

Capitol Comments January 2012

Recent News

When there is a deadline associated with an item, you will see this graphic: 

FinCEN advisory on identifying and reporting account takeover

FinCEN issued an [Advisory](#) (FIN-2011-A016) to assist financial institutions with identifying account takeover activity and reporting the activity through the filing of SARs.

Comment: In account takeover, at least one of the targets is a customer holding an account at the financial institution and the ultimate goal is to remove, steal, procure, or otherwise affect the funds of the target customer. When completing SARs on account takeover activity, use the term "account takeover fraud" in the narrative section and describe the activity in detail. The advisory provides other SAR completion tips.

FinCEN extends deadline for use of new CTR and SAR

[FinCEN announced](#) that the deadline for financial institutions to utilize FinCEN's new CTR and SAR for reporting purposes will be extended to March 31, 2013 from June 30, 2012.

Comment: FinCEN cites industry concern about the short time they had to transition to the new reports. Until March 31, 2013, financial institutions may use either the legacy forms or the new reports.

Another E-mail claiming to be from the FDIC

The FDIC issued a [Consumer Alert](#) stating that it has received numerous reports of fraudulent e-mails notifying recipients of "recent changes in the Federal Deposit Insurance Corporation insurance coverage." They state:

"During the period from December 31, 2010 to December 31, 2012 all the money in a "noninterest-bearing transaction account" are fully insured by the Federal Deposit Insurance Corporation. Please note, that this is a temporary measure besides the Federal Deposit Insurance Corporation's general rules.

The term "noninterest-bearing transaction account" includes a usual checking account or demand deposit account on which no interest is paid by the insured depository institution."

Comment: This e-mail and link are fraudulent. Recipients should consider the intent of this e-mail as an attempt to collect personal or confidential information, or to load malicious software onto end users' computers. Recipients should not click on the link provided. The FDIC does not issue unsolicited e-mails to consumers or business account holders.

CRA regulation amendment adjusts asset size thresholds

The OCC, the Fed, and the [FDIC amended their CRA regulations](#) to adjust the asset-size thresholds used to define "small bank" or "small savings association" and "intermediate small bank" or "intermediate small savings association." As required by the CRA regulations, the adjustment to the threshold amount is based on the annual percentage change in the Consumer Price Index.

Comment: The effective Date is January 1, 2012.

FHA extends waiver of anti-flipping regulations through 2012

For the expressed intent of continuing to stabilize home values and improve conditions in communities experiencing high foreclosure activity, Acting Federal Housing Administration Commissioner Carol J. Galante extended a temporary waiver of [FHA's anti-flipping regulations](#) through 2012. ([HUDNo. 11-292](#))

Comment: The waiver, issued in 2010, defers regulations that would otherwise prohibit the FHA from insuring mortgages used to purchase home bought and resold in less than 90 days. The idea is to accelerate the resale of foreclosed properties.

FDIC FIL on 4 Quarter Call Report

In [FIL-77-2011](#), asks depository institutions to plan to prepare, edit, and review their Call Report data and submit these data to the agencies' Central Data Repository (CDR) as early as possible. Except for certain institutions with foreign offices, completed Call Report must be received by Monday, January 30, 2012, in accordance with the filing requirements discussed below. No extensions of time for submitting Call Report data are granted.

OCC public service advertisements regarding foreclosure review

The OCC issued a news release ([NR 2012-1](#)) about released print and radio public service advertisements intended to increase awareness of the [Independent Foreclosure Review](#) that lets borrowers who faced foreclosure in 2009 or 2010 to request reviews of their cases if they think they suffered financial injury as a result of errors in the process by certain named large servicers.

FFIEC: Reg. Z interagency exam procedures approved

The Task Force on Consumer Compliance of the FFIEC recently approved [interagency examination procedures for Regulation Z](#). These revised procedures supersede the Regulation Z interagency examination procedures transmitted with CA Letter 11-3.

