

## February 2011 – INTERSTATE CAPITOL COMMENTS

Community Bankers Association of Kansas

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### ***FINE POINTS***

**By Camden R. Fine  
President and CEO of ICBA**

#### **TAMING REGS GONE WILD**

Washington is abuzz with talk about ending outmoded, wasteful and counterproductive regulation. Citing an imperative to bring jobs to the jobless recovery and spur business investment, President Obama is touting a new priority for sensible government regulation. Republican and Democratic lawmakers are also turning up the volume on the familiar limited-government refrain. While saddled with writing Wall Street Reform Act regulations, the banking regulators say that they hear the same call.

As Americans and as community bankers, we've heard this tune before. This time policymakers mean business for the sake of jobs, the economy and global competitiveness, they say.

#### **Compliance tips on the S.A.F.E. Act and NMLRS registration**

On January 31, 2011, the Nationwide Mortgage Licensing System and Registry (the [Registry](#)<sup>i</sup>) began accepting federal mortgage loan originator registrations. (See the [Joint Release](#)<sup>ii</sup> by the five federal financial institution regulators and the Farm Credit Corp.) Under the Secure and Fair Enforcement for Mortgage Licensing Act ([S.A.F.E. Act](#)<sup>iii</sup>) and the financial institution regulatory agencies' final rules ([Federal Register](#)<sup>iv</sup>), residential mortgage loan originators employed by banks must register with the Registry, obtain a unique identifier from the Registry, and maintain their registrations.

#### **Who must register?**

Residential mortgage loan originators must register with the Registry. Although the S.A.F.E. Act defines a residential mortgage loan originator as an individual who for compensation or gain or in the expectation of compensation or gain: 1) takes a residential mortgage loan application; and 2) offers or negotiates the terms of a residential mortgage loan, employees of banks and bank subsidiaries should register if they do either 1 or 2.

***Tip: Don't make the mistake of thinking that only your residential loan officers need to register. In most institutions, the definition above will capture more employees than that. If commercial loan officers or private bankers are negotiating residential mortgage loans for their customers, they will need to register.***

#### **What about clerical staff?**

Employees who perform purely administrative or clerical tasks on behalf of residential mortgage loan originators are not required to register. Administrative or clerical tasks means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the residential mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

***Tip: To avoid unnecessarily exposing your administrative and clerical staff to the registration requirements, review the job descriptions of all employees who work in residential lending. By reallocating a few duties, you can avoid registration of clerical staff and may be able to reduce the number of employees registered.***

#### **What about employees of a bank or holding company subsidiary?**

Check your state's law. In most states, employees of a bank subsidiary are exempt from licensing, but not the employees of a holding company subsidiary.

***Tip: If you want to avoid licensing of employees of a bank holding company subsidiary, you may want to move their jobs to the bank or to a subsidiary of the bank where they'll only need to register with the NMLS.***

Congress and regulators have a lot of work to do to cut back on out-of-touch government decrees taken to ridiculous excess. ICBA and an industry coalition are asking lawmakers to quickly repeal the debit interchange price fixing legislation as a good faith gesture to community banks and Main Street America. In light of the Federal Reserve's proposed rulemaking, no single piece of meddlesome legislation in recent memory could do more to harm to community banks and their customers. An ICBA poll found that because of the legislation, 93 percent of community banks will have to charge their customers for services they now offer for free. Many members of Congress have buyer's remorse after ICBA's repeated warnings against such knee-jerk, ham-handed interference in our free-market payments system.

Another good faith gesture would be scotching the FDIC's examiner guidance on overdraft protection programs, another example of starry-eyed government do-goodism at its most counterproductive. However well intended, this guidance is impractical and even unworkable for community banks in several ways. By a wide margin, it misunderstands the basic realities of banking. Requiring banks to advise consumers on how to best manage their personal accounts and lives, for example, trounces the delicate relationships between consumers and their financial institution.

The guidance will drive community banks to discontinue or sharply curtail their overdraft services, which will only generate more returned-item and merchant-returned-check fees. That in turn will needlessly damage the credit of more consumers and expose more to possible criminal penalties for bounced checks. Like the interchange legislation, the guidance shows how disconnected government can be from the everyday banking habits of most customers.

ICBA has asked FDIC officials to jettison the guidance or significantly delay it to allow the agency to better

### **Does the method of paying mortgage loan originators matter?**

No. We've been asked several times whether registration is only required for employees whose compensation or gain is tied to loan production in some way. It doesn't. If an employee performs any of the tasks listed for pay, they must be registered.

