

**Memorandum of Understanding between the  
Consumer Financial Protection Bureau and the United States Department of Justice  
Regarding Fair Lending Coordination**

**I. Background and Purpose**

1. This Memorandum of Understanding (MOU) is entered into between the Department of Justice (DOJ) and the Consumer Financial Protection Bureau (CFPB or the Bureau) (collectively, the Agencies or Parties).

2. The Department of Justice is authorized to bring federal lawsuits to enforce various civil rights statutes, including the Equal Credit Opportunity Act (ECOA), 15 U.S.C. § 1691 *et seq.*, the Fair Housing Act (FHA), 42 U.S.C. § 3601 *et seq.*, and the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. § 501 *et seq.* The DOJ's enforcement of all Federal statutes affecting civil rights, including those pertaining to housing and credit, is delegated to the Assistant Attorney General for the Civil Rights Division. 28 C.F.R. § 0.50.

3. Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act or Act), Pub. L. 111-203, established the Bureau, an independent agency with the authority to implement and enforce Federal consumer financial law as set forth in the Act, including the ECOA<sup>1</sup> and the Home Mortgage Disclosure Act (HMDA).<sup>2</sup> The CFPB is authorized to conduct hearings and adjudication proceedings under Section 1053 and commence civil actions under Section 1054 of the Dodd-Frank Act to enforce Federal consumer financial law, including ECOA and HMDA. The CFPB also has supervisory authority over certain entities with respect to Federal consumer financial law, including ECOA and HMDA, and related purposes.

4. Section 1013(c) of the Dodd-Frank Act established within the CFPB an Office of Fair Lending and Equal Opportunity. Its functions include oversight and enforcement of Federal fair lending laws and coordinating fair lending efforts of the CFPB with other Federal agencies to promote consistent, efficient, and effective enforcement of Federal fair lending laws, including ECOA and HMDA. Section 1052 of the Act authorizes the CFPB, where appropriate, among other things, to engage in joint investigations with, and requests for information from, the DOJ in matters relating to fair lending.

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<sup>1</sup> References to ECOA include reference to its implementing Regulation B.

<sup>2</sup> References to HMDA include reference to its implementing Regulation C.

5. The Dodd-Frank Act contemplates that the Agencies cooperate, as appropriate, on enforcement of Federal fair lending laws, which include ECOA. Furthermore, both the CFPB and the DOJ are authorized to file civil actions to enforce ECOA. As amended by the Dodd-Frank Act, Section 706(g) of ECOA provides for the CFPB, along with the other federal agencies having responsibility for enforcement of ECOA under Section 704 of ECOA, to refer certain violations of ECOA to the Attorney General. The Agencies also have a shared interest in ensuring that enforcement of Federal fair lending laws is consistent and not duplicative.

6. The Agencies, recognizing that effective cooperation is important to protect consumers, prevent duplication of efforts, and provide consistent enforcement of Federal fair lending laws hereby enter into this MOU regarding coordinating enforcement of the Federal fair lending laws.<sup>3</sup>

## **II. Information Sharing and Confidentiality**

1. The Agency providing the information (the Provider) will share as appropriate Non-Public Information under this MOU, including but not limited to sharing information in furtherance of referrals, joint investigations under the ECOA, and coordinating fair lending enforcement and the Provider will determine what information it considers appropriate to share under this MOU in furtherance of this MOU's purpose. This MOU is not intended to and does not alter, waive, or compromise the discretion of the Provider to determine the information it will share. Except as otherwise provided in this MOU, all exchanges of information between the Agencies under this MOU will be governed by the information sharing and confidentiality provisions set forth in this section.

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<sup>3</sup> On June 9, 2011, the CFPB became a signatory to the existing Information Sharing Agreement Regarding Fair Lending Investigations among the DOJ, the Department of Housing and Urban Development, and the Federal Trade Commission. The agreement allows these fair lending enforcement agencies to share confidential information, as appropriate, related to fair lending investigations, screening procedures, and investigative techniques. This MOU does not purport to modify this existing Information Sharing Agreement.