Comment: Effective July 21, 2011, Dodd-Frank Act increased the thresholds for exempt consumer credit transactions from \$25,000 to \$50,000. The Federal Reserve Board adjusted Regulation Z by increasing the dollar threshold for exempt consumer credit transactions. In addition, the Dodd-Frank Act provides that, on or after December 31, 2011, the threshold must be adjusted annually by any annual percentage increase in the consumer price index. Accordingly, the exemption threshold increased from \$50,000 to \$51,800 effective January 1, 2012. The procedures clarify aspects of prior Board rules implementing the Credit Card Act.

CFPB posts Mortgage Origination Examination Procedures

On a page entitled [Guidance Documents](#), the CFPB has posted its Mortgage Origination Examination Procedures.

Comment: Remember, banks with total assets of \$10 billion or less will not be examined by the CFPB.

CFPB Director posts first video asking consumers to tell their stories

Rich Cordray, the new Director of the CFPB, has recorded a video message and posted it on the CFPB Web site. He tells the story of "Rebecca" and says she has had trouble with her mortgage servicer. He encourages Americans to [tell their story](#).

Comment: Director Cordray is seeking stories, good or bad. Although, banks of \$10 billion or less in assets aren't regulated by the CFPB, wouldn't it be great if your customers told their stories?

CFPB: Mortgage complaint system up and running

The CFPB is now accepting mortgage complaints from consumers who have experienced difficulties in the housing market, including problems related to mortgage documents, mortgage servicers, and foreclosure. To submit complaints, inquire, feedback, or just plain tell the CFPB about an experience they had with mortgages, consumers can:

Call toll-free at 1-855-411-CFPB (2372)

Visit [online](#)

Fax at 1-855-237-2392

Mail a letter to P.O. Box 4503, Iowa City, IA 522

Comment: Although financial institutions under \$10 billion aren't regulated by the CFPB, I think that studying CFPB's complaint process is instructive. When the CFPB receives a complaint, they forward it to the financial institution for review and resolution. The institution has 15 days to provide a response. The CFPB expects institutions to resolve and close all but the most complicated complaints in 60 days. The CFPB will prioritize for investigation complaints not timely resolved and those complaints consumers dispute. If legal violations are detected,

the Consumer Response office works with other part of the CFPB, including Supervision, Enforcement, and Regulations offices to initiate appropriate investigations. Data collected is shared throughout the CFPB to help inform decisions about consumer education, rulemaking, etc. I presume that any complaint received by the CFPB on a bank of \$10 billion or less will be referred to the bank's prudential regulator.

CFPB on collection of info from financial institutions larger than \$10B

CFPB issued a letter ([CFPB Bulletin 12-01](#)) to financial institutions with total assets of more than \$10 billion and their affiliates regarding the collection of information through the supervisory process and confidentiality protections provided.

CFPB announces launch of nonbank supervision program

On January 5, 2012, the CFPB announced that it was expanding "its bank supervision program (which began last July) to nonbanks, ensuring that banks and nonbanks play by the same rules." Click [here](#) to read the blog post.

CFPB joins other federal bank agencies by establishing its Office of Minority and Women Inclusion

On January 20, 2012, the CFPB will establish its Office of Minority and Women Inclusion (OMWI), under the guidance of the CFPB's OMWI working group.

Comment: Among other requirements, the OMWIs of the CFPB and each federal banking agency is charged, by statute, with developing standards for:

- *equal employment opportunity, workforce diversity, and inclusion at all levels of the agency;*
- *increased participation of minority-owned and women-owned businesses in the CFPB's programs and contracts; and*
- *assessing the diversity policies and practices of the CFPB's regulated entities.*

Section 342 of the Dodd-Frank Act requires the FDIC, FHFA, all Federal Reserve Banks, the Federal Reserve Board, NCUA, OCC, SEC, and CFPB to each create an Office of Minority and Women Inclusion. These offices have all been established and will each develop the standards set out in the bullet points above.

The third bullet point is troubling. For years, federal and state governments have created internal diversity standards. And private businesses have voluntarily created such standards, but I can't remember a government agency ever having the authority to assess these voluntary programs. Equal employment and affirmative action (for businesses of 50 employees or more) have been required for years, but to my knowledge, there's no federal diversity requirement. The Wall Street Journal called this the "biggest underreported threat" of the Dodd-Frank Act. ([Politicizing the Fed, June 14, 2010](#))



NMLS: Annual renewal and reactivation

The renewal period in NMLS has ended. Registrations that were not renewed must now be reactivated in order to be in an "Active" status.

