that proposed determination has 30 days to request a hearing on the matter, after which the FSOC may make a final determination that the company is a SIFI.

6. Attached hereto as Exhibit 4 is a true and correct copy of an article by Michael R. Crittenden, *Nonbanks Set for Oversight*, Wall Street Journal, June 3, 2013 (on-line edition),

which reports that nonbank financial companies American International Group Inc., Prudential Financial Inc., and the GE Capital Unit of General Electric Company have confirmed that they were part of the first group of companies to receive the FSOC's proposed SIFI determination.

7. Attached hereto as Exhibit 5 is a true and correct copy of the following GE Capital webpages as accessed on June 10, 2013:

(a) http://www.gecapitalinvestdirect.com/index.html;

(b) http://www.gecapitalinvestdirect.com/discover_ge_interest_plus/overview.html;

(c) https://www.gogecapital.com/en/consumer-credit-financing/find-merchants.html?region=all;

(d) http://www.gecapital.com/en/solutions/retail-credit-financing.html?gemid2=gtnav0103.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of June 2013, at Washington, DC.

s/Gregory Jacob
Gregory Jacob

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE NATIONAL BANK OF BIG SPRING, et al.,	)	Civil Action No. 12-1032
Plaintiffs,	)	
v.	)	
TIMOTHY F. GEITHNER et al.,	)	June 11, 2013 2:37 p.m.
Defendants.	)	

Washington, D.C.

TRANSCRIPT OF MOTION HEARING

BEFORE THE HONORABLE ELLEN SEGAL HUVELLE
UNITED STATES DISTRICT JUDGE

COURT REPORTER: PATRICIA A. KANESHIRO-MILLER, RMR
Certified Realtime Reporter
Official Court Reporter
Room 4704B, U.S. Courthouse
Washington, D.C. 20001
202-354-3243

would apply. If we engaged in the practices that we previously were used to engaging in under Texas law, we would end up running afoul of regulations promulgated by the CFPB.

THE COURT: The foreclosure rule is one, and that is you can't send out a notice under certain kinds of mortgages, not all -- and I don't know how many you have that fit into that category -- you can't use the 120 days. Okay. What else do you have to worry about?

MR. JACOB: Well, we had to monitor for the remittance rule. Although the safe harbor is there now, the only way for us to understand that was to follow the four different amendments to their regulations at different points in time. We also have the qualified mortgage rule, which with respect to any of our higher priced mortgages shifts the burden that we bear with respect to our requirements for investigating the ability of a borrower to repay the loan. We need to make sure with respect to any of those loans that we do additional due diligence because we only get a rebuttable presumption with respect to those loans because --

THE COURT: How do you know that that rule would ever be retroactive? You seem to assume something about its retroactivity; that if you did X, Y, Z five years ago when you made the loan because you're not making any new ones, that the law is going to now say what you did back then is abusive. Is that how they're operating as far as you know? Have there been rules that say what you did before we had a definition of this being abusive is now retroactive?

MR. JACOB: Particularly with respect to that rule, the reason that we're monitoring, as the affidavit of Bank President Purcell states, we desperately want to get back into the mortgage market. The moment that we can clear away these rules that increase our cost of doing so, because every new mortgage that we issue would be subject to the dictates of the qualified mortgage rule, the foreclosure rule, the potential --

THE COURT: You didn't answer my question. I talked to you about retroactivity. Why am I worried about the mortgages you have on the book? Whether you get back in or don't get back into the mortgage business, I don't know. So far there's two rules: One is the foreclosure rule, and one is the qualified mortgage. You have a dwindling stock of consumer loans, but you are assuming that you're going to be covered -- those loans will be covered by rules that, first of all, haven't even become effective and there may be a safe harbor. So why is it that I should assume -- do they say in the rules -- I don't monitor them, but apparently your client must or else they're not incurring these costs for a reason. When do they go into effect? One of them in 2014, but it's effective for mortgages that were issued five years earlier?

MR. JACOB: The foreclosure rule is -- and the government does not contest this -- the qualified mortgage rule, I'm actually not entirely certain as I stand here right now in terms of whether it would have applied to all of the mortgages we have on the books. I believe so. The government certainly didn't say otherwise. But our additional costs for reentry into that market, in addition to the effects that we have with respect to our current business, where we want to get back into that market and need to continuously both monitor their pronouncements and stay out of it until we can clear away the regulations and the "abusive" interpretations that -- interpretations of what actions constitute abusive behavior. Once we clear that away, we will reenter into that market. That is what our affidavit states.

THE COURT: There is uncertainty for you, and because of the uncertainty, you don't feel confident that you can comply with the rules and regulations at the present and make money. When the uncertainty gets resolved, you might be able to because you may be covered by a safe harbor or, alternatively, the rule of -- since you have so few foreclosures for the last five years, you may decide if you get a safe harbor for one, and there are various exceptions, it's not a big deal, but all you're dealing with is uncertainty. You're not dealing with regulation particularly.

MR. JACOB: No, Your Honor. With respect to what the CFPB may deem to be abusive, yes, there we're dealing with a sea of uncertainty. Nobody knows what the CFPB --

THE COURT: That's life. That's not standing.

MR. JACOB: Well, Your Honor --

THE COURT: It is.

MR. JACOB: -- we don't think that's true. When you take a look at the various precedents of this Court, for example, take *Great Lakes Gas*, in *Great Lakes Gas*, there the company wanted to build a center to receive additional gas from Canada on the Great Lakes, and FERC said, you can build that facility but if you do and if Canada doesn't send as much gas as you're anticipating, you are going to be on the hook and -- for the unmet costs -- and we're not going to let you pass them on to the consumers. Great Lakes Gas sued saying, hey, we can't bear that additional risk. The D.C. Circuit said, hey, nobody knows whether Canada is, in fact, going to provide you less gas than you're expecting. That's speculative, but it is affecting your current business decisions because that additional risk is sufficiently great that it is impacting your current market decisions.

Similarly, in this D.C. Circuit's decision in *Rio Grande*, there Rio Grande, again dealing with FERC, asked FERC to approve the rates that it wanted to charge under one section that would not be subject to potential future litigation by third parties. FERC declined and, instead, approved it under one that was subject to potential future litigation by third parties. Again, no one knew whether somebody was actually going to sue in the future, but that additional uncertainty and risk that would attach that transaction was affecting Rio Grande's current business decisions. That is squarely where the bank is with respect to our decision to exit the market. Our bank, being responsible, looked at the market that it had profitably engaged in for years. It wants to be in this market. It wants to serve the people of its community. That's its founding statement, to be a community bank and to serve their needs. But when it looked at those additional risks, not knowing whether the five-year balloon notes that it issued were going to be deemed to be abusive or not by the FCPB --

THE COURT: You still don't know that.

MR. JACOB: We still don't know.

THE COURT: You went out in the last quarter of 2010. The law became effective in July 2010. We're sitting here now three years later, at least the qualified mortgage issue is not going to go into effect until '14, and we have no idea how many of your mortgages may or may not be exempt. No one has told me that. But they're certainly under the safe harbor, some of them could be.

So you're trying to blame this statute, this violation of the constitutional law, and you're trying to say it caused the separation of powers by giving unlimited powers and the appointment of Caldray, which took place two years later, essentially made you, in 2010, three months after the statute went into effect, to pull out. I mean that does not seem like an obvious cause and effect by any means. You're saying that in some fashion, yes, we might have certain things that might -- might -- violate certain statutes, so we're going to get out now and never test it, and now you want to test it. It seems like having your cake and eating it, too; isn't it?

MR. JACOB: I don't think so, Your Honor. There are a number of decisions of the D.C. Circuit that have said you aren't required to stay in the market and bear those additional costs and incur those additional risks in order to challenge it. I have given the Court two examples, the *Rio Grande* and the *Great Lake Gas* decisions, where the potential for the risk was in the future, but there are a number of decisions. The Court in *Duncan*, there the issue was states were either going to issue -- fail to issue regulations that complied with what I believe the Department of Education was requiring, in which case everybody would have to exit the market, or they were going to issue regulations that would increase their compliance costs. Those were the choices that the plaintiffs faced. Either you go in with increased compliance costs or you exit the market. The Court said, that's good enough.

In *Chamber of Commerce*, as I mentioned previously, compete --

THE COURT: You compete --

MR. JACOB: GE Capital is that systemically important or imminently to be systemically important financial institution.

THE COURT: Meaning that we are counting on that the market will treat them better than the bank for purposes of where you compete as opposed to something else, even though the fact is that people are influenced by the interest rate. It is not irrelevant. You're saying risk and interest rate, but you can't even tell me the interest rate that will be available if you were going to get a loan from GE versus you.

MR. JACOB: The bank's pricing isn't actually relevant. I can direct the Court to several decisions of the D.C. Circuit where they said we don't need to know what the actual prices are that are going to be charged by the two entities that are in competition. One of those is the *Louisiana Energy* case where *Louisiana Energy* was asserting that its potential competitor was going to be -- when it was given the rate and approved to offer certain rates, that it would be able to engage in predatory pricing. And the D.C. Circuit said, we don't know if they're actually going to engage in predatory pricing or not. What we do know is that they have now been freed to charge a lower price than they previously could. Don't know what the price is going to be that they charge, but it has increased the competition with *Louisiana Energy*, and that was sufficient to establish standing. They're now able to offer a lower price.

Similarly, in the *USTA* case, the *United States Telecommunications Association*, there there was a regulation that provided a subsidy to the Iowa entity --

THE COURT: You call this a subsidy. Have you ever asked the GE Capital whether this is a "subsidy"? I understand what a subsidy is. That means the government is giving them something that puts them in a better position. The SIFI is not a "subsidy." You're just saying it's a benefit in the marketplace for those -- do you have proof historically, anything to offer that says that for the people who have been SIFIs for all this time, that they are beating you out in some way with the direct cost of capital?

MR. JACOB: What we have are the statement of Chairman Bernanke that it, in fact, functions in that way, it gives them an ability to out compete their competitors by virtue of being lower risk. We have a number of economic studies. In fact, there was a letter from the senate that said in numerous sources that detail and document the cost of capital advantage that flows from it, so we certainly have pled it, and that is certainly plausible in light of Chairman Bernanke's statements, as well as all of those economic studies. It is certainly plausible that that competitive harm will flow therefrom; that they end up getting a market advantage from that. A market advantage is all that it takes. That is what *Louisiana Energy* stands for.

In the *Sherley* case, where more participants were allowed in to compete for grants for stem cell research, the doctors were deemed to have standing to challenge that. The Court said, "No one can say exactly how likely the doctors are to lose funding." But the fact that you have increased the competition by allowing additional actors to compete for limited funds there, that was sufficient to establish standing.

Again, the *Shays* case is another example, where the congressman was going to face increased competition in the political arena. It wasn't even directly monetary. But because of the rules that the FEC had enacted in promulgating rules pursuant to the Campaign Finance Reform, they were allowing more competitors in to spend more money against him than he asserted was legally allowed. They said he has standard to do that because by allowing more intense competition, he has alleged sufficient harm.

So I don't think that there could be any question under the governing precedents that our plausible pleadings that --

THE COURT: Well, your plausible pleading says, I'm a competitor. It doesn't tell me another thing. That's your think then for four reasons the plaintiffs lack standing here or the state plaintiffs lack standing here: One, they only allege a procedural injury, not a substantive injury; two, they haven't even suffered this procedural injury and it is speculative that they ever will; finally, the states' injury isn't fairly traceable to all of Title II. At most, it is fairly traceable only to the one statutory provision they have identified, this 5390 (b)(4). It doesn't give them grounds to challenge all of Title II. Also, as we mentioned in our reply brief when we cite the *Katzenbach* case, states aren't persons under the due process clause and can't --

THE COURT: They have been allowed to sue. Nobody ever brings that up, it seems. States have sued.

MR. COOPER: Under the due process laws?

THE COURT: Yeah.

MR. COOPER: Well, from our research of the case law, we haven't found any case that says *Katzenbach* is no longer good law on this point; and any cases we're aware of citing *Katzenbach* have found that states lack the right to bring due process in separation of powers claims.

Thank you, Your Honor.

THE COURT: Thank you to both sides and for many very extensive briefs, that's for sure. It gives us a lot to work on. Thank you.

MR. JACOB: You inquired about limited facts, our interest rates at the bank and the consumer loans --

THE COURT: I don't think the court reporter can hear you unless you get to a mike.

MR. JACOB: Your Honor had mentioned a couple of additional facts that you would find useful from us, the interest rate that the bank now offers on its deposits, as well as the consumer loans that we offer other than the mortgages we used to offer, and now that they have raised the new safe harbor, the increased safe harbor on the qualified mortgage rule, it would probably also be useful to Your Honor to know how many of our loans would still not qualify for that safe harbor. So I would just ask for permission, as under *USTA v. FERC,* to just submit a supplemental affidavit covering those very limited set of facts.

THE COURT: Very, very limited. You have to do it by Thursday.

MR. JACOB: Thank you, Your Honor.

THE COURT: I need an affidavit, though, not from you.

(Proceedings concluded at 5:22 p.m.)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE NATIONAL BANK OF BIG SPRING *et al.*, Plaintiffs, v. JACOB J. LEW, in his official capacity as United States Secretary of the Treasury and ex officio Chairman of the Financial Stability Oversight Council 1500 Pennsylvania Avenue, NW Washington, DC 20220, *et al.*, Defendants.	Case No. 1:12-cv-01032 (ESH) Judge: Hon. Ellen S. Huvelle

SECOND DECLARATION OF JIM R. PURCELL

In Accordance with 28 U.S.C. § 1746, I, Jim R. Purcell, declare as follows, under the pains and penalties of perjury:

1. I am the Chairman of the Board and CEO of the State National Bank of Big Spring in Big Spring, Texas ("the Bank"). I have served as CEO since 1988 and became Chairman of the Board in 2012.

2. I served as President of the Bank from 1988 to 2012.

3. I am familiar with the Bank's depository and lending practices.

Lending Practices

4. The Bank makes a wide variety of agricultural loans, including loans for equipment, livestock, operating costs, commodities, and real estate. By total amount, approximately 37% of the Bank's outstanding loans are agricultural loans.

5. The Bank also makes automobile loans, including loans for new and used vehicle

purchases, with payback periods of up to 60 months. The bank also makes personal loans that are secured by vehicles.

6. As of May 31, 2012, the Bank held 165 outstanding agricultural loans. As of January 31, 2013, the Bank held 129 outstanding agricultural loans. As of May 31, 2013, the Bank held 159 outstanding agricultural loans.

7. As of May 31, 2012, the Bank held 236 outstanding business loans. As of January 31, 2013, the Bank held 220 outstanding business loans. As of May 31, 2013, the Bank held 204 outstanding business loans.

8. As of May 31, 2012, the Bank held 579 outstanding consumer loans. As of January 31, 2013, the Bank held 560 outstanding consumer loans. As of May 31, 2013, the Bank held 530 outstanding consumer loans.

9. As of May 31, 2012, the Bank held 209 outstanding automobile loans. As of January 31, 2013, the Bank held 199 outstanding automobile loans. As of May 31, 2013, the Bank held 207 outstanding automobile loans.

10. As of May 31, 2013, three of the outstanding mortgage loans held by the Bank exceeded the prime offered rate by more than 3.5%.

11. According to publicly available information, GE Capital and its subsidiaries offer numerous loans in the agricultural sector, including in markets that are served by the Bank. For example, GE Capital and/or its subsidiaries provide financing for purchases from McCoy's, which offers "Farm and Ranch Outfitt[ing]" supplies. *See* https://www.mccoys.com/mccoys-credit (visited June 13, 2013). McCoy's has stores in Midland and Odessa, TX; Odessa is 62 miles from Big Spring, and Midland is 40 miles from Big Spring. *See* www.mccoys.com/why-mccoys/store-locator?state=TX (visited June 13, 2013). To provide another example, Bobcat is a

manufacturer of agricultural equipment that has a dealer in Odessa, TX. *See* bobcat.know-where.com/bobcat/cgi/selection?option=&mapid=US&lang=en&design=default&country=&region_name=&regionSelect=US%2CWorld&addr=&city=big+spring&state=TX%2CUS&zip=&province=&postalcode= (visited June 13, 2013). Bobcat provides financing both to its dealers and to consumers through GE Capital. *See* http://www.gecapital.com/en/our-customers/bobcat.html (visited June 13, 2013).

12. The Bank has previously used the foreclosure-notice-posting process provided for in Tex. Prop. Code Ann. § 51.002(a), (b), (d) (West 2012).

Depository Practices

13. The Bank competes with a wide variety of bank and non-bank financial institutions for deposits. For example, during the financial crisis, the Bank's deposits increased by approximately $75 million between March 2007 and December 2010, a 45% total increase in deposits, primarily because depositors/investors perceived other investment alternatives during that time as bearing significantly increased risk. In deciding where to invest/deposit money, an investor/depositor typically considers the promised return on the investment (as reflected, for example, by a promised interest rate), discounted by the risk that the investment will be lost. The Bank faces increased competition when its competitors either (1) promise higher returns on investments/deposits, including higher interest rates, ***or*** (2) offer less risky investment/deposit opportunities.

14. As of May 31, 2012, the Bank had 162 depository accounts that exceed the $250,000 FDIC insurance threshold. As of January 31, 2013, the Bank had 186 depository accounts that exceed the $250,000 FDIC insurance threshold. As of May 31, 2013, the Bank had 181 depository accounts that exceed the $250,000 FDIC insurance threshold.

15. As of May 31, 2012, the Bank offered .05% interest on amounts deposited in checking accounts, .15% interest on amounts deposited in money market or savings accounts, and .25% interest on 6 Month CDs. Those interest rates remained unchanged as of January 31, 2013, and as of May 31, 2013. These rates reflect competitive market conditions.

16. As of May 31, 2012, the Bank offered .50% interest on amounts deposited on 1 Year CDs. Those interest rates dropped to .40% as of January 31, 2013, and remained at .40% as of May 31, 2013. These rates reflect competitive market conditions.

