

**Memorandum of Understanding
Between the Antitrust Division of the U.S. Department of Justice
and the Consumer Financial Protection Bureau**

I. Purpose and Scope

This Memorandum of Understanding (“MOU”) is entered into between the Antitrust Division of the U.S. Department of Justice (“Antitrust Division”) and the Consumer Financial Protection Bureau (“CFPB”) (collectively referred to as “the Agencies”). The Agencies recognize the value of strengthening our collaborative relationship to enhance and maximize the enforcement of the federal laws administered and enforced by the Agencies, and to promote competition in financial markets. The Agencies enter into this Memorandum of Understanding (“MOU”) to strengthen the Agencies’ partnership through greater coordination in information sharing, coordinated investigations and enforcement activity, market monitoring, training, education, and outreach.

This MOU is intended to memorialize this understanding between the Agencies regarding cooperation between the CFPB and the Antitrust Division. This MOU is a voluntary agreement that expresses the good-faith intentions of the Agencies, is not intended to be legally binding, does not create any contractual obligations, and is not enforceable by any party. This MOU does not obligate and will not result in an exchange of funds, personnel, property, or services, or any kind of financial commitment. This MOU outlines procedures to be followed by both Agencies in working together to address the need for information sharing, coordinated investigations and enforcement activity, market monitoring, training, education, and outreach between the Agencies. Nothing in this MOU limits either Agency’s discretion to determine what information it will share with the other Agency.

The CFPB enforces the Truth in Lending Act, the Truth in Savings Act, the Electronic Fund Transfer Act, and other related statutes and regulations that protect the nation’s consumers. The CFPB’s primary function is to ensure that banks, lenders, and other financial companies treat consumers fairly. The Antitrust Division enforces the antitrust laws of the United States, including the Sherman Act, the Clayton Act, and related statutes.

By entering into this MOU, the Agencies do not imply an endorsement or promotion by either Agency of the policies, programs, or services of the other. Nothing in this MOU will be interpreted as limiting, superseding, or otherwise affecting the Agencies’ normal operations or decisions in carrying out their statutory or regulatory duties, or duties under any Executive Order. This MOU also does not limit or restrict the Agencies from participating in similar activities or arrangements with other entities.

The Agencies share an interest in protecting consumers and promoting competition in financial markets. The Agencies therefore enter into this MOU to advance these interests and promote

interagency collaboration, information exchanges, training, and other forms of cooperation to the fullest extent desired by the Agencies and permitted by law.

On January 20, 2012, the DOJ entered into a Memorandum of Understanding with the CFPB, which was amended on May 30, 2012. That Memorandum of Understanding satisfies Section 1054(d)(2)(B) of the Dodd-Frank Act and promotes effective cooperation between the Agencies by enabling the Agencies to avoid conflicts and promote consistency regarding litigation of matters under Federal Law. This MOU addresses additional ways the Agencies may cooperate and does not purport to modify that existing Memorandum of Understanding. Nor does this MOU purport to address CFPB collaboration with DOJ divisions outside the Antitrust Division or modify existing memoranda of understanding between the CFPB and other DOJ divisions.

II. Coordination Activities

A. Agency Liaison

Each Agency will designate one or more points of contact responsible for ensuring effective, ongoing collaboration (“Agency Liaison”).

Each Agency shall endeavor to update the other if it designates a new Agency Liaison.

B. Information Sharing

Consistent with the purposes of this MOU, and to the extent permitted by law, regulation, Agency policy, contract, and this MOU, each Agency may share Non-Public Information (defined in Part III), including complaints, investigative files, reports or analyses prepared by either Agency, or data, and provide technical assistance, including guidance on policy and enforcement matters.¹

Requests for information under this MOU shall be made through each Agency Liaison, or others designated by them as necessary, and each Agency shall promptly respond to these requests as appropriate and as soon as practicable consistent with the availability of the responding Agency’s staff, resources, and priorities.

