

**Basis for the Financial Stability Oversight Council's  
Final Determination Regarding Prudential Financial, Inc.**

**Introduction**

Pursuant to section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Financial Stability Oversight Council (Council) has made a final determination that material financial distress at Prudential Financial, Inc. (Prudential) could pose a threat to U.S. financial stability and that Prudential should be subject to supervision by the Board of Governors of the Federal Reserve System (Board of Governors) and enhanced prudential standards.

In reaching this determination, the Council carefully considered a broad range of information in light of the statutory factors set forth in section 113(a)(2) of the Dodd-Frank Act, both separately and in conjunction with each other. The Council has considered information available through existing public and regulatory sources, as well as information provided by Prudential. The Council also consulted with certain regulators of Prudential or its insurance subsidiaries.

On June 3, 2013, the Council made a proposed determination under section 113 of the Dodd-Frank Act that material financial distress at Prudential could pose a threat to U.S. financial stability and that Prudential should be subject to Board of Governors supervision and enhanced prudential standards. The Council provided Prudential with an explanation of the basis for the Council's proposed determination and informed the company of its right to request a hearing before the Council to contest the proposed determination. On July 2, 2013, Prudential requested a written and an oral hearing before the Council. Prudential subsequently submitted written hearing materials to the Council, and the Council held an oral hearing on July 23, 2013.

Based on the Council's evaluation of all the facts of record in light of the factors that the Council is required to consider under section 113 of the Dodd-Frank Act and the Council's interpretive guidance regarding nonbank financial company determinations (Interpretive Guidance),<sup>1</sup> the Council has voted to make a final determination that material financial distress at Prudential could pose a threat to U.S. financial stability and that Prudential will be supervised by the Board of Governors and subject to enhanced prudential standards.

The Council's final determination does not constitute a conclusion that Prudential is experiencing material financial distress. Rather, consistent with the statutory standard for determinations by the Council under section 113 of the Dodd-Frank Act, the Council has determined that material financial distress at the company, if it were to occur, could pose a threat to U.S. financial stability.

**Executive Summary**

In making its determination, the Council considered the statutory factors and all the facts of record.

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<sup>1</sup> 12 C.F.R. part 1310, app. A (2013).

Prudential is a significant participant in financial markets and the U.S. economy and is significantly interconnected to insurance companies and other financial firms through its products and capital markets activities. Because of Prudential's interconnectedness, size, certain characteristics of its liabilities and products, the potential effects of a rapid liquidation of a significant portion of its assets, potential challenges with resolvability, and other factors described herein, material financial distress at Prudential could lead to an impairment of financial intermediation or of financial market functioning that would be sufficiently severe to inflict significant damage on the broader economy.

Prudential is one of the largest financial services companies in the United States. Through its subsidiaries, it is a market leader in providing a wide array of financial services including group and individual life insurance, annuities, retirement-related products and services, and asset management. Prudential is among the largest U.S. insurance companies in terms of its general account assets, separate account assets, and assets under management. As of December 31, 2012, the company had approximately \$3.6 trillion of total in-force life insurance and \$709 billion in total on-balance sheet assets, including \$424 billion of general account investments and cash and \$253 billion of separate account assets. Prudential also manages a significant amount of off-balance sheet, third-party assets.

Prudential is interconnected with global systemically important banks, nonbank financial companies, large insurance companies, and other companies of all sizes through its broad mix of institutional customers, debt holders, and other counterparties. Corporations, banks, and pension plans have exposures to Prudential through retirement and pension products, corporate- and bank-owned life insurance, and other group insurance products. Many employee benefit retirement plans have large exposures to Prudential through insurance and stable value products. Material financial distress at Prudential could impair the ability of pension plans to meet certain obligations to retirement plan participants. Prudential's capital markets activities, including its derivatives activities, its use of credit lines from large banks, its securities lending and reverse repurchase portfolio, and its issuance to investors of equity and debt, expand its connections to other financial firms and markets.

While exposures to Prudential may be small relative to the capital of its individual counterparties, aggregate exposures are significant enough that they could amplify the risk of contagion among other financial institutions if Prudential were to experience material financial distress. For example, if Prudential were to experience material financial distress, the company's derivatives portfolio could be a source of risk to its derivative counterparties, which could experience losses through unwinding bilateral derivative trades. The largest of Prudential's derivative counterparties also have other significant exposures to Prudential.

