

# Compliance Journal

## Special Focus

## Website and Mobile Application Accessibility Under the ADA

Notice 2017-1

### Accessibility to Financial Institution Services for Customers with Disabilities

Title III of the Americans with Disabilities Act (ADA) requires places of “public accommodation” to allow people full and equal enjoyment of business services, regardless of disability. Financial institutions are places of public accommodation and as a result must comply with Title III of the ADA. The ADA requires more than simply providing customers physical access to a building. Recently, plaintiffs’ law firms and disability advocacy groups have been filing lawsuits against places of public accommodation for failing to provide websites and mobile applications that are accessible to customers with disabilities.

Customers with disabilities frequently need websites and mobile applications to comply with certain technological standards in order for these customers to use websites and mobile applications effectively. For example, videos must be captioned properly for customers with hearing impairments, and pictures must have “alt tags” that describe the pictures with text in order to allow screen reader devices to describe the pictures for customers with visual impairments.

### The State of the Law Regarding Website Accessibility

The Department of Justice (DOJ) has begun the process of creating regulations on website accessibility under the ADA. The DOJ issued an Advance Notice of Proposed Rulemaking in 2010 and gathered extensive commentary related to website accessibility under both Title II (which covers public entities such as state and local governments) and Title III of the ADA. The DOJ has decided to first issue website accessibility regulations under Title II of the ADA, and then issue regulations under Title III. The DOJ recently solicited additional comments regarding website accessibility under Title II. The comment period ended October 7, 2016, and thus it is likely that website accessibility regulations under Title II will not be available until 2017 at the earliest. The Title II regulations for website accessibility will likely impact the eventual Title III regulations that will apply to financial institutions. The DOJ has stated that proposed website accessibility regulations under Title III are not expected until 2018.

The lack of federal regulations regarding website accessibility for disabled individuals has not stopped lawsuits from being filed. Under existing Title III regulations, a place of public accommodation must “furnish appropriate auxiliary aids and services

where necessary to ensure effective communication with individuals with disabilities,” including communication through the internet. Case law on website accessibility has indicated that places of public accommodation can be liable under the ADA when their websites are not accessible to people with disabilities. A financial institution’s website connects users to the institution’s physical locations, and thus the institution’s website would likely be considered a place of public accommodation given its strong nexus to the financial institution’s physical locations. To meet obligations under the ADA, financial institutions must incorporate technology to ensure its websites and mobile applications are accessible to customers with disabilities.

### Technological Standards for Web Content Accessibility

Web Content Accessibility Guidelines (WCAG 2.0) have been developed to make web content more accessible to people with disabilities. The DOJ often requires companies to comply with WCAG 2.0 in settlement and consent agreements. Therefore, a financial institution whose website and mobile applications comply with WCAG 2.0 has likely met its website accessibility obligations under the ADA. WCAG 2.0 is also one of the standards that the DOJ has considered using as a basis for eventual federal regulations.

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WCAG 2.0 requires, among other things, perceivable content that provides text alternatives for non-text content and provides captions for multimedia. It also requires websites to make all functionality available from merely a keyboard. These guidelines also require websites to have easily readable text and tools that help users correct website accessibility errors. WCAG 2.0 also maximizes compatibility with current and future user tools. For more information on WCAG 2.0 see <https://www.w3.org/WAI/intro/wcag.php>.

## Steps for Compliance with the ADA

Every financial institution should conduct an audit of its

websites and mobile applications. WCAG 2.0 should be utilized as a clear standard for ADA compliance. Compliance audits may be conducted by third-party vendors or internally by the institution. However, internal audits will take significant employee time and may not be feasible for institutions with small information technology departments.

Next, financial institutions should work with the third-party vendors that administer the institution's websites and mobile applications. Financial institutions should consider requiring current and future vendors to comply with WCAG 2.0 and should exercise proper management by monitoring vendor compliance with the ADA. If a website is

not accessible, the financial institution is liable, not the vendors. Institutions should be aware of this liability when negotiating vendor contracts and should select vendors who are capable of providing compliant websites and mobile applications. With proper diligence, financial institutions can ensure that all of their customers, including those with disabilities, have equal access to the institution's websites and mobile applications.

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# Regulatory Spotlight

## Agencies Finalize Rules on Expanded Examination Cycles.

The Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC) are jointly adopting as final and without change their interim final rules published in the *Federal Register* on 02/29/2016, that implemented section 83001 of the Fixing America's Surface Transportation Act (FAST Act). Section 83001

of the FAST Act permits FRB, FDIC, and OCC to conduct a full-scope, onsite examination of qualifying insured depository institutions with less than \$1 billion in total assets no less than once during each 18-month period. Prior to enactment of the FAST Act, only qualifying insured depository institutions with less than \$500 million in total assets were eligible for an 18-month on-site examination cycle. The final rules, like the interim final rules, generally allow well capitalized and well managed institutions with less

than \$1 billion in total assets to benefit from the extended 18-month examination schedule. Finally, FDIC is integrating its regulations regarding the frequency of safety and soundness examinations for State nonmember banks and State savings associations. The final rule is effective **01/17/2017**. The final rule may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-16/pdf/2016-30133.pdf>. *Federal Register*, Vol. 81, No. 242, 12/16/2016, 90949-90952.



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## Agencies Issue Semiannual Regulatory Agendas.

