

June 2010 - INTERSTATE CAPITOL COMMENTS

Community Bankers Association of Kansas

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(To access a blue underlined hyperlink, place your cursor on the link, use Ctrl + Click and the page will open.)

Have you posted the notice required by Executive Order 13496? Executive Order 13496, signed by President Obama on January 30, 2009, requires federal contractors to notify employees of their rights under the National Labor Relations Act (NLRA) to organize (form, join or support a union) and bargain collectively with their employers and to engage in other protected activity. If you are required to post the notice, you must do so on or before June 21, 2010.

Federal contractors and subcontractors are required to post the prescribed employee notice conspicuously in plants and offices where employees covered by the NLRA perform contract-related activity, including places where other notices to employees about their jobs are customarily posted both physically and electronically.

You can satisfy the electronic posting requirement by displaying prominently a link to the Notice of Employee Rights Under Federal Labor Laws Poster on any external or internal website that you maintain and customarily use for notices to employees about terms and conditions of employment. The text for the link must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers" and it must link to [this page](#).

Click below to see or print the notice:

[The Notice](#) (11X17)

[The Notice](#) (11X8.5)

To use one of these files as a poster for your place of employment, follow these instructions:

The files are only available in PDF format. In order to view and/or print PDF documents you must have a PDF viewer (e.g., Adobe Acrobat Reader) available on your workstation. Click on the PDF link for one of the Notice of Employee Rights Under Federal Labor Laws posters above and wait for it to load into the viewer.

1. The size of the poster must be 11x17 inches or larger.
2. If you have a printer capable of printing to 11x17 inch paper, download the poster in the 11x17-inch one-page format. Be sure to select that paper size when printing.
3. If you do not have a printer that is capable of 11x17 prints, download the poster in the 11x8.5-inch two-page format. When printing, please ensure that the Page Scaling box reads: Scale to Printer Margins and you have checked the Auto-Rotate and Center box. The poster will print two 11x8.5-inch landscape pages that must be taped or pasted together to form the 11x17 inch poster

[Fact Sheet](#)

[Executive Order 13496](#)

[Final Rule Implementing Executive Order 13496](#)

If you have questions about E.O. 13496 or its implementing regulations, call the Office of Labor-Management Statistics at (202) 693-0123 or send an email to olms-public@dol.gov.

Comment: Most community banks and commercial banks must post the notice physically and electronically. Each bank will need to make its own determination as to whether it posts the notice. If your bank offers savings bonds, serves as a Treasury and Tax Loan depository, or has other government contracts, it should comply with this law. If you don't think that you need to post the notice, get advice from a human resources specialist and/or legal counsel before making that decision.

Fed approves final credit cards rules

The Federal Reserve Board on July 15, 2010, approved a [final rule](#) to protect credit card users from late payments and other penalty fees that the Fed considers unreasonable and to require credit card issuers to reconsider interest rate increases imposed since the beginning of last year.

Among other things, the final rule, which amends Regulation Z (Truth in Lending):

- Prohibits credit card issuers from charging a penalty fee of more than \$25 for paying late or otherwise violating the account's terms unless the consumer has engaged in repeated violations or the issuer can show that a higher fee represents a reasonable proportion of the costs it incurs as a result of violations.
- Prohibits credit card issuers from charging penalty fees that exceed the dollar amount associated with the consumer's violation. For example, card issuers will no longer be permitted to charge a \$39 fee when a consumer is late making a \$20 minimum payment. Instead, the fee cannot exceed \$20.
- Bans "inactivity" fees, such as fees based on the consumer's failure to use the account to make new purchases.
- Prevents issuers from charging multiple penalty fees based on a single late payment or other violation of the account terms.
- Requires issuers that have increased rates since January 1, 2009 to evaluate whether the reasons for the increase have changed and, if appropriate, to reduce the rate.

This is the third stage of the Federal Reserve's implementation of the Credit Card Accountability Responsibility and Disclosure Act of 2009, which was enacted in May 2009. The provisions of the Act addressed in this rule will generally go into effect on August 22, 2010.

Comment: Consumers can learn more about changes to their credit card accounts by accessing a new online publication, "[What You Need to Know: New Credit Card Rules Effective Aug. 22.](#)" It explains key changes consumers can expect from their credit card companies as a result of the third phase of the new credit card rules. Additional information about credit cards can be found on the [Board's Web site](#).

Guidance on lapse and extension of FEMA's authority to issue flood insurance
[OCC Bulletin 2010-20](#) provides guidance to assist national banks in dealing with the periods during which the authority of FEMA to issue flood insurance contracts under the NFIP has lapsed. On May 31, 2010 the current reauthorization of the NFIP lapsed. The bulletin also provides guidance that will apply if there are any future lapses in the NFIP.