A significant amount of Prudential's U.S. life insurance policies are subject to early withdrawal and include a significant cash surrender value. While the company has the right to defer payouts on a significant portion of policies with immediately payable cash surrender values, the company could have strong disincentives to invoke this option because of the negative signal invoking such a deferral could provide to counterparties, investors, and policyholders. The exercise of such contractual provisions to defer payouts, combined with operational and logistical considerations, could slow any asset liquidation. However, this action, if taken at a time when the company is experiencing material financial distress, could spread concern regarding the

company in the marketplace. Such concern could exacerbate the company's material financial distress and result in negative effects for counterparties, policyholders, and the broader industry. Actions to temporarily restrict customer access to withdrawable policies could also induce customer concern about access to funds at other insurance companies with similar assets or product profiles, especially in the context of a period of overall stress in the financial services industry and in a weak macroeconomic environment.

In the event of its material financial distress, Prudential could face pressure to rapidly liquidate a significant portion of its general account assets to meet redemption and withdrawal requests. In addition, although Prudential's separate account contract holders have disincentives for surrendering policies, a significant portion of Prudential's separate account liabilities also can be surrendered at or near market value. Therefore, separate account contract holders, particularly those with guaranteed contracts, also could choose to surrender policies, particularly if they lost confidence in Prudential's ability to meet its obligations.

A liquidation of a significant portion of Prudential's assets could cause significant disruptions to key markets including the corporate debt and asset-backed securities markets, particularly during a period of overall stress in the financial services industry and in a weak macroeconomic environment, when liquidity dries up and price swings can be magnified. The severity of the disruption caused by a forced liquidation of Prudential's assets could be amplified by the fact that the investment portfolios of many large insurance companies are composed of similar assets, which could cause significant reductions in asset values and losses for those firms. Furthermore, beyond the direct effect of Prudential's asset liquidation on the financial markets, other insurance companies could be exposed to second-order effects if asset liquidations at Prudential sparked a loss of confidence in the broader insurance industry because of their similar product or balance sheet profiles, potentially leading to policy withdrawals, surrenders, or redemptions at other major insurers. Even if Prudential were able to avoid significant asset liquidations in response to surrender and withdrawal requests by invoking a stay, these requests, once started, could cause market participants to lose confidence in the financial strength of companies with similar product or balance sheet profiles. The erosion of capital and potential de-leveraging at Prudential and other similar firms could result in asset fire sales that cause significant damage to the broader economy.

Asset liquidation resulting from withdrawal requests of Prudential's policyholders could be exacerbated by its derivative and short-term funding counterparties, which could, under existing agreements, require Prudential to either post additional collateral or to raise cash to close out certain funding transactions.

Prudential plays a leading role in the annuity, retirement, asset management, and commercial mortgage servicing markets. While the withdrawal of a market leader across so many business lines at once could exacerbate financial market disruptions caused by material financial distress at Prudential, these markets appear to be competitive and would likely be able to absorb the withdrawal of Prudential, although the negative effects of a withdrawal of a market leader such as Prudential could be exacerbated during a period of economic stress and broader pullbacks across many industry and non-insurance business lines.

The interstate and cross-border complexities involved in resolving a large troubled organization operating in many states and countries could exacerbate the negative effects described above. In addition to the significant challenges associated with the involvement of various domestic and international regulators and judicial bodies in resolving such an institution—including state regulators, the state and federal court system, and foreign regulators—an orderly resolution of Prudential could be complicated by a number of factors.

Prudential's U.S. subsidiaries are highly interconnected to each other through funding arrangements, derivatives exposures, guarantees, and reinsurance. Additionally, while the sale of large blocks of Prudential's business could limit the associated harm resulting from material financial distress at Prudential, selling sizable business lines could be difficult, especially in a period of stress in the financial markets and in a weak macroeconomic environment. Such sales could be complicated by the amount of time required for such a transaction, intra-firm interconnectedness and complexity in light of Prudential's size and internal funding mechanisms, and the challenge of achieving a competitive valuation. The resolution of Prudential also could place significant financial and administrative strain on the state-based guaranty fund system (GA System).

Based on the Council's evaluation of all the facts of record in light of the statutory factors that it is required to consider under the Dodd-Frank Act, the Council has concluded that material financial distress at Prudential could cause an impairment of financial intermediation or of financial market functioning that would be sufficiently severe to inflict significant damage on the broader economy. Therefore, the Council has made a final determination that material financial distress at Prudential could pose a threat to U.S. financial stability and that Prudential should be subject to Board of Governors supervision and enhanced prudential standards.