On January 20, 2012, the CFPB entered into a Memorandum of Understanding with the United States Department of Justice, which was amended on May 30, 2012. That agreement satisfies Section 1054(d)(2)(B) of the Dodd-Frank Act and promotes effective cooperation between the Agencies. This MOU does not purport to modify that existing Memorandum of Understanding.

2. Non-Public Information means all information in any form (including oral) that the Provider shares with the other Agency (the Recipient) pursuant to this MOU or any other agreement between the parties that allows for the sharing of information and that specifically designates that the terms of this MOU will govern the treatment of the shared information, unless the information is publicly available and the Provider expressly consents or designates the information as publicly available. Non-Public Information includes Confidential Supervisory Information, Confidential Investigatory Information, and Personally Identifiable Information, as defined below. Non-Public Information also includes information derived therefrom, such as information jointly or individually created from the shared Non-Public Information, including but not limited to privileged materials and work product; however, each Agency may, as it deems appropriate, utilize in its other fair lending-related activities analytical methods that may be derived from Non-Public Information shared pursuant to this MOU and disclose information about those analytical methods in its other fair lending-related activities, so long as such utilization or disclosure does not disclose the origin of the Non-Public Information.

3. “Confidential Supervisory Information” means any information collected, maintained, or owned by the CFPB that relates to the supervision of an entity under its supervisory authority, including pursuant to Sections 1024, 1025, and 1026 of the Dodd-Frank Act, including without limitation any information so designated by the Provider of the information.

4. “Confidential Investigatory Information” means any information collected, maintained, developed or owned by either the CFPB or the DOJ that relates to any enforcement review, investigation or action involving one or more entities under its respective enforcement authority, but not including any Confidential Supervisory Information, including without limitation any such information so designated by the Provider of the information.

5. “Personally Identifiable Information” means information that can be used to distinguish or trace an individual’s identity (such as their name, social security number, biometric records, etc.) alone, or when combined with other personal identifying information that is linked or linkable to a specific individual (such as date and place of birth, mother’s maiden name, etc.), including without limitation any information so designated by the Provider of the information.

6. The Parties will make their best efforts to share information in a timely way, or as otherwise specified in an agreement between the Parties. The Parties agree to cooperate and coordinate on the media and format of shared information.

7. All Non-Public Information shared pursuant to this MOU will remain the record or property of the Provider. To the extent that the Non-Public Information originated with



another agency or entity, the Provider will coordinate with the other agency or entity as appropriate. The Agencies will treat all Non-Public Information shared under this MOU as confidential, and the Provider will mark all such information as confidential if not already so marked. If questions arise as to whether or not specific information provided under this MOU should be marked as confidential, the Agencies will confer regarding those issues and, at the request of the Provider, the Recipient will mark as confidential after receipt specific received information that was inadvertently not marked as confidential by the Provider.

8. To the extent permitted by applicable law and in accordance with the regulations of the Provider, the Agencies will maintain the confidentiality of all Non-Public Information obtained pursuant to this MOU and will use the Non-Public Information only for purposes authorized by law or as otherwise agreed upon by the parties as set forth in Attachment A.

9. Unless the Provider consents in writing, the Agencies will disclose Non-Public Information of the other Agency only as necessary to those of its officers, employees, agents, contractors, consultants, or experts who need such information in connection with the Agency's respective responsibilities consistent with and pursuant to the requirements of the Dodd-Frank Act, other federal laws enforced by each Agency, or in furtherance of the Agencies' law enforcement purposes. The Agencies will inform those of its officers, employees, agents, contractors, consultants, or experts who are provided access to such Non-Public Information of their responsibilities under this MOU. Unless the Provider consents in writing, the Recipient will not voluntarily disclose any Non-Public Information of the Provider to any other third party, including, but not limited to, the public in connection with a proceeding or determination related to an administrative or civil action or investigation taken by the Recipient.