**Tip: Don't try to parse the words of the law to try to avoid registering an employee. If you think the duties an employee performs could be interpreted as taking an application or offering or negotiating the terms of a residential mortgage loan, then register them.**

### **How long do we have to register our mortgage loan originators?**

If you aren't quite ready to register your mortgage loan originators, don't panic; you still have almost three months to get them registered. However, you need to make sure that you get them registered timely. Following expiration of the 180-day initial registration period on July 29, 2011, any employee of your bank who is subject to the registration requirements will be prohibited from originating residential mortgage loans without first meeting the requirements. Mortgage loan originators who originated five or fewer mortgage loans during the previous 12 months and who have never been registered are not required to complete the federal registration process.

**Tip: If you haven't developed and adopted policies and procedures on the registration of mortgage loan originators, use the time before July 29, 2011 to do so.**

**Further information regarding the registry and the registration process is available at the [Registry's Web site](#)<sup>v</sup>.**

### **S.A.F.E. Act: NMLS federal registry "How To" series**

The NMLS's Federal Registry training has been broken into a four-part series:

1. Institution Basics: Getting Started on NMLS. This session will show institutions how to: set up their account, create users, register "Two Factor Credentials" from VeriSign, and submit the Form MU1R. [Tuesday, March 1, 2011 at 2:00 - 3:30 p.m. ET](#)  
[Tuesday, March 15, 2011 at 2:00 - 3:30 p.m. ET](#)
2. Managing the MLO Registration Process. This session will show institutions how to: create MLO users accounts and records, manage the MU4R process, create and complete a Batch Upload, pay MU4R fees, understand the Criminal Background Check process, and view the Composite MLO record. [Thursday, March 3, 2011 at 2:00 - 3:30 p.m. ET](#)  
[Thursday, March 17, 2011 at 2:00 - 3:30 p.m. ET](#)
3. MLO Basics (a training session for MLOs). This session will show MLOs how to: update and attest to their MU4R filing, complete the fingerprint process, understand notification emails, view their Composite MLO record, and grant their institution access (if necessary). [Tuesday, March 8, 2011 at 2:00 - 3:30 p.m. ET](#)  
[Tuesday, March 22, 2011 at 2:00 - 3:30 p.m. ET](#)
4. Confirming Employment and Managing MLO Records. This session will show institutions how to: confirm employment automatically and manually, reject an employment, request a correction, and terminate an employment. [Friday, February 25, 2011 at 2:00 - 3:30 p.m. ET](#)  
[Thursday, March 10, 2011 at 2:00 - 3:30 p.m. ET](#)  
[Thursday, March 24, 2011 at 2:00 - 3:30 p.m. ET](#)

### **A welcome announcement by the Federal Reserve on Reg Z proposals**

The Federal Reserve announced that it does not expect to finalize three pending rulemakings under Regulation Z before the rulemaking authority is transferred to the Consumer Financial Protection Bureau (CFPB) in July. Click [here](#)<sup>vi</sup> to read the Federal Reserve's press release.

**Comment: In an era of constant and disjointed regulatory changes, this is logical and welcome news. Although the rulemaking the CFPB will undertake once that authority is transferred isn't completely fleshed out, this announcement is consistent with the CFPB's charge to integrate RESPA and Reg. Z. Any Reg. Z or RESPA rules adopted or amended**

study real-world banking practices. We have also provided detailed and technical recommendations to make it less harmful if the FDIC decides to continue with it anyway. Fortunately, FDIC officials are listening, so there's hope.

Through targeted tax and regulatory relief provisions enacted with help from ICBA-inspired measures such as Communities First Act provisions, ICBA and its members have made some headway on regulatory relief. The Wall Street Reform Act itself includes several critical regulatory exemptions for community banks. More broadly, most policymakers also accept tiered regulation that accommodates the differences between community banks and Wall Street institutions.

Of course, repealing or significantly modifying the interchange legislation and the FDIC guidance would only be a start on the deregulation highway. Much more is needed. It's time for policymakers of all stripes to stop talking and start acting.



By Jim MacPhee  
Chairman of ICBA

## You Can Do It

Over my past three years on ICBA's Executive Committee, community bankers have often asked, "How do you do all this and still run your bank"? First, I have a wonderfully supportive staff and board. Second, with advancements in communication technology, I can do almost everything for my customers while on the road that I can do while at my bank except look them in the eye, and even that is possible with video conferencing.