### **Determination that Prudential is Predominantly Engaged in Financial Activities**

The Council is authorized to determine that a “nonbank financial company” will be subject to supervision by the Board of Governors and enhanced prudential standards.<sup>2</sup> A company is a nonbank financial company, and thus eligible for a determination by the Council, if it is *predominantly engaged in financial activities*, subject to certain exceptions.<sup>3</sup> Section 102(a)(6) of the Dodd-Frank Act provides that a company is “predominantly engaged in financial activities” if at least 85 percent of the company's and its subsidiaries' annual gross revenues are derived from, *or* at least 85 percent of the company's and its subsidiaries' consolidated assets are related to, “activities that are financial in nature” as defined in section 4(k) of the Bank Holding Company Act of 1956, as amended (BHC Act).<sup>4</sup>

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<sup>2</sup> See Dodd-Frank Act section 113, 12 U.S.C. § 5323.

<sup>3</sup> Dodd-Frank Act section 102(a)(4), 12 U.S.C. § 5311(a)(4).

<sup>4</sup> Dodd-Frank Act section 102(a)(6), 12 U.S.C. § 5311(a)(6). The Board of Governors' Regulation PP describes activities that are financial in nature as defined in section 4(k) of the BHC Act and establishes the requirements for determining if a company is predominantly

Based on Prudential's 2012 income statement, more than 85 percent of Prudential's revenues are derived from activities that are financial in nature. In addition, based on Prudential's consolidated balance sheet as of year-end 2012, more than 85 percent of Prudential's assets are related to activities that are financial in nature. These activities include life insurance, annuities, investing, and asset management activities.<sup>5</sup> Thus, Prudential is a nonbank financial company and is eligible for a final determination by the Council.

### **The Statutory Standard and the Legal Framework for a Final Determination**

Under section 113 of the Dodd-Frank Act, the Council may determine that a nonbank financial company will be supervised by the Board of Governors and be subject to prudential standards if the Council determines that (1) material financial distress at the nonbank financial company could pose a threat to the financial stability of the United States (the First Determination Standard) or (2) the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company could pose a threat to the financial stability of the United States (the Second Determination Standard).

The Council may subject a nonbank financial company to Board of Governors supervision and enhanced prudential standards if either the First or Second Determination Standard is met. The Council evaluated Prudential under the First Determination Standard.

In considering whether to make a determination that a nonbank financial company will be supervised by the Board of Governors and subject to enhanced prudential standards, section 113 of the Dodd-Frank Act requires the Council to consider the following 10 statutory factors:<sup>6</sup>

1. the extent of the leverage of the company;
2. the extent and nature of the off-balance-sheet exposures of the company;
3. the extent and nature of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;
4. the importance of the company as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the United States financial system;
5. the importance of the company as a source of credit for low-income, minority, or underserved communities, and the impact that the failure of such company would have on the availability of credit in such communities;
6. the extent to which assets are managed rather than owned by the company, and the extent to which ownership of assets under management is diffuse;
7. the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company;

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engaged in financial activities for purposes of Title I of the Dodd-Frank Act. See 12 C.F.R. part 242.

<sup>5</sup> 12 C.F.R. 242, app. A, (a), (b), (f)(2)(vi), and (f)(8).

<sup>6</sup> The Council may also consider any other risk-related factors that it deems appropriate.

8. the degree to which the company is already regulated by 1 or more primary financial regulatory agencies;
9. the amount and nature of the financial assets of the company; and
10. the amount and types of the liabilities of the company, including the degree of reliance on short-term funding.

In considering whether material financial distress at Prudential could pose a threat to U.S. financial stability, the Council considered each of the statutory considerations in section 113 of the Dodd-Frank Act, including the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of Prudential. The Council considered Prudential's activities in evaluating Prudential under the First Determination Standard.

As noted in the Council's Interpretive Guidance, the Council will consider a "threat to the financial stability of the United States" to exist "if there would be an impairment of financial intermediation or of financial market functioning that would be sufficiently severe to inflict significant damage on the broader economy." The Interpretive Guidance also reflects the belief of the Council that "material financial distress" exists "when a nonbank financial company is in imminent danger of insolvency or defaulting on its financial obligations."