Comment: If the Senate hasn't done so by the time you read this, it should consider H.R. 4213 soon, which contains an NFIP authorization through December 31, 2010.

Write your own principal coordinators and the NFIP servicing agent

The NFIP was not reauthorized by Congress by midnight of May 31, 2010. Therefore, the Program is experiencing a hiatus – a period without authority to:

- issue new policies for which application and premium payment dates are on or after June 1, 2010, or
- issue increased coverage on existing policies for which endorsement and premium payment dates are on or after June 1, 2010, or
- issue renewal policies for which the renewal premium is received by the

company on or after June 1, 2010, and after the end of the 30-day renewal grace period, until Congress reauthorizes the Program.

While awaiting Congressional reauthorization, FEMA issued [guidance](#). A set of Frequently Asked Questions (starting at page 5) concerning NFIP authorization is attached to the guidance to assist in communicating with insurance agents and policyholders.

Comment: The hiatus period is expected to end soon. Capitol Comments will inform you when the NFIP is again authorized to sell new policies, issue increase coverage on existing policies, or issue renewal policies.

Fed issues clarification of Reg E and Reg DD amendments

The Federal Reserve Board on Friday announced final clarifications to aspects of its November 2009 final rule under [Regulation E](#) and its December 2008 final rule under [Regulation DD](#) pertaining to overdraft services.

The final clarifications address questions that have arisen and provide further guidance regarding compliance with certain aspects of the final overdraft rules. In particular, the final clarifications explain that the prohibition in Regulation E on assessing overdraft fees without the consumer's affirmative consent applies to all institutions, including those with a policy and practice of declining automated teller machine (ATM) and one-time debit card transactions when an account has insufficient funds. The final rules also make certain technical corrections and conforming amendments.

Comment: There are times when an account is in overdraft, but a debit card or ATM transaction will not reject. Banks without a courtesy overdraft program will not be able to charge a fee when this happens. Additionally, banks are required to establish a complex method for calculating overdraft balances for customers who don't consent to debit card overdraft coverage, but who overdraw their accounts through a combination of debit card and check or ACH transaction. Banks should also be aware that the model form A-9 may give customers the false impression that they are consenting to the amount of the fees. Banks may want to work with their legal counsel to amend the form to clearly state that the customer is consenting to the program, but that the stated fees may change upon 30-days notice without consent. Although the model form says that the bank will charge a daily fee, in at least one state, usury laws prevent such a fee. Check your state's usury laws before charging a daily overdraft fee.

Bank consents to \$1 million penalty for BSA violations

The FinCEN assessed a civil money penalty (CMP) of \$1 million against Pamrapo Savings Bank, S.L.A., of Bayonne, N.J. for violating requirements under BSA. Pamrapo's lack of internal controls combined with unqualified BSA compliance personnel, relatively non-existent training and deficient independent testing resulted in a wholly ineffective BSA compliance program which, in turn, resulted in the failure to file a substantial number of currency transaction and suspicious activity reports in an accurate and timely manner. Pamrapo, without admitting or denying the allegations, consented to payment of the civil money penalty.

FinCEN found that between January 1, 2005 and April 21, 2009, the bank flagrantly and repeatedly disregarded the most basic BSA requirements which resulted in an ineffective AML program and significant reporting failures.

In addition, bank management did not heed a bank regulatory recommendation that a third party evaluate the bank's BSA program. Bank management misled regulators by indicating this recommendation was given strong consideration at the highest levels of the bank but decided against taking action on it, when in fact, this recommendation was not considered at all.

Further, the lack of understanding of basic BSA requirements resulted in the failure to identify, evaluate and risk rate dozens of higher risk accounts to mitigate potential BSA/AML risks.

Comment: This is just a reminder that BSA/AML violations are taken seriously and can be very costly to your bank. Forward this to your BSA/AML Officer.

FDIC issues guidance on deposit placement and collection activities

The FDIC is issued [guidance](#) on deposit placement and collection activities by FDIC-insured institutions and their affiliates. The guidance outlines steps depository institutions should take to avoid customer misunderstanding about deposit insurance coverage when the institutions enter into third-party arrangements to collect and place deposits. Failure to properly administer deposit collection practices in a manner that prevents customer confusion and complies with deposit insurance rules will be factored into the supervisory assessment of the institution and may result in enforcement actions and penalties pursuant to 12 U.S.C. 1828(a)(4).

Comment: The FIL ([FIL-29-2010](#)) announcing issuance of the guidance contains a list of seven highlights. I suppose the highlights might be helpful, but the guidance is only three pages long.