- The Bureau of Consumer Financial Protection (CFPB) has published its Fall 2016 semiannual regulatory agenda in the *Federal Register*. CFPB reasonably anticipates having the regulatory matters identified within the agenda under consideration during the period from **11/01/2016** through **10/31/2017**. The next agenda will be published in spring 2017 and will update the agenda through spring 2018. The information within the agenda is current as of **10/19/2016**. The agenda may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-23/pdf/2016-29921.pdf>. *Federal Register*, Vol. 81, No. 247, 12/23/2016, 94844-94847.
- The Board of Governors of the Federal Reserve System (FRB) is issuing its agenda under the Regulatory Flexibility Act and FRB's Statement of Policy Regarding Expanded Rulemaking Procedures. FRB anticipates having under consideration regulatory matters as indicated below during the period **11/01/2016** through **04/30/2017**. The next agenda will be published in spring 2017. The agenda may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-23/pdf/2016-29929.pdf>. *Federal Register*, Vol. 81, No. 247, 12/23/2016, 94890-94891.
- The Department of the Treasury (Treasury) is issuing its semiannual regulatory agenda including regulations that Treasury has issued or expects to issue and rules currently in effect that are under departmental or bureau review. The agenda may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-23/pdf/2016-29911.pdf>. *Federal Register*, Vol. 81, No. 247, 12/23/2016, 94806.
- The Securities and Exchange Commission (SEC) is publishing its agenda of rulemaking actions. Information in the agenda was accurate on **09/02/2016**, the date on which SEC completed compilation of the data. To the extent possible, rulemaking actions by SEC since that date have been reflected in the agenda. SEC invites questions and public comment on the agenda and on the individual agenda entries. The agenda may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-23/pdf/2016-29931.pdf>. *Federal Register*, Vol. 81, No. 247, 12/23/2016, 94898-94903.
- The Department of Housing and Urban Development (HUD) is publishing its agenda of regulations already issued or that are expected to be issued during the next several months. The agenda also includes rules currently in effect that are under review and describes those regulations that may affect small entities. The purpose of publication of the agenda is to encourage more effective public participation in the regulatory process by providing the public with advance information about pending regulatory activities. The agenda may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-23/pdf/2016-29865.pdf>. *Federal Register*, Vol. 81, No. 247, 12/23/2016, 94766-94767.
- The Small Business Administration (SBA) is giving notice of its semiannual summary of all current and projected rulemakings and completed actions. SBA expects that its summary information will enable the public to be more aware of, and effectively participate in, SBA's regulatory activity. SBA invites the public to submit comments on any aspect of this Agenda. The agenda may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-23/pdf/2016-29918.pdf>. *Federal Register*, Vol. 81, No. 247, 12/23/2016, 94824-94828.
- The Commodity Futures Trading Commission (CFTC) is publishing a semiannual agenda of rulemakings that CFTC expects to propose or promulgate over the next year. CFTC welcomes comments from small entities and others on the agenda. The agenda may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-23/pdf/2016-29920.pdf>. *Federal Register*, Vol. 81, No. 247, 12/23/2016, 94840-94841.
- The Regulatory Information Service Center is giving notice of the Publication of the Unified Agenda of Regulatory and Deregulatory Actions and the Regulatory Plan. The complete fall 2016 Unified Agenda contains the Regulatory Plans of 30 Federal agencies and 60 Federal agency regulatory agendas. The notice may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-23/pdf/2016-29848.pdf>. *Federal Register*, Vol. 81, No. 247, 12/23/2016, 94496-94701.

## Agencies Request Comment on New Call Report.

The Office of the Comptroller of the Currency (OCC), Department of the Treasury (Treasury), Board of Governors of the Federal Reserve System (FRB), and Federal Deposit Insurance Corporation (FDIC) are proposing to create a new Call Report for eligible small institutions,



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the foundation for which is a currently approved collection of information for each agency. In addition, the agencies are proposing revisions to data items reported on the FFIEC 041 and FFIEC 031 Call Reports. Comments are due **02/08/2017**. The notice may be viewed at: <https://www.gpo.gov/ fdsys/pkg/FR-2017-01-09/pdf/2017-00085.pdf>. *Federal Register*, Vol. 82, No. 5, 01/09/2019, 2444-2467.

## **CFPB Finalizes Rule on HMDA Adjustment to Asset-Size Exemption Threshold.**

The Bureau of Consumer Financial Protection (CFPB) is issuing a final rule amending the official commentary that interprets the requirements of HMDA's implementing Regulation C to reflect the asset-size exemption threshold for banks, savings associations, and credit unions based on the annual percentage change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). Based on the 0.8 percent increase in the average of the CPI-W for the 12-month period ending in November 2016, the exemption threshold will remain at \$44 million. Therefore, banks, savings associations, and credit unions with assets of \$44 million or less as of December 31, 2016, are exempt from collecting data in 2017. The final rule is effective **01/01/2017**. The final rule may be viewed at: <https://www.gpo.gov/ fdsys/pkg/FR-2016-12-21/pdf/2016-30731.pdf>. *Federal Register*, Vol. 81, No. 245, 12/21/2016, 93580-93581.