10. All information exchanged between the Agencies under this MOU will be exchanged in accordance with applicable laws, regulations, and policies, including but not limited to, the Right to Financial Privacy Act of 1978, 12 U.S.C. § 3401 *et seq.*, and the information security guidelines of the Provider with respect to any information that is deemed Personally Identifiable Information. The Parties agree to establish and maintain physical, electronic, and procedural safeguards to appropriately protect the Non-Public Information that may be shared under this MOU against loss, theft, misuse, unauthorized access, and improper disclosure, copying, use, modification or deletion. In addition, Personally Identifiable Information shall be protected by administrative, technical and physical safeguards appropriate to the sensitivity of the information. Any Non-Public Information shared electronically or using portable media shall be encrypted and labeled as confidential. In accordance with Office of Management and Budget Memorandum 07-16 (OMB M-07-16), breach of Personally Identifiable Information is defined to include "the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose



have access to personally identifiable information, whether physical or electronic.” In the event either Agency becomes aware of a breach of Personally Identifiable Information, that Agency shall notify the other immediately by phone and email, and shall collaborate with the other while complying with applicable breach notification policies and procedures, including Office of Management and Budget Memoranda 06-19 (OMB M-06-19) and 07-16 (OMB M-07-16).

11. Unless prohibited by law or otherwise provided in this MOU, the Recipient will:

- (a) promptly notify the Provider in writing of any legally enforceable demand or request for any Non-Public Information of the Provider (including but not limited to, a subpoena, court order, request pursuant to the Freedom of Information Act, or request by the U.S. Government Accountability Office) and provide the Provider with a copy of such demand or request. In addition, the Recipient will:
  - (i) in the case of a request made pursuant to the Freedom of Information Act, 5 U.S.C. § 552, the Privacy Act, 5 U.S.C. § 552a, or any state analogue to such statutes, advise the requester that:
    - (1) the confidential information sought may not be disclosed insofar as it is the property of the Provider; and
    - (2) any request for the disclosure of such confidential information is properly directed to the Provider pursuant to its applicable rules and regulations;
  - (ii) in the case of all other types of demands or requests, consult with the Provider before complying with the demand or request, provide the Provider a reasonable opportunity to respond to the demand prior to complying with the demand or request, assert all reasonable and appropriate legal exemptions or privileges on behalf of the Provider as the Provider may request be asserted, and consent to application by the Provider to intervene in any related action for the purpose of asserting and preserving any claims of privilege or confidentiality with respect to that Provider’s Non-Public Information;
- (b) not grant any other demand or request for the Provider’s Non-Public Information or furnish it to any third party, make public any portions of the information or make public use of the information, unless the Recipient has given prior written notice to the Provider and the Provider has not objected within ten (10) business days; and

- (c) adhere to the requirements of federal law governing disclosure of confidential information by a federal government agency, including the Privacy Act, 5 U.S.C. § 552a, and the Freedom of Information Act, 5 U.S.C. § 552.

12. Nothing in this MOU will prevent an Agency from complying with an order of a court of the United States compelling production of the Provider's Non-Public Information or, if compliance is deemed compulsory, a request or demand from a duly authorized committee of the United States Senate or House of Representatives. To the extent permitted by law, the Recipient will notify the Provider of the order, request, or demand and shall consult with the Provider on the response to such order, request or demand. The Recipient will use its best efforts to ensure that the requestor is subject to an appropriate protective order or, if the requestor is a legislative body, use its best efforts to obtain the commitment or agreement of the legislative body that it will maintain the confidentiality of the information.

13. The Agencies agree that the sharing of Non-Public Information pursuant to this MOU will not constitute public disclosure and in no way constitutes a waiver of confidentiality, the work product doctrine, or of any other applicable privileges, including the examination, deliberative process, law enforcement, or common interest privileges, or waives or alters any provisions of any applicable laws relating to Non-Public Information. To the extent that the Agencies jointly or collaboratively create or generate derived information, the authorization of both Agencies is required to waive any privileges that may be asserted with respect to such information. However, neither Agency is required to seek such authorization in order to utilize analytical methods that may be derived from Non-Public Information shared pursuant to this MOU or disclose information about those analytical methods in its other fair lending-related activities, so long as such utilization or disclosure does not disclose the origin of the Non-Public Information. The Agencies expressly reserve all evidentiary privileges and immunities applicable to the information shared under this MOU. The CFPB is sharing Non-Public Information pursuant to its applicable rules, namely 12 C.F.R. §§ 1070.40-47, and therefore its sharing of any Non-Public Information under this MOU does not constitute a waiver of, or otherwise affect, any privilege any agency or person may claim with respect to such information under federal law.