In addition, the Interpretive Guidance states that for purposes of considering whether material financial distress at a nonbank financial company could pose a threat to U.S. financial stability, the Council intends to assess the impact of the company's material financial distress "in the context of a period of overall stress in the financial services industry and in a weak macroeconomic environment."

As history has shown, including in 2008, financial crises can be hard to predict and can have consequences that are both far-reaching and unanticipated. Consistent with the Council's mission under the Dodd-Frank Act to identify potential threats before they occur, and pursuant to the Interpretive Guidance, this analysis focuses on the potential consequences of material financial distress at Prudential in the context of a stressed financial services industry and in a weak macroeconomic environment.

## **Analysis of Potential Effects of Material Financial Distress at Prudential**

### ***Consideration of Transmission Channels***

Consistent with the Dodd-Frank Act and the Interpretive Guidance, the Council evaluated the extent to which material financial distress at Prudential could be transmitted to other financial firms and markets and thereby pose a threat to U.S. financial stability through the following three transmission channels: (1) the exposures of counterparties, creditors, investors, and other market participants to Prudential; (2) the liquidation of assets by Prudential, which could trigger a fall in asset prices and thereby could significantly disrupt trading or funding in key markets or cause significant losses or funding problems for other firms with similar holdings; and (3) the inability or unwillingness of Prudential to provide a critical function or service relied upon by market participants and for which there are no ready substitutes. In evaluating whether material financial distress at Prudential could be transmitted to other firms and markets through the transmission channels to a degree that could cause a broader impairment of financial

intermediation or of financial market functioning, the Council has considered the statutory factors set forth in section 113 of the Dodd-Frank Act.

***Exposure Channel***

*A nonbank financial company's creditors, counterparties, investors, or other market participants have exposure to the company that is significant enough to materially impair those creditors, counterparties, investors, or other market participants and thereby pose a threat to U.S. financial stability.*

In evaluating the potential threat that material financial distress at Prudential could pose to U.S. financial stability through the exposure channel, the Council has considered the exposures of Prudential's creditors, customers, counterparties, investors, and other market participants to Prudential. Specifically, the Council has considered the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of Prudential,<sup>7</sup> extent and nature of its off-balance sheet exposures,<sup>8</sup> extent and nature of Prudential's transactions and relationships with other significant nonbank financial companies and significant bank holding companies,<sup>9</sup> amount and nature of the financial assets of Prudential,<sup>10</sup> and amount and types of Prudential's liabilities, including the degree of Prudential's reliance on short-term funding.<sup>11</sup>

Through its domestic and international subsidiaries, Prudential provides a wide mix of financial services including individual and group life insurance, annuities, asset management, commercial mortgage lending, mortgage servicing, trust, and other retirement-related services. As of December 31, 2012, Prudential has \$424 billion of assets in its general account investment portfolio and \$253 billion in separate accounts. Prudential's annuity offerings through its insurance subsidiaries make the company a leader in the domestic individual variable annuity market.

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<sup>7</sup> See Dodd-Frank Act section 113(a)(2)(G), 12 U.S.C. § 5323(a)(2)(G).

<sup>8</sup> See Dodd-Frank Act section 113(a)(2)(B), 12 U.S.C. § 5323(a)(2)(B).

<sup>9</sup> See Dodd-Frank Act section 113(a)(2)(C), 12 U.S.C. § 5323(a)(2)(C). The Dodd-Frank Act directs the Board of Governors to adopt a rule to define "significant nonbank financial company" and "significant bank holding company." Dodd-Frank Act section 102(a)(7), 12 U.S.C. § 5311(a)(7). On April 3, 2013, the Board of Governors approved a final rule defining these terms (12 C.F.R. part 242). The rule defines a "significant nonbank financial company" as (i) any nonbank financial company supervised by the Board of Governors; and (ii) any other nonbank financial company that had \$50 billion or more in total consolidated assets as of the end of its most recently completed fiscal year. The rule defines a "significant bank holding company," as "any bank holding company or company that is, or is treated in the United States as, a bank holding company, that had \$50 billion or more in total consolidated assets as of the end of the most recently completed calendar year."

<sup>10</sup> See Dodd-Frank Act section 113(a)(2)(I), 12 U.S.C. § 5323(a)(2)(I).

<sup>11</sup> See Dodd-Frank Act section 113(a)(2)(J), 12 U.S.C. § 5323(a)(2)(J).