And it's not just me. If you believe in what you do, you too can become chairman (or a leader in another post) of the ICBA. In my three years

*now could be undone or changed by the CFBP during the integration process causing community banks to unnecessarily expend capital twice in their efforts to comply*

### Consumer Financial Protection Bureau Beta Web site

The U.S. Department of the Treasury announced the launch of a 'beta' Consumer Financial Protection Bureau (CFPB) website, [ConsumerFinance.gov](http://ConsumerFinance.gov). The CFPB Web site currently has these features: Open for Suggestions, Interactive Display of Prof. Elizabeth Warren's Daily Calendar, About the Bureau, and Social Media.

*Comment: The "Open for Suggestions" section of the Web site seeks input from "anyone who is interested in making consumer financial services markets work better for everyone."*

### FASB Pulls Plug on Fair Value Proposal

In a very welcome move, the Financial Accounting Standards Board (FASB) [announced](#)<sup>vii</sup> that they would not be pursuing the ill-advised "mark to market" accounting requirement proposed last year. Several thousand comments were sent, pointing out the additional costs, misrepresentation of financial condition and inapplicability to the reality of the community bank business model, among other pertinent arguments.

*Comment: We are obviously pleased with this pronouncement from FASB and applaud their receptiveness to public comments.*

### OCC director workshops in Dallas, Little Rock, and Indianapolis,

The Office of the Comptroller of the Currency will host workshops for directors<sup>viii</sup> of nationally chartered community banks and federal savings associations—particularly those with assets of less than \$1 billion—in [Dallas](#)<sup>ix</sup> at the Adolphus, March 15-16, [Little Rock, Arkansas](#)<sup>x</sup> at the Peabody, April 5-6, and in [Indianapolis](#)<sup>xi</sup> at the Embassy Suites Indianapolis, March 28-30.

The Dallas workshops provide practical information that expands bank directors' skills and understanding of issues facing their banks. The workshops cover risk assessment ("Directors: Where is the Risk in Your Bank") and credit risk ("Credit Risk: A Director's Focus").

The Little Rock workshops cover risk assessment ("Directors: Where is the Risk in Your Bank") on April 5, and credit risk ("Credit Risk: A Director's Focus") on April 6, and are geared primarily to outside directors.

The Indianapolis workshop is entitled, "A Director's Challenge: Mastering the Basics," is geared primarily to directors of national community banks and federal savings associations with assets of less than \$1 billion who would like to review the fundamental requirements of their position.

*Comment: Management Directors may also benefit from the Little Rock workshops. To register, click [here](#)<sup>xii</sup>. These are great opportunities to train your directors for a very low price: \$65.*

### FDIC small business hotline

The FDIC announced the formation of a new dedicated, toll-free hotline for small businesses. The new hotline allows small business owners to make inquiries with FDIC officials or to register concerns about the availability of credit. The FDIC will respond to inquiries about policies and financial institutions it regulates as well as make referrals to other governmental agencies where appropriate. The hotline is operational Monday thru Friday, 8am to 8pm, EST. The toll-free number is 1-855-FDIC-BIZ (1-855-334-2249). The FDIC also created a dedicated [Web site](#)<sup>xiii</sup> for small businesses to utilize.

*Comment: Maybe our small business owners can use this hotline to tell the FDIC to quit negatively affecting the availability of credit.*

of meeting with state banking associations all over the country, I've seen that there are many really smart, committed, passionate community bankers who have never even thought about participating on an ICBA committee or considered that they might serve at the national level.

You have a wealth of knowledge and experience to offer, and your industry could be so much richer if only you would step outside your comfort zone and give it a try. You'll find you have joined a special group of bankers who become family in the sense that we are not out to compete but to help one another compete.

Being an active ICBA member is really about family and how we support each other. Yes, it takes time. To serve as ICBA chairman means not being home nearly every weekend. But the rewards are great as well, and while I was uncertain how I could possibly lead this wonderful association and its members, I learned in short order that when you really have to, you get the courage to do what has to be done, even when it is out of your comfort zone.

The success of my fellow community bankers is something I take great pride in. When I see that the products, services and educational offerings that ICBA committees have designed and launched save community banks hundreds of thousands of dollars and allow us all to compete squarely with the largest banks, that makes me proud. I know the committee members who worked hard a few weekends a year to create those money-saving ideas, and they care as deeply about community banking as I do.

It has been an honor and a privilege as well as humbling to serve as your ICBA chairman, and at least in my case, it has changed my life forever. As tough as it has been at times, I would do it all over again if I were asked to.