17. According to publicly available information on www.gecapitalinvestdirect.com, GE Capital offers GE Interest Plus accounts that, as of June 13, 2013, pay as much as 1.10% interest. GE Capital markets these accounts as direct competitors of bank deposit accounts, stating that potential investors/depositors should "[c]onsider this investment if you are comfortable investing in the corporate debt of GE Capital, want your cash to earn a higher rate of return than many FDIC-insured deposit accounts, and want easy access to your investment through check writing, electronic transfers and wires." Customers can apply for these accounts and fund them online through the GE Capital website from anywhere in the United States, including the geographic areas in which the Bank does its business. The investment/deposit opportunities offered by GE Capital are natural competitors with the investment/deposit opportunities provided by the Bank.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 13, 2013, at Big Spring, Texas.

Jim R. Purcell

Jim R. Purcell

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE NATIONAL BANK OF BIG SPRING *et al.*, *Plaintiffs*, v. JACOB J. LEW, in his official capacity as United States Secretary of the Treasury and *ex officio* Chairman of the Financial Stability Oversight Council, *et al.*, *Defendants*.	Case No. 1:12-cv-01032 (ESH) Judge: Hon. Ellen S. Huvelle

PRIVATE PLAINTIFFS' SUPPLEMENTAL BRIEF
IN SUPPORT OF THE COURT'S JURISDICTION
OVER COUNT II OF THE SECOND AMENDED COMPLAINT

On July 17, 2013, the Court ordered plaintiff State National Bank of Big Spring ("Bank") to file a brief "addressing what effect, if any, the United States Senate's July 16, 2013 confirmation of Richard Cordray as Director of the Consumer Financial Protection Bureau ['CFPB'] has on Count II of their Complaint." Order at 1 **[Dkt. #37]**.

As explained below, the Senate's confirmation of Director Cordray to serve as CFPB Director does not moot Count II, because the Private Plaintiffs continue to be injured by regulations that he unlawfully promulgated without constitutional appointment to his office. The Court can remedy that injury by providing the relief that the Private Plaintiffs request in the Complaint: *i.e.*, declaring his January 2012 appointment unconstitutional and enjoining him and the CFPB from enforcing regulations promulgated during his unconstitutional appointment.[1]

I. The Bank Is Injured By Regulations That Director Cordray Unconstitutionally Promulgated Before He Received Senate Confirmation

Director Cordray was unconstitutionally appointed as CFPB Director in January 2012, without the Senate's requisite advice and consent. *See* Second Am. Compl. for Declaratory and Injunctive Relief ("Am. Compl.") ¶¶ 124-34, 207-15 **[Dkt. #24]**; *see also* Private Pls.' Opp'n to Defs.' Mot. to Dismiss the Second Am. Compl. ("Opp'n to Mot. to Dismiss") at 7-8 **[Dkt. #27]**.

In the subsequent eighteen months, Director Cordray and the CFPB promulgated several regulations that directly injured the Bank. *See* Am. Compl. ¶¶ 96, 102. And those injuries, in turn, gave the Private Plaintiffs standing to challenge the constitutionality of his appointment and

[1] The Court's order requested briefing only on the Bank's standing to bring Count II—*i.e.*, the effect of Director Cordray's confirmation on the Private Plaintiffs' challenge to Director Cordray's "recess" appointment. *See* Order at 1 **[Dkt. #37]**. Director Cordray's new appointment is altogether irrelevant to Count I, the Private Plaintiffs' challenge to the unconstitutional formation and operation of the CFPB itself under Title X of the Dodd-Frank Act; his appointment in January 2012 was not a basis for the separate separation-of-powers challenge to the CFPB. Nor does it affect Counts III, IV, V, and VI, regarding the Financial Stability Oversight Council and Orderly Liquidation Authority.

to request a court order declaring his appointment unconstitutional and enjoining the enforcement of regulations promulgated by the CFPB without a constitutionally appointed Director. *See* Am. Compl. ¶¶ 209, 257.

The Private Plaintiffs further developed these allegations in their memoranda opposing the Defendants' motion to dismiss, identifying several CFPB regulations that directly injure them. *See* Opp'n to Mot. to Dismiss; Surreply in Opp'n to Defs.' Mot. to Dismiss **[Dkt. #32]**. These continuing injuries include the following:

1. Director Cordray issued "Regulation X," which governs the Bank's servicing of existing consumer mortgages. *Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X)*, 78 Fed. Reg. 10696 (Feb. 14, 2013). Regulation X changed the law governing the Bank's rights and responsibilities for foreclosures; it prohibits the Bank from taking any action to foreclose on delinquent loans until 120 days after giving an initial notice, whereas Texas law permits the Bank to initiate foreclosure sale proceedings on a defaulted loan by posting a notice of foreclosure sale at the courthouse if the borrower does not cure within 20 days of a letter notifying him of the delinquency. Tex. Prop. Code Ann. § 51.002(a), (b), (d). This rule increases the Bank's cost of doing business. *See* Decl. of Jim R. Purcell ¶¶ 35-38 **[Dkt. #27-2]**, *incorporated by reference at* Opp'n to Mot. to Dismiss at 14-16, 31; Second Decl. of Jim R. Purcell ¶ 12 **[Dkt. #35]**.

2. Director Cordray issued the Remittance Rule, which governs the Bank's international remittance transfers. *Electronic Fund Transfers (Regulation E)*, 77 Fed. Reg. 6194 (Feb. 7, 2012), *modified by* 77 Fed. Reg. 50244 (Aug. 20, 2012). This rule forced the Bank to cease offering remittance transfers. Decl. of Jim R. Purcell ¶¶ 11-15. The Bank was able to resume remittance transfers only after Director Cordray modified the rule (after this suit was

filed), and the Bank still remains subject to the requirements and burdens imposed by the Remittance Rule. *Id.* ¶¶ 17-20. *See generally* Opp'n to Mot. to Dismiss at 16-17, 31.

3. Finally, Director Cordray issued "Regulation Z," which provides that if a bank offers a first-lien mortgage loan at specified interest rates higher than the Average Prime Offer Rate, as the Bank did when it was in the mortgage market, then it will be deemed to have offered a "higher priced covered transaction," which is then subject to the risk of future litigation.[2] As Mr. Purcell explained, this new regulatory regime injects substantial new uncertainty and compliance cost into the consumer mortgage market, another factor preventing the Bank from re-entering the market. *See* Opp'n to Mot. to Dismiss at 23-24 (citing Decl. of Jim R. Purcell ¶¶ 25, 32); Second Decl. of Jim R. Purcell ¶ 10. That injury was recently compounded by the CFPB's July 2, 2013 decision, under Director Cordray's supervision, to remove the "rural" designation it previously assigned to the county in which the Bank originated a majority of its consumer mortgages (Howard County, Texas).[3] By depriving the Bank of a key exemption from new escrowing rules, this decision further increases the litigation risk and costs the Bank would incur if it were to reenter the mortgage market.[4]

Each of those injurious regulations resulted directly from—and is tainted by—the

[2] *Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z)*, 78 Fed. Reg. 6408 (Jan. 30, 2013), *amended by* 78 Fed. Reg. 35430, 35503 (June 12, 2013) (to be codified at 12 C.F.R. §1026.43(b)(4)).

[3] *See* Paul Mondor, *Final list of rural and underserved counties for use in 2014* (July 2, 2013), *at* http://www.consumerfinance.gov/blog/final-list-of-rural-and-underserved-counties-for-use-in-2014/; 15 U.S.C. § 1639c (authorizing Bureau to define "qualified mortgages" to include balloon loans made by lenders operating "predominantly in rural or underserved areas").

[4] *See Escrow Requirements Under the Truth in Lending Act (Regulation Z)*, 78 Fed. Reg. 4725, 4753 (Jan. 22, 2013) (requiring lenders not predominantly lending in rural counties to establish an escrow account "for payment of property taxes and premiums for mortgage-related insurance" on "higher-priced mortgage loans," one of the types of loan previously made by the Bank); Decl. of Jim R. Purcell ¶ 25; Second Decl. of Jim R. Purcell ¶ 10.

unconstitutional appointment of Director Cordray, who signed and issued them. *See Nguyen v. United States*, 539 U.S. 69, 77-83 (2003) (vacating defendant's criminal conviction because Court of Appeals panel unconstitutionally included an Article IV territorial court judge); *Free Enter. Fund v. Public Co. Accounting Oversight Bd.*, 130 S. Ct. 3138, 3163 n.12 (2010) ("We cannot assume . . . that the Chairman would have made the same appointments acting alone; and petitioners' standing does not require precise proof of what the Board's policies might have been in that counterfactual world"); *see generally* Opp'n to Mot. to Dismiss at 31-33.

Each of those injuries can be remedied by this Court. If the Bank prevails on the merits of its constitutional challenge to Director Cordray's January 2012 appointment, then this Court can grant the relief that the Private Plaintiffs request in their Second Amended Complaint: it can declare his January 2012 appointment unconstitutional and enjoin him and the CFPB from enforcing Regulation X, the Remittance Rule, and Regulation Z. *See* Am. Compl. ¶ 257.

II. Because The Bank's Injuries Are Not Remedied By Director Cordray's New Appointment, Count II Is Not Moot.

After the Senate finally gave its advice and consent to his nomination, Mr. Cordray was officially appointed to direct the CFPB on July 17, 2013. But this new appointment, in and of itself, does not moot the Private Plaintiffs' challenge to Mr. Cordray's original "recess" appointment, because it does not remedy the aforementioned injuries that the Private Plaintiffs continue to suffer because of that unconstitutional "recess" appointment.

If the Government intends to argue that the Private Plaintiffs' challenge to Director Cordray's January 2012 appointment is now moot, then the Government bears the "heavy burden" of proving that his new appointment "completely and irrevocably eradicated the effects of" his original, unconstitutional appointment. *Motor & Equip. Mfrs. Ass'n v. Nichols*, 142 F.3d 449, 459 (D.C. Cir. 1998). The Government must demonstrate that Director Cordray's new

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE NATIONAL BANK of BIG SPRING *et al*., **Plaintiffs,** **v.** **JACOB J. LEW *et al*.,**[1] **Defendants.**	)	**Civil Action No. 12-1032 (ESH)**

<u>MEMORANDUM OPINION</u>

Plaintiffs State National Bank of Big Spring ("SNB" or the "Bank"), the 60 Plus Association ("60 Plus"), the Competitive Enterprise Institute ("CEI") (collectively the "Private Plaintiffs"), and the States of Alabama, Georgia, Kansas, Michigan, Montana, Nebraska, Ohio, Oklahoma, South Carolina, Texas, and West Virginia (collectively "the States") have sued to challenge the constitutionality of Titles I, II, and X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (July 21, 2010) (the "Dodd-Frank Act"), as well as the constitutionality of Richard Cordray's appointment as director of the Consumer Financial Protection Bureau ("CFPB" or the "Bureau").[2] (*See generally* Second Amended Complaint [ECF No. 24] ("Second Am. Compl.").) Defendants, who include more than a dozen federal government officials and entities, have filed a motion to dismiss pursuant to Fed. R. Civ. P.

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[1] Pursuant to Fed. R. Civ. P. 25(d), if a public officer named as a party to an action in his official capacity ceases to hold office, the Court will automatically substitute that officer's successor. Accordingly, the Court substitutes Secretary Lew for Neil S. Wolin.

[2] The Supreme Court has agreed to hear a similar case involving the recess appointments of three members of the National Labor Relations Board during its next term. *See NLRB v. Noel Canning*, 705 F.3d 490 (D.C. Cir. 2013), *cert. granted*, 133 S. Ct. 2861 (June 24, 2013) (No. 12-1281).

12(b)(1) on the grounds that plaintiffs lack Article III standing, or, in the alternative, that their claims are not ripe for review. For the reasons stated below, the Court will grant defendants' motion.

BACKGROUND

On July 21, 2010, Congress enacted the Dodd-Frank Act as "a direct and comprehensive response to the financial crisis that nearly crippled the U.S. economy beginning in 2008." S. Rep. No. 111-176, at 2 (2010). The purpose of the Act was to "promote the financial stability of the United States . . . through multiple measures designed to improve accountability, resiliency, and transparency in the financial system[.] " *Id*. Those measures included "establishing an early warning system to detect and address emerging threats to financial stability and the economy, enhancing consumer and investor protections, strengthening the supervision of large complex financial organizations and providing a mechanism to liquidate such companies should they fail without any losses to the taxpayer, and regulating the massive over-the-counter derivatives market." *Id*. The Act "creat[ed] several new governmental entities, [] eliminate[ed] others, and [] transferr[ed] regulatory authority among the agencies." (*See* Defendants' Motion to Dismiss [ECF No. 26-1] ("Def. Mot.") at 6.)

In this suit, plaintiffs challenge Title I of Dodd-Frank, which established the Financial Stability Oversight Council ("FSOC" or the "Council"), *see* 12 U.S.C. § 5321; Title II, which established the Orderly Liquidation Authority ("OLA"), *see* 12 U.S.C. § 5384; and Title X, which established the CFPB. *See* 12 U.S.C. §§ 5491, 5511.[3] Specifically, in Count III, the

[3] In several unrelated cases, plaintiffs have mounted challenges to regulations promulgated pursuant to authority delegated by Dodd-Frank. Judge Howell recently held that a plaintiff lacked standing to challenge a CFTC regulation setting minimum liquidation times for swaps and future contracts, which was promulgated, in part, pursuant to Dodd-Frank's DCO Core Principles. *See Bloomberg L.P. v. CFTC*, No. 13-523, 2013 WL 2458283, at *26 (D.D.C. June

Private Plaintiffs challenge the constitutionality of Title I on separation-of-powers grounds, alleging that the FSOC "has sweeping and unprecedented discretion to choose which nonbank financial companies to designate as 'systematically important'" and that such "powers and discretion are not limited by any meaningful statutory directives." (Second Am. Compl. ¶ 8.) In Count I, the Private Plaintiffs challenge Title X on the grounds that it violates the separation of powers by "delegat[ing] effectively unbounded power to the CFPB, and coupl[ing] that power with provisions insulating the CFPB against meaningful checks by the Legislative, Executive, and Judicial Branches[.]" (*Id.* ¶ 6.) And, in Count II, the Private Plaintiffs challenge the appointment of Richard Cordray as CFPB Director as unconstitutional on the grounds that he was appointed without the Senate's advice and consent in violation of the Appointments Clause of the United States Constitution. U.S. Const. art. II, § 2, cl. 2. (*See* Second Am. Compl. ¶ 7.)[4]

All plaintiffs challenge Title II on three separate grounds. In Count IV, they allege that Title II violates the separation of powers because it "empowers the Treasury Secretary to order the liquidation of a financial company with little or no advance warning, under cover of

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7, 2013). The D.C. Circuit also affirmed Judge Howell's ruling in yet another suit challenging CFTC rulemaking in the wake of Dodd-Frank. *See Inv. Co. Inst. v. CFTC*, 12-5413, 2013 WL 3185090, at *1 (D.C. Cir. June 25, 2013). In *Am. Petroleum Inst. v. SEC*, No. 12-1668, 2013 WL 3307114, at *1 (D.D.C. July 2, 2013), the plaintiff challenged a provision of Dodd-Frank now codified at section 13(q) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m(q), on First Amendment grounds, and regulations promulgated pursuant to the statute under the Administrative Procedure Act, 5 U.S.C. § 706. Judge Bates vacated the challenged rule, while declining to reach the constitutional challenge as premature in view of the fact that the SEC "has yet to interpret section 13(q) in light of its discretionary authority, and the interpretation it adopts could alter the First Amendment analysis." *Id*. at *15. *See also Am. Petroleum Inst. v. SEC*, 714 F.3d 1329 (D.C. Cir. 2013) (Court of Appeals dismissing simultaneously filed suit for lack of subject matter jurisdiction and leaving plaintiff to pursue its claims in the district court). And, in *Nat'l Ass'n of Mfrs. v. SEC*, No. 13-0635, 2013 WL 3803918, at *1, 31 (D.D.C. July 23, 2013), Judge Wilkins held that section 1502 of the Dodd-Frank Act and a rule promulgated under that authority did not violate the First Amendment.

[4] The States have not joined Counts I, II, or III.

mandatory secrecy, and without either useful statutory guidance or meaningful legislative, executive, or judicial oversight." (Second Am. Compl. ¶ 9.) In Count V, they allege that Title II violates the due process clause of the Fifth Amendment, because the "[t]he forced liquidation of a company with little or no advance warning, in combination with the FDIC's virtually unlimited power to choose favorites among similarly situated creditors in implementing the liquidation, denies the subject company and its creditors constitutionally required notice and a meaningful opportunity to be heard before their property is taken – and likely becomes unrecoverable[.]" (*Id.* ¶ 10.) And, in Count VI, they allege that Title II violates the constitutional requirement of uniformity in bankruptcy because "[w]ith no meaningful limits on the discretion conferred on the Treasury Secretary or on the FDIC, Title II not only empowers the FDIC to choose which companies will be subject to liquidation under Title II, but also confers on the FDIC unilateral authority to provide special treatment to whatever creditors the FDIC, in its sole and unbounded discretion, decides to favor[.]" (*Id.* ¶ 11.)

Defendants have moved to dismiss the complaint on the grounds that plaintiffs lack Article III standing to pursue their claims, or, in the alternative, that their claims are not ripe. (*See* Def. Mot. at 4-5.) This is an unusual case, as plaintiffs have not faced any adverse rulings nor has agency action been directed at them. Most significantly, no enforcement action – "the paradigm of direct governmental authority" – has been taken against plaintiffs. *FEC v. NRA Political Victory Fund*, 6 F.3d 821, 824 (D.C. Cir. 1993). As a result, plaintiffs' standing is more difficult to parse here than in the typical case. *See, e.g., Noel Canning v. NLRB*, 705 F.3d 490, 492-93 (D.C. Cir. 2013) (employer challenged NLRB decision finding that it had violated the National Labor Relations Act). Furthermore, while the Bank is a regulated party under Title X, none of the plaintiffs is subject to regulation under Titles I or II. Nonetheless, plaintiffs maintain that they have standing to pursue their Title I and II claims, based, respectively, on their status as competitors and as creditors of the regulated entities.