Comment: Click [here](#) to find the steps institutions and Mortgage Loan Officers should follow to successfully renew or, if necessary, reactivate a registration.

OCC Director Workshops Schedule

The OCC announced the [2012 workshop schedule](#) for directors of national community banks and federal savings associations. Please register [online](#). If you have any questions about the workshops, please read the [Frequently Asked Questions](#), or contact the registration center at (240) 485-1700 or by [e-mail](#).

Comment: Even if a director had to travel out-of-state to attend, it is only \$99 per participant/per workshop.

Dodd-Frank Act (DFA) agency actions

Note to the Reader: This 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. We encourage you to comment on proposals.

Proposed DFA rules with open comment periods:

CFPB interim rules effective Dec. 31, 2011; comments sought

Title X of the Dodd-Frank Act transferred rulemaking authority for a number of consumer financial protection laws from seven Federal agencies to the CFPB as of July 21, 2011. The Bureau is in the process of republishing the regulations implementing those laws with technical and conforming changes to reflect the transfer of authority and certain other changes made by the Dodd-Frank Act. In light of the transfer to the CFPB of the Fed's rulemaking authority for the following rules, the CFPB published for public comment an interim final rule establishing a new:

- [Regulation C \(Home Mortgage Disclosure\)](#).
- [Regulation G \(S.A.F.E. Mortgage Licensing Act— Federal Registration of Residential Mortgage Loan Originators\) and a new Regulation H \(S.A.F.E. Mortgage Licensing Act—State Compliance and Bureau Registration System\)](#). (This interim final rule also covers employees of institutions regulated by the Farm Credit Administration.)
- [Regulation M \(Consumer Leasing\)](#). (CFPB published a [correction to the interim final rule](#) in the Federal Register to insert an omitted paragraph)
- [Regulation X \(Real Estate Settlement Procedures Act\)](#).
- [Regulation P \(Privacy of Consumer Financial Information\)](#)
- [Regulation DD \(Truth in Savings\)](#)
- [Regulation V \(Fair Credit Reporting\)](#)
- [Regulation B \(Equal Credit Opportunity\)](#)
- [Regulation J \(Land Registration\); a new Regulation K \(Purchasers' Revocation Rights, Sales Practices and Standards\); and a new Regulation L \(Special Rules of Practice\)](#)
- [Regulation Z \(Truth in Lending\)](#)
- [Regulation E \(Electronic Fund Transfers\)](#)

Comment: If the CFPB moves the electronic versions of these rules from their present locations to the CFPB Web site, every electronic article, periodical (e.g. Capitol Comments), email, forum discussion that contains hyperlinks to the regulations may instead contain dead links. This is a huge problem because many banking professionals rely on those resources and the hyperlinks they contain. Many of us in the compliance arena have spent the better part of the last 15 years (or more) linking to these rules in our writings. There is a possibility that overnight these links could become worthless.

Additionally, the transfer raises an interesting legal point. For transactions that occurred before December 30, 2011, the Federal Reserve regulations were the operative law. The fact that they will now have new numbers doesn't change that. In other words, bankers continue to need access to the Fed version. But this also means that there will be a dual system depending on the date of the transaction. That is not a good result.

These interim final rules were effective on December 30, 2011. Comments on Regs. C, G, H, and M must be received on or before February 17, 2012. Comments on Regs B, J, K, L, P, V, X, Z and DD must be received on or before February 21, 2012. Comments on Reg E must be received on or before February 27, 2012. According to the Federal Register notices, these interim final rules do not impose any new substantive obligations.

Volcker Rule proposal comment period extended

The Fed, FDIC, OCC, and [SEC extended until February 13, 2012, the comment period](#) on a proposal to implement the so-called Volcker Rule of the Dodd-Frank Act.