### **Treasury announces prepaid debit and payroll cards for tax refunds**

The Treasury launched a pilot to offer taxpayers a financial account for the electronic delivery of their federal tax refunds. The new account card option is target toward individuals who don't use traditional banking services. The Treasury sent letters to 600,000 low- and moderate-income individuals inviting them to activate a [MyAccountCard Visa](#)<sup>xiv</sup> prepaid debit card, issued by Bonneville Bank, where they can direct deposit their 2010 federal income tax refund.

Working with ADP, Treasury also began a companion pilot to encourage tens of thousands of current and potential payroll card users to direct deposit their 2010 federal tax refund onto existing payroll cards.

As part of the pilot, Treasury will randomly offer several different variations of MyAccountCard in order to evaluate which product features, fee structures and marketing messages generate the greatest positive response from taxpayers. The results of the pilot will help determine the benefits and feasibility of a card account as an integrated part of the tax filing and refund process.

***Comment: The Treasury Web site directs card holders to nearly 20,000 Money Pass surcharge-free ATMs across the nation. You can find a map of Money Pass ATMs under "Materials" on the [Treasury's My Account Card Web page](#)<sup>v</sup>.***

### **Revised Interagency Examination Procedures for Regulation Z**

A Federal Reserve Consumer Affairs letter, [CA 11-1](#)<sup>xvi</sup>, announced that the Task Force on Consumer Compliance of the Federal Financial Institutions Examination Council recently approved the [interagency examination procedures for Reg. Z](#)<sup>xvii</sup>. These revised procedures supersede the Reg. Z interagency examination procedures transmitted with CA Letter 10-10.

***Comment: At 141 pages, the interagency procedures is a little light reading for those cold snowy nights.***

### **Federal Reserve exams before membership or merger into state member banks**

The Fed issued [Supervision and Regulation Letter SR 11-2](#)<sup>xviii</sup> (Consumer and Community Affairs Letter CA 11-2) clarifying the criteria for conducting safety-and-soundness, consumer compliance, CRA, and trust examinations of insured depository institutions that are either: (1) seeking to become state member banks; or (2) merging with another institution where a state member bank would be the surviving entity.

***Comment: According to the letter, this largely reiterates existing examination criteria, but adds that a Reserve Bank must consult with appropriate Board staff and document its decision when waiving a pre-membership or pre-merger examination for a bank that would generally be subject to such an examination.***

### **FDIC releases Smart Money**

The FDIC today announced the release of an updated and enhanced version of its instructor-led [Money Smart](#)<sup>xix</sup> financial education curriculum for young adults.

***Comment: This is a great tool to use when your employees teach financial classes in your local schools. It is also a great resource for your local schools to use in their state-mandated financial education.***

### **FFIEC: Revision to Call Report**

The FFIEC approved revisions to the reporting requirements for the Call Report. These revisions will take effect as of March 31, 2011, and include most, but not all, of the proposed Call Report changes that the FDIC, the Fed, and the OCC (the agencies) published on September 30, 2010 (see [FIL-70-2010](#)<sup>xx</sup>).

***Comment: The FFIEC provided this advance notification to help you plan for these changes. The U.S. Office of Management and Budget must approve these changes before they become final.***

So if you've never viewed yourselves as being the next chairman of the ICBA, believe me, I never saw myself in this position either. Yet it has been an amazing and rewarding experience. I challenge you, especially you young community bankers, not to look past the possibilities. You have within you a person whom you may not even have found yet, one who can do things you never imagined doing. So why not get started and get involved?

Our industry is eager for you to share your ideas, energy, voice and talents to help ensure a bright future for our vital industry and for Main Street America. We need you—and you can do it.

I challenge you, especially you young community bankers, not to look past the possibilities.

## DODD-FRANK ACT

**Note to the Reader:** *This new section is devoted to matters relating directly to the Dodd-Frank Act. In this section, we will report on both proposed and final rulemaking. We don't usually report on proposed rulemaking because readers can confuse the proposals with final rules; however, an exception will be made with respect to selected rules proposed in response to the Dodd Frank Act. Please be aware that rules listed as proposed have not been adopted by the regulators. On occasion, we will encourage you to comment on a proposal.*

### Comments needed on the Fed's proposed interchange rules

Despite the small bank exemption in the [Federal Reserve's proposed interchange rules](#)<sup>xxi</sup>, adoption of the rule, as proposed, would negatively impact community banks and their customers. As written, it will be one more in a long line of recent revenue killing measures affecting community banks. These measures are already forcing many community bankers to choose between economic survival and raising customer fees. [Click here](#)<sup>xxii</sup> to view all the public comments the Federal Reserve has received.