## **CFPB Finalizes Rule on TILA Adjustment to Asset-Size Exemption Threshold.**

CFPB is amending the official commentary that interprets the requirements of TILA's implementing Regulation Z to reflect a change in the

asset-size threshold for certain creditors to qualify for an exemption to the requirement to establish an escrow account for a higher-priced mortgage loan based on the annual percentage change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the 12-month period ending in November. The exemption threshold is adjusted to increase to \$2.069 billion from \$2.052 billion. The adjustment is based on the .8 percent increase in the average of the CPI-W for the 12-month period ending in November 2016. Therefore, creditors with assets of less than \$2.069 billion (including assets of certain affiliates) as of December 31, 2016, are exempt, if other requirements of Regulation Z also are met, from establishing escrow accounts for higher-priced mortgage loans in 2017. This asset limit will also apply during a grace period, in certain circumstances, with respect to transactions with applications received before April 1 of 2018. The adjustment to the escrows exemption asset-size threshold will also increase a similar threshold for small-creditor portfolio and balloon-payment qualified mortgages. Balloon-payment qualified mortgages that satisfy all applicable criteria, including being made by creditors that have (together with certain affiliates) total assets below the threshold, are also excepted from the prohibition on balloon payments for high-cost mortgages. The final rule is effective **01/01/2017**. The final rule may be viewed at <https://www.gpo.gov/ fdsys/pkg/FR-2016-12-21/pdf/2016-30730.pdf>. *Federal Register*, Vol. 81, No. 245, 12/21/2016, 93581-93583.

## **CFPB Issues Proposed Rule on Supplemental Standards of Ethical Conduct.**

CFPB, with the concurrence of the Office of Government Ethics (OGE),

is issuing a notice of proposed rulemaking for employees of CFPB. The proposed rule would amend the existing Supplemental Standards of Ethical Conduct for Employees of the Bureau of Consumer Financial Protection involving: Outside employment for covered employees; CFPB employees' ownership or control of certain securities; restrictions on seeking, obtaining, or renegotiating credit or indebtedness; and disqualification requirements based on existing credit or indebtedness. Additionally, the proposed regulation would clarify and make minor revisions to certain definitions. Comments are due **02/09/2017**. The proposed rule may be viewed at: <https://www.gpo.gov/ fdsys/pkg/FR-2017-01-10/pdf/2016-31596.pdf>. *Federal Register*, Vol. 82, No. 6, 01/10/2017, 2921-2929.

## **FFIEC Issues Interim Final Rule on Office, Procedures, and Public Information.**

The Federal Financial Institutions Examination Council (FFIEC) is amending its regulations to incorporate changes to the Freedom of Information Act (FOIA). The interim final rule reflects the required changes necessitated by the FOIA Improvement Act of 2016 consisting of extending the deadline for administrative appeals, including information on dispute resolution services, and amends parts of the fee determination. The interim final rule also corrects a duplicate entry that occurred in the 2010 update of the regulations. The interim final rule is effective **12/27/2016**. The interim final rule may be viewed at: <https://www.gpo.gov/ fdsys/pkg/FR-2016-12-27/pdf/2016-30696.pdf>. *Federal Register*, Vol. 81, No. 248, 12/27/2016, 94937-94941.



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## **FFIEC Issues Proposed Revised Policy Statements.**

FFIEC has issued a notice requesting public comment on a proposal to revise ASC Policy Statements. The proposal includes three parts and two appendices of changes. Comments are due **04/10/2017**. The interim final rule may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-27/pdf/2016-30696.pdf>. *Federal Register*, Vol. 81, No. 248, 12/27/2016, 94937-94941.

## **FRB Finalizes Rule on Regulatory Capital.**

The Board of Governors of the Federal Reserve System (FRB) is issuing a final rule to make several revisions to its rule regarding risk-based capital surcharges for U.S.-based global systemically important bank holding companies (GSIB surcharge rule). The final rule modifies the GSIB surcharge rule to provide that a bank holding company subject to the rule should continue to calculate its method 1 score and method 2 score under the rule annually using data reported on the firm's Banking Organization Systemic Risk Report as of December 31 of the previous calendar year. In addition, the final rule clarifies that a bank holding company subject to the GSIB surcharge rule must calculate its method 2 score using systemic indicator amounts expressed in billions of dollars. The final rule is effective **01/17/2017**. The final rule may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-16/pdf/2016-29966.pdf>. *Federal Register*, Vol. 81, No. 242, 12/16/2016, 90952-90955.

## **FRB Finalizes Rule on Reserve Requirements of Depository Institutions.**

FRB is issuing a final rule amending Regulation D, Reserve Requirements

of Depository Institutions, to reflect the annual indexing of the reserve requirement exemption amount and the low reserve tranche for 2017. The Regulation D amendments set the amount of total reservable liabilities of each depository institution that is subject to a zero percent reserve requirement in 2017 at \$15.5 million (up from \$15.2 million in 2016). This amount is known as the reserve requirement exemption amount. The Regulation D amendments also set the amount of net transaction accounts at each depository institution (over the reserve requirement exemption amount) that is subject to a three percent reserve requirement in 2017 at \$115.1 million (up from \$110.2 million in 2016). This amount is known as the low reserve tranche. The adjustments to both of these amounts are derived using statutory formulas specified in the Federal Reserve Act. FRB is also announcing changes in two other amounts, the nonexempt deposit cutoff level and the reduced reporting limit, that are used to determine the frequency at which depository institutions must submit deposit reports. The final rule is effective **01/18/2017**. The final rule may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-19/pdf/2016-30320.pdf>. *Federal Register*, Vol. 81, No. 243, 12/19/2016, 91672-91674.

## **FRB Finalizes Rule on Liquidity Coverage Ratio.**

FRB is issuing a final rule to implement public disclosure requirements for the liquidity coverage ratio (LCR) rule. The final rule applies to all depository institution holding companies and covered nonbank financial companies that are required to calculate an LCR under FRB's LCR rule (covered companies). Under the final rule, a covered company will be required to disclose publicly, on a quarterly basis, quantitative information about its LCR calculation and a discussion

of the factors that have a significant effect on its LCR. The final rule also provides additional time for companies that become subject to FRB's modified LCR requirement in the future to come into compliance with the requirement. The final rule is effective **04/01/2017**. The notice may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-27/pdf/2016-30859.pdf>. *Federal Register*, Vol. 81, No. 248, 12/27/2016, 94922-94932.