Certain of Prudential's activities have a high degree of interconnectedness. The financial system is exposed to Prudential through the capital markets, including as derivatives counterparties, creditors, debt and equity investors, and securities lending and repurchase agreement counterparties. Material financial distress at Prudential could affect third parties that hold Prudential's debt, including other insurance companies that hold a significant portion of the company's long-term debt. In addition, large corporate and financial entities have significant exposures to Prudential through the company's retirement and pension products, corporate-owned and bank-owned life insurance, and other group insurance products. Prudential also uses derivatives to hedge various risks related to its assets and liabilities. Prudential's derivatives counterparties include several large financial firms, which are significant participants in the global debt and derivatives markets. In the aggregate, these exposures could serve to spread material financial distress at Prudential to counterparties and financial markets more broadly.

Prudential's off-balance sheet exposures could serve as a mechanism by which material financial distress at Prudential could be transmitted to banks and to financial markets more broadly. For example, Prudential's total off-balance sheet exposure due to derivatives counterparty and credit facilities commitments with large global banks is significant.

By allowing for the potential reduction of the total amount of available capital, Prudential's use of captive reinsurance could increase the potential losses of policyholders and creditors.

Prudential's liabilities include debt securities, insurance contracts, annuity contracts, separate account obligations, securities lending and repurchase agreements, and reinsurance, among others. Although Prudential does not substantially depend on short-term funding, and its life insurance and annuity products are generally considered to be relatively long-term liabilities, a substantial portion of the liabilities in the U.S. general account are available for discretionary withdrawal with little or no penalty and therefore could, in practice, have characteristics of short-term liabilities. Policyholders in Prudential's separate account and international insurance business are also able to surrender policies for significant cash values on short notice.

The Council has considered potential mitigants that could reduce the potential for material financial distress at Prudential to be transmitted to other financial firms and markets through the exposure channel. For institutional and retail policyholders, losses could be mitigated by Prudential's assets and the activity of state receivers and the GA System. In addition, individual exposures to Prudential may be small relative to the capital of its individual counterparties. In the aggregate, however, the exposures across multiple markets and financial products are significant enough that material financial distress at Prudential could aggravate losses to large, leveraged financial firms, which could contribute to a material impairment in the functioning of key financial markets or the provision of financial services by Prudential's counterparties. The correlations across asset classes and the similar exposures and holdings by many of Prudential's key counterparties and peers could spread the financial contagion triggered by material financial distress at Prudential.

### ***Asset Liquidation Channel***

*A nonbank financial company holds assets that, if liquidated quickly, would cause a fall in asset prices and thereby significantly disrupt trading or funding in key markets or cause significant losses or funding problems for other firms with similar holdings.*

In evaluating the potential threat that material financial distress at Prudential could pose to U.S. financial stability through the asset liquidation channel, the Council has considered the extent of Prudential's leverage,<sup>12</sup> the amount and nature of the financial assets of Prudential,<sup>13</sup> the amount and types of Prudential's liabilities, including the degree of reliance on short-term funding,<sup>14</sup> and the nature, scope, size, scale, concentration, interconnectedness, and mix of Prudential's activities.<sup>15</sup>

Although Prudential's life insurance and annuity products are generally considered to be long-term liabilities, a substantial portion of these liabilities are available for immediate discretionary withdrawal with little or no penalty and therefore could, in practice, have characteristics of short-term liabilities. A large number of withdrawal and surrender requests within a short period of time could strain Prudential's liquidity resources and compel the company to sell assets in order to meet its obligations to policyholders. A liquidation resulting from withdrawal requests of Prudential's policyholders also could be exacerbated by its derivative and short-term funding counterparties, which could, under existing agreements, require Prudential to either post additional collateral or to raise cash to close out certain funding transactions. Material financial distress at Prudential in the context of overall stress in the financial services industry could lead to the liquidation of certain of the company's separate account assets and have significant effects on the broader financial markets. While some of these assets may be transferable to other asset managers, certain of the company's businesses could be difficult to sell in a stressed market.

The Council has considered the potential effects on other large financial firms of Prudential's asset fire sales based on the size, leverage, asset composition, and liquidity of Prudential's assets. A forced liquidation of a significant portion of Prudential's assets, possibly including separate account assets, could cause significant disruptions to key markets including corporate debt and asset-backed securities markets, particularly during a period of overall stress in the financial services industry and in a weak macroeconomic environment when liquidity dries up and price swings can be magnified. Such a liquidation could be exacerbated by Prudential's asset leverage.