14. The CFPB and the DOJ may execute additional case or investigation specific information sharing agreements as appropriate, including for joint investigations, pursuant to the form set forth in Attachment A, which sets forth the permissible uses and confidential treatment of information shared as authorized by this MOU.



### **III. Joint Investigation and Coordination**

1. Section 1052 of the Act authorizes the CFPB, where appropriate, to engage in joint investigations with, and requests for information from, the DOJ in matters relating to fair lending.

2. When appropriate, the DOJ and the CFPB will seek to collaborate on investigations, and conduct joint investigations of entities allowing the Agencies to leverage resources and expertise.

3. The Agencies will meet no less than quarterly to discuss current fair lending investigations of entities within the jurisdiction of both Agencies and how they can coordinate and cooperate effectively in those activities.

4. When the DOJ and the CFPB conduct a joint investigation, the Agencies will work closely together to coordinate their investigations in a manner that is consistent and complementary, including but not limited to coordinating the planning and conduct of the investigation. The DOJ and the CFPB will strive to avoid unnecessarily duplicative actions. At the time that either Agency is prepared to make a determination as to how to proceed following a joint investigation, the Agencies will consult to determine whether multiple or joint actions are necessary or appropriate. However, nothing in this MOU will affect either Agency's independent authority to proceed in the manner that it determines is appropriate.

5. For any enforcement action that results from a joint investigation, the Agencies will comply with Section IV of this MOU.

### **IV. Referral and Notice Procedures**

1. The CFPB will refer a matter to the DOJ whenever the CFPB has reason to believe that one or more creditors has engaged in a pattern or practice of discouraging or denying applications for credit in violation of ECOA. Consistent with the established practice of the other federal bank regulators, the CFPB agrees to refer to the DOJ all matters where it has reason to believe that one or more creditors has engaged in a pattern or practice of lending discrimination.

2. The CFPB may refer a matter to the DOJ whenever the CFPB has reason to believe that one or more creditors has violated Section 701(a) of the ECOA. The CFPB may also refer a matter to the DOJ with a recommendation that an appropriate civil action be instituted if the CFPB is unable to obtain compliance with Section 701 of the ECOA.

3. In all of the foregoing circumstances, when the CFPB refers a matter to the DOJ, the CFPB will provide to the DOJ Non-Public Information sufficient to support the referral, subject to Paragraph II.1. During its review of a referral, the DOJ will engage in ongoing consultations with the CFPB regarding coordination of the CFPB's and the DOJ's actions. The CFPB and the DOJ will coordinate their enforcement actions and make every effort to avoid unnecessarily duplicative actions.

4. In all of the foregoing circumstances, upon the CFPB's referring a matter to the DOJ pursuant to Paragraph IV.3, the DOJ will make reasonable efforts to determine within 60 calendar days of receiving a referral whether to authorize an investigation into the matter. A referral does not deprive the CFPB of authority to take independent enforcement action. However, during this 60-day period, or until the DOJ makes its determination, whichever is shorter, absent the CFPB's determination of exigent circumstances, the CFPB will not unilaterally commence an adjudication proceeding under Section 1053 or a civil action under Section 1054 of the Dodd-Frank Act in the matter. If the CFPB determines during this 60-day period that exigent circumstances exist, the CFPB will consult with the DOJ regarding the relevant circumstances and its proposed action prior to commencing an adjudication proceeding or civil action in the matter. If the DOJ needs more than 60 days to make its determination, the DOJ may request that the CFPB extend the time period during which the CFPB will not unilaterally commence an adjudication proceeding under Section 1053 or a civil action under Section 1054 of the Dodd-Frank Act, and the CFPB may, in its discretion, extend this time period. Nothing in this paragraph restricts the CFPB from taking any action pertaining to the matter that the CFPB deems appropriate pursuant to its supervisory authority.