Comment: The Dodd-Frank Act requires regulators to implement certain prohibitions and restrictions on the ability of a banking entity and nonbank financial company to engage in proprietary trading and have certain interests in, or relationships with, a hedge fund or private equity fund. The comment period was extended as part of a coordinated interagency effort to allow interested persons more time to analyze the issues and prepare their comments. Originally, comments were due by January 13, 2012.

Publications, reports, studies, testimony & speeches

- **FedFocus**

The Federal Reserve issued its [FedFocus](#) for January with articles about changes to the dollar coin program, a strategy shift to FedCash services, and tips to connecting to their online events.

- **FinCEN assesses impact of defining mutual funds as financial institutions**

The purpose of the [report](#) is to assess the effectiveness of FinCEN's rulemaking in bringing the mutual fund industry into greater conformity with other parts of the financial industry that currently file CTRs.

- **Fed: Beige Book**

On January 11, the Fed issued its [Beige Book](#) prepared at the Federal Reserve Bank of San Francisco and based on information collected on or before December 30, 2011. It summarizes comments received from business and other contacts outside the Federal Reserve System and is not a commentary on the views of Federal Reserve officials.

- **FedFlash**

Click [here](#) to see the latest FedFlash. FedFlash provides the latest Federal Reserve operational news.

- **FinCEN issues annual report**

Click [here](#) to read FinCEN's annual report.

Selected upcoming federal compliance dates:

03.15.2012 ATMs must comply with the communication requirements of the [ADA and ABA Accessibility Guidelines for Buildings and Facilities](#).

06.30.2012 SAR/CTR batch filers must update their systems to the [new specifications](#). All institutions that batch file the current CTR, CTR-C, SAR-DI, SAR-SF, SAR-MSB, or SAR-C will have to convert their systems to file the new CTR and SAR. FinCEN will make other filing technical specifications available in the near future.

12.31.2012 Housing and Economic Recovery Act by The Helping Heroes Keep Their Homes Act of 2010 – The provision for an extended time period (extended from 90 days to nine months) for protections affecting foreclosure, sale, or seizure of servicemembers' real or personal property expires.

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

Selected federal compliance dates from the past 12 months:

Our list of past final rule effective dates is limited to 12 months. To see final rules with effective dates more than 12 months old, click [here](#).

01.01.2012 The FFIEC member agencies directed examiners to formally assess financial institutions under the enhanced expectations outlined in the [supplemental guidance on Internet banking authentication](#) beginning in January 2012.

12.31.2011 Treasury ends over-the-counter sales of paper savings bonds, including sales through financial institutions and applications directly to the Fed.

11.14.2011 National Labor Relations Board's [final rule](#) requiring employers to post workplaces notices regarding employee rights regarding unions and collective bargaining. Notices will be available at NLRB regional offices or on the NLRB [website](#) by October 1. Private sector employers subject to National Labor Relations Act must post the notice.

10.01.2011 [Final rule](#) establishing standards (Regulation II) for debit card interchange fees and prohibiting network exclusivity arrangements and routing restrictions.

10.01.2011 [Interim final rule](#) that allows for an upward adjustment of no more than 1 cent to an issuer's debit card interchange fee if the issuer develops and implements policies and procedures reasonably designed to achieve the fraud-prevention standards.

10.01.2011 Clarification of [Reg Z](#) Credit Card Act and official staff commentary.

08.15.2011 The Board [amended model notices](#) in Regulation B to include the disclosure of credit scores and related information if a credit score is used in taking adverse action.