**Comment:** *We encourage you to comment on this very important proposal:*

**Comments must be submitted by February 22, 2011.**

**Submit comments, identified by Docket No. R-1404 and RIN No. 7100 AD63, by any of the following methods:**

**[Agency Web site](#)**<sup>xxiii</sup>. (Follow the [instructions](#)<sup>xxiv</sup> for submitting comments.)

**[Federal eRulemaking Portal](#)**<sup>xxv</sup>.

**[E-mail](#)**<sup>xxvi</sup>. (Include the docket number in the subject line of the message.)

**Fax:** (202) 452-3819 or (202) 452-3102.

**Mail:** Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

### FDIC issues rule that includes IOLTA in temporary unlimited coverage

The FDIC approved a [final rule](#)<sup>xxvii</sup> to include Interest on Lawyer Trust Accounts (IOLTAs) in the temporary unlimited deposit coverage for noninterest-bearing transaction accounts.

The Dodd-Frank Act provides temporary, unlimited deposit insurance for all noninterest-bearing transaction accounts. The FDIC's final rule implements the December 29, 2010 amendment to that Act by including IOLTAs within the definition of a "noninterest-bearing transaction account." For more information, read the FDIC's [FIL-2-2011](#)<sup>xxviii</sup>

**Comment:** *The final rule requires that by no later than February 28, 2011, each Insured Depository Institution (IDI) that offers noninterest-bearing transaction accounts must post prominently an amended notice in its office lobbies and on its Web sites. The notice explains that IOLTAs will be fully insured through December 31, 2012.*

*In their year-end 2010 regulatory reports, IDIs should ensure that their reporting on noninterest-bearing transaction accounts (as defined in the Dodd-Frank Act) of more than \$250,000 and, if applicable, estimated uninsured deposits incorporates the amended treatment of IOLTAs.*

*All funds held in IOLTA accounts, together with all other noninterest-bearing transaction account deposits, are fully insured, without limit, from December 31, 2010, through December 31, 2012. This coverage is separate from, and in addition to, the coverage provided to depositors for other accounts at an insured depository institution.*

*The FDIC updated their [Dodd Frank Act FAQ's](#)<sup>xxix</sup> to address the IOLTA rule change.*

### Fed adopts final rule on Volcker Rule

The Federal Reserve Board adopted a [final rule](#)<sup>xxx</sup> to implement the conformance period during which banking entities and nonbank financial companies supervised by the Board

must bring their activities and investments into compliance with the prohibitions and restrictions on proprietary trading and relationships with hedge funds and private equity funds imposed by section 619 of the Dodd-Frank Act. Section 619 is commonly referred to as the “Volcker Rule.” The final rule is effective on April 1, 2011.

***Comment: Generally, the Volcker Rule bars banks from engaging in proprietary trading.***

#### **Fed letter on de novo interstate branching by state member banks**

On February 14, the Federal Reserve issued a Supervision and Regulation Letter, [SR 11-3](#)<sup>xxxii</sup>. The Dodd-Frank Act modified the federal statute governing de novo interstate branching by state member banks. As a result, as of July 22, 2010, a state member bank is authorized to open its initial branch in a host state by establishing a de novo branch at any location at which a bank chartered by the host state could establish a branch.

Just as it must do in establishing any domestic branch, a state member bank seeking to open a de novo interstate branch must file an application with the Federal Reserve pursuant to the procedures and standards set forth in section 208.6 of the Board’s Regulation H. In addition, applications for de novo interstate branches are subject to state filing requirements and to capital, management, and community reinvestment standards.

***Comment: The Dodd-Frank Act expanded banks ability to branch interstate. If the laws of a state allow a bank chartered by the state to open a branch, then a bank in another state may open a de novo branch in the state. This could be good for a community bank looking to expand its market into additional states, but bad as increase competition comes into the state. This letter sets out how a state member bank would take advantage of the branching expansion of the Dodd-Frank Act.***

#### **FDIC final rule on Assessments, Dividends, Assessment Base and Large Bank Pricing**

The FDIC approved a [final rule](#)<sup>xxxiii</sup> on Assessments, Dividends, Assessment Base, and Large Bank Pricing. This new large bank pricing system will result in higher assessment rates for banks with high-risk concentrations, less stable balance sheet liquidity, or potentially higher loss severity in the event of failure. [FDIC Press Release](#).<sup>xxxiii</sup>

***Comment: Kudos to community banking associations all over the nation, to the drafters of the Dodd-Frank Act, and to the FDIC for a job well-done. Except as specifically provided, the final rule will take effect for the quarter beginning April 1, 2011, and will be reflected in the June 30, 2011 fund balance and the invoices for assessments due September 30, 2011.***

#### **Agencies propose rules on incentive-based compensation arrangements**

The federal financial institution regulatory agencies proposed rules to implement section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The [proposed rule](#)<sup>xxxiv</sup> would require the reporting of incentive-based compensation arrangements by a covered financial institution and prohibit incentive-based compensation arrangements at a covered financial institution that provide excessive compensation or that could expose the institution to inappropriate risks that could lead to a material financial loss.