## **FRB Issues Interim Final Rule on Rules Regarding Availability of Information.**

FRB is adopting, and inviting comment on, an interim final rule to amend its regulations for processing requests under the Freedom of Information Act (FOIA) pursuant to the FOIA Improvement Act of 2016. The amendments clarify and update procedures for requesting information from FRB, extend the deadline for administrative appeals, and add information on dispute resolution services. The final rule is effective **12/27/2016**. Comments are due **02/27/2017**. The notice may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-27/pdf/2016-30670.pdf>. *Federal Register*, Vol. 81, No. 248, 12/27/2016, 94932-94934.

## **FRB Adopts Proposal to Revise Joint Standards for Assessing Diversity Policies and Practices.**

FRB is adopting a proposal to revise its Joint Standards for Assessing Diversity Policies and Practices. The revision adds the Diversity Self-Assessment Template. The Template (1) asks for general information about a respondent; (2) includes a checklist of the standards set forth in the Policy Statement; (3) seeks additional diversity data; and (4) provides an opportunity for a respondent to provide other information regarding or comment



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on the self-assessment of its diversity policies and practices. The notice may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-12/pdf/2016-29606.pdf>. *Federal Register*, Vol. 81, No. 238, 12/12/2016, 89463-89464.

## **FRB Adopts Proposal to Revise Capital Assessments and Stress Testing Information Collection.**

FRB has issued a notice to announce it is adopting a proposal to revise its Capital Assessments and Stress Testing Information Collection. FRB is also giving notice that it has sent the collection to OMB for review. The revisions are effective **12/31/2016** and **12/31/2017** for 2017 reports. The notice may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-22/pdf/2016-30855.pdf>. *Federal Register*, Vol. 81, No. 246, 12/22/2016, 93917-93922.

## **FRB Issues Notice on Regulatory Capital Rules.**

FRB is providing notice of the aggregate global indicator amounts for purposes of a calculation that is required under the risk-based capital surcharges for global systemically important bank holding companies rule for 2016. The amounts are effective **12/28/2016**. The notice may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-28/pdf/2016-31371.pdf>. *Federal Register*, Vol. 81, No. 249, 12/28/2016, 95612-95613.

## **FRB Requests Comment on Proposed Guidelines for Evaluating Joint Account Requests.**

FRB is requesting comment on proposed guidelines to evaluate requests for joint accounts at Federal Reserve Banks (Reserve Banks) by private-sector arrangements within the U.S. payment system. Under the Federal Reserve Act,

Reserve Banks have the authority to open accounts for member banks and other eligible depository institutions. The Reserve Banks typically permit a single master account per eligible institution but have, in limited cases, opened joint accounts for specific uses. Given the potential for this type of account to be of interest to payment system participants, FRB proposes to establish guidelines to be considered in evaluating requests for joint accounts to facilitate settlement for payment systems in the United States. FRB seeks comment on all aspects of the proposed guidelines. Comments are due **02/21/2017**. The notice may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-22/pdf/2016-30860.pdf>. *Federal Register*, Vol. 81, No. 246, 12/22/2016, 93923-93926.

## **FRB Issues Notice on Application of RFI/C(D) Rating System to Savings and Loan Holding Companies.**

FRB has issued a notice proposing to fully apply the same supervisory rating system to savings and loan holding companies as currently applies to bank holding companies. The proposal would not apply to savings and loan holding companies engaged in significant insurance or commercial activities. These firms would instead continue to receive indicative supervisory ratings. Comments are due **02/13/2017**. The notice may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-13/pdf/2016-29891.pdf>. *Federal Register*, Vol. 81, No. 239, 12/13/2016, 89941-89943.

## **FRB Extends Deadline on Banking Organization Systematic Risk Report.**

FRB is extending the deadline to complete Schedule G of the Banking Organization

Systemic Risk Report for certain firms depending on total consolidated assets. Comments are due **02/14/2017**. The notice may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-16/pdf/2016-29967.pdf>. *Federal Register*, Vol. 81, No. 242, 12/16/2016, 91171-91173.

## **FRB Extends Comment Period for Proposed Rule on Risk-Based Capital and Other Regulatory Requirements for Financial Holding Companies.**

FRB is extending the comment period for its proposed rulemaking to adopt additional limitations on physical commodity trading activities conducted by financial holding companies under complementary authority granted pursuant to section 4(k) of the Bank Holding Company Act and clarify certain existing limitations on those activities; amending FRB's risk-based capital requirements to better reflect the risks associated with a financial holding company's physical commodity activities; rescinding the findings underlying FRB orders authorizing certain financial holding companies to engage in energy management services and energy tolling; removing copper from the list of metals that bank holding companies are permitted to own and store as an activity closely related to banking; and increase transparency regarding physical commodity activities of financial holding companies through more comprehensive regulatory reporting. Due to the range and complexity of the issues addressed in the proposed rule, the public comment period has been extended until **02/20/2017**. The notice may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-23/pdf/2016-30993.pdf>. *Federal Register*, Vol. 81, No. 247, 12/23/2016, 94276-94277.



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## **FDIC Finalizes Rule on Rules of Practice and Procedure.**

The Federal Deposit Insurance Corporation (FDIC) is adjusting the maximum amount of each civil money penalty within its jurisdiction to account for inflation. This action is required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. FDIC is also amending its rules of practice and procedure to correct a technical error from the previous inflation-adjustment rulemaking. The final rule is effective **01/15/2017**. The final rule may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-28/pdf/2016-31240.pdf>. *Federal Register*, Vol. 81, No. 249, 12/28/2016, 95412-95419.