The Antitrust Division and the CFPB will review this MOU periodically to evaluate the existing information sharing, examine the continuing needs for information sharing, to discuss the utility of categories of data heretofore shared, and determine whether the provisions of this MOU require amendment or revision.

¹ Examples of such information sharing might include the Antitrust Division asking the CFPB about how Electronic Fund Transfers regulations may apply to planned services resulting from the merger of two fintech companies, or the CFPB asking the Antitrust Division during the drafting of a NPRM whether there may be competition concerns from requiring consumer lenders to standardize the public disclosure of terms and statistics.

C. Training, Education, and Outreach

Where the Agencies mutually determine it to be appropriate, the Agencies shall provide training to each Agency's staff in identifying cases and issues that may arise under the other Agency's jurisdiction; engage in outreach and public education; share or co-develop training materials and programs; and develop joint policy statements and technical assistance documents when appropriate to facilitate a greater understanding and awareness of the laws the Agencies enforce. The Agencies' training, outreach, and education efforts, such as those described herein, shall include coordination on the experiences and enforcement perspectives of each Agency in protecting and preserving competition in financial markets, when appropriate. The Agencies may also meet periodically, and otherwise routinely share information as otherwise provided for by this MOU.

All public materials bearing the DOJ or Antitrust Division name, logo, or seal must be approved in advance by the Antitrust Division. All public materials bearing the CFPB name, logo, or seal must be approved in advance by the CFPB. Any such materials that include the opinions, results, findings, and/or interpretations of data arising from the result of activities of the Agency carrying out the activity do not necessarily represent the opinions, interpretation, or policy of the other Agency.

D. Consultation and Coordination

The Agencies may periodically consult on activities, including specific complaints, proposed rules, market monitoring, or possible violations of laws or regulations. Such consultation may involve reviewing information obtained during the course of investigations or coordinating requests for information, as permitted by law, regulation, agency policy, and this MOU. Staff may also exchange information about general patterns of conduct that may be anticompetitive or otherwise harm consumers or others.

E. Referrals

When the CFPB detects potential antitrust violations while investigating conduct under the statutes it enforces, it will evaluate and, as appropriate, refer the matter to the Antitrust Division.

Following a referral from the CFPB, the Antitrust Division will determine whether to open a civil or criminal investigation into the conduct and, after investigation, whether to bring a lawsuit based on the conduct. If the Division decides against accepting the referral, it will promptly notify the CFPB. Accepting the referral does not indicate the Antitrust Division will open a civil or criminal investigation into the conduct.

When the Antitrust Division detects potential violations of laws enforced by the CFPB during the course of enforcing the statutes it enforces, it will evaluate and, as appropriate, refer the matter to CFPB.

Following a referral from the Antitrust Division, the CFPB will determine whether to take action based on the referral. If the CFPB decides against accepting the referral, it will promptly notify the Antitrust Division. Accepting the referral does not indicate that the CFPB will open an investigation or pursue litigation regarding the conduct.

III. Non-Public Information

When one of the Agencies provides Non-Public Information pursuant to this MOU (the “Providing Agency”) to the other Agency (the “Receiving Agency”), the Receiving Agency shall presume the information so provided to be confidential and will maintain the confidentiality of such information in accordance with the terms of this MOU, unless and until the Providing Agency designates otherwise in writing.

For purposes of this MOU, “Non-Public Information” means any information shared pursuant to this MOU that has not been designated as public information. Such Non-Public Information includes the information itself, in any form (including written, oral or electronic), and any documents or other materials derived from the information.

