

Capitol Comments November 2011

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



Recent News



Posting of NLRB employee rights notice postponed to January 31, 2011

The National Labor Relations Board postponed the implementation date for its new notice-posting rule by more than two months in order to allow for enhanced education and outreach to employers, particularly those who operate small and medium sized businesses. The new effective date of the rule is Jan. 31, 2012.

Comment. Most private sector employers will be required to post the 11-by-17-inch notice, which is available at no cost from the NLRB through its [website](#), either by downloading and printing or ordering a print by mail. The NLRB also has an [FAQ](#).

CFPB: Know Before You Owe, the student loan version

CFPB began *Know Before You Owe* several months ago to attempt to make mortgage disclosures easier to understand and compare. Now, the CFPB has begun a project with the Department of Education to do the same thing with student loans. The CFPB worked with the Department to sketch out a [sample form](#) as a “thought-starter,” not as a formal proposal. They want people to check it out and tell them what they think.

CFPB: Know Before You Owe; What’s next for mortgage disclosure design

The CFPB has received over 24,000 comments on its mortgage disclosure designs. Until last month, the CFPB had asked consumers and industry representatives to comment on two different designs. Last month, they sought comment on two different loans using the same design to see which product consumer’s would choose. The CFPB is now asking consumers and industry to comment on their comparison of a [fixed-rate](#) and an [adjustable-rate](#) loan using the same design for each.

Comment: If you’d like to comment, send them an [email](#). The disclosure designs they’ve been testing combine the Truth in Lending form and Good Faith Estimate given at application. Next, the CFPB will test closing disclosure designs. While we appreciate the CFPB’s efforts, we believe that adoption of these designs would necessitate Congressional action to change to the underlying laws. If you’d like to receive updates from the CFPB, click [here](#).

Notice regarding how to correct or amend paper BSA forms

Due to business process changes resulting from FinCEN’s BSA IT Modernization, paper form instructions that pertain to filing corrections or amendments have changed.

When correcting or amending a previously filed paper report, filers must check the appropriate amendment or correction box *and complete the form in its entirety*. Filers are strongly encouraged to complete this process through the BSA E-Filing System. Prior to these instruction updates, some form instructions required filers to attach copies of previously filed reports to corrected or amended forms. Filers should no longer attach copies of previously filed reports to a corrected or amended form. Amendment instructions for the Report of Foreign Bank and Foreign Financial Accounts (TDF.90-22.1) and the Report of Cash Payments over \$10,000 Received in a Trade or Business (Form 8300) will be updated soon to reflect this filing change.

As of December 1, 2011, corrections and amendments will not be accepted as previously filed and filers will be contacted to resubmit corrections or amendments using the updated instructions. To view specific correction or amendment instructions, please visit the [Forms webpage](#) and select a specific form type.

Please note that BSA E-Filing instructions pertaining to corrections and amendments have not changed. FinCEN encourages filers to submit corrections and amendments via the BSA E-Filing System. Some electronic forms require the input of a Document Control

Number (DCN) for corrections or amendments. If a DCN is required but unavailable, filers should enter all "zeros" into the DCN field when submitting an electronic correction or amendment to a filing that was previously submitted via paper. To learn more about electronically filing BSA forms, please visit the [BSA E-Filing System webpage](#).

Comment: You might recall that FinCEN [proposed](#) the mandatory electronic filing of reports required under BSA effective June 30, 2012.

FinCEN Webinar: Definitions and other regulations relating to prepaid access

A recording of FinCEN's [Webinar](#) on the prepaid access final rule is available on the FinCEN Website. The Webinar is in a Powerpoint format. You will need speakers or headphones for your computer. The Webinar is clocks in at just under an hour.

FinCEN issues FAQs on prepaid debit access

FinCEN issued [FAQs](#) to assist providers and sellers of prepaid access in understanding the scope of the final rule imposing certain recordkeeping and reporting requirements under BSA. The [Prepaid Access Final Rule](#) (the "Rule") was issued July 29, 2011 and has generated many questions. These FAQs are intended to provide interpretive guidance for the Rule; they do not supersede or replace any part of it.

The Rule establishes a more comprehensive approach for regulating prepaid access and requires providers and sellers of prepaid access to (1) file SARs, (2) collect and retain customer and transactional information and (3) maintain an anti-money laundering program. These BSA requirements are similar to those that apply to other categories of Money Services Businesses. The Prepaid Access Rule amends some of the provisions within FinCEN's MSB regulations.