## **FDIC Issues Proposed Rule on Recordkeeping Requirements for Qualified Financial Contracts.**

FDIC is proposing to amend its regulations regarding Recordkeeping Requirements for Qualified Financial Contracts, which require insured depository institutions (IDIs) in a troubled condition to keep records relating to qualified financial contracts (QFCs) to which they are party. The proposed rule would expand the scope of QFC records required to be maintained by an IDI that is subject to the FDIC's recordkeeping requirements and that has total consolidated assets equal to or greater than \$50 billion or is a member of a corporate group where one or more affiliates is subject to the QFC recordkeeping requirements set forth in the regulations adopted by the Department of the Treasury (full scope entity); for all other IDIs subject to the FDIC's QFC recordkeeping requirements, add and delete a limited number of data requirements and make certain formatting changes with respect to the QFC recordkeeping requirements; require

full scope entities to keep QFC records of certain of their subsidiaries; and include certain other changes, including changes that would provide additional time for certain IDIs in a troubled condition to comply with the regulations. Comments are due **02/27/2017**. The proposed rule may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-28/pdf/2016-30734.pdf>. *Federal Register*, Vol. 81, No. 249, 12/28/2016, 95496-95528.

## **FDIC Requests Comment on Handbook for New Banks.**

FDIC is seeking comment on a handbook developed to facilitate the process of establishing new banks titled Applying for Deposit Insurance – A Handbook for Organizers of De Novo Institutions. The handbook provides an overview of the business considerations and statutory requirements that de novo organizers will face as they work to establish a new depository institution and apply for deposit insurance. It offers guidance for navigating three phases of establishing an insured institution: pre-filing activities, the application process, and pre-opening activities. Comments are due **02/20/2017**. The notice may be viewed at: <https://www.fdic.gov/news/news/financial/2016/fil16081.html>.

## **OCC Finalizes Rule on Receiverships for Uninsured National Banks.**

The Office of the Comptroller of the Currency (OCC) is adopting a final rule addressing the conduct of receiverships for national banks that are not insured by the Federal Deposit Insurance Corporation (FDIC) and for which FDIC would not be appointed as receiver. The final rule implements the provisions of the National Bank Act that provide the legal framework for receiverships of such institutions. The final rule adopts the rule as proposed

without change. The final rule is effective **01/19/2017**. The final rule may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-20/pdf/2016-30666.pdf>. *Federal Register*, Vol. 81, No. 244, 12/20/2016, 92594-92603.

## **OCC Issues Interim Final Rule on Availability of Information under Freedom of Information Act.**

OCC is amending its regulations governing the disclosure of information pursuant to requests made under the Freedom of Information Act (FOIA) to reflect changes to the FOIA made by the FOIA Improvement Act of 2016 and the OPEN FOIA Act of 2009 and to make other technical changes that update the OCC's FOIA regulations. The interim final rule is effective **12/23/2016**. Comments are due **02/21/2017**. The interim final rule may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-23/pdf/2016-30725.pdf>. *Federal Register*, Vol. 81, No. 247, 12/23/2016, 94240-94246.

## **HUD Finalizes Rule on Housing Counseling Certification Requirements.**

The Department of Housing and Urban Development (HUD) has issued a final rule revising its Housing Counseling Program regulations to adopt the new requirements established in the housing counseling statute amended by the Dodd-Frank Act. Additionally, this rule amends HUD's general and other program regulations to clarify for grantees the requirement that housing counseling under Other HUD Programs must be provided by housing counseling agencies. The final rule is effective **01/13/2017**. The final rule may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-14/pdf/2016-29822.pdf>. *Federal Register*, Vol. 81, No. 240, 12/14/2016, 90632-90660.



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## **HUD Issues Notice on FHA Direct Endorsement Program Timeframe for Conducting Pre-Endorsement Review.**

HUD has issued a notice that the Federal Housing Administration (FHA) is shifting the timeframe for FHA's review of loans prior to endorsement from pre-closing to post closing. A lender applying for unconditional Direct Endorsement authority will therefore submit required loan files, required in accordance with HUD regulations, only after closing. After determining that the mortgage is acceptable and meets all FHA requirements, FHA will notify the lender that the loan has been endorsed. The timeframe change is effective **01/13/2017**. The notice may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-14/pdf/2016-29757.pdf>. *Federal Register*, Vol. 81, No. 240, 12/14/2016, 90373-90375.

## **HUD Issues Correction to Interim Final Rule on HOME Program Commitment Requirement.**

HUD is correcting its interim final rule that changes the commitment requirement of the HOME Investment Partnerships (HOME) Program. The correction modifies the preamble to reflect a 30-day effective date and a 60-day comment period. The corrected effective date for the interim final rule is **01/03/2017**. The correction may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-12/pdf/2016-29643.pdf>. *Federal Register*, Vol. 81, No. 238, 12/12/2016, 89381-89382.

## **HUD Requests Comment on Implementation of HOPA.**

HUD has issued a notice to announce it seeks comment on the information collection titled, Implementation of the Housing for Older Persons Act of 1995.

HUD is also giving notice that it has sent the collection to OMB for review. Comments are due **02/13/2017**. The notice may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-13/pdf/2016-29754.pdf>. *Federal Register*, Vol. 81, No. 239, 12/13/2016, 89964-89965.