The severity of the disruption caused by a forced liquidation of Prudential's assets could be amplified by the fact that the investment portfolios of many large insurance companies are composed of similar assets, which could cause significant reductions in asset valuations and losses for those firms. The erosion of capital and potential de-leveraging could result in asset fire sales that cause significant damage to the broader economy.

This rapid liquidation of assets could also depress the value of similar assets held broadly in the economy, including those held by other large financial firms. Holders of these assets could be

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<sup>12</sup> See Dodd-Frank Act section 113(a)(2)(A), 12 U.S.C. § 5323(a)(2)(A).

<sup>13</sup> See Dodd-Frank Act section 113(a)(2)(I), 12 U.S.C. § 5323(a)(2)(I).

<sup>14</sup> See Dodd-Frank Act section 113(a)(2)(J), 12 U.S.C. § 5323(a)(2)(J).

<sup>15</sup> See Dodd-Frank Act section 113(a)(2)(G), 12 U.S.C. § 5323(a)(2)(G).

subject to financial stress as they recognize lower asset values or sell such assets at fire-sale prices.

The Council has considered mitigants that could reduce the potential for material financial distress at Prudential to be transmitted to other financial firms and markets through the asset liquidation channel. For example, the company has the right to defer payouts on a significant portion of policies with immediately payable cash surrender value of surrendered policies; however, the company could have strong disincentives to invoke this option because of the negative signal invoking such a deferral could provide to counterparties, investors, and policyholders. Other mitigants include the authority of state courts to impose stays on policyholder withdrawals and surrenders; and the sale of certain subsidiaries or lines of business to third parties. While these factors and others could mitigate the potential for material financial distress at Prudential to be transmitted to other firms and markets, attempts to invoke these mitigation tools, especially during a period of overall stress in the financial services industry and in a weak macroeconomic environment, could cause concern about similar products offered by other large insurance companies and spread contagion throughout the system.

### ***Critical Function or Service Channel***

*A nonbank financial company is no longer able or willing to provide a critical function or service that is relied upon by market participants and for which there are no ready substitutes.*

Prudential is a leader in several of its key markets and products, including life insurance, annuity, retirement, asset management, and commercial mortgage servicing. While certain factors could aggravate the transmission of stress in this transmission channel, Prudential's share in these generally fragmented and competitive markets does not appear large enough to cause a significant disruption in the provision of services if the company experiences material financial distress and is unable or unwilling to provide services. Nevertheless, general market conditions could aggravate the transmission of stress through this transmission channel, particularly if accompanied by a period of economic stress and broader pullbacks across the industry in certain of Prudential's core insurance and non-insurance businesses.

In evaluating the potential threat that material financial distress at Prudential could pose to U.S. financial stability through the critical function or service channel, the Council has considered the importance of Prudential as a source of credit for households, businesses, and state and local governments and as a source of liquidity for the United States financial system,<sup>16</sup> the importance of Prudential as a source of credit for low-income, minority, or underserved communities, and the impact that the failure of Prudential would have on the availability of credit in such communities,<sup>17</sup> and the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of Prudential.<sup>18</sup>

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<sup>16</sup> See Dodd-Frank Act section 113(a)(2)(D), 12 U.S.C. § 5323(a)(2)(D).

<sup>17</sup> See Dodd-Frank Act section 113(a)(2)(E), 12 U.S.C. § 5323(a)(2)(E).

<sup>18</sup> See Dodd-Frank Act section 113(a)(2)(G), 12 U.S.C. § 5323(a)(2)(G).

Prudential is an important source of credit for both businesses and households. While Prudential is among the top commercial and multifamily mortgage servicers, its commercial and multifamily mortgage servicing operations represent a small percentage of the overall market. Prudential is also an important investor in corporate bonds. Prudential's holdings of state and local government obligations are small relative to the size of the overall market. At this time, Prudential does not appear to be an important source of short-term liquidity for the U.S. financial system via wholesale or short-term funding arrangements.

Prudential also does not appear to be a major source of credit to low-income, minority, or underserved communities; therefore, it does not appear that material financial distress at Prudential would have an appreciable impact on the availability of credit in such communities.