Comment: Financial institutions with questions about the frequently asked questions may contact the FinCEN's regulatory helpline at 1-800-949-2732.

OCC revised procedures to appeal agency decisions and actions

The OCC revised its [procedures](#) for national banks to appeal agency decisions and actions to include federal savings associations. This issuance also replaces Banking Bulletin 2002-9, dated February 25, 2002, and repeals OTS Thrift Bulletin 68b, dated July 10, 2008.

Comment: By revising the appeals procedure to include federal savings associations, a uniform appeals process will apply to national banks, federal branches and agencies, and federal savings associations.



NMLS Annual Renewal (SAFE Act)

The NMLS Annual Renewal Period begins November 1 and ends December 31, 2011. According to federal regulations, any institution managing registered mortgage loan originators in NMLS must renew its record in NMLS for 2012. Additionally, individual mortgage loan originator (MLO) registrants placed in an active status prior to July 1, 2011 must be renewed through NMLS for 2012. The institution is responsible for renewing its registration as well as its individual MLOs' MU4R registrations. Individual MLOs must log in and attest to their renewal registration prior to December 31st in order for the status to remain active.

Comment: On the [NMLS Resource Center](#) Web page there are steps both institutions and MLOs should follow to successfully complete this process.

CFPB Bulletin: Early Warning Notice

The CFPB issued the first in a series of [periodic bulletins](#) intended to provide information about the policies and procedures of the CFPB's Office of Enforcement (the Office). The stated purpose of the bulletins is to inform the public about some of the types of legal violations that the Office intends to investigate for potential enforcement action and the procedures and methods that it will use to do so.

Comment: Before the Office recommends that the CFPB commence proceedings, the Office may give the subject notice of the nature of the subject's potential violations and may offer the subject the opportunity to submit a written response. So, the use of the notice by the Office isn't mandatory. The Office provided a sample [notice](#).

CFPB: Mortgage settlement disclosure designs

The CFPB posted on their Web site [two disclosure forms](#) designs for the same mortgage loan product for purposes of comparison by consumers and mortgage lenders. The CFPB is asking the following question: "Which format would you prefer for your customer to use at closing to describe final loan terms and closing costs?"

Comment: We encourage you to look at the two disclosure designs and click on the one that you prefer. Give your input now; you'll have to live with the final form. Here is a [CFPB blog](#) describing what they are doing.

CFPB blogs

Click [here](#) to read the latest CFPB blogs on student loans, seniors, veterans, holiday spending, and mortgage disclosure form testing in Des Moines, Iowa,

Federal Reserve annual indexing of reserve requirement exemption amount

The Federal Reserve Board [announced](#) the [annual indexing](#) of the reserve requirement exemption amount and of the low reserve tranche for 2012.

The Board also announced changes in two other amounts, the nonexempt deposit cutoff level and the reduced reporting limit, that are used to determine the frequency with which depository institutions must submit deposit reports. The attached Federal Register notice contains a description of the new boundaries for deposit reporting that will be effective in 2012.

Additional Check 21-Related FedReceiptRouting Numbers

The Federal Reserve Banks [announced](#) the conversion of additional routing numbers to the FedReceipt Forward and FedReceipt Returns product as well as availability changes for Check 21-Related FedFoward and FedReturn services.

Effective the business day of October 24, 2011, the Federal Reserve Banks will modify the credit availability and pricing schedule on these FedReceipt routing numbers. The following changes will apply to image cash letter deposits:

- Availability on all FedReceipt Forward collection routing numbers will be immediate at all deadlines unless specifically noted. The list of new routing numbers as well as a complete list of FedReceipt Forward routing numbers can be found [here](#).
- Availability on FedReceipt Returns routing numbers will be immediate through the 2:00 a.m. deadline. The list of new routing numbers as well as a complete list of FedReceipt Return routing numbers can be found at [here](#).

Also effective October 24, 2011, the following changes will be made to the FedReceipt endpoint lists:

- Attachment I provides a list of routing numbers that have been dropped from FedReceipt or have shifted between FedReceipt Returns and PDF
- Attachment II provides a list of routing numbers that will be immediate only through the 7:00 a.m. ET deposit deadline
- The following routing numbers will be available through the 10:00 a.m. ET deposit deadline: 0560-7349-2; 2550-7690-2

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.

Recent DFA final rules adopted:

No final rules since October Capitol Comments

No relevant final rules implementing the Dodd Frank Act were adopted since the issuance of the October edition of Capitol Comments.