ANALYSIS

I. LEGAL STANDARDS

Plaintiffs bear the burden of establishing that the Court has jurisdiction over their claims. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 104 (1998). Nonetheless, "[f]or purposes of ruling on a motion to dismiss for want of standing, [the court] must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." *Warth v. Seldin*, 422 U.S. 490, 501 (1975). "While the burden of production to establish standing is more relaxed at the pleading stage than at summary judgment, a plaintiff must nonetheless allege 'general factual allegations of injury resulting from the defendant's conduct' (notwithstanding 'the court presumes that general allegations embrace the specific facts that are necessary to support the claim')."[5] *Nat'l Ass'n of Home Builders v. EPA*, 667 F.3d 6, 12 (D.C. Cir. 2011). Moreover, where a court's subject matter jurisdiction is called into question, the court may, as it has done here, consider matters outside the pleadings to ensure that it has jurisdiction over the case. *See Teva Pharms., USA, Inc. v. U.S. Food & Drug Admin.*, 182 F.3d 1003, 1006 (D.C. Cir. 1999). "For each claim, if constitutional and prudential standing can be shown for at least one plaintiff, [the court] need not consider the standing of the other plaintiffs to raise that claim." *Mountain States Legal Found. v. Glickman*, 92 F.3d 1228, 1232 (D.C. Cir. 1996).

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[5] Since plaintiffs raise only facial challenges to the constitutionality of various titles of Dodd-Frank, it is agreed that further development of the record through discovery is unlikely to occur. (*See* 6/11/13 Motions Hearing Transcript ("Tr.") at 12.)

A. Standing

"[T]o establish constitutional standing, plaintiffs must satisfy three elements: (1) they must have suffered an injury in fact that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical'; (2) the injury must be 'fairly traceable to the challenged action of the defendant'; and (3) 'it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.'" *NB ex rel. Peacock v. Dist. of Columbia*, 682 F.3d 77, 81 (D.C. Cir. 2012) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)). Where a plaintiff is seeking declaratory or injunctive relief, he "must show he is suffering an ongoing injury or faces an immediate threat of injury." *Dearth v. Holder*, 641 F.3d 499, 501 (D.C. Cir. 2011).

It is well-established that where "the challenged regulations 'neither require nor forbid any action on the part of [the challenging party],' – *i.e.*, where that party is not 'the object of the government action or inaction' – 'standing is not precluded, but it is ordinarily substantially more difficult to establish." *Ass'n of Private Sector Colls. & Univs. v. Duncan*, 681 F.3d 427, 457-58 (D.C. Cir. 2012) (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488 (2009)). "In that circumstance, causation and redressability ordinarily hinge on the response of the regulated (or regulable) third party to the government action or inaction – and perhaps on the response of others as well." *Lujan*, 504 U.S. at 562. It then "becomes the burden of the plaintiff to adduce facts showing that . . . choices [of the independent actors] have been or will be made in such a manner as to produce causation and redressibility of injury." *Id*. The Supreme Court recently reaffirmed its hesitation to "endorse standing theories that require guesswork as to how independent decisionmakers will exercise their judgment." *Clapper v. Amnesty International*, 133 S. Ct. 1138, 1150 (2013). Thus, as observed by the D.C. Circuit, "courts [only] occasionally find the elements of standing to be satisfied in cases challenging government action on the basis of third-party conduct." *Nat'l Wrestling Coaches Ass'n v. Dep't of Educ.*, 366 F.3d 930, 940 (D.C. Cir. 2004).

B. Ripeness

"'Ripeness is a justiciability doctrine' that is 'drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction.'" *Devia v. Nuclear Regulatory Comm'n*, 492 F.3d 421, 424 (D.C. Cir. 2007) (quoting *Nat'l Park Hospitality Ass'n v. Dep't of the Interior*, 538 U.S. 803, 807-08 (2003)) (internal quotation marks and brackets omitted). "In assessing the prudential ripeness of a case," courts consider two factors: "the 'fitness of the issues for judicial decision' and the extent to which withholding a decision will cause 'hardship to the parties.'" *Am. Petroleum Inst. v. EPA*, 683 F.3d 382, 387 (D.C. Cir. 2012) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967), *overruled on other grounds by Califano v. Sanders*, 430 U.S. 99, 105 (1977)). The underlying purpose of ripeness in the administrative context "is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Devia*, 492 F.3d at 424 (quoting *Abbott Labs.*, 387 U.S. at 148-49). Ripeness also prevents a court from making a decision unless it absolutely has to, underpinned by the idea that if the court does not decide the claim now, it may never have to. *Id.*

I. TITLE I: FINANCIAL STABILITY OVERSIGHT COUNCIL ("FSOC")

A. The Statutory Provision

Title I of Dodd-Frank established the FSOC. *See* 12 U.S.C. § 5321. The purposes of the Council are

> to identify risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace; [] to promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure; and [] to respond to emerging threats to the stability of the United States financial system.

12 U.S.C. § 5322(a)(1). The Council has ten voting members: the Secretary of the Treasury, who serves as the Council Chairperson; the Chairman of the Federal Reserve Board; the Comptroller of the Currency; the Director of the CFPB; the Chairperson of the Securities and Exchange Commission ("SEC"); the Chairperson of the Federal Deposit Insurance Corporation ("FDIC"); the Chairperson of the Commodity Futures Trading Commission ("CFTC"); the Director of the Federal Housing Finance Agency ("FHFA"); the Chairman of the National Credit Union Administration ("NCUA") Board; and an independent member with insurance expertise appointed by the President with the advice and consent of the Senate. *See* 12 U.S.C. § 5321(b)(1). The Council also includes five nonvoting members. *See id*. § 5321(b)(3).

Title I authorizes the Council, upon a two-thirds vote of its voting members, including the affirmative vote of the Treasury Secretary, to designate certain "nonbank financial companies" as "systematically important financial institutions" or SIFIs.[6] 12 U.S.C. §§ 5323(a)(1), (b)(1),

[6] A "nonbank financial company" is defined as a company "predominately engaged in financial activities," other than bank holding companies and certain other entities. 12 U.S.C. § 5311(a)(4). The term "systematically important financial institution" does not actually appear in the Dodd-

5365, 5366. SIFI designation is based on consideration of eleven enumerated factors leading to a determination that "material financial distress at the U.S. nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the U.S. nonbank financial company, could pose a threat to the financial stability of the United States." 12 U.S.C. § 5323(a)(1). *See id*. (a)(2), (b)(2). If an entity is designated as a SIFI, it "will be subject to supervision by the Federal Reserve Board and more stringent government regulation in the form of prudential standards and early remediation requirements established by the Board." (*See id*.) Before designating any company as a SIFI, the Council must give written notice to the company of the proposed determination. *See* 12 U.S.C. § 5323(e)(1). The company is entitled to a hearing at which it may contest the proposed determination. *See id*. § 5323(e)(2). Additionally, once the Council makes a final decision to designate a company as a SIFI, that company may seek judicial review of the determination, and a court will determine whether the decision was arbitrary and capricious. *See id*. § 5323(h). There is no provision for third-party challenges to SIFI designation under Title I. (*See* Second Am. ¶ 157.)

On April 11, 2012, following a notice-and-comment period, the Council published a "final rule and interpretive guidance . . . describ[ing] the manner in which the Council intends to apply the statutory standards and considerations, and the processes and procedures that the Council intends to follow, in making determinations under section 113 of the Dodd-Frank Act." Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, 77 Fed. Reg. 21637 (Apr. 11, 2012). On June 3, 2013, while this motion was pending, the Council voted to make proposed determinations regarding a set of nonbank financial companies but did not release the names of the designated companies. (*See* Second Supplemental Declaration of

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Frank Act, but because it has come into common parlance (*see* Def. Mot. at 3 n.2), and the parties have used the term throughout their briefs, the Court will do so as well.

Gregory Jacob [ECF No. 34-1] ("Second Jacob Decl.") ¶ 5; *id.*, Exs. 3-4.) Those companies then had thirty days to request a hearing before a final determination would be made. (*See* Second Jacob Decl. ¶ 5.) American International Group, Inc. ("AIG"), Prudential Financial Inc., and the GE Capital Unit of General Electric have confirmed that they are among the designated companies. (*See id*. ¶ 6; *id.*, Ex. 4.) AIG and GE Capital have chosen not to contest their designations, but Prudential has announced that it will appeal. *See* Danielle Douglas, *Prudential enters uncharted legal realm by appealing its regulatory label*, WASH. POST, July 3, 2013, at A14.

B. Count III

1. Injury-in-Fact

The Bank claims to have standing to challenge the creation and operation of the FSOC as a violation of the Constitution's separation of powers. The Bank is not a regulated party under Title I and so, while "standing is not precluded, it is . . . substantially more difficult to establish" under these circumstances. *Duncan*, 681 F.3d at 457-58. The Bank's theory of standing relies on an allegation of "competitor injury" arising out of the "illegal structuring of a competitive environment." *Shays v. Fed. Election Com'n*, 414 F.3d 76, 85 (D.C. Cir. 2005). The D.C. Circuit has "recogniz[ed] that economic actors 'suffer [an] injury in fact when agencies lift regulatory restrictions on their competitors or otherwise allow increased competition' against them." *Sherley v. Sebelius*, 610 F.3d 69, 72 (D.C. Cir. 2010) (quoting *La. Energy & Power Auth. v. FERC*, 141 F.3d 364, 367 (D.C. Cir. 1998)). The Court has also applied this principle to evaluate how campaign finance regulations affect the political "market," generalizing that "any one competing for a governmental benefit should [] be able to assert competitor standing when the Government takes a step that benefits his rival and therefore injures him economically." *Id*.

Importantly, however, the plaintiff must allege that it is "a *direct* and *current* competitor whose bottom line may be adversely affected by the challenged government action." *New World Radio, Inc. v. FCC*, 294 F.3d 164, 170 (D.C. Cir. 2002) (emphasis in the original). A plaintiff's "'chain of events' injury is too remote to confer standing" where the plaintiff has not stated a "concrete, economic interest that *has been perceptibly damaged*" by the agency action. *Id*. at 172 (internal quotation marks and citation omitted) (emphasis in the original). *See also KERM, Inc. v. FCC*, 353 F.3d 57, 60-61 (D.C. Cir. 2004) ("party must make a *concrete showing* that it is in fact likely to suffer financial injury as a result of the challenged action") (emphasis added). The Supreme Court has likewise made clear that there are limits to the competitor standing doctrine. For instance, in *Already, LLC v. Nike, Inc.*, 133 S. Ct. 721 (2013), the Court rejected plaintiff's "boundless theory of standing," remarking, "[t]aken to its logical conclusion, [plaintiff's] theory seems to be that a market participant is injured for Article III purposes whenever a competitor benefits from something allegedly unlawful – whether a trademark, the awarding of a contract, a landlord-tenant arrangement, or so on." *Id*. at 731.

The Bank relies on just such a "boundless theory." *Id*. The assumption underlying the Bank's assertion of injury is that the FSOC's designation of GE Capital as a SIFI will confer a competitive advantage on GE and a corresponding disadvantage on the Bank. (*See* Private Plaintiffs' Opposition to Defendants' Motion to Dismiss [ECF No. 27] ("Pvt. Pl. Opp.") at 36.)[7]

[7] Because no SIFI designations had yet been made when this motion was briefed, the Bank made arguments about "imminent" SIFI designations without identifying any particular competitor that might be designated. (*See* Pvt. Pl. Opp. at 36-39.) Following the designation of GE Capital while this motion was pending, the Bank has sought to establish that GE Capital is a competitor and that it will gain a competitive advantage from its SIFI designation. (*See* Second Jacob Decl., Exs. 3, 4, 5; Second Declaration of Jim R. Purcell [ECF No. 35-1] ("Second Purcell Decl.") ¶¶ 13-17; Third Supplemental Declaration of Gregory Jacob [ECF No. 36-1] ("Third Jacob Decl."), Ex. 1.) While it is unclear if the Bank can seek to identify competitors based on facts that did not

The Bank alleges that GE Capital is its direct competitor in the market to raise capital and in the market to sell consumer loans, and that GE will benefit from a cost-of-capital advantage that "will place SNB at a competitive disadvantage in each" market. (*Id.* at 37.)

In support of the Bank's allegation that GE is a direct and current competitor in the consumer loan market, Chairman and former President of SNB Jim Purcell asserts in a recent declaration that "approximately 37% of the Bank's outstanding loans are agricultural loans" and "[a]ccording to publicly available information, GE Capital and its subsidiaries offer numerous loans in the agricultural sector, including in markets that are served by the Bank." (Second Declaration of Jim R. Purcell [ECF No. 35-1] ("Second Purcell Decl.") ¶¶ 4, 11.) Purcell indicates that there are two farm equipment dealerships within a 100-mile radius of the Bank that provide financing through GE Capital or its subsidiaries. (*See id*. ¶ 11.) With respect to the market to raise capital, Purcell indicates that "[t]he Bank competes with a wide variety of bank and non-bank financial institutions for deposits," and offers interest rates ranging from .05% on checking account deposits to .40% on 1-year CDs as of May 31, 2013. (*See id*. ¶¶ 13, 15.) Based on publicly available data, Purcell represents that GE Capital offers accounts that pay as much as 1.10% as of June 13, 2013. (*See id*. ¶ 17.) He asserts that "[c]ustomers can apply for these accounts and fund them online through the GE Capital website from anywhere in the United States, including the geographic areas in which the Bank does its business." (*Id*.)

While these assertions lend some plausibility to the Bank's allegation that GE is a "direct and current" competitor at least in the agricultural loan business, the Bank relies on conjecture to

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exist at the time that the suit was filed (*see* Section III.B.3), these added facts still do not make the Bank's injury sufficiently concrete to confer standing.

argue that the SIFI designation will benefit GE and harm the Bank.[8] The Bank speculates that the designation will cause investors to flock to the designees because they will be perceived as safer investments due to the possibility of government backing. (*See* 6/11/13 Motions Hearing Transcript ("Tr.") at 72-73, 82.) Of course, SIFI designation does not, in fact, mean that the federal government is "backing" the SIFI or that the government will not allow the company to fail. Instead, it means that the SIFI will be subject to more stringent regulation and government oversight. *See* 12 U.S.C. § 5323(a)(1), (b)(1), 5365(c)(I). But whether SIFI designation will mean anything else is simply unknown at this early stage.

The ambiguous consequences of SIFI designation are underscored by David Price, the very source cited by the Bank:

> The precise implications of being designated as a SIFI are not known yet because the new regulatory regime has not yet been defined. . . . On the plus side, SIFI designation may confer benefits on a company by reducing its cost of capital. Creditors may believe that enhanced supervision lowers an institution's credit risk. . . .The extent of this benefit to creditors, if any, is not clear at this point however. . . . So far, institutions appear to believe that they would be worse off as SIFIs. In public comments filed with FSOC and in public statements, large nonbanks and their trade associations have argued that they should not be considered systematically important. . . . The institutions' concerns about the regulatory regime for SIFIs may be heightened by a fear that the as-yet-unwritten rules will turn out to be overly restrictive.

David A. Price, "Sifting for SIFIs," Region Focus, Federal Reserve Bank of Richmond (2011), at www.richmondfed.org/publications/research/region_focus/20110q2/pdf/federal_reserve.pdf (cited in Second Am. ¶ 145).

Indeed, one of the proposed SIFIs, Prudential Financial, is appealing its designation, which indicates that at least one nonbank perceives the designation more as a detriment than a

[8] Given the significantly higher interest rates offered by GE Capital, it is somewhat difficult to understand why the Bank believes it is a direct and current competitor with GE Capital with respect to the raising of capital.

benefit. On the other hand, GE Capital has declined to appeal, because it "is already supervised by the Fed and as a result has strong liquidity and capital." (Third Supplemental Declaration of Gregory Jacob [ECF No. 36-1] ("Third Jacob Decl."), Ex. 1, Daniel Wilson, *GE Capital, AIG Accept SIFI Label While Prudential Protests*, Law 360, July 2, 2013.) Since the SIFIs themselves are far from unanimous as to the consequences of being designated, it is difficult to prophesize that the designation confers a clear benefit on them, much less a corresponding disadvantage on non-SIFI institutions like SNB. *See Already, Inc.*, 133 S. Ct. at 731. In short, the Bank has not come close to a "*concrete showing* that it is in fact likely to suffer financial injury as a result of the challenged action." *KERM, Inc.*, 353 F.3d at 60-61 (emphasis in original).

The Bank objects to defendants' suggestion that the burden of being designated a SIFI may outweigh the advantages, arguing that "the Government cites no authority for the novel proposition that the benefits flowing from a statute should be netted against its harms for purposes of determining whether a party has been injured." (Pvt. Pl. Opp. at 38-39.) But standing requires a showing of "certainly impending" injury, *Clapper*, 133 S. Ct. at 1151, and at this stage, nothing is certainly impending. The Bank's theory of injury "require[s] guesswork as to how independent decisionmakers will exercise their judgment," *id*. at 1150, and consequently, guesswork as to whether the Bank will suffer an injury-in-fact from the designation of GE Capital or any other alleged competitor. Here the need for such guesswork defeats the Bank's attempt to demonstrate that it faces an "imminent" injury. *Lujan*, 504 U.S. at 560-61.

2. Causation and Redressability

Furthermore, the Bank has not made an adequate showing with regard to the causation and redressability prongs of the standing requirement. *See Lujan*, 504 U.S. at 560-61. The

Bank's attenuated claim of causation is highlighted by its admission that large financial companies already enjoy a cost-of-capital advantage, even without a formal SIFI designation, because these institutions have been perceived by the public as "too big to fail." (*See* Second Am. ¶ 146 (Federal Reserve Chairman Bernanke describing benefits that businesses enjoyed of being perceived as "too big to fail" before Dodd-Frank granted designation authority to FSOC).) The Bank asserts that the

> formal SIFI designations promulgated by the FSOC will enhance any direct cost-of-capital subsidy previously enjoyed by institutions considered by some in capital markets to enjoy unofficial SIFI status, by removing uncertainty as to the government's views on their SIFI status, and will extend this direct cost-of-capital subsidy to institutions not previously considered by those in capital markets to enjoy unofficial SIFI status.

(*See id*. ¶ 148.) Indeed, GE Capital *already* offers interest rates between 2.75 and 22 times greater than those offered by the Bank. (*See* Second Purcell Decl. ¶¶ 13, 15, 17.) No explanation has been given for the disparity, but given the large gap in what the two institutions already offer, it is hardly reasonable to infer that GE's greater ability to attract deposits is fairly traceable to the SIFI designation proposed only weeks ago or that it is redressable by a court. Whereas the Bank has demonstrated that GE Capital already has a distinct advantage, whether because of "unofficial SIFI status" or merely because it is a larger, more highly capitalized company, it can only speculate that SIFI designation will "enhance" this pre-existing benefit. (Second Am. Compl. ¶ 148.) Because the Bank has failed to establish that GE's SIFI designation is the cause of an injury to the Bank, it has also failed to establish that this Court could redress any such injury by invalidating Title I.