### **Existing Supervision and Regulation**

In considering whether to make a final determination that Prudential could pose a threat to U.S. financial stability and should be subject to Board of Governors supervision and enhanced prudential standards, the Council has considered the degree to which Prudential is already regulated by one or more primary financial regulatory agencies.<sup>19</sup> The Council also consulted with certain regulators of Prudential or its insurance subsidiaries before making a final determination regarding the company.

Prudential's insurance company subsidiaries are subject to supervision by regulators in all 50 U.S. states, the District of Columbia, the five U.S. territories, and numerous foreign countries. Prudential's major foreign subsidiaries are regulated by applicable financial services regulatory authorities in their host countries, particularly those in Japan. In the United States, Prudential's insurance company subsidiaries are separately subject to a state-based regulatory regime, the purposes of which are to protect policyholders and to ensure competitive insurance markets.<sup>20</sup> State insurance regulators' approach to group supervision is indirect, conducted through the regulation of one or more licensed insurance companies.

For U.S. domiciled insurance companies with operations in multiple states, state insurance regulators convene "supervisory colleges" on a periodic basis. These supervisory colleges are non-public, regulator forums, which include the state insurance regulators of the largest insurance subsidiaries in an insurance group, as well as the regulatory agencies responsible for supervising non-insurance affiliates of the insurance group. Supervisory colleges are a tool available to state regulators concerning group supervision, but they do not provide regulators with the same authorities to which nonbank financial companies would be subject if the Council determines that such nonbank financial companies shall be subject to supervision by the Board of Governors including consolidated, enterprise-wide supervision.

The determination by the Council regarding Prudential under section 113 of the Dodd-Frank Act allows the Board of Governors to apply a number of new requirements to Prudential. These include enhanced prudential standards required by sections 165 and 166 of the Dodd-Frank Act,

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<sup>19</sup> See Dodd-Frank Act section 113(a)(2)(H), 12 U.S.C. § 5323(a)(2)(H).

<sup>20</sup> Prudential's U.S. lead state insurance regulators are New Jersey and Connecticut.

which, among other things, would require the company to: (1) meet enhanced liquidity and capital standards; (2) undergo and report periodic stress tests; (3) adopt enhanced risk management processes; (4) submit a resolution plan providing for its rapid and orderly resolution in the event of its material financial distress or failure; and (5) provide for the early remediation of financial distress at the company. The enhanced prudential standards required by section 165 of the Dodd-Frank Act are for the purpose of “prevent[ing] or mitigat[ing] risks to the financial stability of the United States that could arise from the material financial distress, failure, or ongoing activities of large, interconnected financial institutions.” In addition, the Board of Governors would have additional authorities with respect to review of proposals by Prudential to expand size or scope.

The Council has considered all the facts of record in light of the requirement that it consider the degree to which Prudential is already regulated by one or more primary financial regulatory agencies and has determined that the Dodd-Frank Act provides additional regulatory and supervisory tools focused on financial stability.

### **Resolvability**

The Council also has considered whether any threat that material financial distress at Prudential could pose to U.S. financial stability could be mitigated or aggravated by its complexity, the opacity of its operations, or its difficulty to resolve.

Prudential is a complex and interconnected organization operating in all 50 states and numerous foreign countries, which could increase the obstacles to its rapid and orderly resolution. There is no precedent for the resolution of an insurance company the size and scale of Prudential. Coordinated resolution of Prudential would require accommodations with each of its local supervisory authorities, as well as cooperation among a number of home and host jurisdiction supervisory authorities and courts. This could delay and complicate steps to resolve Prudential in an orderly fashion that would minimize disruption to financial stability. If Prudential were to become insolvent, separate and possibly conflicting judicial proceedings in multiple countries could also lead to a disruption of the critical services necessary to ensure the continuity of its businesses. This could aggravate the potential threat posed by financial distress at Prudential to U.S. financial stability.

As noted above, the Council’s determination regarding Prudential will enable the Board of Governors to apply enhanced prudential standards to Prudential, including the requirement that Prudential submit a resolution plan providing for its rapid and orderly resolution in the event of its material financial distress or failure. While a company’s resolution can be complicated by its complexity, the opacity of its operations, or other exacerbating factors, the Council believes that no firm should be protected from its own failure, and these statutory tools enable regulators to facilitate the orderly liquidation of a company.

### **Conclusion**

The Council has made a final determination that material financial distress at Prudential could pose a threat to the financial stability of the United States and that Prudential should be supervised by the Board of Governors and be subject to enhanced prudential standards.