## **OFAC Makes Changes to Lists.**

The Office of Foreign Assets Control (OFAC) has amended its lists of Specially Designated Global Terrorists, Specially Designated Nationals and Blocked Persons, and Specially Designated Narcotics Trafficker Kingpins. The documents listing these changes may be viewed at: [www.treas.gov/offices/enforcement/ofac/actions](http://www.treas.gov/offices/enforcement/ofac/actions).

## **Treasury Finalizes Rule on Terrorism Risk Insurance Program.**

The Department of the Treasury (Treasury) is issuing a final rule addressing the balance of the other proposed rules published on April 1, 2016, and adopts the general renumbering of sections as proposed on April 1, 2016. The final rule includes clarification changes in response to comments, and certain other wording changes have also been added which do not change the meaning of the final rule as originally proposed. The final rule is effective **01/17/2017**. The notice may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-21/pdf/2016-29987.pdf>. *Federal Register*, Vol. 81, No. 245, 12/21/2016, 93756-93784.

## **Treasury Issues Notice of Guarantee Availability.**

Treasury has issued a notice of guarantee availability inviting Qualified Issuer Applications and Guarantee Applications

for the Community Development Financial Institutions (CDFI) Bond Guarantee Program. Qualified Issuer Applications and Guarantee Applications may be submitted to the CDFI Fund starting on **12/15/2016**. In order to be considered for the issuance of a Guarantee in FY 2017, Qualified Issuer Applications must be submitted by **03/03/2017** and Guarantee Applications must be submitted by **03/17/2017**. If applicable, CDFI Certification Applications must be received by the CDFI Fund by 5:00 p.m. ET, **03/03/2017**. Under FY 2017 authority, which is contingent upon Congressional authorization, Bond Documents and Bond Loan documents must be executed, and Guarantees will be provided, in the order in which Guarantee Applications are approved or by such other criteria that the CDFI Fund may establish, in its sole discretion, and in any event by **09/30/2017**. The notice may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-15/pdf/2016-30087.pdf>. *Federal Register*, Vol. 81, No. 241, 12/15/2016, 90905-90920.

## **Treasury Issues Notice Regarding Community Development Financial Institutions Fund.**

Treasury has issued a notice requesting comments from the public regarding the current policies and procedures to certify an organization as a Community Development Financial Institution (CDFI). The CDFI fund has established seven tests, described within the notice, to certify an Applicant financial entity as a CDFI. Comments are due **03/10/2017**. The notice may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2017-01-09/pdf/2017-00013.pdf>. *Federal Register*, Vol. 82, No. 5, 01/09/2017, 2251-2254.



# Regulatory Spotlight

## **FHFA Finalizes Rule Reorganizing Acquired Member Asset Programs.**

The Federal Housing Finance Agency (FHFA) is issuing a final rule to reorganize and relocate the current regulation governing the Federal Home Loan Banks' (Banks) Acquired Member Asset (AMA) programs. More significantly, as required by the Dodd-Frank Act, it removes and replaces references in the current regulation to, and requirements based on, ratings issued by a Nationally Recognized Statistical Ratings Organization. It also provides a Bank greater flexibility in choosing the model it can use to estimate the credit enhancement required for AMA loans. Additionally, the final rule adds a provision allowing a Bank to authorize the transfer of mortgage servicing rights on AMA loans to any institution, including a nonmember of the Federal Home Loan Bank System. The final rule allows the Banks to acquire mortgage loans that exceed the conforming loan limits if they are guaranteed or insured by a department or agency of the U.S. government. The final rule excludes a proposed provision that would have eliminated the use of private, loan-level, supplemental mortgage insurance in the member credit enhancement structure required by the AMA regulation, but does require Banks to establish financial and operational standards that insurers must meet to be qualified to provide insurance on AMA loans. Finally, the final rule deletes some obsolete provisions from the current regulation, and clarifies certain other provisions. The final rule is effective **01/18/2017**. The final rule may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-19/pdf/2016-30161.pdf>. *Federal Register*, Vol. 81, No. 243, 12/19/2016, 91674-91690.

## **FHFA Finalizes Rule on New Business Activities.**

FHFA has issued a final rule amending its regulations addressing requirements for the Federal Home Loan Banks' (Banks) new business activity (NBA) notices. The final rule reduces the scope of activities requiring submission of an NBA notice, modifies the submission requirements, and establishes new timelines for agency review and approval of such notices. The final rule also reorganizes a part of the regulations to clarify the protocol for FHFA review of NBA notices. The final rule is effective **01/18/2017**. The final rule may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-19/pdf/2016-30245.pdf>. *Federal Register*, Vol. 81, No. 243, 12/19/2016, 91690-91694.

## **FHFA Finalizes Rule on Enterprise Duty to Serve Underserved Markets.**

FHFA is issuing a final rule which specifies the scope of Enterprise activities that are eligible to receive Duty to Serve credit. These activities generally are those that facilitate a secondary market for mortgages related to: Manufactured homes titled as real property or personal property; blanket loans for certain categories of manufactured housing communities; preserving the affordability of housing for renters and homebuyers; and housing in rural markets. The final rule provides a framework for FHFA's method for evaluating and rating the Enterprises' compliance with the Duty to Serve each underserved market. The final rule is effective **01/30/2017**. The final rule may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-29/pdf/2016-30284.pdf>. *Federal Register*, Vol. 81, No. 250, 12/29/2016, 96242-96301.