3. Ripeness

For the same reason that the Bank lacks standing, the Bank's claim under Count III is not ripe: the lack of a "certainly impending" injury caused by Title I. *See Coal. for Responsible*

Regulation, Inc. v. EPA, 684 F.3d 102, 130 (D.C. Cir. 2012) ("Ripeness . . . shares the constitutional requirement of standing that an injury in fact be certainly impending.") Therefore, in the absence of a concrete and particular injury, Count III will be dismissed under Fed. R. Civ. P. 12(b)(1).

II. TITLE II: THE ORDERLY LIQUIDATION AUTHORITY ("OLA")

A. The Statutory Provision

Pursuant to the OLA of Title II, the Treasury Secretary may appoint the FDIC as receiver of a failing "financial company."[9] The purpose of Title II of Dodd-Frank is "to provide the necessary authority to liquidate failing financial companies that pose a significant risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard." 12 U.S.C. § 5384(a). Title II is viewed as providing "the U.S. government a viable alternative to the undesirable choice it faced during the financial crisis between bankruptcy of a large, complex financial company that would disrupt markets and damage the economy, and bailout of such financial company that would expose taxpayers to losses and undermine market discipline." S. Rep. No. 111-176, at 4. The statute provides that this authority

> shall be exercised in the manner that best fulfills such purpose, so that [] creditors and shareholders will bear the losses of the financial company; [] management responsible for the condition of the financial company will not be retained; and [] the [FDIC] and other appropriate agencies will take all steps necessary and appropriate to assure that all parties . . . having responsibility for the condition of the financial company bear losses consistent with their responsibility, including actions for damages, restitution, and recoupment of compensation and other gains not compatible with such responsibility.

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[9] "Financial company" is defined under Title II as any company that is a bank holding company, a "nonbank financial company supervised by the Board of Governors," a "company predominately engaged in activities that the Board of Governors has determined are financial in nature", or any subsidiary of any of the above, except not insured depository institutions or insurance companies. 12 U.S.C. § 5381(a)(11). Title II also exempts from coverage insured depository institutions, *see id*. § 5381(a)(8), for which the FDIC already had authority to serve as receiver under the Federal Deposit Insurance Act. *See id.* § 1821.

12 U.S.C. § 5384(a).

The OLA replaces, in limited instances, the liquidation and reorganization mechanisms of Chapters 7 and 11 of the Bankruptcy Code. (*See* State Plaintiffs' Opposition to Defendants' Motion to Dismiss [ECF No. 28] ("States' Opp.") at 5.) Traditionally, bankruptcy proceedings begin with the filing of a petition by either the debtor company or the company's creditors in federal bankruptcy court. (*See id*. (citing 11 U.S.C. §§ 301, 303).) A trustee elected by the creditors' committee and the United States trustee act, under court supervision, to ensure that creditors' rights are protected. (*See id*. (citing 11 U.S.C. §§ 307, 341, 702, 704, 705, 1102, 1104, 1106, 1129).) Central to this dispute is the principle under bankruptcy law that "similarly situated creditors are entitled to equal treatment [in the form of] the pro rata payment on their claims." (*See id*. at 6 (citing 11 U.S.C. §§ 726(b), 1123(a)(4)).) The "automatic stay" provided by bankruptcy proceedings "reinforces that right, by preventing individual creditors and other stakeholders from seeking preferential treatment from the company." (*See id*. (citing 11 U.S.C. § 362).)

"There is a strong presumption that the bankruptcy process will continue to be used to close and unwind failing financial companies, including large, complex ones," as the "orderly liquidation authority could be used if and only if the failure of the financial company would threaten U.S. financial stability." S. Rep. No. 111-176, at 4. "Therefore the threshold for triggering the [O]rderly [L]iquidation [A]uthority is very high." *Id*. In order to activate the OLA, two-thirds of the Federal Reserve Board and two-thirds of the FDIC Board provide a written recommendation to the Treasury Secretary. *See* 12 U.S.C. § 5383(a). The recommendation must include an evaluation of eight statutory factors: [1] "whether the financial company is in default or in danger of default"; [2] "the effect that the default . . . would have on financial stability in the United States"; [3] "the effect that the default . . . would have on economic conditions or financial stability for low income, minority, or underserved communities"; [4] "the nature and extent of actions to be taken"; [5] "the likelihood of a private sector alternative to prevent the default"; [6] "why a case under the Bankruptcy Code is not appropriate"; [7] "the effects on creditors, counterparties, and shareholders of the financial company and other market participants"; and [8] "whether the company satisfies the definition of a financial company" under the statute. *Id.*

Before the Treasury Secretary can authorize use of the OLA, he must make seven findings: [1] that the company is "in default or in danger of default"; [2] that "the failure of the financial company . . . would have serious adverse effects on financial stability in the United States"; [3] that "no viable private sector alternative is available to prevent the default"; [4] that "any effect on the claims or interests of creditors, counterparties, and shareholders of the financial company and other market participants . . . is appropriate"; [5] that "any action taken [under this authority] would avoid or mitigate such adverse effects"; [6] that "a Federal regulatory agency has ordered the financial company to convert all of its convertible debt instruments that are subject to the regulatory order"; and [7] that "the company satisfies the definition of a financial company" under the statute. *Id.* § 5383(b).

If the financial company "does not acquiesce or consent to the appointment of the [FDIC] as receiver, the Secretary shall petition the United States District Court for the District of Columbia for an order authorizing the Secretary to appoint the [FDIC] as receiver." *Id.* § 5382(a)(1). The Secretary's petition is filed under seal. *See id*. The Court "[o]n a strictly confidential basis, and without any prior public disclosure . . . after notice to the covered financial company and a hearing in which the [] company may oppose the petition, shall determine whether the determination of the Secretary that the covered financial company is in default or in danger of default and satisfies the definition of a financial company under section 5381(a)(11) is arbitrary and capricious." *Id*. § 5382(a)(1)(A)(iii). The Secretary's other findings are not subject to review. *See id*. Additionally, the Act establishes criminal penalties for any "person who recklessly discloses" the Secretary's determination or petition, or the pendency of court proceedings. *See id*. § 5382(a)(1)(C).

A court must make a decision within twenty-four hours of receiving the Secretary's petition; if it does not, the government wins by default. *See id*. §5382(a)(1)(A)(v). The Court of Appeals reviews the district court's determination under the arbitrary and capricious standard. *See id*. § 5382(a)(2). Once the district court affirms the Secretary's determination, or fails to issue a decision within 24 hours, the Secretary may begin the liquidation by appointing the FDIC as receiver, and the liquidation "shall not be subject to any stay or injunction pending appeal." *Id*. § 5382(a)(1)(A)(v), (B). This judicial review process does not include creditors. (*See* States' Opp. at 9-10.)

After the FDIC is appointed as receiver, it "succeed[s] to . . . all rights, titles, powers, and privileges of the covered financial company and its assets, and of any stockholder, member, officer, or director[.]" 12 U.S.C. § 5390(a)(1)(A). Under Title II, the FDIC has a broad range of tools available to it. It may merge the company with another, sell its assets, transfer assets and claims to a "bridge financial company" owned and controlled by the FDIC, and repudiate "burdensome" contracts or leases. *See id.* §5390(a)(1)(G), (h)(1)(A), (c)(1).

Once appointed as receiver, the FDIC must provide notice to the failing company's creditors. *See id*. § 5390(a)(2)(B). Those creditors may file claims, which the FDIC as receiver may pay "in its discretion" and "to the extent that funds are available." *Id.* § 5390(a)(7). The

FDIC is required to treat all similarly situated creditors in a similar manner unless it determines that differential treatment is "necessary [] to maximize the value of the assets of the covered financial company; [] to initiate and continue operations essential to the implementation of the receivership of any bridge financial company; [] to maximize the present value return from the sale or other disposition of the assets of the . . . company; or [] to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered financial company." *Id.* § 5390(b)(4). "A creditor shall, in no event, receive less than the amount" that it would have received if the FDIC "had not been appointed receiver" and the company instead "had been liquidated under chapter 7 of the Bankruptcy Code." *Id*. § 5390(a)(7)(B), (d)(2). A creditor may seek judicial review on any disallowed claim in federal district court. *See id*. § 5390(a)(4). To date, the OLA has not been invoked. (*See* Def. Mot. at 14 (citing GAO, "Agencies Continue Rulemakings for Clarifying Specific Provisions of Orderly Liquidation Authority," at 2 (July 2012), at http://www.gao.gov/assets/600/592318.pdf).)

B. Counts IV, V, and VI

1. Standing

Plaintiffs challenge Title II on three separate legal grounds. For all three, they assert standing based on the States' status as creditors, in that the States or their pension funds hold investments in institutions that qualify as "financial companies" under Section 210 of the Dodd-Frank Act, which renders those companies potentially subject to Title II's OLA.[10] As was the case with the Bank's challenge to Title I, the States are not themselves "the object of the government action or inaction [they] challenge[]," and so "standing is not precluded, but it is . . . substantially more difficult to establish." *Summers*, 555 U.S. at 493.

[10] The Private Plaintiffs ostensibly join these counts but make no attempt to establish that they have standing in their own right.

a. Present Injury

The State Plaintiffs insist that their standing is based on the existence of a present injury caused by "Dodd-Frank's express abrogation of the statutory rights that the State Plaintiffs previously retained under the Bankruptcy Code." (States' Opp. at 14 (citing Second Am. Compl. ¶ 170).) They maintain that "[a]s investors in the unsecured debt of financial companies, the State Plaintiffs were protected by the federal bankruptcy laws' guarantee of equal treatment of similarly situated creditors. By abridging that guarantee, Title II invades the State Plaintiffs' legally protected interests, injuring them and giving them standing to challenge Title II's constitutionality." (*Id*.)

The States suggest that their "property rights in their investments [are] a bundle of sticks, [and] one of the 'sticks' that [they] held before the Dodd-Frank Act was enacted was the statutory right to equal treatment in bankruptcy." (*Id.* at 19.) They argue that "[w]hen the Act became law . . . that 'stick' was removed from the States' bundle," which constitutes an injury because "a rational investor would prefer an investment that includes a guarantee of equal treatment in bankruptcy to an investment that does not include such a guarantee." (*Id*.) By casting their claim in this manner, the States attempt to escape the obvious conclusion that any future injury is too conjectural and remote. However, the Court is unconvinced that the States have a present injury because the States' underlying premise that they have a "property right" in the configuration of the Bankruptcy Code is flawed. Simply put, the States' holding of certain statutory rights does not amount to an inalienable property right under the Bankruptcy Code.

Nor is the Court persuaded by the States' argument that the loss of a right in the abstract is sufficient to confer standing. The States cite *Lujan* for the proposition that an "injury" is "an invasion of a legally protected interest[,]" and the injury "may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing." (*Id.* at 20 (quoting *Lujan*, 504 U.S. at 560, 578).) But the States misinterpret *Lujan*. In the passage that the States cite, the Supreme Court clarified its holding in an earlier case by reiterating that the "[statutory] broadening [of] the categories of injury that may be alleged in support of standing is a different matter from abandoning the requirement that the party seeking review must himself have suffered an injury." *Lujan*, 504 U.S. at 578-79. As to the latter requirement, the Supreme Court affirmed that "the concrete injury requirement *must* remain" in suits against the government. *Id*. (emphasis added). There is no real question then that an injury could arise out of the invasion of a statutory right, *as long as there is a concrete injury based on that invasion*. Nor is there a real debate that an injury can be of a non-financial nature, as in FOIA cases, *see, e.g., Public Citizen v. U.S. Dep't of Justice*, 491 U.S. 440, 449 (1989), or in cases such as *Zivotofsky v. Sec'y of State*, 444 F.3d 614, 617-18 (D.C. Cir. 2006). (*See* States' Opp. at 19-23.) But there must be a *concrete, present injury*, which the States have not shown here.

The cases cited by the States are not to the contrary. The States rely primarily on *Zivotofsky*, where the Court of Appeals stated:

> Although it is natural to think of an injury in terms of some economic, physical, or psychological damage, a concrete and particular injury for standing purposes can also consist of the violation of an individual right conferred on a person by statute. Such an injury is concrete because it is of a form traditionally capable of judicial resolution, . . . and it is particular because, as the violation of an individual right, it affects the plaintiff in a personal and individual way.

444 F.3d at 619 (citations, brackets, emphasis, and internal quotation marks omitted). Significantly, however, the injury in *Zivotofsky* was not an abstract, hypothetical loss of a statutory right. Rather, it was the actual, concrete loss of a right granted by statute to have Israel listed as the place of birth on the passport of a child born in Jerusalem. *See* Foreign Relations Authorization Act, Fiscal Year 2003, Pub. L. No. 107-228, § 214(d), 116 Stat. 1350, 1365-66

(2002). Despite the clear right granted by statute, the U.S. Embassy in Israel denied the request of the child's American parents. *Zivotofsky*, 444 F.3d at 615-16. The States' claims here are not remotely similar to the concrete loss in *Zivotofsky*, since in this case no violation of any statutory right has occurred and it may never occur in the future.

The States represent that "the scholarship is virtually unanimous" that "as a rational creditor you are harmed now by having the certainty that you had under the Bankruptcy Code and the knowledge of what would happen in the event of a default taken away" (*see* Tr. at 92-93), but a review of their citations does not support this assertion. One author, highlighted by the States at the oral argument on this motion (*see id.* at 93), cautions that there could be adverse impacts for creditors, but concludes that the ultimate effects are far from clear:

> One of the challenging aspects of considering the potential impact of Title II on creditors and other stakeholders of nonbank financial companies that are eligible to be a debtor under the Bankruptcy Code is that many provisions of Title II are subject to the enactment of rules and regulations that are necessary for implementing and clarifying its terms. Since most of those regulations have yet to be promulgated, the impact of Title II on creditors and other stakeholders will continue to evolve. It is possible that many regulations may further "harmonize" certain provisions of Title II with the provisions of the Bankruptcy Code. It is also possible that the very significant differences between the provisions of Title II and those of the Bankruptcy Code will cause creditors of nonbank financial companies that face future financial crises to be more amenable to finding private sector alternatives, including restructuring of debt and consent to sales of assets, in order to avoid the uncertainties posed by this new and as yet untested insolvency regime.

Hollace T. Cohen, *Orderly Liquidation Authority: A New Insolvency Regime to Address Systemic Risk*, 45 U. Rich. L. Rev. 1143, 1153 (2011) (cited in States' Opp. at 5, 7, 12, 18).

While it may be true that the OLA could generate some uncertainty, which could affect the behavior of investors and others, this type of market uncertainty is insufficient to constitute an injury, either present or future, that is fairly traceable to Title II.[11] In this regard, the D.C. Circuit's reasoning in *Committee for Monetary Reform v. Board of Governors of the Federal Reserve System*, 766 F.2d 538 (D.C. Cir. 1985), is relevant. In that case, appellants included businesses, associations, and individuals who alleged that they suffered financial damage "as a result of monetary instability and high interest rates." *Id.* at 542. The Court assumed that the allegations were sufficient to meet the requirements of injury-in-fact, but held that appellants "failed to show that their injuries are fairly traceable to the asserted constitutional violation," because

> [i]t is entirely speculative whether the influence of the Reserve Bank members is responsible for the FOMC's alleged pursuit of restrictive or erratic monetary policies. Moreover, in light of the complexity of the modern economy, it is also highly uncertain whether and to what extent such policies were responsible for the adverse economic conditions that allegedly resulted in harm to the appellants. Similarly, the appellants have given no indication as to how they can succeed in establishing that an overly broad delegation of power to the Federal Reserve System has had the consequence of undermining economic certainty and thereby increasing interest rates.

Id.

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[11] As Professor Hal Scott describes,

> [B]ecause [the OLA process] appl[ies] only to institutions determined to be systemically important, and appl[ies] to banks only at the holding company level, all other institutions will be subject to the bankruptcy regime where impairment is even more likely . . . . If short-term debt holders do not know whether their issuer will be deemed systemically important, then they will not know which resolution principles will apply to them, compounding uncertainty in the marketplace. Moreover, because the regulators have significant discretion in determining the circumstances that constitute danger of default the OLA adds another layer of uncertainty for creditors of financial companies who could run at an earlier point in time in order to avoid impairment in the OLA receivership.

Hal S. Scott, *Interconnectedness and Contagion* 216-217 (Nov. 20, 2012) (cited in States' Opp. at 18).

The injuries asserted here are even more speculative, for the States have not claimed any actual damage resulting from increased economic uncertainty. Moreover, they have not presented evidence that any harm is fairly traceable to the OLA, nor could they since the OLA exists only on paper at this point in time. While it may be true that certain economic actors have already adjusted their behavior in response to Title II, "[t]he fact that some individuals may base decisions on 'conjectural or hypothetical' speculation does not give rise to the sort of 'concrete' and 'actual' injury necessary to establish Article III standing." *Already*, 133 S. Ct. at 730 (quoting *Lujan*, 540 U.S. at 560).

b. Future Injury

Nor can the States prevail on an allegation of future injury. There are a series of contingencies that must occur before they would suffer any actual harm. It is true that Dodd-Frank empowers the FDIC to treat creditors' claims somewhat differently than they are treated in traditional bankruptcy proceedings, but no one can know if this will ever happen. Thus, the States do not face a future harm that is "certainly impending." *Clapper*, 133 S. Ct. at 1151.

The D.C. Circuit's recent decision in *Deutsche Bank Nat'l Trust Co. v. FDIC*, 717 F.3d 189 (D.C. Cir. 2013), is instructive. There, the Court of Appeals agreed that appellants' economic interest in receivership funds constituted a legally protected interest, but found that they were "not persuasive in showing that their economic interest faces an imminent, threatened invasion – *i.e.*, one that is not conjectural or speculative." *Id.* at 193. The Court found that

> at least two major contingencies must occur before Deutsche Bank's suit could result in economic harm to appellants: (1) the district court must interpret the Agreement to find that FDIC did not transfer the relevant liability to J.P. Morgan; and (2) Deutsche Bank must prevail on the merits against FDIC in its breach-of-contract claims. . . Under such circumstances, where a threshold legal interpretation must come out a specific way before a party's interests are even at risk, it seems unlikely that the prospect of harm is actual or imminent.