5. Where both the CFPB and the DOJ determine that they will take actions under their own respective authorities, the CFPB and the DOJ will seek to coordinate their actions in a manner that is consistent and complementary. The CFPB and the DOJ will discuss referrals on a case-by-case basis to determine whether multiple or joint actions are necessary and appropriate.

6. In its discretion, the DOJ may notify the CFPB whenever the DOJ has reason to believe that one or more creditors has violated the ECOA. The DOJ also may notify the CFPB when the DOJ has information that may be relevant to potential violations of other statutes enforced by the CFPB, including but not limited to violations of the Home Mortgage Disclosure Act and its implementing regulation, Regulation C.

7. In its discretion, the CFPB may notify the DOJ whenever it has reason to believe that it has information that may be relevant to potential violations of other statutes enforced by the DOJ, including but not limited to potential violations of the FHA and the SCRA, and potential violations of ECOA by creditors that may fall outside the CFPB's supervisory and



enforcement authority. This MOU does not purport to modify the CFPB's obligations under the January 20, 2012 Memorandum of Understanding with the DOJ.

8. Upon authorization of an enforcement investigation regarding the ECOA, the CFPB will notify the DOJ. Upon authorization of an investigation regarding the ECOA, the FHA, or the SCRA involving an entity under the CFPB's supervisory or enforcement jurisdiction, the DOJ will notify the CFPB.

9. Upon authorization of a civil action under the ECOA, the CFPB will notify the DOJ. Upon authorization of a civil action under the ECOA, the FHA, or the SCRA involving an entity under the CFPB's supervisory or enforcement jurisdiction, the DOJ will notify the CFPB.

10. Where feasible, when commencing a civil action under the ECOA the CFPB will notify the DOJ at least 7 days prior to filing a complaint, motion for relief, or similar document that will initiate the action or proceeding. Where feasible, when commencing a civil action under the ECOA, the Fair Housing Act, or the SCRA involving an entity under the CFPB's supervisory or enforcement jurisdiction, the DOJ will notify the CFPB at least 7 days prior to filing a complaint, motion for relief, or similar document that will initiate the action or proceeding.

## **V. Liaison**

1. For purposes of this agreement, the Assistant Director of the Office of Fair Lending and Equal Opportunity of the CFPB, will be the DOJ's liaison, and the Chief of the Housing and Civil Enforcement Section in the Civil Rights Division of the DOJ, will be the CFPB's liaison.

2. Where this MOU requires the CFPB to provide notice to the DOJ, such notice will be provided to the Chief of the Housing and Civil Enforcement Section in the Civil Rights Division of the DOJ. Where this MOU requires the DOJ to provide notice to the CFPB, such notice will be provided to the Assistant Director of the Office of Fair Lending and Equal Opportunity of the CFPB.

## **VI. General Terms**

1. This MOU is effective upon the signature by representatives of the Parties.

2. The Parties may from time to time amend this MOU in writing, and any such amendment will become effective when executed by both Parties.

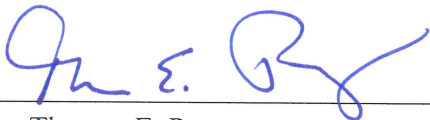
3. The DOJ and the CFPB agree to meet at least annually to assess the implementation of this MOU. This meeting may coincide with the meetings set forth in Section III.3.

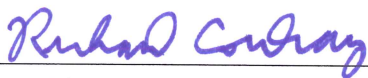
4. Nothing in this MOU creates or affords any rights or remedies to any party not a signatory to this MOU.

5. This MOU may be executed in separate counterparts, each of which when executed and delivered will be deemed an original, and all of which taken together will constitute one and the same MOU.

