

## Resources

### Consumer Financial Protection Bureau Alert—Vol. 1, No. 8

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## Regulations and Guidance Update

### Consumer Financial Protection Bureau Unveils Simplified Credit Card Agreement

On December 7, the CFPB unveiled a prototype for a simplified credit card agreement that is both shorter and easier to read than current credit card agreements. The prototype is the CFPB's answer to consumers' top complaint of difficulty understanding the terms of their credit card agreements. The prototype is part of the bureau's Know Before You Owe campaign, a series of initiatives aimed at improving financial disclosures that has already released simplified model disclosures for mortgages and student loans.

The prototype agreement spans two pages and is about 1,100 words—a significant reduction from current credit card agreements, which average about 5,500 words. The prototype highlights in large type the actual costs, and uses simple language to explain other terms. The prototype also removes much of the “legalese” from the agreement. The contractually and legally necessary definitions and other language will be made available on the CFPB's website or by mail, free of charge, for those who do not have access to the Internet.

Raj Date, the Bureau's *de facto* director, explained that the prototype is merely intended as a “thought-starter,” and that the Bureau expects to revise and improve on the agreement with feedback from the industry as well as product testing. The CFPB will test the prototype with the Pentagon Federal Credit Union, one of the largest credit unions in the country with more than one million members. Additionally, the prototype agreement will be made available on the CFPB's website, where consumers will have the opportunity to offer comments and suggestions for improvement.

The efforts of the CFPB in creating the prototype agreement have been met with widespread support, but some have doubts as to the legal sufficiency of the prototype. Some commenters have suggested that it might be too ambitious to try to simplify credit agreements so dramatically when much of the content is driven by the legal requirements. Moreover, the American Bankers Association said the prototype was a “good first step,” but noted that it could leave card issuers susceptible to lawsuits.

### CFPB Posts Additional Model Loan Closing Disclosure Forms for Comment

In its continued effort to combine the Truth in Lending Disclosure with the HUD-1 Settlement Statement, and building off of the comments received on the forms it posted in November, the CFPB posted two new disclosure prototypes on December 13, 2011. While the first round of prototypes were designed to simplify disclosure formats, the CFPB has indicated that in this round, the goal is to target closing costs. One prototype (Sassafras) discloses closing costs in a similar format to the current HUD-1. The other (Mimosa) displays the closing costs in a format similar to the CFPB application prototype. Both prototypes are available on the CFPB website.

In reviewing the forms, the CFPB has specifically asked consumers and industry professionals to think about whether the information is presented in a consumer-friendly format, whether consumers can easily identify the key loan terms and closing costs, whether the disclosure covers all the information needed, and whether the format is easy for lenders and settlement companies to use.

The Bureau is currently seeking feedback on the two prototypes through its website. Additionally, the prototypes are being tested in various markets, beginning in Birmingham, Alabama. This is the second round of testing in what the Bureau anticipates to be four rounds through February 2012. Draft forms are expected to be issued for notice and comment in July

2012.

## CFPB Proposes Disclosure of Credit Card Complaints

The Bureau has requested public comment on a proposed policy statement regarding the publication of information from consumers' credit card complaints. The CFPB has received more than 5,000 complaints from consumers regarding credit cards over the past several months. Consumers can monitor their complaints at the Bureau's website or by calling a toll-free number. The online complaint system includes five categories of information: What Happened; Desired Resolution; My Information; Credit Card Information; and Review. Companies must respond to consumer complaints within 15 days and close the complaint within 60 days.

The most common disputes to date have involved billing, interest rates, identity theft, and fraud issues. The CFPB believes "[t]hese complaints show a mismatch between consumer expectations and the way the product functions." The American Bankers Association disagrees with that sentiment, with representative Kenneth Clayton stating, "There are more than 383 million credit card accounts in the U.S., and less than one-tenth of one percent of those have submitted a complaint to the bureau."

The Bureau issued an interim final rule in July governing disclosure of records and information, including treatment of confidential information. However, the proposed policy statement does not contemplate the disclosure of confidential consumer complaint information. The proposed policy statement sets forth the Bureau's proposed initial disclosure of credit card complaint data. It also identifies additional ways that the CFPB may disclose credit card complaint data, but the CFPB will conduct further study regarding these other methods of disclosure before finalizing its position.

The policy statement would allow the Bureau to publish a database including the type of complaint, name of the credit card issuer, date of the complaint, and zip code of the consumer. The database would not include consumers' names, addresses, or other confidential or proprietary information. Nor will the CFPB publish any narrative information consumers provide in complaints, stating that such disclosure "would be unlikely to facilitate statistical analyses of trends or patterns in the credit card complaint data," and "might also expose issuers to reputational harm from potentially inaccurate, misleading, or incomplete narratives." The Bureau also proposes publishing "periodic reports about trends and patterns in complaint data that will give consumers meaningful information about credit card use." Comments on the proposed policy statement are due on or before January 30, 2012.

As reported in this Alert, the Bureau has begun accepting complaints and inquiries from consumers regarding home mortgages and, in the near future, will start taking complaints about checking accounts, savings accounts, and other financial products by the end of next year.

## CFPB Publishes Interim Final Rules Regarding the Fair Debt Collections Practices Act, Consumer Leasing, the Home Mortgage Disclosure Act, the S.A.F.E. Act, Mortgage Act and Practices (Advertising) and Mortgage Assistance Relief Services

Title X of the Dodd-Frank Act transferred rulemaking authority for a number of consumer financial protection laws from seven Federal agencies to the Bureau 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.

Effective July 21, 2011, section 1061 of the Dodd-Frank Act transferred to the Bureau the "consumer financial protection functions" previously vested in certain other Federal agencies. Accordingly, effective July 21, 2011, except with respect to persons excluded from the Bureau's rulemaking authority by section 1029 of the Dodd-Frank Act, the authority of the Board to issue regulations pursuant to the CLA transferred to the Bureau. Under this authority, the Bureau has been busy revising the regulations it inherited from other regulators so it can reissue them under its own subtitles in the Code of Federal Regulations (CFR). To this end, the Bureau released newly codified regulations regarding the Fair Debt Collection Practices Act (the "FDCPA") (Regulation F) the Mortgage Act and Practices (Advertising) (Regulation N) and Mortgage Assistance Relief Services (Regulation O) last week, and on December 19, 2011 released newly codified regulations regarding Consumer Leasing (Regulation M), the Home Mortgage Disclosure Act (Regulation C), and the S.A.F.E. Act (Regulations G and H). These regulations are discussed below.