Id. Here, too, there are a host of contingencies that must occur before the States could arguably suffer economic harm under Title II, and "because [the statute] at most *authorizes* – but does not *mandate* or *direct* – the [enforcement] that respondents fear, respondents' allegations are necessarily conjectural." *Clapper*, 133 S. Ct. at 1149 (emphasis in original).[12]

First, "[a] systematically important financial company in which the States are invested would have to be in default or in danger of default." (Defendants' Reply [ECF No. 30] ("Def. Reply") at 30.) Second, "[t]he Secretary of the Treasury would have to exercise his discretion to seek the appointment of a receiver under Title II's [O]rderly [L]iquidation [A]uthority, and he could do so only if numerous statutory prerequisites were met, including consultation with the President of the United States, and a written recommendation from the Federal Reserve Board and the FDIC, or another agency." (*Id.*) Third, "the States as creditors would have to suffer a greater loss in a Title II liquidation than they would have in bankruptcy, and this would have to happen despite Title II's requirement that each creditor will receive no less than it would have under a liquidation pursuant to chapter 7 of the Bankruptcy Code." (*Id.*)[13]

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[12] The States also argue that "denying judicial review of the State Plaintiffs' constitutional claims until after a Title II liquidation occurs would in fact prevent them from ever raising those constitutional claims . . . [because] Dodd-Frank expressly prohibits the courts from reaching these constitutional issues after a liquidation occurs." (States' Opp. at 28.) This is incorrect, as there is ample precedent suggesting that statutory limitations on judicial review do not prevent parties from raising constitutional challenges to the statute itself. *See, e.g., Gen. Elec. Co. v. EPA*, 360 F.3d 188, 193 (D.C. Cir. 2004) (allowing pre-enforcement review of facial constitutional challenge to statute, despite statutory limitations on judicial review of orders and actions taken under the statute); *Time Warner v. FCC*, 93 F.3d 957, 965, 973 (D.C. Cir. 1996) (same).

[13] Even the States' articulation of the harm they face highlights its highly speculative nature:

> On its face, Section 210(b)(4) of the Act abrogates the rights under the U.S. Bankruptcy Code of creditors of institutions that *could* be liquidated, destroying a valuable property right held by creditors – including the State Plaintiffs – under bankruptcy law, contract law, and other laws, prior to the Dodd-Frank Act.

In some instances, when and if the OLA is ever invoked, a given creditor may find itself worse off than it would have been had the debtor company been subject to a Chapter 11 proceeding. Other creditors may, however, find themselves better off since the very point of the OLA authority is to try to minimize the losses and maximize the value of the assets of the failing financial company. *See* 12 U.S.C. § 5390(b)(4). It is entirely speculative that the States will be among the creditors that will end up worse off. Furthermore, it is possible that regulations will be enacted that will provide greater certainty, as Cohen suggests, and that the doom the States foresee will never come to pass. In short, the States' theory "stacks speculation upon hypothetical upon speculation, which does not establish an 'actual or imminent"' injury. *N.Y. Reg'l Interconnect Inc. v. FERC*, 634 F.3d 581, 587 (D.C. Cir. 2011) (quoting *Lujan*, 504 U.S. at 560). Any injury is "hopelessly conjectural," depending upon a chain of potential but far from inevitable developments. *Deutsche Bank*, 717 F.3d at 193. *See also* Price, *Sifting for SIFIs*, at 8 (suggesting that the existence of the OLA could prompt some creditors to "believe that they may . . . get protection unavailable in a normal bankruptcy"). Accordingly, the States lack standing to challenge Title II.

2. Ripeness

The States' claims are also not ripe because they are not "fit for judicial review." *See, e.g., Seegars v. Gonzales*, 396 F.3d 1248, 1253 (D.C. Cir. 2005) (citations omitted). In such an instance, the issues would be much clearer for judicial review with further factual development,

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> Section 210(b)(4) exposes those creditors to *the risk that* their credit holdings *could* be arbitrarily and discriminatorily extinguished in a Title II liquidation, and without notice or input. Title II's destruction of a property right held by each of the State Plaintiffs harms each State, and is itself a significant, judicially cognizable injury that would be remedied by a judicial order declaring Title II unconstitutional.

(Second Am. Compl. ¶ 170 (emphasis added).)

and "denial of immediate review would [not] inflict a hardship on the challenger – typically in the form of its being forced either to expend non-recoverable resources in complying with a potentially invalid regulation or to risk subjection to costly enforcement processes." *Id*. Even a "pure legal issue," such as a facial challenge, may not be ripe. *See, e.g., Nat'l Park Hospitality Ass'n v. Dep't of the Interior*, 538 U.S. 803, 812 (2003) (even a "purely legal" "facial challenge" is unripe if "further factual development would significantly advance [the court's] ability to deal with the legal issues presented."). Of particular relevance here, "a claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *CTIA-The Wireless Ass'n v. FCC*, 530 F.3d 984, 987 (D.C. Cir. 2008) (quoting *Texas v. United States*, 523 U.S. 296, 300 (1998)). As the D.C. Circuit has noted, in rejecting a separation-of-powers claim on ripeness grounds:

> In the instant case, as in *Buckley* [*v. Valeo*, 424 U.S. 1 (1976)], appellant asks this court to pass on the constitutionality of an entire Act of Congress that vests in an entity a host of powers, most of which have not been invoked and many of which may never be invoked in the proceedings concerning appellant. To decide the legitimacy of powers whose exercise is the antithesis of "all but certain" would clearly contravene the principle of constitutional avoidance underlying both this court's and the Supreme Court's decisions in *Buckley*, the principle that "the quarrel must be with the official and not the statute book." . . . In the course of time we may have a more concrete application of the Act as a whole. Then, and only then, will we be justified in deciding the facial constitutionality of the Act.

Hastings v. Judicial Conference, 770 F.2d 1093, 1101–03 (D.C. Cir. 1985) (citation omitted). Similarly, the States ask the Court to invalidate all of Title II, despite the fact that none of the OLA powers "have [] been invoked and many of which may never be invoked" in matters concerning the States. *Id*. at 1101. For the Court to do so would be the height of imprudence. Therefore, even if the States could survive a challenge to their standing, which they cannot, their claims are not ripe.

For these reasons, the Court finds that the States lack standing on Counts IV, V, and VI, or in the alternative, that their claims are not ripe, and will accordingly dismiss these counts pursuant to Fed. R. Civ. P. 12(b)(1).

III. TITLE X: CONSUMER FINANCIAL PROTECTION BUREAU

A. The Statutory Provision

Title X established the Consumer Financial Protection Bureau in order to "implement and . . . enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive." 12 U.S.C. § 5511(a). The Bureau is an independent agency within the Federal Reserve System. *See id.* § 5491(a). The Bureau is headed by a Director appointed by the President, with the advice and consent of the Senate and removable by the President for cause. *See* 12 U.S.C. § 5491(b), (c). The President appointed Richard Cordray as the Bureau's first Director on January 4, 2012, pursuant to the Recess Appointments Clause, U.S. Const. art. II, § 2, cl.3. The President renominated Cordray to a full term on February 13, 2013. Cordray's recess appointment was due to expire at the end of the Senate's current session or upon the Senate's confirmation of his nomination if earlier, but on July 16, 2013, the Senate confirmed Cordray's appointment.[14] *See* Danielle Douglas, *Senate confirms Cordray to head consumer agency*, WASH. POST, July 17, 2013, at A12.

[14] In supplemental pleadings submitted in response to the Court's request (*see* 7/17/13 Order [ECF No. 37]), the parties appear to agree that the challenge to Cordray's recess appointment in Count II is not moot. (*See* Private Plaintiffs' Supplemental Brief in Support of the Court's Jurisdiction over Count II [ECF No. 38]; Defendants' Response to Plaintiffs' Supplemental Brief [ECF No. 40].)

Title X transferred regulatory authority to the Bureau over consumer financial products and services that had previously been exercised by other federal agencies. *See* 12 U.S.C. § 5581. This includes regulatory authority under, among others, the Truth in Lending Act ("TILA"), the Equal Credit Opportunity Act, the Real Estate Settlement Procedures Act ("RESPA"), and the Electronic Funds Transfer Act ("EFTA"). *See id.* §§ 5581, 5481(12), (14). The Dodd-Frank Act also amended many existing laws related to consumer financial issues and transferred the authority to implement those amendments to the Bureau. (*See* Def. Mot. at 7.) Under the Act, the Bureau is also authorized to promulgate any rule that it deems "necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof." 12 U.S.C. § 5512(b)(1). The Bureau has authority to directly enforce these laws, including the power to initiate civil enforcement actions. *See* 12 U.S.C. § 5564.

1. UDAAP Authority

In addition to granting existing regulatory authority to the Bureau, Title X also authorizes the Bureau to issue new regulations to implement the provisions of Title X, including its prohibition against any "unfair, deceptive, or abusive act or practice" by a "covered person" or "service provider." 12 U.S.C. §§ 5512(b)(1), 5531(a), 5532(a)), 5536(a)(1)(B), 5481(6), (26). Although Title X authorizes the Bureau to issue regulations under this "UDAAP authority," it has yet to do so. (*See* Def. Mot. at 8.) The Bureau has, however, commenced enforcement actions pursuant to its UDAAP authority, such as filing complaints and securing consent orders against third parties in matters unrelated to this litigation. (*See* Pvt. Pl. Opp. at 4.)

The Bureau also has the authority to "supervis[e] covered persons for compliance with Federal consumer financial law, and tak[e] appropriate enforcement action to address violations of Federal consumer financial law." 12 U.S.C. § 5511(c)(4). The "prudential regulators" – the Federal Reserve Board, the FDIC, the OCC, the NCUA, and previously, the OTS – remain primarily responsible for examining the compliance of smaller insured depository institutions and credit unions (*i.e.*, those with $10 billion or less in total assets that are not affiliates of large banks and credit unions) with Federal consumer financial law. *See id.* §§ 1813q, 5481(24), 5581(c)(1)(B), 5516(a). SNB falls under the authority of the OCC. (*See* Pvt. Pl. Opp. at 4.) The Bureau may require reports from those smaller institutions and may participate in the prudential regulators' examinations of those institutions "on a sampling basis." 12 U.S.C. § 5516(b), (c)).

The Bureau may also recommend to the prudential regulator that it take action when there is reason to believe that one of the smaller institutions has violated Federal consumer financial law. *See* 12 U.S.C. § 5516(d)(2). The prudential regulator has an obligation to respond in writing to any such recommendation. *See id*. To date, no reporting requirement has been imposed on SNB, and neither the OCC nor the Bureau has taken any action against SNB.

2. Remittance Rule

Dodd-Frank amended the EFTA to establish greater consumer protections for remittance transfers from consumers in the United States to businesses and individuals abroad. (*See* Def. Mot. at 7 (citing 15 U.S.C. § 1693o-1).) With the EFTA regulatory authority that it now exercises, the Bureau promulgated the Remittance Rule to implement this statutory amendment. The Remittance Rule establishes disclosure and compliance requirements for institutions that offer international remittance transfers, and it applies to "any person that provides remittance transfers for a consumer in the normal course of its business." Electronic Fund Transfers (Regulation E) ("EFT"), 77 Fed. Reg. 6194, 6205 (Feb. 7, 2012) (to be codified at 12 C.F.R. pt. 1005)). On February 7, 2012, the Bureau published the final rule, and on August 20, 2012, it published an amendment to that rule establishing a safe harbor provision. *See* EFT, 77 Fed. Reg. 6194 (Feb. 7, 2012) (codified at 12 C.F.R. pt. 1005, subpart B); EFT, 77 Fed. Reg. 50244 (Aug. 20, 2012) (amending 12 C.F.R. pt. 1005). Following several months of additional rulemaking, the Bureau issued a final rule on May 22, 2013, amending several aspects of the rule not relevant here, and establishing that the rule would take effect on October 28, 2013. *See* EFT, 77 Fed. Reg. 77188 (Dec. 31, 2012); EFT Temporary Delay of Effective Date, 78 Fed. Reg. 6025 (Jan. 29, 2013); EFT 78 Fed. Reg. 30661 (May 22, 2013).

3. Rules Relating to Mortgages

The Bureau has also promulgated two rules regarding mortgages that are relevant to SNB's claim of standing.

a. RESPA Servicing Rule

On February 14, 2013, the Bureau issued a final rule governing mortgage servicing under RESPA, 12 U.S.C. § 2601 *et seq*. ("RESPA Servicing Rule"). *See* Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X), 78 Fed. Reg. 10696 (Feb. 14, 2013) (to be codified at 12 C.F.R. § 1024.41(j)). Although multi-faceted, the portion of the rule relevant here will prohibit a servicer from making "the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless a borrower's mortgage loan obligation is more than 120 days delinquent." *Id.* at 10885. This rule will take effect on January 10, 2104. *See id*. at 10696.

b. ATR-QM Rule

On January 10, 2013, the Bureau issued a final rule implementing Title XIV of the Dodd-Frank Act and amending Regulation Z, which implements the Truth in Lending Act, 15 U.S.C. 1601 *et seq.* ("ATR-QM Rule"). *See* Ability-to-Repay and Qualified Mortgage Standards under the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 6408 (Jan. 30, 2013) (to be codified at 12 C.F.R. § 1026.43). This rule requires lenders to determine potential borrowers' ability to repay before extending mortgage credit to them. *See* 15 U.S.C. § 1639c(1). The failure to conduct this determination leaves lenders subject to liability and a foreclosure defense by borrowers. *See id.* § 1640(a), (k). Title XIV and the ATR-QM Rule both provide for a safe harbor under which a lender will be deemed to have made the ability-to-repay determination for qualified mortgages, and a rebuttable presumption that a lender has made the ability-to-repay determination for qualified mortgages that are "higher-priced covered transactions."[15] *See id*. § 1639c(b); 78 Fed. Reg. at 6585-87. On May 29, 2013, the Bureau expanded the scope of the safe harbor, by

> [r]aising the threshold defining which qualified mortgages receive a safe harbor under the ability-to-repay rules for loans that are made by small creditors under the balloon-loan or small creditor portfolio categories of qualified mortgages. Because small creditors often have higher cost of funds, the final rule shifts the threshold separating qualified mortgages that receive a safe harbor from those that receive a rebuttable presumption of compliance with the ability-to-repay rules from 1.5 percentage points above the average prime offer rate (APOR) on first-lien loans to 3.5 percentage points above APOR.

78 Fed. Reg. 35430, 35431 (June 12, 2013).[16]

B. Counts I and II

In its Opposition, the Bank bases its claim of standing as to Count I on "four here-and-now financial injuries directly caused by the unconstitutional formation and operation of the Bureau." (Pvt. Pl. Opp. at 12.) First, it alleges that it "has incurred and will continue to incur

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[15] A "higher-priced covered transaction" was initially defined as a mortgage with "an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points for a first-lien covered transaction, or by 3.5 or more percentage points for a subordinate-lien covered transaction." 78 Fed. Reg. at 6584.

[16] A "small creditor" is defined as a creditor with no more than $2 billion in assets, a category that includes SNB. *See* 78 Fed. Reg. at 35431.

substantial compliance costs to ensure it acts consistently with the Bureau's regulations and interpretations of Federal consumer financial law." (*Id*.) Second, it alleges that the Bureau's Remittance Rule caused the Bank initially to "cease[] offering profitable remittance transfers" and subsequently to resume offering the transfers on a limited basis. (*Id*.) Third, it alleges that "the Bureau's new rules governing mortgage foreclosure increase the Bank's costs of doing business with respect to mortgage loans it has already made." (*Id*.) Fourth, it alleges that as of October 2010, it "discontinued a profitable mortgage practice to avoid prosecution pursuant to the Bureau's UDAAP authority." (*Id*.) In addition, the Bank asserts that it has standing simply "because it is directly regulated by the Bureau." (Pvt. Pl. Opp. at 30-31.)

As an initial matter, the Bank errs to the extent that it suggests that it need only show that it is "directly subject to the authority of the agency" without meeting the basic standing requirements of injury-in-fact, causation, and redressability. (Pvt. Pl. Opp. at 30 (quoting *Comm. for Monetary Reform*, 766 F.2d at 543).)[17] The Bank claims to be relying on D.C. Circuit precedent for this proposition, but it has misinterpreted that precedent. In *Committee for Monetary Reform*, the Court held that "litigants have standing to challenge the authority of an agency on separation-of-powers grounds only where they are directly subject to the authority of the agency, whether such authority is regulatory, administrative, or adjudicative in nature." 766 F.2d at 543. Ultimately, the Court found no standing because plaintiffs did not allege that "they are directly subject to the governmental authority they seek to challenge, but merely assert[ed] that they are substantially affected by the exercise of that authority." *Id*. The Court did not

[17] The Bank backtracked somewhat from this bold position during the oral argument, conceding that an injury is necessary for standing and offering the qualification that its direct regulation argument is "the fifth argument for standing that we have in our brief. So we have many alternative arguments." (Tr. at 44.)

conclude, however, that being subject to the challenged governmental authority was *sufficient*. Lest there be any doubt, the Court later cited this holding in *NRA Political Victory Fund*, where it stated, "[b]ecause an enforcement action is the paradigm of 'direct governmental authority,' appellants have standing[.]" 6 F.3d at 824. While the parameters of direct governmental authority have yet to be established, no case stands for the proposition that standing can be established merely by being subject to governmental regulatory authority in the absence of any agency action that causes injury.[18]

The Bank's claim of standing with respect to Count II is based on the same factual allegations as it relies on for Count I.[19] (*See* Pvt. Pl. Opp. at 31.) It is settled that the Bank need not show that the results of any agency action would have been different without an unconstitutional appointment. In other words, the Bank need not present "precise proof of what the [Bureau]'s policies might have been in that counterfactual world." *Free Enter. Fund v. Public Co. Accounting Oversight Bd.*, 130 S. Ct. 3138, 3163 n.12 (2010). *See also Comm. for Monetary Reform*, 766 F.2d at 543 ("a party is not required to show that he has received less favorable treatment than he would have if the agency were lawfully constituted and otherwise authorized to discharge its functions").