OCC revises Conversions booklet

The OCC's Conversions booklet contains policies and procedures to guide depository institutions in converting to national bank charters and discusses any exceptions to these requirements. It also contains a step-by-step procedures section for use by the applicant and the OCC, a glossary of terms, and a reference section. The reference section includes applicable laws, regulations, and OCC issuances to assist applicants in completing the filing process.

Comment: A national bank seeking to convert to an institution with another type of charter is discussed in the "[Termination of National Bank Status](#)" booklet.

OTS: Revised Examination Handbook section on Fraud and Insider Abuse

The OTS has amended [Examination Handbook Section 360, Fraud and Insider Abuse](#), by revising the narrative to expand and update discussions in many areas and add some new information:

- Added a discussion on SAR reporting requirements and the applicability of the "Safe Harbor" provisions for SAR filers.
- Added a discussion on the FDIC's white paper entitled, "Impact of New Activities and Structures on Bank Failures" and highlighted factors that contributed to the four costliest institution failures from 1997 through 2002.
- Provided updated statistics and red flags on mortgage fraud, identity theft, check fraud and payment card fraud.
- Added a discussion on fraud risk management and detection methods based on AICPA guidance.
- Streamlined the internal controls section.

OCC: Community bank directors workshops

The OCC will host [workshops for directors](#) of nationally chartered community banks in:

- [Tulsa, OK](#), at the [Hilton Tulsa Southern Hills](#), July 20-21, 2010

The workshops are entitled "Directors: Where is the Risk in Your Bank" on July 20 and "Credit Risk: A Director's Focus" on July 21.

The OCC will also host these [workshops](#):

- [Peoria, IL](#), at the [Embassy Suites Hotel](#), July 27-28, 2010

The workshops are entitled "Directors: Where is the Risk in Your Bank" on July 27 and "Compliance Risk: What Directors Need to Know" on July 28.

The workshops, which are geared primarily to outside directors of national community banks with assets of less than \$1 billion, cost \$65 each and are each limited to the first 35 registrants. For information or to register [online](#), visit or call 336.451.0557.

Comment: Training is a necessity for bank directors and Tulsa is not very far to travel for training.

Agencies release list of distressed or underserved nonmetropolitan areas

The federal bank and thrift regulatory agencies announced the availability of the 2010 list of distressed or underserved nonmetropolitan middle-income geographies where revitalization or stabilization activities will receive CRA consideration as "community development. As with past releases, the 2010 list will incorporate a one-year lag period for geographies designated as distressed or underserved in 2009, but not designated as such in the 2010 release. Geographies subject to this one-year lag period are eligible to receive consideration for community development activities for 12 months after publication of the 2010 list.

The 2010 list and lists from previous years can be found on the [FFIEC website](#), along with information about the data sources used to generate the list of distressed or underserved geographies.

HMDA update

A [notice](#) was issued by FFIEC on the changes to 2009 HMDA Disclosure Reports. This three page notice includes:

- The Change in Reporting for Higher Priced Loans; and
- Changes to the Disclosure Statement and MSA Aggregate and National Aggregate Reports

PUBLICATIONS, REPORTS, STUDIES, TESTIMONY & SPEECHES

• Fed's Beige book released

According to the Fed's [June 2010 Beige Book](#), consumer spending and tourism increased, and the labor market improved modestly. Business spending rose, employment and capital spending increased, but inventory investment slowed. Economic activity continues to improve, but in most Districts the growth is modest. The April deadline for the homebuyer tax credit assisted residential real estate. Although some Districts reported an increase in leasing, commercial real estate remained weak. Lending increased modestly in a few districts, although overall financial activity was essentially unchanged. Stable prices of final goods indicated that higher input costs were not passed along to consumers.

• Fed: Profits and Balance Sheet Developments at U.S. Commercial Banks in 2009

The [Federal Reserve Bulletin from May 24, 2010](#), reviews recent developments in the balance sheets and in the profitability of U.S. commercial banks. The article discusses how developments in the U.S. banking industry in 2009 and early 2010 were related to changes in financial markets and in the broader economy.

• FDIC Spring 2010 Consumer News

The [Spring 2010 FDIC Consumer News](#), was released on May 19, 2010. This month's articles: New Realities, New Directions for Credit Cardholders; The New Consumer Protections on Credit Cards: An Overview; Using an Agent or Broker to Place a Bank Deposit? Ask these Questions First; Advice for Seniors: Understand the Risks and Costs of Borrowing With a Reverse Mortgage.

• FedFocus™

Among the articles in this edition of [FedFocus™](#) are: Federal Reserve Bank authorized to offer term deposits; Message format launch delayed; Layers of protection help to ensure secure FedLine framework. There are also articles on ACH risk exposure monitoring, Savings Bond University, and the end of paper savings bonds issued through payroll savings plans.