## Fair Debt Collection Practices Act (Regulation F)—12 CFR Part 1006

In the December 16, 2011 Federal Register, the Bureau published an interim final rule establishing Regulation F, the Bureau's FDCPA regulation, which becomes effective on December 30, 2011. Public comments are requested and must be received by February 14, 2012.

The interim final rule makes few changes to the FTC's current FDCPA regulations (16 CFR Part 901). Other than nonsubstantive, technical and formatting changes, Regulation F mirrors the current FDCPA regulations. As is the case with the FTC rule, Regulation F lays out the procedure that a state must follow if the state seeks an exemption of a class of debt collection practices within the state from certain provisions of the FDCPA. The rule discusses the application process, as well as notification procedures once a decision has been made, and the requirement that the state inform the Bureau of changes in state law that is the subject of the exemption.

The exemption procedures appear in Subpart A of Regulation F. The interim final rule also creates a Subpart B of the regulation, which, for the time being, is reserved. The Bureau has indicated that it plans that any additional guidance it issues related to the FDCPA will be adopted as part of Regulation F rather than through formal advisory opinions or informal staff interpretations. Regulation F will be codified at 12 CFR Part 1006.

## Consumer Leasing (Regulation M)—12 CFR Part 1013

In light of the transfer of the Board of Governors of the Federal Reserve System's (Board's) rulemaking authority for the Consumer Leasing Act of 1976 (CLA) to the Bureau, the Bureau published for public comment an interim final rule establishing a new Regulation M (Consumer Leasing). This interim final rule does not impose any new substantive obligations on persons subject to the existing Regulation M, previously published by the Board. The new interim final rule becomes effective on December 30, 2011. Comments are requested and must be received by February 17, 2012.

The CLA, as amended, authorizes the Bureau to prescribe regulations to update and clarify the requirements and definitions applicable to lease disclosures and contracts, and any other issues specifically related to consumer leasing, to the extent the Bureau determines such action necessary to carry out the purposes, prevent the circumvention, or facilitate compliance with the requirements of the CLA. The Bureau has made certain nomenclature and other non-substantive changes consistently throughout Regulation M. References to the Board and its administrative structure have been replaced with references to the Bureau. Conforming edits have been made to internal cross references and to reflect the scope of the Bureau's authority pursuant to the CLA, as amended by the Dodd-Frank Act. Appendix B, entitled "Federal Enforcement Agencies," has been eliminated, because it was designed to be informational only and is unnecessary for purposes of implementing the CLA, as amended. Historical references that are no longer applicable, and references to effective dates that have passed, have been removed as appropriate.

Section 1100E of the Dodd-Frank Act directs the Bureau to adjust the dollar threshold for covered consumer lease transactions annually for inflation by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), as published by the Bureau of Labor Statistics.

## Home Mortgage Disclosure Act (Regulation C)—12 CFR Part 1003

In light of the transfer to the Bureau of the Board's rulemaking authority for the Home Mortgage Disclosure Act of 1975, as amended, the Bureau published for public comment an interim final rule establishing a new Regulation C (Home Mortgage Disclosure). This interim final rule does not impose any new substantive obligations on persons subject to the existing Regulation C, previously published by the Board. The new interim final rule becomes effective on December 30, 2011. Comments are requested and must be received by February 17, 2012. The interim final rule substantially duplicates the Board's Regulation C as the Bureau's new Regulation C, 12 CFR Part 1003, making only certain non-substantive, technical, formatting, and stylistic changes. To minimize any potential confusion, the Bureau preserved the past numbering of the Board's Regulation C, other than the new part number and the enumeration of the individual definitions in Sec. 1003.2. While this interim final rule generally incorporates the Board's existing regulatory text, appendices (including model forms and clauses), and supplements, the rule has been edited as necessary to reflect nomenclature and other technical amendments required by the Dodd-Frank Act. Notably, this interim final rule does not impose any new substantive obligations on regulated entities. In future rulemakings, the Bureau expects to amend Regulation C to implement certain changes to HMDA made by the Dodd-Frank Act.

The rule has been changed to effect technical, non-substantive changes to the Board's existing regulatory text of Regulation C. References to the Board and its administrative structure have been replaced with references to the Bureau. Conforming edits have been made to internal cross-references and addresses for filing documentation. Paragraph lettering for definitions has been removed. Conforming edits have been made to reflect the scope of the Bureau's authority pursuant to HMDA, as amended by the Dodd-Frank Act. Historical references that are no longer applicable, and references to effective dates that have passed, have been removed.

Conforming edits have also been made to reflect new Office of Management and Budget (OMB) control numbers issued for information collections required by Regulation C. Specifically, Form FR HMDA-LAR, the Loan/Application Register Transmittal Sheet, has been edited to add OMB control numbers for the Bureau and the National Credit Union Administration and to remove the control number formerly used by the Office of Thrift Supervision.

This interim final rule modifies the current regulatory text by including the Bureau as an appropriate Federal agency for receiving reports and removes the Office of Thrift Supervision as an entity to whom financial institutions may be required to report data under HMDA. The Bureau issued guidance concurrently with the issuance of this interim rule regarding the appropriate Federal agency to which each financial institution should report 2011 data pursuant to HMDA.