Nevertheless, while the Bank does not have to demonstrate that a constitutionally-appointed director would have made different decisions than Cordray has, it must demonstrate that it has been harmed by some decisions made by Cordray or under his direction. Thus, it

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[18] For example, if this were the case, any entity that pays taxes could challenge any action of the IRS even if it had not been the object of an IRS ruling or enforcement action.

[19] The Bank asserts standing for Count II based on the fact that as "an FDIC-insured institution [it] is directly subject to Mr. Cordray's authority as an "ex officio Director of the Federal Deposit Insurance Corporation." (Pvt. Pl. Opp. at 31.) The Bank never elaborates on this argument, and appears to have abandoned it in its further briefing. In the absence of any explanation for this claim, the Court need not address it.

cannot complain in Count II about the Bank's 2010 exit from the mortgage market, since that predated Cordray's 2012 appointment, *see Lujan*, 504 U.S. at 560-61, but it can point to the Remittance Rule, the RESPA Servicing Rule, and the ATR-QM Rule that issued during his tenure and the compliance costs incurred after his 2012 appointment.[20] Nonetheless, as to both Counts I and II, the Bank must satisfy the injury-in-fact prong of standing, for, as the Supreme Court stated long ago:

> We have no power per se to review and annul acts of Congress on the ground that they are unconstitutional. That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act. . . . The party who invokes the [court's jurisdiction] must be able to show, not only that the statute is invalid, but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally.

Massachusetts v. Mellon, 262 U.S. 447, 488 (1923). The Court will turn to the four grounds upon which the Bank relies to satisfy its burden as to standing.

1. Compliance Costs

The Bank argues that it has spent money to keep abreast of developments under the Dodd-Frank Act and that these expenditures are subsumed under the heading of "compliance costs."[21] In particular, it asserts that it spent over $230,000 in compliance costs in 2012, including "over $2,500 to send a representative to 'Compliance School' that offered classes on, *among other things*, CFPB regulations." (Pvt. Pl. Opp. at 8 (citing Declaration of Jim R. Purcell [ECF No. 27-2] ("First Purcell Decl.") ¶¶ 5, 6) (emphasis added).) The Bank also began

[20] As noted below (*see infra* Section III.B.3), the fact that the RESPA Servicing Rule and the ATR-QM Rule were issued subsequent to the filing of this suit poses a separate problem for the Bank's standing.

[21] At the oral argument, counsel characterized this claim as its strongest pillar for a finding of standing as to Count I. (*See* Tr. at 4.)

subscribing, at a cost of $9,900 annually, to a service called the "'Compliance Alliance' created by the Texas Bankers Association in response to the passage of the Dodd-Frank Act." (*Id.*) In the Bank's careful phrasing, the "[s]ervice provides notification and counsel regarding new and proposed regulations, interpretations, and enforcement actions that would affect the Bank's business, and was specifically marketed to SNB and other banks as necessary to stay up-to-date with (*among other things*) the activities of the CFPB." (*Id*. (emphasis added).) In 2011, prior to Cordray's appointment, the Bank also subscribed to a second compliance service, TriNovus, at a cost of $2,300. (*See id*.)[22] In sum, the Bank's "compliance costs" consist of the costs of learning about the Bureau's regulatory and enforcement activities.

In proposing this novel and overly broad interpretation of the term "compliance costs," the Bank would have this Court adopt a theory of standing that goes beyond any decision in this jurisdiction. Certainly, courts in this jurisdiction have found standing based on expenditures that have been categorized as "compliance costs," [23] but in each case, those costs were incurred to come into compliance with the law, rather than merely to keep abreast of developments in the law. *See, e.g., Duncan*, 681 F.3d at 458 (plaintiff schools "harmed because they will face even greater compliance costs" due to new regulation requiring states to institute school authorization process and complaint-review process). As defendants suggest, a compliance cost is typically "the cost a regulated party incurs to satisfy a legal mandate – *e.g.*, money spent to retrofit a

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[22] At the oral argument, SNB's counsel made clear that $230,000 represents the "total figure for all [of the Bank's] compliance costs, but then [the Bank] broke out several specific costs that were specific to the CFPB and Title X," which amounted to $12,400 for 2012. (Tr. at 16.)

[23] The fact that these costs are relatively minor does not matter, for even the "threat of relatively small financial injury [is] sufficient to confer Article III standing." *Raytheon Co. v. Ashborn Agencies, Ltd.*, 372 F.3d 451, 454 (D.C. Cir. 2004) (citing *Franchise Tax Bd. of Ca. v. Alcan Aluminum Ltd.*, 493 U.S. 331, 336 (1990)).

factory to bring it into compliance with a new environmental code," not the cost the party incurs to determine *whether* it needs to satisfy a legal mandate. (Def. Reply at 21.) But the Bank does not claim to have any costs of the former type, only the latter.

A compliance cost has also been interpreted to include the cost of complying with statutory reporting requirements. *See, e.g., Cellco P'ship v. FCC*, 357 F.3d 88, 100 (D.C. Cir. 2004) (in assessing a challenge to two regulations involving extensive reporting requirements, the Court held that "[a]s an entity continuously burdened by the costs of complying . . . with what it contends are 'unnecessary' regulations[,] . . . [plaintiff's] injuries are concrete and actual"); *Inv. Co. Instit. v. CFTC*, 891 F.Supp.2d 162, 177, 185 (D.D.C. 2012) (in assessing challenge to regulations issued pursuant to Dodd-Frank involving reporting and registration requirements, Court found standing based on "relative increased regulatory burden and . . . associated costs"). But, while the Bureau has the authority to demand the production of reports from covered entities, the Bank has not been required to submit any reports, nor is it clear that it will be required to do so in the future.[24]

Because the Bank's overly broad conception of "compliance costs" has never been recognized in this jurisdiction, the Bank resorts to reliance on two cases from the Fourth Circuit. In addition to not being binding on this Court, both of the cases cited by the Bank are distinguishable. In *Chambers Med. Tech. of S.C. v. Bryant*, 52 F.3d 1252 (4th Cir. 1995), the plaintiff challenged a blacklisting provision under South Carolina state law that prohibited an owner or operator of a waste treatment facility within South Carolina from accepting infectious waste generated in a jurisdiction that prohibits the treatment, storage, or disposal of the waste in that jurisdiction. *See id*. at 1265. The plaintiff was found to have standing because it "would

[24] Under Title X, the Bureau is required to use existing reports before demanding the production of an independent report from a covered entity. *See* 12 U.S.C. § 5516(b)(1).

incur costs associated with monitoring the laws of [sixteen] states to ensure that they did not enact . . . legislation" that would automatically trigger the blacklisting provision. *Id*. Importantly, in *Chambers*, the costs of monitoring the other states' laws were necessarily incurred in order to avoid violating South Carolina law. By contrast, the expenditures that SNB includes as "compliance costs" are ones that it has voluntarily incurred to keep track of the CFPB's activities, not to actually comply with any regulations.

Similarly, in *Pac. Legal Found v. Goyan*, 664 F.2d 1221 (4th Cir. 1981), a funding program that the plaintiff was challenging would have expanded public participation in FDA rulemaking proceedings in which the plaintiff frequently participated, necessitating its increased "vigilance and efforts" to maintain its "'institutional presence'" in those proceedings. *Id.* at 1224. The Fourth Circuit found that the plaintiff had standing based on the "increased time and expense necessary for it to monitor not only proposals by the FDA and comments thereto, but also proposals by applicants for reimbursement under the program here in question." *Id.* In that case, there was no question that the plaintiff would participate in future FDA proceedings and that its participation would become more expensive under the funding program. Thus, its injury was "certainly impending." *Clapper*, 133 S. Ct. at 1143. The same is not true here, where the Bank is monitoring CFPB proposals and actions to determine *if* the Bureau will take any actions that will affect the Bank. In addition, both of these cases predate *Clapper*, 133 S. Ct. at 1152, wherein the Supreme Court held that "self-inflicted" injuries, which arguably encompass the harms claimed by the plaintiffs in the Fourth Circuit cases, do not give rise to Article III standing.[25]

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[25] In their recently filed Notice of Supplemental Authority [ECF No. 42] ("Pl. Supp. Authority"), plaintiffs cite to another Fourth Circuit case, *Liberty Univ. v. Lew*, No. 10-2347, 2013 WL 3470532 (4th Cir. July 11, 2013). In that case, the court found that Liberty University had

Nevertheless, to the extent that the Fourth Circuit cases can be read to justify the Bank's theory of standing and survive *Clapper*, this Court is unwilling to accept their rationale. The logical extension of the Bank's expansive definition of compliance costs would be that any time a party spends money or uses its resources (including its in-house counsel) to identify its statutory obligations, or indeed to determine if it even has any, it would then have standing to challenge that statute. That cannot be the law. Just as "a plaintiff cannot achieve standing to litigate a substantive issue by bringing suit for the cost of bringing suit," *Steel Co.*, 523 U.S. at 107, a plaintiff should not be able to achieve standing to litigate an injury based on the cost of figuring out whether it has an injury. To accept the Bank's definition of compliance costs would amount to an evisceration of the requirement of injury-in-fact, and would grant standing to a party that is merely a subject of a regulation or statute. (*See supra* Section III.B.)

But even if these costs could be construed to constitute an injury, it is a self-inflicted injury, neither caused by Title X nor redressable by this Court. As the Supreme Court recently held, plaintiffs "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending." *Clapper*, 133 S. Ct. at 1151. The Bank's assertion that it was forced to expend these costs rings hollow since it is not

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standing to challenge the Affordable Care Act on the grounds that "[e]ven if the coverage Liberty currently provides ultimately proves sufficient, it may well incur additional costs because of the administrative burden of assuring compliance with the employer mandate, or due to an increase in the cost of care." *Id.* at *7. Once again, the Court agrees that Article III standing may be based on this traditional conception of "compliance costs" – *i.e.*, "the burden of assuring compliance" – but the costs claimed by the Bank do not fall into that category. In the same filing, plaintiffs also cite a recent D.C. Circuit case, *Ass'n of Am. R.R. v. U.S. Dep't of Transp.*, No. 12-5204, 2013 WL 3305715 (July 3, 2013), in support of their compliance costs argument. However, plaintiffs mischaracterize the case as holding that compliance costs constitute Article III injury. (*See* Pl. Supp. Authority at 2-3.) Rather, in dicta in a footnote, the Court refers to "the immediate actions the metrics and standards have forced" the plaintiff to take as evidence of the "considerable hardship" the plaintiff would face if review of its claims were denied under the second prong of *Abbott Lab*'s prudential ripeness test. *See Ass'n of Am. R.R.*, 2013 WL 3305715, at 10 n.6 (citing *Abbott Labs*., 387 U.S. at 149).

clear that Compliance Alliance and TriNovus provide needed information about Bureau regulations that is not readily accessible from the Bureau's own comprehensive and comprehensible website. (*See generally* http://www.consumerfinance.gov.) Furthermore, the Compliance Alliance is a service of the Texas Bankers Association, a trade association to which the Bank belongs, which further undermines the Bank's claim that these expenses constitute an injury caused by the Bureau. In addition, while the service may have been inspired by Dodd-Frank, as the Bank suggests, it is not focused exclusively on Bureau regulations. Instead, its publications and resources cover a wide range of federal and state regulations, so it is an overstatement to claim that the entire subscription fee is attributable to Title X of Dodd-Frank. (*See* Pvt. Pl. Opp. at 8; *see generally* http://www.compliancealliance.com.) Similarly, the "Compliance School" training related to a variety of subjects, including, but certainly not limited to, CFPB regulations. (*See* Pvt. Pl. Opp. at 8; Tr. at 18.) Thus, if Dodd-Frank had never been passed, the Bank presumably would still have to spend money to learn about its compliance responsibilities under other federal and state regulations; likewise, if the Court were to invalidate Title X, the Bank would continue to spend money to learn about its other compliance responsibilities. As a result, the Bank has not established that these costs were caused by Title X or that they are redressable by a court.

In short, these expenditures are not "a reasonable reaction to a risk of harm," but rather expenditures that the Bank would make in the normal course of business irrespective of Title X, or, to the extent that they are costs unique to Title X, they are an injury that the Bank has inflicted on itself "based on [its] fears of hypothetical future harm that is not certainly impending." *Clapper*, 133 S. Ct. at 1151.

2. Remittance Rule

The Bank claims that the Bureau's Remittance Rule has constrained its remittance business, thereby causing it Article III injury. Importantly, on the day the Bureau issued the rule, it also issued a notice of proposed rulemaking indicating that the Bureau was considering the establishment of a safe harbor. (*See* Def. Reply at 8.) Although the safe harbor, as initially contemplated, would have covered only institutions that provided 25 or fewer remittances, the safe harbor that was ultimately adopted in August 2012 protects institutions that provide 100 or fewer remittances. (*See* 77 Fed. Reg. at 6203; EFT, 77 Fed. Reg. at 50244.)

The Bank stopped offering remittances when the initial rule was promulgated – despite the fact that the rule had not come into effect and there was a notice of proposed rulemaking – and it began offering remittances again after the safe harbor provision was adopted. (*See* First Purcell Decl. ¶¶ 15, 18, 20.) The Bank now argues that its "inability to cost-effectively comply with the Rule has caused it to adopt a policy pursuant to which it has limited its business opportunities by mandating that it will never perform more than 99 covered transfers in any given year." (Pvt. Pl. Opp. at 17 n.8.) However, the Bank has never come close to 100 remittances, as it "regularly offered more than 25 transfers a year," but it has never offered more than 70 transfers in a year. (*See* First Purcell Decl. ¶ 11.) Thus, it falls comfortably within the safe harbor that was ultimately adopted, and its assertion that it would issue more than 100 remittances annually in the future were it not subject to the regulation lacks plausibility. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). For, as the Supreme Court has held, "'some day' intentions – without any description of concrete plans, or indeed even any specification of when the some day will be – do not support a finding of the 'actual or imminent' injury that" is required. *Lujan*, 504 U.S. at 564.

The Bank also argues that even if the Court does not accept its proposition that the rule as currently configured causes it injury, it has standing because when it filed suit, the final Remittance Rule had been issued but the final rule regarding the safe harbor had not yet been formally promulgated. Of course, "standing is assessed at the time of filing." *Wheaton Coll. v. Sebelius*, 703 F.3d 551, 552 (D.C. Cir. 2012). Nonetheless, the Court disagrees with the Bank's premise. At the time that the suit was filed, the Remittance Rule had not taken effect, and the Bureau had made it clear that it was still in the midst of drafting a rule to provide for a safe harbor. Furthermore, as defendants have noted, further amendment was not only contemplated at the time the rule was issued, it was all but inevitable. (*See* Tr. at 64.) The statute and the rule specified that the rule would apply only to entities that provide remittance transfers "in the normal course of business," but that phrase was left undefined. (*Id*.) Ultimately, the safe harbor amendment defined "in the normal course of business" as the issuance of 100 or more remittances annually, thereby limiting the application of the Remittance Rule to institutions that have a far more active remittance business than the Bank. While a plaintiff need not necessarily wait until the effective date of a regulation to challenge it, *see Pierce v. Soc'y of the Sisters,* 268 U.S. 510, 529, 536 (1925), where it is clear that the administrative process is ongoing to the extent that the regulation's application to the plaintiff is unclear, there is no "certainly impending" injury. *Clapper*, 133 S. Ct. at 1143.

In addition, considerations of prudential ripeness will sometimes lead courts to refrain from interfering with an agency's ongoing decision-making process. *See Reno v. Catholic Soc. Servs*., 509 U.S. 43, 58 n.18 (1993) ("Even when a ripeness question in a particular case is prudential, we may raise it on our own motion, and cannot be bound by the wishes of the parties.") (internal quotation marks and citation omitted). As the Court of Appeals recently noted, "[i]n the context of agency decision making, letting the administrative process run its course before binding parties to a judicial decision prevents courts from 'entangling themselves in abstract disagreements over administrative policies, and . . . protect[s] the agencies from judicial interference' in an ongoing decision-making process." *Am. Petroleum Inst.*, 683 F.3d at 386. Of course, the Bank is not challenging a specific agency decision, but rather the existence of the agency itself. Nonetheless, in the context of this Court's attempts to assess its jurisdiction over the Bank's claims, similar reasoning applies, for the Bank's claims remain abstract until there is some regulation that actually causes harm or will plausibly harm in the near future.

Furthermore, the Bank's claim is not ripe because the Bank has no imminent injury based on the Remittance Rule as presently promulgated. The Bank alleges that the Bureau could alter the rule at any time to make it applicable to the Bank, "[g]iven the CFPB's constantly changing positions on remittances." [26] But the promulgation of a handful of amendments to clarify and refine the rule hardly qualifies as taking "constantly changing positions." Furthermore, while anything is possible, that does not render it plausible, much less "certainly impending." *Clapper*, 133 S. Ct. at 1143. *See also Coal. for Responsible Regulation*, 684 F.3d at 130 ("Ripeness . . . shares the constitutional requirement of standing that an injury in fact be certainly impending." (internal quotation marks and citation omitted)).

[26] The Bank relies heavily on the voluntary cessation doctrine as articulated most recently in *Already LLC v. Nike, Inc.*, 133 S. Ct. 721, 727 (2013), arguing that the CFPB could change the Remittance Rule again to do away with the safe harbor, because it has amended the rule in the past. (*See* Pvt. Pl. Opp. at 17 n.8; Tr. at 8-9.) However, the Bank's reliance is misplaced. This doctrine is an exception to mootness, and "if a plaintiff lacks standing at the time the action commences, the fact that the dispute is capable of repetition yet evading review will not entitle the complainant to a federal judicial forum." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 191 (2000). It is instead standing and ripeness that are at issue here.