## **SBA Finalizes Rule on Credit for Lower Tier Small Business Subcontracting.**

The Small Business Administration (SBA) is issuing a final rule to amend its regulations to implement section 1614 of the National Defense Authorization Act for Fiscal Year 2014. Section 1614 amended the Small Business Act to provide that where a prime contractor has an individual subcontracting plan for a specific prime contract with an executive agency, the prime contractor shall receive credit towards its subcontracting plan goals for awards made to small business concerns at any tier under the contract. The final rule will allow an other than small prime contractor that has an individual subcontracting plan for a contract to receive credit towards its small business subcontracting goals for subcontract awards made to small business concerns at any tier, to the extent reported on the subcontracting plans of its lower tier subcontractors. The final rule also implements the statutory requirements related to the subcontracting plans of all subcontractors that are required to maintain such plans, including the requirement to monitor subcontractors' performance and compliance toward reaching the goals set out in those plans as well as their compliance with subcontracting reporting requirements. SBA is also clarifying that the size standard for a particular subcontract must appear in the solicitation for the subcontract. The final rule is effective **01/23/2017**. The final rule may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-23/pdf/2016-30874.pdf>. *Federal Register*, Vol. 81, No. 247, 12/23/2016, 94246-94251.



# Regulatory Spotlight

## **SBA Issues Proposed Rule on Administrative Fees.**

SBA has issued a proposed rule to increase the Small Business Investment Company (SBIC) licensing and examination fees.

The Small Business Investment Act of 1958, as amended, allows SBA to collect licensing and examination fees to offset SBA's costs associated with the administration of these two activities.

The proposed rule would revise existing regulations to increase, over a five-year period, SBIC licensing and examination fees in order to annually recoup an estimated 70% of SBA administrative expenses related to these activities.

After the five year period, the rule proposes annual increases of these fees based on inflation. The proposed rule would establish certain examination fee discounts for SBICs that make significant low and moderate income investments. Comments are due **02/14/2017**. The proposed rule may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-16/pdf/2016-30104.pdf>. *Federal Register*, Vol. 81, No. 242, 12/16/2016, 91049-91058.

## **FSA Issues Notice of Funds Availability for Organic Certification Cost Share Program.**

The Farm Service Agency (FSA), on behalf of the Commodity Credit Corporation (CCC), is announcing the availability of \$12.5 million per year for fiscal year (FY) 2017 and 2018 under the Organic Certification Cost Share Program (OCCSP) for eligible certified organic and transitional producers and handlers. FSA is announcing the opportunity for States to apply in FY 2017 to administer the OCCSP program for FY 2017. States that establish an agreement for FY 2017

may be given the opportunity to extend their agreement and receive additional funds to administer the program in FY 2018; FSA has not yet determined whether an additional application period will be announced for FY 2018 for State agencies that do not establish an agreement to administer the program for FY 2017. In this document, FSA is providing the requirements for producers and handlers to apply for OCCSP payments, and for State agencies to establish agreements to receive funds in order to provide cost share assistance to eligible producers and handlers. Applications are due between the period of **01/03/2017** and **02/17/2017**. The notice may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-22/pdf/2016-30772.pdf>. *Federal Register*, Vol. 81, No. 246, 12/22/2016, 93884-93887.

## **RUS Issues Notice Regarding Rural Broadband Access Loans and Loan Guarantees Program.**

The Rural Utilities Service (RUS) is announcing that it is accepting applications for fiscal year 2017 for the Rural Broadband Access Loan and Loan Guarantee program. There will be two application windows for FY 2017. In addition to announcing the application windows, RUS is announcing the minimum and maximum amounts for broadband loans for FY 2017. Applications for the first application window must be submitted from **03/01/2017** through **03/31/2017**, and for the second application window from **09/01/2017** through **09/30/2017**. The notice may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2017-01-09/pdf/2017-00137.pdf>. *Federal Register*, Vol. 82, No. 5, 01/09/2017, 2309-2311.

## **RUS Announces Grant Application Deadlines and Funding Levels.**

RUS is announcing its Community Connect Grant Program application window for Fiscal Year (FY) 2017. In addition, RUS is announcing the minimum and maximum Community Connect grant amounts, the funding priority, the application submission dates, the agency contact information, and the procedures for submission of paper and electronic applications. RUS will publish the amount of funding received in the final appropriations act on its Web site at <http://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas>. Applicants can review the Community Connect Grant Program regulation at 7 CFR part 1739 (Subpart A). Submissions are due **03/13/2017**. The notice may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2017-01-10/pdf/2017-00194.pdf>. *Federal Register*, Vol. 82, No. 6, 01/10/2017, 2940-2945.

## **CFTC Finalizes Rule on Aggregation of Positions.**

The Commodity Futures Trading Commission (CFTC) is issuing a final rule to amend part 150 of its regulations with respect to the policy for aggregation under its position limits regime for futures and option contracts on nine agricultural commodities. CFTC notes that if its proposed position limits regime for other exempt and agricultural commodity futures and options contracts and the physical commodity swaps that are economically equivalent to such contracts are finalized, these amended regulations would also apply to the position limits regime for those contracts and swaps. The final rule is effective **02/14/2017**. The final rule may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-16/pdf/2016-29582.pdf>. *Federal Register*, Vol. 81, No. 242, 12/16/2016, 91454-91492.