The Dodd-Frank Act amended HMDA to require covered financial institutions to report data with respect to, among other things, the age of mortgagors and mortgage applicants, points and fees payable at origination in connection with a mortgage, the difference between the annual percentage rate associated with a loan and a benchmark rates or rates for all loans, the term in months of any prepayment penalty or other fee or charge payable on repayment of some portion of principal or the entire principal in advance of scheduled payment, the value of the real property pledged or proposed to be pledged as collateral, the actual or proposed term in months of any introductory period after which the rates of interest may change for a loan, the presence of contractual terms or proposed contract terms that would allow the mortgagor or applicant to make payments other than fully amortizing payments during any portion of the loan term, the actual or proposed term in months of the mortgage, the channel through which the mortgage application was made, and the credit score of mortgage applicants and mortgagors. A change to the regulatory text to require collection of additional data pursuant to the Dodd-Frank Act is a substantive change that is beyond the scope of this interim final rule. Therefore, the Bureau will address those substantive amendments to the HMDA data elements in a future rulemaking.

## S.A.F.E. Act (Regulations G and H)—12 CFR Parts 1007 and 1008

In light of the transfer to the Bureau of the rulemaking authority of the Board, the Comptroller of the Currency, the National Credit Union Administration, the Federal Deposit Insurance Corporation, and the Department of Housing and Urban Development for the Secure and Fair Enforcement for Mortgage Licensing Act (S.A.F.E. Act), the Bureau published for public comment an interim final rule establishing a new 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. This interim final rule does not impose any new substantive obligations on persons subject to the existing S.A.F.E. Act regulations. The new interim final rule becomes effective on December 30, 2011. Comments are requested and must be received by February 17, 2012.

The S.A.F.E. Act provides for the licensing and/or registration of mortgage loan originators. The S.A.F.E. Act requires employees of depository institutions, employees of subsidiaries that are owned and controlled by a depository institution and regulated by a Federal banking agency, or employees of institutions regulated by the Farm Credit Administration who act as residential mortgage loan originators to register with the Nationwide Mortgage Licensing System and Registry, obtain a unique identifier, and maintain this registration. The S.A.F.E. Act further requires states to adopt minimum standards for licensing residential mortgage loan originators.

Historically, the Federal registration requirements of the S.A.F.E. Act have been implemented through a coordinated rulemaking of the Federal banking agencies and the Farm Credit Administration with authority over Federal registration requirements under the S.A.F.E. Act (collectively, the Federal registry agencies). Further, prior to July 21, 2011, the S.A.F.E. Act

charged the Department of Housing and Urban Development (HUD) with evaluation of states' compliance with the S.A.F.E. Act and with establishing and maintaining a licensing and registration system for a state or territory that does not have a system in place for licensing loan originators that meets the requirements of the S.A.F.E. Act.

The Dodd-Frank Act amended a number of consumer financial protection laws, including the S.A.F.E. Act. In addition to minor amendments, the Dodd-Frank Act transferred rulemaking authority for the S.A.F.E. Act from the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the National Credit Union Administration, the Federal Deposit Insurance Corporation, and the Department of Housing and Urban Development to the Bureau of Consumer Financial Protection (Bureau), effective July 21, 2011. The Dodd-Frank Act also granted the Bureau rulemaking authority pursuant to the S.A.F.E. Act with respect to employees of institutions regulated by the Farm Credit Administration. Pursuant to the Dodd-Frank Act and the S.A.F.E. Act, as amended, the Bureau published for public comment an interim final rule establishing a new Regulation G, S.A.F.E. Mortgage Licensing Act—Federal Registration of Residential Mortgage Loan Originators, 12 CFR part 1007, implementing the Federal registration requirements of the S.A.F.E. Act and a new Regulation H, S.A.F.E. Mortgage Licensing Act—State Compliance and Bureau Registration System, 12 CFR Part 1008, implementing the requirements with respect to states' compliance with the S.A.F.E. Act and the maintenance of a licensing and registration system for a state or territory that does not have a system in place for licensing loan originators that meets the requirements of the S.A.F.E. Act.

The interim final rule substantially duplicates the Federal registry agencies' largely identical coordinated rules as the Bureau's new Regulation G, 12 CFR part 1007, making only certain nonsubstantive, technical, formatting, and stylistic changes. The interim final rule also substantially duplicates HUD's rule as the Bureau's new Regulation H, 12 CFR part 1008. To minimize any potential confusion, the Bureau preserved the past numbering systems of the Federal registry agencies and HUD, other than the new part numbers and, with respect to Regulation G, the enumeration of the individual definitions in section 1007.102. While this interim final rule generally incorporates and consolidates the largely identical rules of the Federal registry agencies and HUD, the rule has been edited as necessary to reflect nomenclature and other technical amendments required by the Dodd-Frank Act. Notably, this interim final rule does not impose any new substantive obligations on regulated entities. Regulated entities and their employees that were registered with the Nationwide Mortgage Licensing System and Registry and had obtained unique identifiers pursuant to the regulations of the Federal registry agencies as of the effective date of this Regulation G will be considered by the Bureau to have registered pursuant to the new Regulation G.

The new Regulation G consolidates the regulations of the Office of the Comptroller of the Currency (12 CFR part 34); the Federal Reserve System (12 CFR parts 208 and 211); the Federal Deposit Insurance Corporation (12 CFR part 365); the Office of Thrift Supervision (12 CFR part 563); the Farm Credit Administration (12 CFR part 610); and the National Credit Union Administration (12 CFR parts 741 and 761) pursuant to the conforming changes in section 1100 of the Dodd-Frank Act. Further, the new Regulation H has been changed to effect technical, nonsubstantive changes to HUD's existing regulatory text of 24 CFR part 3400. For both Regulations G and H, references to the respective banking agencies and HUD have been replaced with references to the Bureau in the new regulations. Conforming edits have been made to internal cross-references. Conforming edits have also been made to reflect the scope of the Bureau's authority pursuant to the requirements of the S.A.F.E. Act, as amended by the Dodd-Frank Act. For example, references to the Federal registry agencies and HUD and their respective administrative structures have been replaced with references to the Bureau and its administrative structure. Conforming edits have been made to internal cross-references and addresses. Historical references that are no longer applicable, and references to effective dates that have passed, have been removed.