3. Mortgage Foreclosure Rules

The Bank also relies on the RESPA Servicing Rule and the ATR-QM Rule, both issued by the CFPB under Cordray's direction, as evidence of injury. As a threshold matter, it is significant that neither rule had been issued at the time of the filing of the suit. As defendants point out, although the Second Amended Complaint was filed subsequent to the rules' promulgation, the Bank added no allegations about the rules, mentioning them for the first time in its Opposition to defendants' Motion to Dismiss. (*See* Def. Reply at 13, 15, 16 (citing *Arbitraje Casa de Cambio, S.A. de C.V. v. U.S. Postal Serv.*, 297 F. Supp. 2d 165, 170 (D.D.C. 2003) ("It is axiomatic that a complaint may not be amended by the briefs in opposition to a motion to dismiss.")).) Moreover, "federal jurisdiction depends on the facts as they exist when the complaint is filed." *Commercial Union Ins. Co. v. United States*, 999 F.2d 581, 585 (D.C. Cir. 1993) (citing *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 830 (1989)). Otherwise stated, "[t]o satisfy Article III, an injury in fact must be both 'concrete and particularized' and 'actual or imminent' *at the time the plaintiff files suit*." *Equal Rights Ctr. v. Post Props., Inc.*, 633 F.3d 1136, 1141 (D.C. Cir. 2011) (quoting *Lujan*, 504 U.S. at 560 and citing *Worth v. Jackson*, 451 F.3d 854, 860 (D.C. Cir. 2006)) (emphasis added). *See also Lujan*, 504 U.S. at 571 n.5 ("standing is to be determined as of the commencement of suit"). Because these two rules did not exist at the time the suit was filed, they cannot form the basis of the Bank's standing. But even if they could, the Bank's alleged injuries based on the two rules are far too speculative.

a. RESPA Servicing Rule

The RESPA Servicing Rule has numerous requirements, most of which exempt SNB as a small servicer. (*See* Tr. at 59.) The Bank is not exempt, however, from § 1024.41(j), which prohibits small servicers from making "the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless a borrower's mortgage loan obligation is more than 120 days delinquent." 12 U.S.C. § 1024.41(j). The Bank claims that this provision is causing it present injury because it "increases the Bank's cost of doing business" with regard to the outstanding mortgages it holds. (Pvt. Pl. Opp. at 14-15.) Under Texas law, the Bank was able to initiate foreclosure proceedings 20 days after issuing a letter notifying the borrower that he was in default, and a foreclosure sale could be held as soon as 21 days thereafter. (*See* First Purcell Decl. ¶ 36 (citing Tex. Prop. Code. Ann. § 51.002(a), (b), (d)).) SNB Chairman Purcell asserts that "[e]ven if the Bank did not intend to actually foreclose on a defaulted borrower, posting a foreclosure notice at the courthouse soon after a default can be a useful tool to induce such a borrower to get current on their payments – but the Bank is now prohibited by the Bureau's new rule from doing so for 120 days." (*Id*.) Therefore, according to Purcell, the new rule "will increase the Bank's costs by drawing out the process by which the Bank may seek to recover on a defaulted loan." (*Id*.)

There is substantial doubt, however, whether the Bank would ever run afoul of this rule. Defendants have cited to public records showing that the Bank has not initiated a single foreclosure from the beginning of 2008 through the end of 2012 – a time during which foreclosures were rampant nationwide – and indeed, that no mortgage has gone into default from the beginning of 2007 through the end of 2012. (*See* Def. Reply at 17-18; *id*., Exs. 3, 4.)[27]

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[27] The Bank contends that this information is not properly before the Court because, while the plaintiff can supplement the record on a 12(b)(1) motion, the defendant is limited to arguing based on the plaintiff's pleadings. (*See* Tr. at 13-15 (citing *Haase v. Sessions*, 835 F.2d 902 (D.C. Cir. 1987)).) While conversion does not apply in the 12(b)(1) context, a court can look beyond the pleadings to satisfy itself that it has standing. *Haase*, 835 F.2d at 906, 908. Of course, the Court may take judicial notice of public records, and the information regarding SNB's foreclosure history is derived from information provided by the Bank and contained in

Because the Bank chose to exit the mortgage lending business in 2010, it holds a dwindling number of mortgages, which will total only $577,000 when this rule takes effect in January 2014. (*See* Def. Reply at 17.)[28] Furthermore, loans secured by property of 25 acres or more are exempt from RESPA's requirements (*see id.* at 18 (citing 12 C.F.R. § 1024.5(b)(1))), and § 1024.41(j) only comes into effect if the loans are secured by a borrowers' principal residence. (*See id*.) The Bank, however, has failed to disclose whether any of its existing mortgages are actually subject to this rule. Moreover, following the oral argument on this motion, the Bank asked for and was given an opportunity to adduce additional facts to support its arguments. Although it did file supplementary declarations, it noted only that "[t]he Bank has previously used the foreclosure-notice-posting process provided for in Tex. Prop. Code. Ann. § 51.002(a), (b), (d)." (Second Purcell Decl. ¶ 12.) Since it is unknown when or how often this occurred, Purcell's declaration does little to sustain the Bank's burden as to standing, and it provides no basis upon which to predict that the Bank will be injured in the future with respect to the dwindling number of residential mortgages that it will hold when the rule becomes effective in 2014.

In sum, given the scant record before the Court, it is simply too speculative to suggest that the Bank would ever wish to issue a notice in less than 120 days; that it would be prevented from doing so by § 1024.5(j); and that it would incur costs as a result.[29] And, even if the Bank

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public records published by federal agencies. *See Kaempe v. Myers*, 367 F.3d 958, 965 (D.C. Cir. 2004).

[28] As of December 2012, the Bank held $725,000 in outstanding residential mortgage loans; it will hold $577,000 by the time rule takes effect in January 2014; and, assuming it does not re-enter the mortgage business, it will not hold any residential mortgages within five years. (*See* Def. Reply at 16-17.) The record does not reflect how many individual mortgages make up these figures.

[29] The Bank argues that the public call data reflects only formal foreclosures and does not account for instances in which the Bank has used informal processes to induce its mortgage

were to re-enter the mortgage market at some point in the future, as it claims it wants to do, the record does not support the Bank's claim that the rule would impose additional costs.

b. ATR-QM Rule

The Bank also alleges injury based on the ATR-QM Rule, which implements the Truth in Lending Act, as well as provisions of Title XIV of the Dodd-Frank Act. (*See* Pvt. Pl. Opp. at 14, 23; Def. Reply at 12.) But the Bank cannot base Article III standing on the rule nor does the rule satisfy the prudential ripeness standard. First, as noted above, the rule did not exist at the time the suit was filed, but rather was promulgated seven months later on January 10, 2013. Thus, to the extent that standing is based on injury "at the time the plaintiff files suit," *Equal Rights Center*, 633 F.3d at 1141, the rule cannot give rise to standing.

Furthermore, since its initial promulgation on January 10, 2013, the rule has included several provisions that significantly limit the scope of its application. The rule has always provided that a qualified mortgage that is not "higher-priced" falls within a safe harbor, meaning that the lender is conclusively presumed to have complied with the rule's requirements. *See* 78 Fed. Reg. at 6408. The Bank has not stated whether it holds any mortgages that fall into this category, or if it would hold any if it chose to re-enter the consumer mortgage market. The rule has also always included a rebuttable presumption for "higher-priced" mortgage loans that do not qualify for the safe harbor. *Id*. at 6510. When the rule was first issued in January 2013, "higher-priced" mortgages were defined as "having an APR that exceeds APOR by 1.5 percentage points

customers to get current on their payments. (*See* Tr. at 31-32.) However, the data reflects that there were no defaults from 2007 through 2012, so it is unclear when in the past six years, a period that includes the height of the housing mortgage crisis, the Bank would have had occasion to use even the informal process. (*See* Def. Reply, Ex. 4.)

for first liens[.]”[30] *Id*. Accordingly, on February 12, 2013, SNB Chairman Jim Purcell stated that “[b]efore leaving the market, the Bank offered *several loans* at interest rates that were at least 1.5% higher than the Average Prime Offer Rate. . . . Had it continued to offer consumer mortgage loans, it would have expected many of them to be of this character.” (First Purcell Decl. ¶ 25 (emphasis added).)

Importantly, however, on the same day the rule was issued, the agency proposed raising the safe harbor ceiling for small creditors from 1.5% to 3.5% APR over APOR, *see* 78 Fed. Reg. 6621, 6624 (to be codified at 12 CFR 1026) (Jan. 30, 2013), and after notice and comment, the agency issued such a rule on May 29, 2013. *See* 78 Fed. Reg. 35429, 35431 (June 12, 2013). As noted in the rulemaking,

> [b]ecause small creditors often have higher cost of funds, the final rule shifts the threshold separating qualified mortgages that receive a safe harbor from those that receive a rebuttable presumption of compliance with the ability-to-repay rules from 1.5 percentage points above the average prime offer rate (APOR) on first-lien loans to 3.5 percentage points above APOR.

Id. In response, on June 13, 2013, SNB Chairman Purcell submitted a supplemental declaration indicating that the Bank currently holds only three loans that exceed the prime rate by 3.5% (*see* Second Purcell Decl. ¶ 10), and thus, these loans, if they still exist when the rule becomes

[30] The rule also treats “certain balloon-payment mortgages as qualified mortgages if they are originated and held in portfolio by small creditors operating predominantly in rural or underserved areas.” 78 Fed. Reg. at 6409. In 2013, Dawson and Howard Counties, where SNB is based, fell into this category. *See Final list of rural and underserved counties for use in 2013*, http://consumerfinance.gov/blog/final-list-of-rural-and-or-underserved-counties-for-use-in-2013 (announcing list of counties in which small creditors will be eligible for safe harbors under Escrow Requirements under the Truth in Lending Act Rule (“Escrows Rule”); High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act Rule (“HOEPA Rule”); and Appraisals for Higher-Priced Mortgage Loans Rule.) However, Howard County, where the Bank states that the majority of its mortgages originated, has been removed from the list for 2014. (*See* Pl. Supp. Brief at 3 n.3 (*citing Final list of rural and underserved counties for use in 2014* (July 2, 2013), http://www.consumerfinance.gov/blog/final-list-of-rural-and-underserved-counties-for-use-in-2014).)

effective on January 10, 2014, will be entitled to the rebuttable presumption, not the safe harbor, in the event that a mortgagee sues or raises a defense based on the rule. *See* 78 Fed. Reg. at 35429.

But whether this rule will be invoked by a litigant is sheer conjecture since the Bank has had no mortgages in default, nor has it initiated any foreclosures or become involved in litigation over foreclosures since 2008. (*See* Def. Reply, Ex. 4.) Furthermore, there is a three-year statute of limitations for affirmative cases brought under the rule; after three years, the rule can be invoked only as a defense to foreclosure. (*See* 78 Fed. Reg. 6416.) For these same reasons, the Bank's claim that it is being prevented from re-entering the mortgage market because the rule "would impose an additional risk factor that would affect the costs and structure of the loan if the Bank were to offer it" lacks plausibility. (First Purcell Decl. ¶ 32. *See also* Pvt. Pl. Opp. at 23; Tr. at 25-26.)[31]

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[31] The Bureau noted in its notice of final rulemaking that it investigated the impacts of potential litigation and found that:

> even without the benefit of any presumption of compliance, the actual increase in costs from the litigation risk associated with ability-to-pay requirements would be quite modest. This is a function of the relatively small number of potential claims, the relatively small size of those claims, and the relatively low likelihood of claims being filed and successfully prosecuted. The Bureau notes that litigation likely would arise only when a consumer in fact was unable to repay the loan (i.e. was seriously delinquent or had defaulted), and even then only if the consumer elects to assert a claim and is able to secure a lawyer to provide representation; the consumer can prevail only upon proving that the creditor lacked a reasonable and good faith belief in the consumer's ability to repay at consummation or failed to consider the statutory factors in arriving at that belief. The rebuttable presumption of compliance being afforded to qualified mortgages that are higher-priced reduces the litigation risk, and hence the potential transaction costs, still further.

78 Fed. Reg. 6407, 6512 (Jan. 30, 2013).

As noted above, the Supreme Court is reluctant to find standing based on theories that "require guesswork as to how independent decisionmakers will exercise their judgment," *Clapper*, 133 S. Ct. at 1150, and it is "the burden of the plaintiff to adduce facts showing that . . . choices [of the independent actors] have been or will be made in such a manner as to produce causation and redressibility of injury." *Lujan*, 504 U.S. at 562. *See also Nat'l Wrestling Coaches Ass'n*, 366 F.3d at 940. The Bank has failed to carry this burden here. For even if the Bank were to offer mortgages that exceed the prime rate by 3.5%, its past record indicates that this would be a small number of mortgages; the rate of defaults would be low even among this class of borrowers; and no one can know if any of the defaulting borrowers would choose to raise the ATR-QM Rule as a defense to foreclosure.

It should also be noted that the Bank's claim of injury based on the ATR-QM Rule faces a redressability problem, insofar as the Bank has not challenged Title XIV, nor asked that the rule be set aside under the Administrative Procedure Act, 5 U.S.C. § 706. (*See* Def. Reply at 14.) Even if the Court were to invalidate Title X with the effect of nullifying the Bureau, it is arguable that rulemaking authority for TILA, which the ATR-QM Rule implements, could revert to the Federal Reserve Board, which held that authority prior to Dodd-Frank. *See* 76 Fed. Reg. 27389.[32]

Moreover, it is obvious that the rule is still a work in progress. The agency is clearly taking seriously public comments that it has received, as it has already made adjustments to the

[32] In fact, "in 2008 the Federal Reserve Board . . . adopted a rule under the Truth in Lending Act which prohibits creditors from making 'higher-price mortgage loans' without assessing consumers' ability to repay the loans. Under the Board's rule, a creditor is presumed to have complied with the ability-to-repay requirements if the creditor follows certain specified underwriting practices. This rule has been in effect since October 2009." 78 FR at 6408. The fact that a substantially similar rule was already issued by the agency that previously held regulatory authority for TILA further underscores defendants' argument that the ATR-QM Rule does not constitute an injury redressable by this Court.

rule based on concern that "small creditors operating in rural and underserved areas may reduce the number of mortgage loans they make or stop making mortgage loans altogether, limiting the availability of nonconforming mortgage credit and of mortgage credit in rural and underserved areas." 78 Fed. Reg. at 35478. So again, considerations of prudential ripeness strongly counsel against the Court's intervention. *See Devia*, 492 F.3d at 424 (the purpose of ripeness "'is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties'" (quoting *Abbott Labs.*, 387 U.S. at 148-49)).

4. UDAAP Authority

Finally, the Bank contends that it has standing to attack Title X based on the Bureau's UDAAP authority. Its challenge rests on a two-prong attack. First, the Bank claims that in October 2010, several months after the passage of the Dodd-Frank Act, it decided to exit the consumer mortgage business "to avoid the likelihood of a Bureau-driven prosecution, and to avoid the *certainty* that it would have been required to alter its mortgage lending practices had it stayed in the market." (Pvt. Pl. Opp. at 20 (emphasis in original); *see also* First Purcell Decl. ¶ 30 ("The Bank did so due to fear that those loans would be subject to enforcement action under the Dodd-Frank Act because they might be deemed to violate the prohibition against unfair, deceptive and abusive practices.").) Second, the Bank claims that "[b]ut for the Bureau, its rules, and its enforcement authority, the Bank would reenter the consumer mortgage and remittance markets without limitation." (First Purcell Decl. ¶ 38.) Neither of these claims can withstand scrutiny as a matter of law or fact.

As an initial matter, one must place the Bank's claims in context in order to understand whether either its decision to get out of the mortgage business or its decision to stay out of that business constitutes a concrete injury-in-fact caused by Title X of the Dodd-Frank Act and redressable by this Court. At the time the Bank ceased offering new mortgages in October 2010, the Bureau was barely in operation; it had not used its UDAAP authority to regulate mortgages or any other consumer products; it had not enacted any regulations; and it had not undertaken any enforcement actions.[33] In fact, the only event from that time period that plaintiffs point to in support of their claim about the "overwhelming uncertainty inherent in Title X" (Second Am. Compl. ¶ 88) is a September 17, 2010 statement by President Obama in which he asserted that the CFPB would "crack down on the abusive practice of unscrupulous mortgage lenders."[34] (*Id*. ¶ 89.)

Thereafter, the Bank filed suit on June 21, 2012, complaining about the lack of certainty as to "whether the CFPB will investigate or litigate against them, deeming [the Bank's mortgage lending] practices to be 'unfair,' 'deceptive' or 'abusive' pursuant to an *ex post facto* CFPB interpretation of the law" (Original Complaint [ECF No. 1] ("Compl.") ¶ 43), and adding allegations in 2013 when it amended the complaint about "[t]he resulting chilling effect . . . [that] forces lenders such as the Bank to either risk federal prosecution or curtail their own services and products." (Second Am. Compl. ¶ 83.) Yet, even at the time that suit was filed – two years after

[33] Indeed, the first enforcement action that the CFPB brought pursuant to its UDAAP Authority was not filed until May 30, 2013. That action was brought against a "debt-relief" company. (*See* Pvt. Pl. Opp. at 4; Jacob Second Decl., Exs. 1-2, *CFPB v. Am. Debt Settlement Solutions*, No. 13-80548 (S.D. Fla. filed May 30, 2013).)

[34] According to plaintiffs, it was not until after Cordray's appointment in January 2012 that he specifically zeroed in on the need to "address the origination of mortgages, including loan originator compensation and the origination of high-priced mortgages" in a speech given on March 14, 2012. (Second Am. Compl. ¶ 91)

the enactment of Dodd-Frank – the Bureau still had not enacted any rule that impacted the Bank's mortgage lending practices. In fact, the only mortgage rules that the Bank complains about – the ATR-QM Rule and the RESPA Servicing Rule – were promulgated on January 10, 2013 and February 14, 2013, respectively, and neither was even mentioned in the Second Amended Complaint, which was filed on February 19, 2013.[35] Moreover, neither rule was promulgated under the Bureau's dreaded UDAPP authority, but rather under preexisting laws for which the regulatory authority had been transferred to the Bureau.[36]

Nonetheless, in opposing the motion to dismiss, the Bank raised the two mortgage rules for the first time and argued that "but for the Bureau, its rules, and its enforcement authority, the Bank would reenter the consumer mortgage and remittance markets without limitation." (First Purcell Decl. ¶ 38.) Of course, as of the filing of this lawsuit, neither the mortgage rules nor the Remittance Rule had become effective, and they still have not become effective. Furthermore, each rule has been amended multiple times with the addition of significant safe harbors, which further blunt any possible future impact on either the Bank's present mortgage holdings or its future holdings should it chose to reenter the market. [37] For instance, at the time that Purcell

[35] The Remittance Rule was first promulgated on February 7, 2012, and was cited in plaintiffs' original complaint (Compl. ¶ 58). However, it is unrelated to mortgage practices and it was enacted pursuant to the EFTA, not the Bureau's UDAPP authority.