FOR U.S. DEPARTMENT OF JUSTICE

FOR THE CONSUMER FINANCIAL  
PROTECTION BUREAU

By   
Thomas E. Perez  
Assistant Attorney General  
U.S. Department of Justice

By   
Richard Cordray  
Director  
Consumer Financial Protection Bureau

Date: 12/6/2012

Date: 12/6/2012



ATTACHMENT A:  
INFORMATION SHARING AGREEMENT  
REGARDING [INSTITUTION NAME]

This Information Sharing Agreement (Agreement) between the Consumer Financial Protection Bureau (Bureau) and the U.S. Department of Justice (DOJ) reflects the mutual understanding between the Bureau and the DOJ (the Agencies) with respect to privileges and protections that may be asserted over, and the confidentiality of, materials shared between the Agencies in furtherance of (1) their [respective and joint, modified as appropriate] [reviews and/or investigations, as appropriate] into potential violations of the Equal Credit Opportunity Act (ECOA) and its implementing Regulation B by [Institution Name], and in anticipation of (2) potential civil enforcement actions against [Institution Name], whether administrative or judicial, arising from any such violations.

The Agencies are interested in sharing Confidential [Supervisory and/or Investigatory] Information,<sup>1</sup> including privileged materials and work product, regarding [Institution Name] in connection with their ongoing [respective and joint, modified as appropriate] [reviews and/or investigations, as appropriate] relating to fair lending practices involving [Institution Name] under the Agencies' respective authorities under the ECOA, the Home Mortgage Disclosure Act, the Fair Housing Act, and Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act. *See* 15 U.S.C. §§ 1691c(a)(9), 1691e(h); 42 U.S.C. § 3614; 12 U.S.C. § 5515; 12 U.S.C. §§ 5561-5567. The Agencies share close and common interests in enforcing the ECOA as to [Institution Name]. The Agencies accordingly agree that the sharing of information by their employees, consultants, agents and counsel will further their common law enforcement goals. The Agencies expect to consult one another throughout the enforcement process.

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<sup>1</sup> "Confidential Supervisory Information" means any information collected, maintained, or owned by the Bureau that relates to the supervision of an entity under its supervisory authority, including pursuant to Sections 1024, 1025, and 1026 of the Dodd-Frank Act, including without limitation any information so designated by the Agency providing the information.

"Confidential Investigatory Information" means any information collected, maintained, or owned by either the Bureau or the DOJ that relates to any enforcement investigation or action involving an entity under its respective enforcement authority, but not including any Confidential Supervisory Information, including without limitation any such information so designated by the Agency providing the information.

Therefore, in furtherance of their common law enforcement goals and statutory responsibilities involving [Institution Name], the Agencies intend to share certain Confidential [Supervisory and/or Investigatory] Information, privileged materials, and their written and oral work products relating to their [respective and joint, modified as appropriate] [reviews and/or investigations, as appropriate], including quantitative analysis and related computer codes, statistical data, related materials, potential litigation and settlement strategy related to their investigation, any other materials related to potential judicial or administrative enforcement actions arising out of their [respective and joint, modified as appropriate] [reviews and/or investigations, as appropriate], and any other confidential information that the Agencies create or acquire in the performance of their [respective and joint, modified as appropriate] [reviews and/or investigations, as appropriate] of [Institution Name] (all such information is collectively referred to herein as Covered Material). Covered Material includes information derived therefrom, such as information jointly or individually created from the shared Covered Material, including but not limited to privileged materials and work product; however, each Agency may, as it deems appropriate, utilize analytical methods that may be derived from Covered Material shared pursuant to this Agreement and disclose information about those analytical methods in its other fair lending-related activities, so long as such utilization or disclosure does not disclose the origin of the Covered Material. Both Agencies recognize the importance of protecting the confidentiality and/or privileged nature of the Covered Material and thus, in furtherance of the Agencies' common law enforcement interest, the Bureau and the DOJ enter into this Agreement.