## Mortgage Act and Practices—Advertising (Regulation N) and Mortgage Assistance Relief Services (Regulation O)

Congress enacted section 626 of the Omnibus Appropriations Act, 2009 (Omnibus Appropriations Act) on March 11, 2009 and directed the FTC to commence a rulemaking proceeding within 90 days of enactment with respect to mortgage loans. On May 22, 2009, the enactment of the Credit Card Accountability Responsibility and Disclosure Act of 2009 clarified the FTC's rulemaking authority under the Omnibus Appropriations Act to specify that the FTC's rulemaking based on its authority pursuant to the Omnibus Appropriations Act “shall relate to unfair or deceptive acts or practices regarding mortgage loans,” which may involve loan modification and foreclosure rescue services.

Prior to July 21, 2011, rulemaking authority for the Omnibus Appropriations Act was vested in the FTC. The Dodd-Frank Act amended a number of consumer financial protection laws, including the Omnibus Appropriations Act. In addition to various substantive amendments, the Dodd-Frank Act transferred rulemaking authority for the Omnibus Appropriations Act to the Bureau of Consumer Financial Protection (Bureau), effective July 21, 2011. Pursuant to the Dodd-Frank Act and the Omnibus Appropriations Act, as amended, the Bureau published for public comment an interim final rule establishing a new Regulation N (Mortgage Acts and Practices—Advertising), 12 CFR Part 1014, and a new Regulation O (Mortgage Assistance

Relief Services), 12 CFR Part 1015, implementing the Omnibus Appropriations Act.

The interim final rule substantially duplicates the FTC's Mortgage Acts and Practices—Advertising Rule as the Bureau's new Regulation N, and the FTC's Mortgage Assistance Relief Services Rule as the Bureau's new Regulation O, making only certain non-substantive, technical, formatting, and stylistic changes. To minimize any potential confusion, other than republishing 16 CFR Parts 321 and 322 with the Bureau's part number, the Bureau preserved where possible the numbering the FTC used in the two rules. Additionally, while this interim final rule generally incorporates the FTC's existing regulatory text, the rule has been edited as necessary to reflect nomenclature and other technical amendments required by the Dodd-Frank Act. Notably, this interim final rule does not impose any new substantive obligations on regulated entities. In future rulemakings, the Bureau expects to amend Regulations N and O to implement certain other changes to the Omnibus Appropriations Act made by the Dodd-Frank Act, such as expanding the scope of Regulations N and O to include persons excluded from coverage under the FTC's existing 16 CFR Parts 321 and 322 due to the fact that they are not subject to the FTC's enforcement jurisdiction.

References to the FTC's rulemaking authority have been replaced with references to the Bureau. Conforming edits have been made to internal cross-references. Historical references that are no longer applicable, and references to effective dates that have passed, have been removed as appropriate. In addition, with respect to the Mortgage Assistance Relief Services Rule, the Bureau is correcting a citation error in the FTC's existing § 322.9(c). As adopted by the FTC, § 322.9(c) contains a cross-reference to § 322.10(a). The correct citation should be to §§ 322.9(a) and (b). The Bureau republished § 322.9(c) as § 1015.9(c) with the citation corrected to read §§ 1015.9(a) and (b).

## Examinations/Enforcement

### Here and Now Federal Agencies to Fight HAMP Modification Scams with Joint Task Force

On December 1, 2011, the Consumer Financial Protection Bureau (CFPB) announced that it has joined forces with the Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) and the U.S. Department of the Treasury to combat scams aimed at borrowers seeking loan modifications under the Home Affordable Modification Program (HAMP). The joint task force plans to investigate and shut down operations that defraud consumers under the guise of facilitating HAMP modifications.

The task force also seeks to educate homeowners, which it began doing immediately with the issuance of a consumer fraud alert regarding HAMP-related mortgage modification scams. The fraud alert provides a series of tips for homeowners to keep in mind when seeking a mortgage modification. Among others, the tips caution consumers to be wary of those who charge in advance for mortgage modification services and those who make guarantees regarding the likelihood that the consumer will be approved for a loan modification. The consumer fraud alert is available at [www.SIGTARP.gov/pdf/ConsumerFraudAlert.pdf](http://www.SIGTARP.gov/pdf/ConsumerFraudAlert.pdf) and will be provided directly to homeowners eligible for HAMP.

## News from the Bureau

### CFPB Creates Ombudsman Office

The Consumer Financial Protection Bureau (CFPB) recently created an Ombudsman's Office, which will serve as an independent, impartial, and confidential resource to assist in the resolution of individual and systematic issues that a depository entity, non-depository entity, or consumer has with the CFPB. The CFPB Ombudsman's Office was established under the Dodd-Frank Act, which also created the CFPB. Wendy Kamenshine will be the Acting Ombudsman.

The Ombudsman will report to the CFPB's Deputy Director and have full access to the Director. Depository and non-depository entities supervised by the CFPB may contact the CFPB Ombudsman when they have not had success with the existing CFPB processes for dealing with their complaints. In general, the Ombudsman analyzes and investigates all sides of an issue by reviewing applicable laws, regulations, policy, and data; speaking with the individual and/or stakeholders involved; and meeting with CFPB officials. Upon completion of such review, the Ombudsman may make recommendations on how the CFPB should handle an issue. However, the Ombudsman will not address matters already in litigation or make decisions or legal determinations for the CFPB.

The Ombudsman's Office has established safeguards to preserve confidentiality. On this front, it will not share identifying information outside the Ombudsman's Office without permission of the complainant unless: 1) there is a threat of imminent risk of serious harm; 2) an issue of government fraud, waste, or abuse has been raised; or 3) it is required to do so by law.

## **CFPB Requests Tips about Violators from Whistleblowers**

The Bureau has begun soliciting information from whistleblowers and others knowledgeable sources regarding potential violations of Federal consumer financial laws. In CFPB Bulletin 2011-05, the Bureau announced methods of direct line communication with the Bureau and encouraged assistance in the enforcement of these laws.

Specifically, the Bureau announced it is welcoming information from current or former employees of potential violators, contractors, vendors, and competitor companies. In providing a specific email address and toll-free number, the Bureau has created easy access to the Bureau to those who can assist in its enforcement obligations. Early next year, the Bureau also plans to introduce an online tips portal accessible through its website for this purpose. Richard Cordray, the Bureau's Assistant Director of Enforcement (and President Obama's nominee to head the Bureau), maintained that whistleblower's "tips will help inform Bureau strategy, investigations, and enforcement. And they will help us fulfill our commitment to consumers."