[36] The Bureau issued the final ATR-QM Rule to implement Title XIV of the Dodd-Frank Act and Amended Regulation Z, which itself implements TILA, 15 U.S.C. § 1601 *et seq*. The RESPA Servicing Rule was issued, as its name implies, under RESPA, 12 U.S.C. § 2601 *et seq*.

[37] The Court has previously discussed each of these rules and why they do not that provide standing and/or are not ripe for judicial review. (*See supra* Section III.B.2, 3.) In particular, given the record before the Court, one cannot plausibly argue that the rules inflict a current harm on the Bank nor do they plausibly impose an increase on the Bank's business costs if the Bank were to reenter the market. Alternatively, for prudential ripeness reasons, the Court will refrain from interfering in the ongoing administrative process.

executed his first declaration on February 12, 2013, he pointed to the ATR-QM Rule as a contributing factor to the Bank's unwillingness to reenter the mortgage market, but at that time, the rule's safe harbor was limited to mortgages with a rate less than 1.5% above APOR on first-lien loans. (First Purcell Decl. ¶¶ 25, 32.) Then, on May 29, 2013, the Bureau amended the rule to raise the threshold so that at present, the safe harbor includes all mortgages up to 3.5% above APOR. Thus, much of the reason for the Bank's distress has been alleviated given the expanded scope of the safe harbor, for, as of June 13, 2013, the Bank only had three outstanding mortgage loans that exceeded 3.5% above APOR. (Second Purcell Decl. ¶ 10.) And it still remains unknown whether it would offer similar higher-priced mortgages in the future if it were to reenter the market.

As this chronology demonstrates, the Bank left the mortgage market three months after the law was enacted and long before the adoption of any rule governing residential mortgages so one can only infer that the Bank's generalized fear (or dislike) of the law, and not the mere possibility of increased costs associated with the rules governing mortgages, provides the primary motivation for the Bank to stay out of this business. According to the Bank, its fear arises from the "cloud of regulatory uncertainty" (Compl. ¶ 12), which cannot, by definition satisfy *Clapper*'s requirement of "clearly impending" injury. 133 S. Ct. at 1151.[38]

[38] It is questionable that Title X is the cause of the Bank's fears, since even without its UDAAP authority, the government has ample authority to regulate mortgages. For instance, the Bank has been governed for decades by the Federal Trade Commission Act prohibition on "unfair" and "deceptive" practices. *See* 15 U.S.C. § 45. It is therefore difficult to understand how the insertion of the word "abusive" in defining the Bureau's regulatory authority could make any real difference in the types of business practices that will be scrutinized. The Bank is also subject to numerous statutes and rules regulating mortgage markets. *See, e.g.*, RESPA, 12 U.S.C. § 2601 *et seq*.; the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 U.S.C. § 5101 *et seq*.; the Interstate Land Sales Full Disclosure Act, 15 U.S.C. § 1701 *et seq*.

In addition, defendants argue persuasively that the Bank's decision to withdraw from the consumer mortgage market as of October 10, 2010, and to remain out of that market, as well as its decision to limit the number of remittance transfers to under 100, constitute "self-inflicted" injuries, in contravention of the Supreme Court's admonition that plaintiffs "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending." *Clapper*, 153 S. Ct. at 1151. As argued by defendants, the Bureau has not barred the Bank from reentering the consumer mortgage market nor limited the number of remittance transfers it can issue. (*See* Tr. at 63.) Rather, the Bank has chosen this route because of its fears of a possible hypothetical harm created by the mere existence of the Bureau's looming regulatory and enforcement powers. Standing cannot be based on this type of voluntary act by a plaintiff. *See, e.g.*, *Nat'l Family Planning & Reprod. Health Ass'n, Inc. v. Gonzales*, 468 F.3d 826, 831 (D.C. Cir. 2006) (association lacked standing because its injury was "self-inflicted" insofar as it "ha[d] within its grasp an easy means for alleviating the alleged uncertainty"); *Rodos v. Michaelson*, 527 F.2d 582, 584-85 (1st Cir. 1975) (doctors lacked standing to challenge statute restricting abortions after they ceased performing abortions based on purely speculative "fear of prosecution"); *Nova Health Sys. v. Gandy*, 416 F.3d 1149, 1157 n.8 (10th Cir. 2005) (abortion provider's injury "self-inflicted" where it responded to statute imposing civil liability for abortions performed on minors without "parental consent or knowledge" by requiring all minors to obtain in-person parental consent).

To rebut this argument, the Bank tries to argue, based on several D.C. Circuit cases, that even though the law has yet to be enforced against it, it has standing because "it is 'reasonably certain' that the company's 'business decisions will be affected' by it." (Pvt. Pl. Opp. at 20-21 (quoting *Sabre v. Department of Transportation*, 429 F.3d 1113 (D.C. Cir. 2005).) But these cases are factually distinguishable because we are nowhere near the preenforcement point found sufficient in those cases, and to the extent that they hold that standing may be based on "incurring costs in anticipation of non-imminent harm," they cannot survive *Clapper*, 133 S. Ct. at 1155.

Most notably, the Bank relies on *Sabre*, 429 F.3d 1113, and *Chamber of Commerce v. FEC*, 69 F.3d 600 (D.C. Cir. 1995). In *Sabre*, the Court of Appeals held that the plaintiff had standing "[a]lthough no regulations promulgated by the Department currently constrain [its] business activity and no relevant enforcement actions are pending against any" entity in plaintiff's line of business. 429 F.3d at 1115. However, the Court made clear that its holding was based on a combination of three particular circumstances: "[1] in the Final Rule, the Department claims that it has jurisdiction over independent CRSs under section 411; [2] its statements indicate a very high probability that it will act against a practice that Sabre would otherwise find financially attractive; and [3] it has statutory authority to impose daily civil penalties on Sabre for violation of section 411, which the Department plausibly asserts it may enforce without prior warning by rulemaking or cease-and-desist order." *Id*.

Comparable circumstances do not exist here. First, it is the OCC, rather than the Bureau, that has jurisdiction to enforce the UDAAP prohibition against the Bank, although the CFPB will undoubtedly wield significant influence over the OCC's interpretation and enforcement of the statute. (*See* Mot. to Dismiss at 18 (citing 12 U.S.C. § 5516(d)(1), (d)(2)(A), (d)(2)(B)).) More importantly, it cannot be said that there is a "very high probability," or, for that matter, any probability, that the Bureau would use its UDAAP authority to take action against the Bank even with respect to its three higher-priced mortgages or any such mortgages that it might offer in the future. In *Sabre*, the Department of Transportation issued a Final Rule and made unequivocal statements condemning the business practice in which the plaintiff wished to engage. By contrast, the Bank can only point to general statements by President Obama that the Bureau would "crack down on the abusive practice of unscrupulous mortgage lenders," and by Cordray that the Bureau would "address the origination of mortgages, including loan originator compensation and the origination of high-priced mortgages." (Second Am. Compl. ¶¶ 89, 91 (quoting 9/17/10 Address by President Obama and 3/14/12 Address by Richard Cordray).) Indeed, the Bureau has issued rules pertaining to mortgage practices (though, as noted, none pursuant to its UDAAP authority). However, it has consistently followed a course of creating exceptions for small creditors such as SNB, including the recent amendment to the ATR-QM Rule to expand the safe harbor for small creditors to include mortgages with up to 3.5% APR over APOR. (*See* 78 Fed. Reg. at 35431.) Thus, far from the unequivocal statements by the Department of Transportation in *Sabre*, the Bureau's enforcement approach against small creditors like the Bank has been nothing short of a work in progress, and there is no evidence that the Bureau intends to take action against the issuance of higher-priced mortgages in general (as opposed to unscrupulous practices associated with those types of mortgages) of the sort that the Bank has offered or would offer if it were to re-enter the market.[39]

With respect to the third factor in *Sabre* (the possibility of enforcement through civil penalties without prior notice), the Bank makes vague allegations about "*ex post facto* enforcement activities" (Pvt. Pl. Opp. at 9 (citing Second Am. Compl. ¶¶ 16-17, 77, 91)), but the

[39] To date, no action has been taken against an entity simply for offering such mortgages (which, as far as the Court can determine, is the only practice about which the Bank is apprehensive). Rather, the only enforcement action the Bureau has taken based, in part, on its UDAAP authority is against a mortgage company accused of illegally giving bonuses to loan officers to reward them for steering consumers toward mortgages with higher interest rates. *See CFPB v. Castle & Cooke Mortgage*, No. 13-0684 (D. Utah filed July 23, 2013) (alleging violations of the Compensation Rule, 12 C.F.R. § 1026.36(d)(1)(i); the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1); and Regulation Z's Record-Retention Requirements, 12 C.F.R. § 1026.25(a)).

Bureau denies that it has any such power or intent (*see* Tr. at 66), and the Bank has failed to provide any legal support for its allegations. (*See id*. at 71.) Thus, unlike *Sabre*, the Bank cannot claim the Bureau's actions to date give "rise to a significant risk" that plaintiffs' business interests will be injured in the future. *Clapper*, 133 S. Ct. at 1153-54.

Nor are the facts in *Chamber of Commerce v. FEC,* 69 F.3d 600, similar to those presented here. There, the Court based its decision in part on its conclusion that although "appellants are not faced with any present danger of an enforcement proceeding . . . [n]othing . . . prevents the Commission from enforcing its rule at any time." 69 F.3d at 603. In the specific context of the plaintiff's First Amendment challenge, the Court treated its cessation of the scrutinized political activity as evidence of the challenged regulation's chilling effect. *See id*. The question of whether a regulation has a "chilling effect" has little application beyond the First Amendment context. *See id*. ("A party has standing to challenge, pre-enforcement, even the constitutionality of a statute *if First Amendment rights are arguably chilled*, so long as there is a credible threat of prosecution." (original emphasis removed, emphasis added)); *Nat'l Rifle Ass'n of Am. v. Magaw*, 132 F.3d 272, 294 (6th Cir. 1997) ("Except for cases involving core First Amendment rights, the existence of a chilling effect has never been considered a sufficient basis, in and of itself, for prohibiting government action." (internal quotation marks and citation omitted)). Furthermore, the Court also considered that the plaintiff was particularly at risk of facing future litigation challenges to its activity because of an unusual feature of the statute in question that "permits a private party to challenge the FEC's decision *not* to enforce." *Id.* In this case, even though the Bank invokes the First Amendment doctrine of "chilling effect" (Second Am. Compl. ¶ 16), it has not substantiated its allegations by putting forward a credible "claim of specific present objective harm." *Bigelow v. Virginia*, 421 U.S. 809, 816-17 (1975).

The Bank also relies on two D.C. Circuit cases suggesting that an injury can be based on an agency action that causes a plaintiff to be exposed to additional risks, which in turn affect the plaintiff's business decisions. *See Rio Grande Pipeline Co. v. FERC*, 178 F.3d 533 (D.C. Cir. 1999); *Great Lakes Gas Transmission Ltd. P'ship v. FERC*, 984 F.2d 426 (D.C. Cir. 1993). Both of these cases are readily distinguishable. In each case, the agency *did something* that caused the plaintiff injury. In the instant case, by contrast, the Bank exited the mortgage lending business before the Bureau had done *anything*. Both cases also involved concrete consequences for the plaintiffs' business interests, in contrast to the speculative nature of the Bank's asserted injuries here. In *Rio Grande*, the Court found that the risk of future litigation had a demonstrated *concrete* impact on the plaintiff's "present economic behavior – investment plans and creditworthiness – and its future business relationships." 178 F.3d at 540.[40] Similarly, in *Great Lakes Gas*, the effect on the plaintiff's "business decisions and competitive posture within the industry" was also concrete and demonstrable. 984 F.2d at 430.[41] But those cases involved a

[40] The Court's finding was based on a record indicating not only that "the current rate may be rendered ineffective if any party files a protest," but also reflecting the plaintiff's representation that "the orders 'have had a profoundly negative effect on the active marketing of [this] project to new potential users,' have made existing and potential investors 'extremely skeptical over further investment in the project,' and have 'negatively impact[ed] both [Rio Grande's] ability to raise debt capital and its general creditworthiness.'" *Rio Grande*, 178 F.3d at 540 (quoting Rio Grande's Brief at 19-20).

[41] The Court noted:

> Because of the condition [imposed by the agency], Great Lakes has the present burden of trying to lock in future shipping contracts and NEB export licenses so that it will not be placed at risk for millions of dollars in construction costs should its expansion facility be underutilized in 2005. In the likely event that Great Lakes cannot arrange shipping contracts that far in advance, it will have to adjust its finances and investment strategy to prepare for the risk of underutilization. The at-risk condition also injures Great Lakes' competitiveness in the industry. The anticipation of a risk of lower future earnings lowers Great Lakes' creditworthiness, affecting its ability to raise capital by taking on debt.

credible threat of an actual enforcement, whereas here the Bank is worried about the hypothetical possibility of an enforcement action or a threat of litigation by a mortgagee. These possibilities are simply too speculative.[42]

In sum, the Bank's claim that "[b]ut for the Bureau, its rules, and its enforcement authority, the Bank would reenter the consumer mortgage and remittance markets without limitation" (First Purcell Decl. ¶ 38) does not establish that the Bank has suffered an injury-in-fact caused by the Bureau and Cordray, and redressable by this Court. Therefore, the Bank lacks standing on Counts One and Two.[43]

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984 F.2d at 430-31.

[42] In addition to the forecast of regulatory uncertainty and a threat of litigation by mortgagees, the Bank also cites to greater compliance costs in the future as a reason to stay out of the consumer mortgage business. (*See* Private Plaintiffs' Response to Defendants' Supplemental Brief [ECF NO. 41] at 2.) As discussed above (*see supra* Section III.B.1), the plaintiffs define these costs as expenditures incurred to monitor the developments in the law, and as already held, they do not provide a basis upon which to find standing.

[43] None of the other plaintiffs has standing on these counts either. CEI and 60 Plus claim, ever so summarily, that they have suffered injury because Title X has "increased the costs, and limited the availability, of financial services on which the Institute and the Association's members depend." (Pvt. Pl. Opp. at 34.) CEI claims injury because it maintains checking accounts with Wells Fargo, "which has recently increased fees on such accounts," while 60 Plus claims similar injuries, and in addition, claim that its members are "disproportionately impacted by the reduced interest rates offered by banks as a result of the increased regulatory burdens imposed by the CFPB." (*Id*. at 34-35.) In addition to failing to adequately allege that Title X actually caused these alleged injuries, they are the sort that fall squarely within the category of "generalized grievances," as increased checking account fees and reduced interest rates undoubtedly affect the public at large. *See Valley Forge Christian Coll. v. Americans United for Separation of Church and State*, 454 U.S. 464, 474-75 (1982); *Warth*, 422 U.S. at 499-500. The States did not join Counts One and Two. *See* Pvt. Pl. Opp. at 7.

CONCLUSION

For the reasons stated above, the Court will grant Defendants' Motion to Dismiss in its entirety. A separate Order accompanies this Memorandum Opinion.

/s/
ELLEN SEGAL HUVELLE
United States District Judge

DATE: August 1, 2013

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE NATIONAL BANK of BIG SPRING *et al*.,	
Plaintiffs,	
v.	**Civil Action No. 12-1032 (ESH)**
JACOB J. LEW *et al*.,	
Defendants.	

ORDER

For the reasons stated in the accompanying Memorandum Opinion [ECF No. 43], it is hereby

ORDERED that Defendants' Motion to Dismiss [ECF No. 26] is **GRANTED**; and it is further

ORDERED that this case is **DISMISSED**.

SO ORDERED.

/s/
ELLEN SEGAL HUVELLE
United States District Judge

DATE: August 1, 2013

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE NATIONAL BANK OF BIG SPRING *et al.*, Plaintiffs, v. JACOB J. LEW, in his official capacity as United States Secretary of the Treasury and *ex officio* Chairman of the Financial Stability Oversight Council 1500 Pennsylvania Avenue, NW Washington, DC 20220, *et al.*, Defendants.	)	Case No. 1:12-cv-01032 (ESH) Judge: Hon. Ellen S. Huvelle

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Plaintiffs State National Bank, the Competitive Enterprise Institute, and the 60 Plus Association ("Private Plaintiffs") appeal to the United States Court of Appeals for the District of Columbia Circuit from the August 1, 2013 Memorandum Opinion and Order of the District Court dismissing Plaintiffs' Second Amended Complaint (ECF Nos. 43 and 44).

Dated: August 2, 2013

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CERTIFICATE OF SERVICE

I, Gregory Jacob, hereby certify that on August 2, 2013, I electronically filed the foregoing through the CM/ECF system, which will send a notice of electronic filing to counsel for the Defendants in this matter, as well as counsel for the State of Oklahoma and the State of South Carolina.

I further certify that on August 2, 2013, I caused one hard-copy of the foregoing to be mailed by first-class U.S. Mail to each of the below-listed counsel, who are not registered with the Court's electronic filing system.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE NATIONAL BANK OF BIG SPRING *et al.*, Plaintiffs, v. JACOB J. LEW, in his official capacity as United States Secretary of the Treasury and *ex officio* Chairman of the Financial Stability Oversight Council 1500 Pennsylvania Avenue, NW Washington, DC 20220, *et al.*, Defendants.	)	Case No. 1:12-cv-01032 (ESH) Judge: Hon. Ellen S. Huvelle

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that the State Plaintiffs (the State of Alabama, the State of Georgia, the State of Kansas, the People of Michigan, the State of Montana, the State of Nebraska, the State of Ohio, the State of Oklahoma, the State of South Carolina, the State of Texas, and the State of West Virginia) appeal to the United States Court of Appeals for the District of Columbia Circuit from the August 1, 2013 Memorandum Opinion and Order of the District Court dismissing Plaintiffs' Second Amended Complaint (ECF Nos. 43 and 44).

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CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2013, a copy of the foregoing document was filed electronically via the Court's ECF system, through which a notice of the filing will be sent to all counsel of record.

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