***Comment: Comments on the proposal are due 45 days after the date of publication in the Federal Register, which had not happened as of February 17, 2011.***

#### **FFIEC determines no one national appraisal hotline exists**

Pursuant to section 1473(p) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Act), the Appraisal Subcommittee (ASC) of the FFIEC has determined that no one national hotline presently exists that fully complies with the Act. The determination was made on January 12, 2011, during the ASC’s open meeting. In making this determination, the ASC initiated a project to study the establishment and operation of a national appraisal complaint hotline as required by the Act. [76 FedReg 5161](#).<sup>xxxv</sup>

### Proposed rulemaking on consumer leasing: Reg M and Reg Z

Effective July 21, 2011, the Dodd-Frank Act amends the Consumer Leasing Act. ([75 FedReg 78632](#)).<sup>xxxvi</sup>

**Comment: Comments must be received on or before February 1, 2011. See the January edition of Capitol Comments for a full report.**

### Proposed rulemaking on risk-based capital guidelines: market risk

The Agencies are requesting comment on a [proposal](#)<sup>xxxvii</sup> to revise their market risk capital rules.

**Comment: Comments must be received by April 11, 2011. January Capitol Comments contained a full report.**

### Proposed rulemaking to amend advanced risk-based capital adequacy standards

The Agencies have jointly issued a notice of [proposed rulemaking](#)<sup>xxxviii</sup> to amend the advanced risk-based capital adequacy standards (advanced approaches rules).

**Comment: Comments must be received by February 28, 2011. Read a full report in the January edition of Capitol Comments.**

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## PUBLICATIONS, REPORTS, STUDIES, TESTIMONY & SPEECHES

- **Fed: Online publication to help consumers understand new notices**

A new online Federal Reserve publication helps consumers better understand new notices they may receive from lenders when credit reports or credit scores affect a decision to grant credit. The publication, "[What You Need To Know: New Rules about Credit Decisions and Notices](#),"<sup>xxxix</sup> describes the types of notices consumer may receive and provides links to sample notices. It includes information about what consumers should do if they receive a notice, including instructions on how to dispute credit report errors.

**Comment: As well as being online, this publication is available in a [PDF](#)<sup>xl</sup> form that can be printed out for your customers.**

- **OTS: Small entity privacy notice compliance guide**

The OTS released a publication entitled [Small Entity Compliance Guide for the Model Privacy Notice](#)<sup>xli</sup>.

### FedFocus

The February 2011 issue of [FedFocus](#)<sup>xlii</sup> contains articles on remittance best practices, check adjustment technology, and Service Status.

- **FedFlash**

This issue of [FedFlash](#)<sup>xliii</sup> contains articles on the Andrew Johnson \$1 coin, check adjustment webinar training, and revisions to Operating Circular 2 and Cash Services Manual of Procedures.

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## Selected upcoming federal compliance dates:

03.15.2011	<a href="#">Nondiscrimination on the Basis of Disability Final Rules</a> <sup>xliv</sup> – Effective dates of new <a href="#">ADA requirements for ATMs</a> . <sup>xlv</sup>
04.01.2011	<a href="#">Reg. Z</a> <sup>xlvi</sup> – Amendment to protect consumers in the mortgage market from unfair or abusive lending practices that can arise from certain loan originator compensation practices.
04.01.2011	Fed's <a href="#">final rule</a> <sup>xlvii</sup> to implement the conformance period during which banking entities and nonbank financial companies supervised by the Board must bring their activities and investments into compliance with the prohibitions and restrictions on proprietary trading and relationships with hedge funds and private equity funds imposed by the "Volcker Rule.