IV. Protecting the Confidentiality of Non-Public Information

- A. All Non-Public Information transferred from the Providing Agency to the Receiving Agency belongs to, and shall remain the property and records of the Providing Agency.
- B. The Receiving Agency shall maintain the confidentiality of the Non-Public Information and, except as specifically provided in this Section IV, or with the written approval of the Providing Agency, will not disclose or otherwise make public any Non-Public Information to a third party.
- C. Non-Public Information may be shared only with officials and employees of the Receiving Agency who have a need to know the information in the performance of their official duties, consistent with applicable law. The Receiving Agency will establish and maintain such safeguards as are necessary and appropriate, including appropriate administrative, technical, and physical safeguards, to protect the confidentiality, data security, and integrity of any Non-Public Information obtained from the Providing Agency. All officials and employees of a Receiving Agency with whom Non-Public Information is shared must comply with the terms of this MOU.

- D. The Receiving Agency will promptly notify the Providing Agency in the event of an unauthorized disclosure of the Providing Agency's Non-Public Information, including identifying, where possible, any recipient of information outside of the Receiving Agency or Providing Agency. In the event of such unauthorized disclosure, the Receiving Agency will take appropriate steps to recover the Non-Public Information.
- E. The Agencies will notify one another upon commencement of litigation, a hearing, or other proceeding that may involve the release, through subpoena, introduction of written evidence, or testimony, of Non-Public Information exchanged under this MOU.
- F. If a Receiving Agency receives a legally enforceable request or demand from a third party for Non-Public Information of a Providing Agency including, but not limited to, a Congressional request or Freedom of Information Act request, the Receiving Agency will:
- (i) Unless prohibited by law, promptly notify the Providing Agency in writing of such request or demand for any Non-Public Information of the Providing Agency and furnish to the Providing Agency copies of any such demand or request as well as any documents related thereto;
 - (ii) Afford the Providing Agency a reasonable opportunity to take whatever action it deems appropriate to preserve, protect, or maintain the confidentiality of the Non-Public Information or any privileges associated therewith;
 - (iii) Consistent with law applicable to the Receiving Agency, notify the requestor seeking the Non-Public Information that requests for such information should be made directly to the Providing Agency in accordance with the law applicable to the Providing Agency;
 - (iv) Cooperate fully with the Providing Agency to preserve, protect, and maintain the confidentiality of the Non-Public Information and any privileges associated therewith, including asserting any legal exemptions or privileges on the Providing Agency's behalf that may reasonably be requested to be asserted, including withholding Non-Public Information from disclosure and not disclosing except as provided in this Section IV; and
 - (v) Consent to an application by the Providing Agency to intervene in any related action solely for the purposes of asserting and preserving any of its privileges or claims of confidentiality with respect to Non-Public Information shared pursuant to this MOU.
- G. In the case where the Receiving Agency must comply with a legally enforceable obligation, such as an obligation to provide discovery in a criminal investigation, including when there is no order by a court of competent jurisdiction:

- (i) The Receiving Agency will notify the Providing Agency of its intent to comply with its legal obligation and it will seek a protective order to preserve, protect, and maintain the confidentiality of the Non-Public Information disclosed when possible; or
 - (ii) In the case of a request or demand from a duly authorized committee of the United States Congress with authority to require and receive the Non-Public Information, the Receiving Agency must advise the committee that the Non-Public Information belongs to the Providing Agency and direct the committee to obtain the Non-Public Information directly from the Providing Agency.
- H. Nothing in this MOU shall prevent a Receiving Agency from complying with a legally enforceable obligation including a valid and enforceable order of a court of competent jurisdiction or, if compliance is deemed compulsory, a request or demand from a duly authorized committee of the United States Congress with authority to require and receive the Non-Public Information or testimony. To the extent that compulsory disclosure of Non-Public Information occurs, the Receiving Party shall use its best efforts to ensure that the requestor secures 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 Non-Public Information.
- I. The Agencies intend that sharing of Non-Public Information that is subject to this MOU will not constitute public disclosure, nor will it constitute a waiver of the work-product doctrine, confidentiality, or any privilege or disclosure exemption applicable to such information including, but not limited to, deliberative and predecisional materials. Neither Agency shall have authority to waive any applicable privilege or doctrine on behalf of the other Agency, nor shall any waiver of an applicable privilege or doctrine by the conduct of one Agency be construed to apply to the other Agency.
- J. When the receiving Agency no longer has a reasonable need for Non-Public Information, e.g., at the conclusion of an investigation and prosecution by either party, the Receiving Agency will return any and all Non-Public Information to the Providing Agency, except as required by law, including the Federal Records Act, or will destroyed it no later than thirty (30) days after its use (including the time period required for compliance with federal records retention laws).
- K. *Information Security Protections*
 - (i) For information security purposes, Non-Public Information (including paper-based documents and electronic information such as emails and CDs) exchanged pursuant to this MOU remains the responsibility of the Providing Agency while in transit. The Agencies agree to establish a communication protocol for notifying each Agency Liaison when Non-Public Information is sent to or received from that agency, including a description of the form of the transfer and the media type and