• FedFlash™

A new [FedFlash™](#) is available with the latest Federal Reserve Financial Services operational news and updates regarding products and services, processes, technical protocols, and contact information. Among other articles, this issue announces that financial institutions using a Microsoft Internet Explorer operating system may now access Federal Reserve Financial Services via the FedLine Web and FedLine Advantage.

• FDIC State Profiles

[FDIC State Profiles](#) for the 1st quarter of 2010 is available.

Important upcoming federal compliance dates:

- 06.21.2010 Post employee [notices](#) pursuant to Executive Order 13496
- ~~06.30.2010 TAG program expires. EXTENDED.~~
- 07.01.2010 Implementing FACT Act Accuracy & Integrity Rules: Deadline July 1, 2010
- 07.01.2010 [Reg. Z](#) – This is the mandatory compliance date for all provisions of the final rule on open end credit 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 [Reg Z and Reg. AA \(Unfair or Deceptive Practices\)](#) – 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 [Reg E](#) – The final rule limits the ability of a financial institution to assess an overdraft fee 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 [Reg E](#) and [Reg DD](#) have been proposed to clarify the initial Reg E amendments.)
- 07.01.2010 [FACT Act \(Fair and Accurate Credit Transactions Act\)](#) –Those furnishing consumer information to a consumer reporting agency must establish reasonable policies and procedures for implementing the guidelines in Appendix E.
- 08.22.2010 [Reg E](#) - 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.
- 10.01.2010 Reg Z – Higher priced mortgage loan escrow for manufactured homes (See Reg Z changes for 04.01.2010)
- 12.31.2010 [TAG](#) program expires.
- 01.01.2011 [FACT Act](#) – 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.
- 12.31.2013 [FDIC deposit insurance](#) temporary limit increase to \$250,000 expires.

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

Federal compliance dates from the not-so-distant past:

- 06.01.2010 [Reg GG \(Prohibition on Funding of Unlawful Internet Gambling\)](#).–. 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. [Reg GG \(Extension of compliance date\)](#)

- 04.01.2010 [Reg. Z](#) – Escrow on higher priced loans (Specifically, [12 CFR 226.35\(b\)\(3\)](#) is effective April 1, 2010.)
- 03.31.2010 [TALF program expires.](#)
- 02.27.2010 [Reg. CC](#) -- 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 [Reg. Z](#). – 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 [Reg. Z](#) – Amendments revising the disclosure requirements for private education loan become mandatory.
- 01.19.2010 [Reg. Z](#) – The purchaser or assignee that acquires a mortgage loan must provide the required disclosures in writing no later than 30 days after the date on which the loan is sold or otherwise transferred or assigned. (This rule was effective on 11.20.2009, but compliance was optional until 01.19.2010.)
- 01.01.2010 [Reg. X \(RESPA\)](#) – GFE and HUD-1 both change. Fee variance between GFE and HUD-1 limited based on fee type. Except with change of circumstances and new disclosures (within 3 business days of change), lender is locked into the fees originally disclosed for 10 business days after such disclosure.
- 01.01.2010 [Reg. DD \(Truth-in-Savings\)](#) – Disclose overdraft fees for statement period and YTD on periodic statements. Balances on automated systems (e.g. ATMs) must not include overdraft protection amount.
- 01.01.2010 [Reg. S](#) – Update the fees to be charged for producing records and takes account of recent advances in electronic document productions.
- 01.01.2010 Effective date of TAG participant opt-out.
- 12.31.2010 [GLBA \(Model Privacy Form\)](#) – The agencies adopted a model privacy form that financial institutions may rely on after 12.31.2010 as a safe harbor to provide disclosures under the privacy rules.
- 12.30.2009 Prepay quarterly risk-based FDIC assessments for the fourth quarter of 2009, and for all of 2010, 2011, and 2012, on December 30, 2009, along with risk-based assessment for the third quarter of 2009.
- 12.01.2009 **COMPLIANCE DATE EXTENDED TO 06.01.2010.** [Reg. GG \(Unlawful Internet Gambling Act\)](#) – Must send required notice to existing customers. Must perform due diligence at account opening and have procedures for dealing with violations.
- 10.01.2009 [Reg. C \(HMDA\)](#) – Loans requiring a rate spread must use Reg. Z’s new higher priced loan definition.
- 10.01.2009 [Reg. Z \(TIL\)](#) – Higher priced mortgage loan consumer protections; prohibits appraiser influence; prohibits unfair/deceptive servicing standards on dwelling secured closed end loans; advertising rules open & closed end loans; changes on HOEPA loan criteria.
- 09.18.2009 [New International ACH Transaction \(IAT\) rule](#) requiring all

international ACH payments to be uniquely identified.

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