- 08.15.2011 The [final rules](#) amending Regulation V generally require a creditor to provide a risk-based pricing notice to a consumer when the creditor uses a consumer report to grant or extend credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that creditor
- 07.21.2011 The FDIC [final rule](#) repeals Reg. Q, the prohibition against the payment of interest on demand deposit accounts.
- 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.
- 07.21.2011 The final rules amend [Reg. Z](#) and [Reg. M](#) (Consumer Leasing) to implement a provision of the Dodd-Frank Act, which requires Truth in Lending Act and the Consumer Leasing Act apply to consumer credit transactions and consumer leases up to \$50,000, compared with \$25,000 currently. This amount will be adjusted annually to reflect any increase in the consumer price index.
- 07.22.2011 Effective date of the repeal of Reg. Q's prohibition on payment of interest on commercial checking accounts. A rule has been [proposed](#) to implement this.
- 07.01.2011 [FDIC Overdraft Payment Supervisory Guidance](#). The FDIC expects that any additional efforts to mitigate risk would be in place by July 1, 2011.
- 05.01.2011 [Interim final rule](#) to implement statutory restrictions on the garnishment of Federal benefit payments and establish procedures that financial institutions must follow when they receive a garnishment order against an account holder who receives certain types of Federal benefit payments by direct deposit.
- 04.01.2011 [Final rule](#) amending Reg. Z increases from 1.5 to 2.5 percentage points the APR threshold for determining whether a jumbo mortgage secured by a first lien on a consumer's principal dwelling is a HPML for which an escrow account must be established.
- 04.01.2011 [Reg. Z](#) – 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 [final rule](#) 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](#) 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.
- 03.28.2011 FinCEN [final rule](#) to amend BSA regulations regarding reports of foreign financial accounts.
- 03.15.2011 [Nondiscrimination on the Basis of Disability Final Rules](#) – Effective dates of new [ADA requirements for ATMs](#).
- 01.31.2011 [Reg. E](#) – This is the delayed effective date pursuant to [H.R. 5502](#). 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](#) –The interim rule revising the disclosure requirements for closed-end mortgage loans is effective for all applications received on or after January 30, 2011.

How to submit comments to your federal regulators:

Office of the Comptroller of the Currency: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or e-mail, if possible. Please use the title in the Federal Register publication of the proposal. You may submit comments by any of the following methods:

- Federal eRulemaking Portal—Regulations.gov: Go to
- <http://www.regulations.gov> . Select “Document Type” of “Proposed Rule”, and in “Enter Keyword or ID Box”, enter the docket number found in the Federal Register publication of the proposed rule and click “Search.” On “View By Relevance” tab at bottom of screen, in the “Agency” column, locate the proposed rule for OCC, in the “Action” column, click on “Submit a Comment” or “Open Docket Folder” to submit or view public comments and to view supporting and related materials for this proposed rule.
- Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- E-mail: regs.comments@occ.treas.gov
- Mail: Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 2-3, Washington, DC 20219.
- Fax: (202) 874-5274.
- Hand Delivery/Courier: 250 E Street, SW., Mail Stop 2-3, Washington, DC
- 20219.

Instructions: You must include “OCC” as the agency name and the docket number in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure.

Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Board of Governors of the Federal Reserve System: You may submit comments, identified by the docket number and the RIN number found in the Federal Register publication of the rule proposal, by any of the following methods:

- Agency Web Site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: regs.comments@federalreserve.gov. Include the docket number and RIN number in the subject line of the message.
- Fax: (202) 452-3819 or (202) 452-3102.
- Mail: Address to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551.

Federal Deposit Insurance Corporation: You may submit comments, identified by RIN number, by any of the following methods:

- Agency Web Site: <http://www.FDIC.gov/regulations/laws/federal/propose.html>.
- Follow instructions for submitting comments on the Agency Web Site.
- E-mail: Comments@FDIC.gov. Include the RIN number on the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal
- Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery: Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Instructions: All comments received must include the agency name and RIN for this rulemaking and will be posted without change to <http://www.fdic.gov/regulations/laws/federal/propose.html>, including any personal information provided.

Consumer Financial Protection Bureau: You may submit comments, identified by docket number, by any of the following methods:

- <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Email: CFPB_StudentsFedReg@cfpb.gov.
- Mail: Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1500 Pennsylvania Ave. NW., (Attn: 1801 L Street), Washington, DC 20220.
- Hand Delivery/Courier in Lieu of Mail: Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006.

Instructions: The CFPB encourages the early submission of comments. All submissions must include the document title and docket number. Please note the number of the question to which you are responding at the top of each response (respondents need not answer each question). In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20006, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information such as account numbers or Social Security numbers should not be included. Comments will not be edited to remove any identifying or contact information.

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