Whistleblowers may request confidentiality or may even provide tips anonymously to the extent permitted by law, although the Bureau believes that providing contact information may assist the Bureau in investigating and remediating potential violations. Whistleblowers are protected from employer retaliation under provisions of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act (the "Dodd-Frank Act"). Section 1057 provides that no covered employer may terminate or otherwise discriminate against any covered employee for: (1) providing information to the employer, Bureau, or any state, local, or federal government authority or law enforcement agency relating to a violation of Federal consumer financial law; (2) testifying about a potential violation; (3) filing any lawsuit or other proceeding under any Federal consumer financial law; or (4) objecting to or refusing to participate in violations of Federal consumer financial laws.

The Bureau also clearly distinguished whistleblower information and law enforcement tips from consumer complaints. The Bureau's consumer complaint process is available for individuals who have personally encountered problems as parties to specific transactions with financial services and companies. Consumers or clients of financial services who wish to submit complaints about such issues are directed to the Consumer Complaint Form on the Bureau's website.

## **Consumer Financial Protection Bureau Begins Taking Consumer Complaints Pertaining to Mortgages**

On December 1, 2011, the Bureau commenced its efforts to accept and address consumer complaints relating to residential mortgage loans. The complaint process is highly automated and can be accessed via the CFPB's website. The agency is providing assistance to consumers who wish to file a complaint in the form of a toll-free hotline as well as an online chat-based help system.

The complaint form provides several categories for consumers to complete, including: (1) What Happened; (2) Desired Resolution; (3) My Information; (4) Product Information; and (5) Review. It provides consumers with the ability to provide a significant amount of descriptive text regarding their complaint and regarding their proposed resolution. Consumers also have the ability to upload supporting documentation to the website. When the CFPB receives a complaint, that complaint is automatically routed to the institution that is the subject of the complaint. The CFPB's system will allow the institution to view the complaint information so that the institution can resolve the issue. The CFPB will require the company to respond to each complaint within 15 days and to close out each complaint within 60 days of the date it is received. It remains unknown to what degree the CFPB will insert itself in discussions and negotiations of complaints between interested parties.

## Miscellany

### Republicans Block Richard Cordray from Consumer Financial Protection Bureau Directorship

As expected, President Obama fell short of the 60 votes necessary to seat nominee Richard Cordray as the first director of the Consumer Financial Protection Bureau. On Tuesday, December 6, 2011, the Senate voted 53-45 in favor of the former Ohio Attorney General becoming the Consumer Financial Protection Bureau's first leader, but 60 votes were needed to end the filibuster. "We are not giving up on this," said President Obama, lashing out at Republicans after the vote. Senate Republicans like Cordray for the job. However, they oppose the current CFPB structure, including the idea of appointing a single individual to run the independent agency. "We just think that nobody should be above oversight—including the overseers," said Republican and Senate Minority Leader Mitch McConnell.

After the failed vote, President Obama vowed to make the Cordray vote a prevalent issue in the 2012 election unless the GOP changed its course. In fact, the President has relished the debate. He has even adopted a populist tone heading into his run for re-election. "Unless you're a financial institution whose business model is built on breaking the law, cheating consumers, and making risky bets that could damage the entire country, you should have nothing to fear from these new rules," said Obama.

The fate of the CFPB's leadership will largely depend on whether or not Congress takes its upcoming recess. In lieu of a Senate confirmation, Obama has considered appointing Cordray during the upcoming congressional recess. According to Obama, the administration "won't take any options off the table." Republicans, however, stand with equal resolve to see their opposition through. Some speculate that House Republicans will refuse to adjourn for the rest of the year, thereby forcing the Democrat-controlled Senate to remain in session. Under such circumstances, President Obama would be unable to make Richard Cordray head of the CFPB through a recess appointment.

While the filibuster left the Democrats without their desired CFPB head, observers believe that Democrats will use the failed vote to their advantage. "Democrats can't change Republican votes on the issue, probably, but they can exact a political price and push their election year theme that the GOP is for the rich and they are for the middle class," said Larry Sabato, director of the University of Virginia's Center for Politics. Indeed, blocking Cordray proved an unpopular move in voters' eyes. A majority of Americans—46 percent to 39 percent—wanted Obama's nominee approved, according to the United Technologies/National Journal Congressional Connection Poll.

No matter the outcome, observers anticipate that Democrats have and will use the CFPB directorship dispute as fodder for the upcoming presidential election. The Democrats likely pressed for a vote, knowing it would fail, in order to bring the issue to the public forum. After the filibuster, Democrats engaged the media to express their discontent. What is more, the topics "CFPB" "Richard Cordray" and "Senate GOP" were suddenly trending on Twitter. President Obama immediately appealed to the middle-class sentiments after the vote. He said, "We are not going to let politics as usual on Capitol Hill stand in the way of American consumers being protected from unscrupulous financial operators." Mark Calabria, director of Financial Regulations Studies at the Cato Institute, sees the Democrats' use of the failed vote as electioneering. "I think they're thinking, 'we can paint Republicans as friends of Wall Street,'" said Calabria.

### In Bipartisan Letter, House Members Ask CFPB to Review Credit CARD Act's "Ability to Pay" Rules

In a December 5, 2011, letter to Raj Date, House Financial Services Committee Chair Spencer Bachus (R-AL) and other senior committee members called on the CFPB to study the impact of the "ability to pay" provisions in Regulation Z. Signatories included Committee Ranking Member Barney Frank (D-MA) and Credit CARD Act author Carolyn Maloney (D-NY). The House Members indicated that the rules, promulgated by the Federal Reserve and that became effective on October 1, 2011, are inconsistent with the Congressional intent of the Credit CARD Act of 2009. The Credit CARD Act sets up a distinct "independent ability to pay" standard for college-age consumers seeking lines of credit. The Federal Reserve's final rules, however, create a uniform standard requiring all consumers to demonstrate an independent ability to repay.