- 04.01.2011 FDIC [final rule](#)<sup>xlviii</sup> on Assessments, Dividends, Assessment Base, and Large Bank Pricing. This new large bank pricing system will result in higher assessment rates for banks with high-risk concentrations, less stable balance sheet liquidity, or potentially higher loss severity in the event of failure. Except as specifically provided, the final rule will take effect for the quarter beginning April 1, 2011, and will be reflected in the June 30, 2011 fund balance and the invoices for assessments due September 30, 2011.
- 07.01.2011 [FDIC Overdraft Payment Supervisory Guidance](#).<sup>xlix</sup> The FDIC expects that any additional efforts to mitigate risk would be in place by July 1, 2011.
- 07.21.2011 This is the transfer date when the CFPB will be vested with the consumer protection authorities currently held by the existing federal financial regulators, such as the Federal Reserve and the FDIC.
- 07.22.2011 Effective date of the repeal of Reg Q's prohibition on payment of interest on commercial checking accounts.

***Comment: Distribute this calendar to your CEO, CFO, Compliance Officer, and Operations Officer.***

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**Selected federal compliance dates from the not-so-distant past:**

- 01.31.2011 [Reg. E](#)<sup>i</sup> – This is the delayed effective date pursuant to [H.R. 5502](#)<sup>ii</sup>. The final rules prohibit dormancy, inactivity, and service fees on [gift cards](#) unless: (1) the consumer has not used the certificate or card for at least one year; (2) no more than one such fee is charged per month; and (3) the consumer is given clear and conspicuous disclosures about the fees. Expiration dates for funds underlying gift cards must be at least five years after the date of issuance, or five years after the date when funds were last loaded.
- 01.30.2011 [Reg Z](#)<sup>iii</sup> –The interim rule revising the disclosure requirements for closed-end mortgage loans is effective for all applications received on or after January 30, 2011.
- 01.03.2011 [Official FDIC sign](#)<sup>iiii</sup> – New FDIC signs must be posted showing the \$250,000 minimum insurance amount.
- 01.01.2011 [FACT Act](#)<sup>liv</sup> – Generally require a creditor to provide a consumer with a notice when, based on the consumer's credit report, the creditor provides credit to the consumer on less favorable terms than it provides to other consumers. Alternatively, a creditor may provide such a consumer with a free credit score and information about their score.
- 01.01.2011 [Reg. Z](#)<sup>lv</sup> – Final rule requiring purchaser or assignee that acquires loan to provide written disclosures within 30 days of sell, transfer or assignment.
- 12.31.2010 [Unlimited Coverage for Noninterest-Bearing Transaction Accounts](#)<sup>lvi</sup> – This is the expiration date for the TAG program. However, the Dodd Frank Act extends this program for 2 calendar years and it applies to everyone as part of the standard FDIC coverage. For those who opted in, the original program does expire on this date. NOW and IOLTA customers must receive notice of expiration of TAG program. **(On December 29, 2010, the President signed a law giving IOLTAs full coverage also.)**
- 12.31.2010 The federal banking agencies published [amendments](#)<sup>lvii</sup> to their rules that implement the privacy provisions of the Gramm-Leach-Bliley Act. The rules require financial institutions to provide initial and annual privacy notices to their customers. The Agencies adopted a model privacy form that financial institutions may rely on as a safe harbor to provide disclosures under the privacy rules.

