



Regulatory: Financial regulators regulate themselves over who they will regulate *Joint supervisory statement clarifies Consumer Financial Protection Bureau's jurisdiction*

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By [Martin Bishop](#)

This column is part of a series of articles on the new Consumer Financial Protection Bureau and the upcoming wave of regulations affecting the consumer financial industry.

In order “to provide clarity and transparency,” the Consumer Financial Protection Bureau (Bureau) and the Prudential Regulators—the Federal Reserve Board, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency and the National Credit Union Administration—jointly issued a supervisory statement addressing agency jurisdiction over the largest banks and credit unions in the United States.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), while sweeping in scope, left unanswered some critical questions about which regulator regulates certain financial institutions and when.

For purposes of the federal consumer financial protection laws, Section 1025 of the Dodd-Frank Act gives the Bureau exclusive supervisory authority and primary enforcement authority over financial institutions that have total assets over \$10 billion (so-called large institutions), as well as any of their affiliates. Section 1026 of the Dodd-Frank Act dictates that, for all other financial institutions, the Prudential Regulators will retain supervisory and enforcement authority when it comes to consumer financial protection.

The missing pieces of this jurisdictional puzzle are how and when to determine whether a financial institution has \$10 billion in assets. Because the Dodd-Frank Act is silent on the issue, the Prudential Regulators and the Bureau got together on their own to set appropriate policies and procedures. In order to do so, the agencies needed to determine how to measure the size of financial institutions and when to take that measurement.

As to the former, the agencies found that Section 7(a)(3) of the Federal Deposit Insurance Act requires financial institutions to file Call Reports on a quarterly basis, which provide an account of the condition of the institution, including a disclosure of its total assets. Because this measure is the most common measure of asset size, the agencies determined that it was therefore “appropriate” to use Call Reports to determine size for the purposes of Sections 1025 and 1026 of the Dodd-Frank Act.

With respect to the timing of size measurements, the agencies were properly concerned about avoiding undue uncertainty and volatility in the identification of a financial institution’s primary regulator. Imagine if an institution regularly teetered on the \$10 billion threshold. Would it report one day to its Prudential Regulator and the next to the Bureau?

The agencies duly avoided this untenable situation by deciding to look at Call Reports for four consecutive quarters before changing an institution’s status. Thus, if an institution reports \$10 billion in assets for four quarters in a row, then it is a large institution for purposes of Sections 1025 and 1026; if it reports under \$10 billion, it is not. The FDIC has a long-standing history of using this precise method, which provides some continuity and certainty to a regulatory regime that is in such an extended state of flux at the moment.

When will the first measurements take place? Well, unbeknownst to anyone, they have already. Notwithstanding the very recent announcement regarding these issues, the agencies have decided to use Call Reports from June 30, 2011 as the starting place. The agencies rationalized this decision because June 30, 2011 is the closest Call Report date to the date that authority for the federal consumer protection laws was transferred to the Bureau (the “Designated Transfer Date” was July 21, 2011).

If an institution reported \$10 billion in assets as of June 30, then it is a Large Institution for purposes of Sections 1025 and 1026 of the Dodd-Frank Act. Subsequently, as noted, a bank or credit union will not cross back and forth across the large institution line unless it sustains or fails to sustain \$10 billion in assets for at least a year’s worth of Call Reports.

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