Members are concerned that the "ability to pay" rule is not designed to create a stricter standard for younger consumers, who may need more protection as compared to older consumers. Additionally, Members worry that the uniform standard will

create a disadvantage for stay-at-home spouses who may have ample household income even if they may not have an independent source of income themselves. The letter indicated that credit card issuers have already seen a negative impact on the ability of stay-at-home spouses to secure a line of credit and a greater decline in the average credit line size assigned to women as compared to men, across all applications. In a press release, Representative Louise Slaughter (D-NY) said, “While I was proud that my amendment to protect young adults was included in the legislation, we should remember that a separate, stricter ability-to-pay standard was necessary to protect students from falling into crippling debt. I urge the CFPB to review and amend these rules to ensure that they do not harm stay-at-home mothers.”

The Members called on the CFPB to use its unique perspective to look across both the credit card-issuing industry and consumers to study the impact of the Federal Reserve rules, urging the Bureau to begin a review process before the end of the year. Should a study show a negative impact to consumers, the Members further call on the CFPB to amend the “ability to repay” provisions of Regulation Z.

## **CFPB Requests Additional Funds from the Federal Reserve and Triggers Requests from Congress for Financial Accountability and Reporting**

The CFPB has requested an additional \$28 million from the Federal Reserve, above the \$142 million budgeted for FY 2011. This request has further angered House committees, which have requested specific information regarding the use of the Bureau’s funds.

While the CFPB is allotted a set percentage of the Federal Reserve’s revenue each year, the Dodd-Frank Act allows for the transfer of additional funds, within certain limits. Republican members of the House, already fighting the Bureau’s lack of accountability to Congress, want information regarding the need for the additional funds, as well as the Bureau’s expenditures generally. The House Financial Services Committee is demanding details about why the CFPB requested the additional funds from the Federal Reserve.

In addition, Congressman Neugebauer, Chairman of the House Subcommittee on Oversight and Investigations, indicated that Congress wants to know what goods and services have been purchased by the Bureau, to what purpose they will be put, and what benefit the American people will derive from the resulting Bureau action.

Specifically, the House Subcommittee on Oversight and Investigations has requested that the Bureau provide it with ongoing quarterly reports for FY 2012 on Federal Reserve transfers and obligations, with the reports to be delivered within two weeks of the end of each quarter. The Committee also requested a five-year capital plan, including IT hardware, software and services, vehicles, major equipment, facilities, and leases as well as research and performance measures. The Committee has also requested information about the salaries of CFPB personnel, including the median 2011 annual salary for employees in each of the Bureau’s departments, as well as a spreadsheet listing each position currently held by an employer or contractor at the Bureau along with a description of the position title.

The Bureau has responded by stating that its “goal is to be open and transparent about the way we spend our funds.” At the time this Alert went to press, it was not clear how the Bureau is going to respond to such request.

## **Regulatory Scorecard**

Below is Dykema’s up-to-date chart of pending and final regulatory activities and proceedings at the CFPB.

**Consumer Financial Protection Bureau Pending Rulemakings, Final Rulemakings and Other Initiatives under Dodd-Frank Act (DFA) as of December 20, 2011**

\*\*NOTE: [Click here to access a printable version of the Scorecard.](#)

### **Description**

**Date of Proposal/  
Final or Interim Rule**

**Summary of Contents**

**Key Dates**

Proposed Federal Reserve Board Comprehensive Regulation Z Proposals August 26, 2009  
(74 FR 43428)

August 26, 2009  
(74 FR 43232) Two proposals issued in August of 2009 contained revisions to disclosures for closed-end mortgage loans and HELOCs. On February 1, 2011, Fed elected not to finalize proposals, recognizing CFPB's impending authority

Proposed Federal Reserve Board Comprehensive Regulation Z Proposal September 24, 2010  
(75 FR 58539) Proposed rule to: (1) expand the right to rescind to additional loan types, (2) amend disclosures to explain the right to rescind, (3) clarify lender's responsibilities upon rescission, (4) mandate disclosures for loan modifications, (5) change reserve mortgage disclosures, and (6) place restrictions on certain advertising and sales practices for reverse mortgages. On February 1, 2011, Fed elected not to finalize proposals, recognizing CFPB's impending authority

Department of Treasury Privacy Act System of Records January 10, 2011  
(76 FR 1507)

June 15, 2011  
(76 FR 35071) In accordance with the Privacy Act of 1974, as amended, Department of Treasury provided notice of the establishment of a Privacy Act System of Records. Written comments due on or before February 9, 2011

Effective Date: July 15, 2011

Proposed Federal Reserve Board Regulation Z: Escrow Requirements March 2, 2011  
(76 FR 11598) Proposed rule to: (1) extend the minimum period an escrow account must be maintained for first lien, higher priced mortgage loans from one to five years, (2) provide an exemption from the mandatory escrow for certain loans, (3) exempt from the mandatory escrow requirement creditors that operate primarily in "rural or "undeserved" counties, and (4) require new disclosure explaining how the escrow account works or what the effects would be of not having an escrow account at all. Written comments due on or before May 2, 2011

CFPB and JAGs Partnership July 6, 2011

The CFPB and JAGS: partnering to protect servicemembers CFPB and Judge Advocate Generals will work together to identify potential violations of consumer law involving service members and their families.

OCC, FED, FDIC, SEC, FHFA, and HUD Risk Retention/Qualified Residential Mortgage (QRM) April 29, 2011  
(76 FR 24090)

June 10, 2011  
(76 FR 34010) DFA §941 requires sponsors of asset backed securities (ABSs) to retain at least 5% of the credit risk of assets underlying the securities; proposal includes loan-level requirements such as minimum down payment. Written comments due on or before August 1, 2011

Federal Reserve Board Increase in Regulations Z & M Coverage Thresholds April 4, 2011  
(76 FR 11598) Consumer credit transactions and consumer leases with transaction amounts up to \$50,000 will be covered by Regulation Z and Regulation M. Beginning the end of this year (December 31, 2011), the threshold will be adjusted annually based upon the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers. Effective July 21, 2011

CFPB Data Collection under ECOA April 11, 2011

Section 1701 of the Dodd-Frank Act DFA §1071 amended ECOA to require financial institutions to collect and report credit application information for women- or minority-owned businesses and small businesses. CFPB issued guidance to financial institutions clarifying that DFA §1071 does not take effect until the CFPB issues necessary implementing regulations.