12.10.2010	Final <a href="#">Interagency Appraisal and Evaluation Guidelines</a> <sup>lviii</sup> effective.
10.01.2010	<a href="#">Reg. Z</a> <sup>lix</sup> – Escrow required on higher priced mortgage loans on <u>manufactured homes</u> .
10.01.2010	<a href="#">Reg. DD</a> <sup>lx</sup> – Reg. DD and the official staff commentary amended to address the application of the rule to retail sweep programs and the terminology for overdraft fee disclosures, and to make amendments that conform to the Board’s final Regulation E amendments addressing overdraft services, adopted in November 2009.
08.22.2010	<a href="#">Reg. E</a> <sup>lxi</sup> – <del>The final rules prohibit dormancy, inactivity, and service fees on gift cards unless: (1) the consumer has not used the certificate or card for at least one year; (2) no more than one such fee is charged per month; and (3) the consumer is given clear and conspicuous disclosures about the fees. Expiration dates for funds underlying gift cards must be at least five years after the date of issuance, or five years after the date when funds were last loaded.</del> –EFFECTIVE DATE DELAYED TO JANUARY 31, 2011.
08.22.2010	<a href="#">Reg. Z</a> <sup>lxii</sup> – Federal Reserve Board final rule to protect credit card users from unreasonable late payment and other penalty fees and to require credit card issuers to reconsider interest rate increases imposed since the beginning of 2009.
08.02.2010	<a href="#">Daylight Overdraft Posting Rules</a> <sup>lxiii</sup> . The Federal Reserve Banks will be offering an opt-in, same-day settlement service for certain ACH debit payments through the FedACH service effective August 2, 2010.
07.01.2010	Implementing FACT Act Accuracy & Integrity Rules: Deadline July 1, 2010
07.01.2010	<a href="#">Reg. Z</a> <sup>lxiv</sup> – This is the mandatory compliance date for all provisions of the final rule on <u>open end credit</u> that were not mandatory on February 22, 2010. Generally, the Fed retained a July 1, 2010 mandatory compliance date for those provisions originally adopted in the January 2009 Regulation Z Rule that are not requirements of the Credit Card Act.
07.01.2010	<a href="#">Reg. Z and Reg. AA (Unfair or Deceptive Practices)</a> <sup>lxv</sup> – A lender may not consider a credit card payment late unless statement is provided 21 days prior to due date. Requirements on how credit cards payments above minimum are allocated. Restriction on when credit card rates may change. Finance charges on previous billing cycles limited. Security deposits and fees limited.
07.01.2010	<a href="#">Reg. E</a> – The final rule limits the ability of a financial institution to assess an <u>overdraft fee</u> for paying ATM and one-time debit card transactions that overdraw a consumer’s account, unless the consumer affirmatively consents, or opts in, to the institution’s payment of overdrafts for these transactions. (Further amendments to <a href="#">Reg. E</a> <sup>lxvi</sup> and <a href="#">Reg. DD</a> <sup>lxvii</sup> have been proposed to clarify the initial Reg. E amendments.)
07.01.2010	<a href="#">FACT Act (Fair and Accurate Credit Transactions Act)</a> <sup>lxviii</sup> –Those furnishing consumer information to a consumer reporting agency must <u>establish reasonable policies and procedures</u> for implementing the guidelines in Appendix E.
06.21.2010	Post employee <a href="#">notices</a> <sup>lxix</sup> pursuant to Executive Order 13496
06.01.2010	<a href="#">Reg. GG (Prohibition on Funding of Unlawful Internet Gambling)</a> <sup>lxx</sup> .–. Requires non-exempt participants in designated payment systems to establish and implement written policies and procedures that are reasonably designed to identify and block or otherwise prevent or prohibit unlawful Internet gambling transactions. <a href="#">Reg GG (Extension of compliance</a>

	<a href="#">date</a> <sup>lxxi</sup>
04.01.2010	<a href="#">Reg. Z</a> <sup>lxxii</sup> – Escrow on higher priced loans (Specifically, <a href="#">12 CFR 226.35(b)(3)</a> <sup>lxxiii</sup> is effective April 1, 2010.)
03.31.2010	<a href="#">TALF program expires.</a> <sup>lxxiv</sup>
02.27.2010	<a href="#">Reg. CC</a> <sup>lxxv</sup> -- These amendments reflect the restructuring of check-processing operations within the Federal Reserve System. Subsequent to these amendments, there will only be a single check-processing region for purposes of Regulation CC and there will no longer be any checks that are nonlocal.
02.22.2010	<a href="#">Reg Z</a> <sup>lxxvi</sup> . – Amendments establish a number of new substantive and disclosure requirements pertaining to open-end consumer credit plans, including credit card accounts. This is the mandatory compliance date for the portion of § 226.5(a)(2)(iii) regarding use of the term “fixed” and for §§ 226.5(b)(2), 226.7(b)(11), 226.7(b)(12), 226.7(b)(13), 226.9(c)(2)(except for 226.9(c)(2)(iv)(D)), 226.9(e), 226.9(g) (except for 226.9(g)(3)(ii)), 226.9(h), 226.10, 226.11(c), 226.16(f), and §§ 226.51-226.58. The compliance date for all other provision of this final rule is 07.01.2010.
02.14.2010	<a href="#">Reg. Z</a> <sup>lxxvii</sup> – Amendments revising the disclosure requirements for private education loan become mandatory.

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<sup>ii</sup><http://www.fdic.gov/news/news/press/2011/pr11019.html>

<sup>iii</sup><http://uscode.house.gov/download/pls/12C51.txt>

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<sup>viii</sup><http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-18.html>

<sup>ix</sup><http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-7.html>

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<sup>xii</sup><http://www.occ.gov/about/occ-for-you/bankers/bankers-education/index-bankers-education.html>

<sup>xiii</sup>[www.fdic.gov/smallbusiness](http://www.fdic.gov/smallbusiness)

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<sup>xv</sup><http://www.myaccountcard.gov/media/>

<sup>xvi</sup><http://www.federalreserve.gov/boarddocs/caletters/2011/1101/caltr1101.htm>

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