Proposed DFA rules with open comment periods:

The Volker Rule published in the Federal Register

Last month, we reported that the three federal bank regulatory agencies and the SEC had proposed a rule to implement the Volker Rule. At that time, it had not been published in the Federal Register. It has now been published at [76 FedReg 68846](#).

Comment: This proposed rule would implement Section 619 of the Dodd-Frank Act which contains certain prohibitions and restrictions on the ability of a banking entity and nonbank financial company supervised by the Board to engage in proprietary trading and have certain interests in, or relationships with, a hedge fund or private equity fund.

Publications, reports, studies, testimony & speeches

- **CFPB financial audit**

The Government Accountability Office published its audit of the Bureau of Consumer Financial Protection's fiscal year 2011 financial statements. Click [here](#) to read a summary.

Comment: If you are a real glutton for punishment, you can read the entire report [here](#). If you just want the bottom line, click [here](#) to see the GOA's highlights.

- **Fed's Beige Book**

The Fed's October 19, 2011 update to the [Beige Book](#) was prepared at the Federal Reserve Bank of Chicago and is based on information collected on or before October 7, 2011

- **FedFocus**

The Federal Reserve has issued its [FedFocus](#) for November with features including: **Partnering to better payments; Help your corporate customers make the switch to direct deposit by March 2013 deadline; and Let your fingers do the walking to reach your staff education objectives.**

- **Federal Reserve Bulletin**

The October 2011 edition of the [Federal Reserve Bulletin](#), entitled Legal Developments, Second Quarter, 2011, describes the orders issued under Section 3 of the Bank Holding Company Act. Seven orders were issued in this quarter, one for Hancock Holding Company, Mitsubishi UFJ Financial Group, Inc., and United Bankshares, Inc. under Section 3 of the Bank Holding Company Act, one for Bank of Montreal and M&T Bank Corporation under Sections 3 and 4 of the Bank Holding Company Act, and one for Bank of Communications Co., Ltd. and Bank of Taiwan under the International Banking Act.

- **OCC: Reg E revised examination procedures**

The OCC issued a new booklet entitled "[Electronic Fund Transfer Act—Regulation E](#)" in the Comptroller's Handbook. This booklet updates examination procedures and incorporates recent changes the Board of Governors of the Federal Reserve made to Regulation E regarding overdraft services, gift cards, and electronic signatures.

Comment: The "Electronic Fund Transfer Act—Regulation E" booklet is available on [occ.gov](#) and on Examiner's Library. This booklet replaces the sections of the "Depository Services" booklet that address Regulation E and the Electronic Fund Transfer Act. If you have questions, please contact your supervisory office or the Compliance Policy Department at (202) 874-4428.

- **Fed: How Do Joint Supervisors Examine Financial Institutions? The Case of State Banks**

This [paper](#) studies what determines whether federal and state supervisors examine state banks independently or together. The results suggest that supervisors coordinate examinations in order to support states with lower budgets and capabilities and more banks to supervise. States with larger budgets examine more banks independently, accommodate changes in the number of banks mostly through the number of examinations with a federal supervisor and, when examining banks together, state banking departments that have earned quality accreditation are more likely to write conclusion reports separately from federal supervisors.

- **FedFlash**

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

- **FFIEC: CRA census data**

Census 2010 MSA, State, County and Tract [listing](#) for calendar year (CY) 2012 CRA/HMDA reporting are now available.

- **FFIEC: CRA/HMDA software downloads**

2011 CRA & HMDA Data - The [free FFIEC CRA and HMDA Data Entry Software](#), version 2011 for CY 2011 data due March 1, 2012, is available by download from the FFIEC CRA and HMDA web sites.

Selected upcoming federal compliance dates:

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

- 01.31..2012 National Labor Relations Board's [final rule](#) requiring employers to post workplaces notices regarding employee rights regarding unions and collective bargaining. Notices are available at NLRB regional offices or on the NLRB [website](#). Private sector employers subject to National Labor Relations Act must post the notice. The notice was originally required on 11.14.2011, but was delayed to allow for further education and outreach.
- 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.

- 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.

01.03.2011 [Official FDIC sign](#) – New FDIC signs must be posted showing the \$250,000 minimum insurance amount.

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.

01.01.2011 [Reg. Z](#) – 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](#) – 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](#) 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 [Interagency Appraisal and Evaluation Guidelines](#) effective.

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.

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