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Federal Reserve Board Ability to Repay/Qualified Mortgage (QM) April 19, 2011  
 (76 FR 27390) DFA §1411 requires creditors, when making loans covered by TILA, to determine the consumer's ability to repay before making a loan and also to establish minimum mortgage underwriting standards; proposal includes alternatives for final regulation. Written comments due on or before July 22, 2011

Federal Reserve Board Foreign Remittance Transfers under Regulation. E May 23, 2011  
 (76 FR 29902) DFA §1073 amended the EFT Act, adding a new section to require providers of "remittance transfers" to provide disclosures about such transfers, including exchange rate, applicable fees and taxes, and the amount to be received by the "designated recipient." Written comments due on or before July 22, 2011

Federal Reserve Board Collection Data at Motor Vehicle Dealers under Regulation. B June 20, 2011  
 (76 FR 36885) Proposed rule to clarify that motor vehicle dealers temporarily are not required to comply with certain data collection requirements in the DFA until the board issues final regulations to implement the statutory requirements. Written comments due on or before July 29, 2011

CFPB "Single Integrated Disclosure" Proposal (in advance of proposed rule) under DFA §1032 May – June, 2011  
 (www.consumerfinance.gov)

July 20, 2011  
 (76 FR 43374)

September 12, 2011 CFPB has posted several rounds of "sample" forms on its website and sought public feedback; U.S. Treasury has solicited comments "concerning a proposed generic information collection for development and evaluation of integrated loan disclosures" (combining Regulation. Z mortgage disclosure and the RESPA Good Faith Estimate (GFE) into a single, integrated disclosure form). DFA requires final rule no later than July 21, 2012; CFPB has stated that it will conduct four rounds of consumer testing through February, 2012, and will issue notice and comment rulemaking in July, 2012

CFPB "Larger Participant" Definition June 29, 2011  
 (76 FR 38059) DFA §1024 provides that CFPB may supervise covered persons in the residential mortgage, private education lending and payday lending markets. For other markets for consumer financial products or services, CFPB's supervision program will apply only to a "larger participant" of these markets, as defined by rule. Written comments due on or before August 15, 2011

CFPB Identification of Enforceable Rules and Orders

July 21, 2011  
 (76 FR 43569)

CFPB published consumer financial protection authorities that would be transferred from seven federal agencies and that it would enforce after the Transfer Date. Effective Date: July 21, 2011

CFPB Alternative Mortgage Transaction Parity (Regulation D)

July 22, 2011  
 (76 FR 44226)

CFPB published interim final rule establishing Regulation D pursuant to the Alternative Mortgage Transaction Parity Act and the Truth in Lending Act.

Effective for state housing creditors July 22, 2011

Written comments due on or before September 22, 2011

FTC Statement of General Policy or Interpretation; Commentary on the Fair

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Credit Reporting Act

July 26, 2011  
(76 FR 44462)

FTC is rescinding its Statements of General Policy or Interpretations under the FCRA.      Effective Date: July 26, 2011

Disclosure of Records and Information

July 28, 2011  
(76 FR 45372)

Interim Final Rule establishes procedures for the public to obtain information from the CFPB under the Freedom of Information Act (FOIA). CFPB also established its rules regarding the confidential treatment of information it obtains in connection with the exercise of its authority.

Effective Date: July 28, 2011

Written comments due on or before September 26, 2011

Rules of Practice of Adjudication Proceedings

July 28, 2011  
(76 FR 45338)

Interim Final Rule establishes procedures regarding the conduct of adjudication proceedings under §1053 of the Dodd-Frank Act, used to enforce compliance with the Dodd-Frank Act or any laws for which it has enforcement authority.

Effective Date: July 28, 2011

Written comments due on or before September 26, 2011

State Official Notification Rules

July 28, 2011  
(76 FR 45174)

Interim Final Rule establishes procedures to be used by state officials to notify the CFPB of their actions or proceedings in enforcing the Dodd-Frank Act or its regulations.

Effective Date: July 28, 2011

Written comments due on or before September 26, 2011

Rules Relating to Investigations

July 28, 2011  
(76 FR 45168)

Interim Final Rule describing the CFPB's procedures for investigations regarding compliance with the federal consumer financial laws.

Effective Date: July 28, 2011

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Written comments due on or before September 26, 2011

Notice of Proposed Privacy Act System of Records

August 1, 2011  
(76 FR 45767)

(76 FR 45765)

(76 FR 45761)

(76 FR 45757)

(76 FR 45759)

(76 FR 45763)

Notice of new records system to collect process, log, track and respond to all FOIA- and Privacy Act-related requests.

Notice of new records system used to enable the CFPB to carry out its responsibilities with respect to certain banks, savings associations, credit unions, and their affiliates and service providers, including coordination and conduct of examinations, supervisory evaluations and enforcement actions.

Notice of a new records system used to enable the CFPB to carry out its responsibilities with respect to individuals related to non-depository covered persons, including the coordination of examinations, supervision evaluations and enforcement actions.

Notice of a new records system used to enable the CFPB to carry out its responsibilities with respect to the enforcement of federal consumer financial protection laws.

Notice of a new records system used to assist the CFPB by providing effective, social media-based ways to share information and interact with the public.

Notice of a new records system that will provide the CFPB with a single, agency-wide repository of identifying and registration information concerning entities offering or providing, or materially assisting in the offering or provision of, consumer financial products or services.

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Effective Date: September 12, 2011

Written comments due on or before August 31, 2011

Policy on Ex Parte Presentations in Rulemaking Proceedings  
August 16, 2011

Policy on Ex Parte Presentations in Rulemaking Proceedings Policy requiring public disclosure of ex parte presentations made to the CFPB staff concerning a pending rulemaking.  
August 16, 2011

Notice and Request for Information on Consumer Financial Products and Services for Servicemembers  
September 6, 2011

(76 FR 54998)

Request for input regarding consumer financial products and services tailored to servicemembers and their families.  
Written comments due on or before September 20, 2011

Proposed Information Collection; Comment Requests; Generic Clearance for Research in Development of Disclosure Forms September 26, 2011

(76 FR 59379) Generic Clearance Request regarding information collection to OMB in connection with research in the development of disclosure forms and request for comments on the collection of information and the estimated burden on respondents. Written comments due to OMB reviewer and to Treasury Department Clearance Officer on or before October 26, 2011.