*The Agencies agree to the following:*

1. All Covered Material shared pursuant to this Agreement belongs to, and will remain the record or property of, the Agency providing the Covered Material (the Providing Agency). To the extent that the Covered Material originated with another agency or entity, the Providing Agency will coordinate with the other agency or entity as appropriate. The Agencies will treat all Covered Material exchanged under this Agreement as confidential, and the Providing Agency will mark all such information as confidential if not already so marked. If questions arise as to whether or not specific information provided under this Agreement should be marked as confidential, the Agencies will confer regarding those issues and, at the request of the Providing Agency, the Agency receiving the information (the Receiving Agency) will mark as confidential after receipt specific received information that was inadvertently not marked as confidential by the Providing Agency.
2. All information exchanged between the Agencies under this Agreement will be exchanged in accordance with applicable laws, regulations, and policies, including but not limited to the Right to Financial Privacy Act of 1978, 12 U.S.C. § 3401 *et seq.*, and the information



security guidelines of the Providing Agency with respect to any information that is deemed Personally Identifiable Information.<sup>2</sup> The Agencies agree to establish and maintain physical, electronic, and procedural safeguards to appropriately protect the Covered Material that may be shared under this Agreement against loss, theft, misuse, unauthorized access, and improper disclosure, copying, use, modification or deletion. In addition, Personally Identifiable Information shall be protected by administrative, technical and physical safeguards appropriate to the sensitivity of the information. Any Covered Material shared electronically or using portable media shall be encrypted and labeled as Confidential. In accordance with Office of Management and Budget Memorandum 07-16 (OMB M-07-16), breach of Personally Identifiable Information is defined to include “the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose have access to personally identifiable information, whether physical or electronic.” In the event either Agency becomes aware of a breach of Personally Identifiable Information, that Agency shall notify the other immediately by phone and email, and shall collaborate with the other while complying with applicable breach notification policies and procedures, including Office of Management and Budget Memoranda 06-19 (OMB M-06-19) and 07-16 (OMB M-07-16).

3. The Providing Agency, in its discretion, will share as appropriate Covered Material under this Agreement, and the Providing Agency will determine what information it considers appropriate to share under this Agreement.
4. To the extent permitted by applicable law and in accordance with the regulations of the Providing Agency, the Agencies will maintain the confidentiality of all Covered Material obtained pursuant to this Agreement and will use the Covered Material exclusively in furtherance of their common law enforcement purposes. Unless the Providing Agency consents in writing, the Agencies will disclose Covered Material of the other Agency only as necessary to those of its officers, employees, agents, contractors, consultants, or experts who are directly engaged in one of the Agencies’ investigations of [Institution Name]. The Agencies will inform those of its officers, employees, agents, contractors, consultants, or experts who are provided access to such Covered Material of their responsibilities under this Agreement. Unless the Providing Agency consents in writing, the other Agency will not

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<sup>2</sup> “Personally Identifiable Information” means information that can be used to distinguish or trace an individual’s identity (such as their name, social security number, biometric records, etc.) alone, or when combined with other personal identifying information that is linked or linkable to a specific individual (such as date and place of birth, mother’s maiden name, etc.), including without limitation any information so designated by the Providing Agency.

voluntarily disclose any Covered Material of the Providing Agency to any other third party, including, but not limited to, the public in connection with a proceeding or determination related to an administrative or civil action or investigation taken by the other Agency.

5. Unless prohibited by law or otherwise provided in this Agreement, the Receiving Agency will:
  - (i) promptly notify the Providing Agency in writing of any legally enforceable demand or request for any Covered Material of the Providing Agency (including but not limited to, a subpoena, court order, request pursuant to the Freedom of Information Act, or request by the U.S. Government Accountability Office) and provide the Providing Agency with a copy of such demand or request. In addition, the Receiving Agency will:
    - (A) in the case of a request made pursuant to the Freedom of Information Act, 5 U.S.C. § 552, the Privacy Act, 5 U.S.C. § 552a, or any state analogue to such statutes, advise the requester that: (1) The confidential information sought may not be disclosed insofar as it is the property of the Providing Agency; and (2) Any request for the disclosure of such confidential information is properly directed to the Providing Agency pursuant to its applicable rules and regulations;
    - (B) in the case of all other types of demands or requests, consult with the Providing Agency before complying with the demand or request, provide the Providing Agency a reasonable opportunity to respond to the demand prior to complying with the demand or request, assert all reasonable and appropriate legal exemptions or privileges on behalf of the Providing Agency as the Providing Agency may request be asserted, and consent to application by the Providing Agency to intervene in any related action for the purpose of asserting and preserving any claims of privilege or confidentiality with respect to that Agency's Covered Material;
  - (ii) not grant any other demand or request for the Providing Agency's Covered Material or furnish it to any third party, make public any portions of the information or make public use of the information, unless the Receiving Agency has given prior written notice to the Providing Agency and the Providing Agency has not objected within ten (10) business days; and
  - (iii) adhere to the requirements of federal law governing disclosure for confidential information by a federal government agency, including the Privacy Act, 5 U.S.C. § 552a, and the Freedom of Information Act, 5 U.S.C. § 552.