quantity (when appropriate). A Receiving Agency expecting to receive Non-Public Information will notify the Providing Agency if the information is not received as of the next business date following the agreed upon delivery date.

- (ii) Non-Public Information will not be electronically mailed, unless encrypted using Federal Information Processing Standards (FIPS) 140-2 and National Institute of Standards and Technology (NIST) compliant. Non-Public Information may be transmitted via secure FTP.
- (iii) For information security purposes, upon receipt of Non-Public Information from the Providing Agency, the Receiving Agency becomes responsible for any security incidents, inadvertent disclosure as well as physical and information technology safeguards in place for protecting that information.
- (iv) However, in the event that the Receiving Agency experiences a security incident or disaster that results in the suspected or confirmed inadvertent disclosure of Non-Public Information exchanged by the Providing Agency pursuant to this MOU, the Receiving Agency experiencing the incident or disaster will send formal written electronic notification to the Providing Agency's Liaison immediately within three (3) days after detection of the incident or disaster. The written electronic notification will describe the security incident or disaster in detail including what Non-Public Information exchanged pursuant to this MOU may have been inadvertently disclosed.

V. Other Matters

This MOU will take effect immediately upon signature by both Agencies and will remain in effect until terminated by the Agencies. This MOU may be modified in writing by mutual consent of both Agencies. This MOU may be cancelled by either Agency by giving ninety (90) days advance written notice to the other Agency prior to the date of cancellation. Renewal of the MOU may be accomplished by written agreement of both Agencies. Provisions related to the confidentiality and handling of information, including Non-Public Information, exchanged pursuant to this MOU shall survive the termination of this MOU.

This MOU and all of its terms and conditions are not intended to relieve either a Providing Agency or a Receiving Agency of the requirements of any applicable law, including the Privacy Act of 1974, 5 U.S.C. § 552a, or the Right to Financial Privacy Act, 12 U.S.C. § 3401-3422.

This MOU does not create legally binding obligations on the Agencies and does not create any right enforceable against the Agencies or any of their officers, employees, or any other person. This MOU also does not confer upon any third-party the right or ability, either directly or

indirectly, to obtain, suppress, or exclude any information, or to challenge the execution of a request under this MOU. This MOU does not modify the ability and responsibility of the Agencies to enforce their respective statutes and regulations.

This MOU may be executed in separate counterparts, each of which when so executed and delivered shall be an original, but all of which together shall constitute one and the same agreement.

Whistleblower protections. These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive Order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive Orders and statutory provisions are incorporated into this MOU and are controlling.

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AGREED:

U.S. DEPARTMENT OF JUSTICE

By: Jonathan Kanter Digitally signed by Jonathan Kanter
Date: 2023.11.01 09:42:25 -04'00' Date: November 1, 2023

Name: Jonathan Kanter

Title: Assistant Attorney General, Antitrust Division, U.S. Department of Justice

AGREED:

CONSUMER FINANCIAL PROTECTION BUREAU

By: *Rohit Chopra* _____ Date: October 23, 2023

Name: Rohit Chopra

Title: Director, Consumer Financial Protection Bureau