FRB Final Rule Amending Regulation B to Postpone Auto Dealer Collection of Information on Minority and Women Owned Businesses and Small Businesses

September 26, 2011

(76 FR 59237)

Provides that motor vehicle dealers are not required to comply with Dodd-Frank's data collection requirements on credit applications by women- and minority-owned businesses until the FRB issues final regulations to implement the statutory requirement. Effective September 26, 2011

Proposed Collection;

Comment Request October 31, 2011

(76 FR 67128) CFPB is soliciting comment for a proposed generic information collection that will help the CFPB satisfy responsibilities under the Dodd-Frank Act—the collection and monitoring of and response to consumer complaints about certain financial products and services. Written comments due on or before December 30, 2011.

Proposed Collection;

Comment Request November 2, 2011

(76 FR 67668) CFPB is soliciting comment for a proposed generic information collection for development and/or testing of model forms, tools, and similar related materials. Written comments due on or before January 3, 2012.

CFPB Early Notice of Enforcement Actions CFPB Bulletin 2011-04

November 7, 2011 CFPB announced it may provide lenders with notice of the nature of the subject's potential violations before proceeding with enforcement actions. Effective November 7, 2011

Notice of Proposed Privacy Act System of Records November 4, 2011

(76 FR 68395) CFPB is soliciting comments on its new system of records regarding its employees' Transit Subsidy Program. Written comments due on or before December 5, 2011.

Request for Information Regarding Private Education Loans and Private Education Lenders

November 17, 2011

(76 FR 71329)

CFPB is requesting information on private education loans and related consumer financial products and services to help prepare a report on

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private education loans and private education lenders required under section 1077 of the Dodd-Frank Act. Written comments due on or before January 17, 2012

Notice of Proposed Privacy Act System of Records

November 17, 2011

(76 FR 71327)

CFPB is soliciting comments on its new system of records regarding its employees' benefits, retirement, human resources and payroll programs.

Written comments due on or before December 19, 2011

Proposed Collection;  
Comment Request

November 21, 2011

(76 FR 71932)

CFPB is soliciting comment on the collection of information from state officials regarding the filing of state actions to enforce the Dodd-Frank Act and regulations prescribed thereunder. Written comments due on or before January 20, 2012

Notice; Request for Information

December 5, 2011

(76 FR 71932)

CFPB is requesting specific suggestions for streamlining regulations inherited from other agencies.

Written comments due on or before March 5, 2012

Notice of Proposed Policy Statement

December 8, 2011

(76 FR 76628)

CFPB is requesting comment on a proposed policy statement that addresses the CFPB's proactive disclosure of credit card complaint data. The policy statement sets forth the CFPB's proposed initial disclosure of credit card complaint data and identifies additional ways that CFPB may disclose credit card complaint data.

Written comments due on or before January 30, 2012

Notice of Proposed Privacy Act System of Records

December 13, 2011

(76 FR 77470)

CFPB is soliciting comments on its new system of records regarding Interstate Land Sales Registration Files.

Written comments due on or before January 12, 2012.

Notice of Proposed Privacy Act System of Records

December 13, 2011

(76 FR 77472)

CFPB is soliciting comments on its new system of records regarding its Ombudsman Office's tracking of inquiries submitted to it while the inquiries are being adjudicated.

Written comments due on or before January 12, 2012

Notice and Request for Public Comment

December 14, 2011

(76 FR 77766)

CFPB is requesting comment on a proposed information collection in connection with certain mortgage servicing rules and related disclosures.

Written comments due on or before January 13, 2012

Bureau Invites Whistleblower Information and Law Enforcement Tips, and Highlights Anti-Retaliation Protections

December 15, 2011

[http://www.consumerfinance.gov/wp-content/uploads/2011/12/CFPB\\_Enforcement\\_Bulletin\\_12-15-11.pdf](http://www.consumerfinance.gov/wp-content/uploads/2011/12/CFPB_Enforcement_Bulletin_12-15-11.pdf)

Bureau is soliciting information from whistleblowers regarding potential violations of Federal consumer financial laws.

December 15, 2011

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Interim Final Rule With Request for Public Comment

December 16, 2011

(76 fr 78126)

Interim final rule that recodifies FDCA rules as Regulation F under the Bureau's regulation.

Effective Date: December 30, 2011; Written comments due on or before February 14, 2012

Interim Final Rule With Request For Public Comment

December 16, 2011

(76 FR 78130)

Interim final rule establishing a new Regulation N (Mortgage Acts and Practices—Advertising Rule) and a new Regulation O (Mortgage Assistance Relief Services Rule) under the Bureau's regulations.

Effective Date: December 30, 2011; Written comments due on or before February 14, 2012

Interim Final Rule With Request For Public Comment

December 19, 2011

(76 FR 78465)

Interim final rule that recodifies Regulation C, implementing HMDA, under the Bureau's regulations.

Effective Date: December 30, 2011; Written comments due on or before February 17, 2012

Interim Final Rule With Request For Public Comment

December 19, 2011

(76 FR 78483)

Interim final rule that codifies Regulation G and H, implementing the S.A.F.E. Act, under the Bureau's regulations.

Effective Date: December 30, 2011; Written comments due on or before February 17, 2012

Interim Final Rule With Request For Public Comment

December 19, 2011

(76 FR 78500)

Interim final rule that recodifies Regulation M, implementing the Consumer Leasing Act, under the Bureau's regulations.

Effective Date: December 30, 2011; Written comments due on or before February 17, 2012

## Contacts and Caveats

For more information about Dykema's Financial Services Regulatory and Compliance Team, please contact group leader, **Don Lampe** at 704-335-2736, or any of the listed attorneys.

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## Practice Areas

Financial Services Litigation – Consumer

Litigation

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