6. Nothing in this Agreement will prevent an Agency from complying with an order of a court of the United States compelling production of the Providing Agency's Covered Material or, if compliance is deemed compulsory, a request or demand from a duly authorized committee of the United States Senate or House of Representatives. To the extent permitted by law, the Receiving Agency will notify the Providing Agency of the order, request, or demand and will consult with the Providing Agency on the response to such order, request or demand. The Receiving Agency will use its best efforts to ensure that the requestor is subject to an appropriate protective order or, if the requestor is a legislative body, use its best efforts to obtain the commitment or agreement of the legislative body that it will maintain the confidentiality of the information.
7. The Agencies agree that the sharing of Covered Material pursuant to this Agreement will not constitute public disclosure and in no way constitutes a waiver of confidentiality, the work product doctrine, or of any other applicable privileges, including the examination, deliberative process, law enforcement, or common interest privileges, or waives or alters any provisions of any applicable laws relating to Covered Material. The Agencies expressly reserve all evidentiary privileges and immunities applicable to the information shared under this Agreement. To the extent that the Agencies jointly or collaboratively create or generate derived information, the authorization of both Agencies is required to waive any privileges that may be asserted with respect to such information. However, neither Agency is required to seek such authorization in order to utilize analytical methods that may be derived from Covered Material shared pursuant to this Agreement or disclose information about those analytical methods in its other fair lending-related activities, so long as such utilization or disclosure does not disclose the origin of the Covered Material. The Agencies agree and acknowledge that the common interest privilege established by this Agreement is held jointly by both Agencies and that the DOJ and the Bureau agree to consult regarding any changed circumstances that might impact this privilege. The Bureau is sharing this information pursuant to its applicable rules, namely 12 C.F.R. §§ 1070.40-47, and therefore its sharing of any confidential information under this Agreement does not constitute a waiver of, or otherwise affect, any privilege any agency or person may claim with respect to such information under federal law.
8. The confidentiality obligations established by this Agreement will remain in full force and effect, without regard to whether the Agreement is terminated pursuant to Paragraph 9 and without regard to whether the Agencies' respective investigations are terminated in any way, including final judgment by a court or settlement.
9. Either the Bureau or the DOJ may terminate this Agreement subject to Paragraph 8, by notifying the other Agency in writing of its intention to withdraw from this Agreement. Any



such termination will take effect seven calendar days after an Agency's receipt of the other Agency's written intention to withdraw from this Agreement.

10. This Agreement may be modified, amended, or supplemented only by a written instrument signed by the Agencies. This Agreement may be executed in separate counterparts, each of which when executed and delivered will be deemed an original, and all of which taken together will constitute one and the same Agreement. Facsimile signatures are acceptable.

FOR U.S. DEPARTMENT OF JUSTICE

FOR THE CONSUMER FINANCIAL  
PROTECTION BUREAU

By \_\_\_\_\_  
[Name]  
Deputy Chief  
Housing and Civil Enforcement Section  
U.S. Department of Justice

By \_\_\_\_\_  
[Name]  
Assistant Director  
Office of Fair Lending and Equal  
Opportunity  
Consumer Financial Protection Bureau

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By \_\_\_\_\_  
[Name] [as appropriate]  
Deputy Assistant Director  
Office of Enforcement  
Consumer Financial Protection Bureau

Date: \_\_\_\_\_

By \_\_\_\_\_

[Name] [as appropriate]

Assistant Director

Office of Supervision [Operations or  
Policy]

Consumer Financial Protection Bureau

Date: \_\_\_\_\_