# Regulatory Spotlight

## **CFTC Issues Proposed Rule on Capital Requirements of Swap Dealers and Major Swap Participants.**

CFTC is issuing a proposed rule to adopt new regulations and to amend existing regulations to implement sections 4s(e) and (f) of the Commodity Exchange Act, as added by section 731 of the Dodd-Frank Act. Section 4s(e) requires CFTC to adopt capital requirements for swap dealers (SD) and major swap participants (MSP) that are not subject to capital rules of a prudential regulator. Section 4s(f) requires CFTC to adopt financial reporting and recordkeeping requirements for SDs and MSPs. CFTC also is proposing to amend existing capital rules for futures commission merchants (FCM), providing specific capital deductions for market risk and credit risk for swaps and security-based swaps entered into by an FCM. CFTC is further proposing several technical amendments to the regulations. Comments are due **03/16/2017**. The proposed rule may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-16/pdf/2016-29368.pdf>. *Federal Register*, Vol. 81, No. 242, 12/16/2016, 91252-91334.

## **CFTC Issues Order Excluding Farm Credit System Institutions from Commodity Exchange Act's Definition of Commodity Trading Advisor.**

CFTC is issuing an order pursuant to the authority under section 1a(12)(B)(vii) of the Commodity Exchange Act (CEA) excluding institutions in the Farm Credit System (FCS) from the definition of commodity trading advisor (CTA). CFTC finds that FCS institutions are primarily engaged in lending to U.S. farmers, ranchers, and agricultural cooperatives, and that any commodity trading advice

provided by FCS institutions to their clientele is solely incidental to that lending conduct, as required by CEA section 1a(12)(C). Therefore, CFTC concludes that FCS institutions are not entities within the intent of the statutory CTA definition. The order is effective **12/12/2016**. The order may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-12/pdf/2016-29613.pdf>. *Federal Register*, Vol. 81, No. 238, 12/12/2016, 89447-89449.

## **NCUA Finalizes Rule on Federal Credit Union Occupancy, Planning, and Disposal of Acquired and Abandoned Premises.**

The National Credit Union Administration (NCUA) is finalizing amendments to its regulation governing federal credit union (FCU) occupancy, planning, and disposal of acquired and abandoned premises, and its regulation regarding incidental powers. To provide regulatory relief to FCUs, this final rule eliminates a requirement in the current occupancy rule (formerly known as the fixed assets rule) that an FCU must plan for, and eventually achieve, full occupancy of acquired premises. The final rule generally retains the current regulatory timeframes for partial occupancy. However, it modifies the definition of partially occupy to mean occupation and use, on a full-time basis, of at least fifty percent of the premises by the FCU, or by a combination of the FCU and a credit union service organization in which the FCU has a controlling interest in accordance with Generally Accepted Accounting Principles. The final rule also amends the excess capacity provision in NCUA's incidental powers rule to clarify that an FCU may lease or sell excess capacity in its facilities, but it need not anticipate that such excess capacity will be fully occupied by the FCU in the future. However, the sale or lease of

excess capacity in equipment or services, including employee-sharing and data processing for third parties, continues to be limited to circumstances where an FCU reasonably anticipates that such excess capacity will be taken up by the future expansion of services to members. The final rule is effective **01/20/2017**. The order may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-21/pdf/2016-30657.pdf>. *Federal Register*, Vol. 81, No. 245, 12/21/2016, 93577-93650.

## **NCUA Issues Interim Final Rule on Revisions to Freedom of Information Act Regulation.**

NCUA is revising its Freedom of Information Act (FOIA) regulation. The FOIA Improvement Act of 2016 amended the FOIA and requires agencies to review their FOIA regulations and issue certain specified amendments by December 27, 2016. The interim final rule includes new procedures for disclosing records under the FOIA, assessing fees, and notifying requestors of options for resolving disputes through the NCUA FOIA Public Liaison and the Office of Government Information Services within the National Archives and Records Administration. The interim final rule is effective **12/22/2016**. Comments are due **01/23/2017**. The interim final rule may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-22/pdf/2016-30748.pdf>. *Federal Register*, Vol. 81, No. 246, 12/22/2016, 93792-93795.

## **NCUA Issues Notice of New System of Records.**

NCUA is proposing to establish a new system of records. The action will be effective **02/06/2017**. The action may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-27/pdf/2016-31209.pdf>. *Federal Register*, Vol. 81, No. 248, 12/27/2016, 95201-95202.



# Regulatory Spotlight

## NCUA Requests Comment on NCUA Call Report and Profile.

NCUA has issued a notice to announce it seeks comment on the information collection titled, NCUA Call Report and Profile. NCUA is also giving notice that it has sent the collection to OMB for review. Comments are due **01/27/2017**. The notice may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-28/pdf/2016-31269.pdf>.

*Federal Register*, Vol. 81, No. 249, 12/28/2016, 95652-95653.

## ED Requests Comment on Loan Rehabilitation: Reasonable and Affordable Payments.

The Department of Education (ED) has issued a notice to announce it seeks comment on the information collection titled, Loan Rehabilitation: Reasonable

and Affordable Payments. ED is also giving notice that it has sent the collection to OMB for review. Comments are due **02/27/2017**. The notice may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-29/pdf/2016-31441.pdf>. *Federal Register*, Vol. 81, No. 250, 12/29/2016, 95972-95973. ■

# Compliance Notes

▲ The Federal Reserve Bank of Philadelphia has issued the Third edition of its *Consumer Compliance Outlook*. The edition is billed as a “Fintech Special Edition”, which features pieces on: Federal Reserve Governor Lael Brainard’s perspectives on recent developments in fintech; Balancing the Promise and Risks of Innovation; Fintech for the Consumer Market: An Overview; and Laws, Regulations, and Supervisory Guidance related to Fintech. The Outlook may be viewed at: <https://consumercomplianceoutlook.org/>.

▲ FRB has made available an optional diversity self-assessment template. The template has been released to assist institutions in connection with the Interagency Policy Statement Establishing Joint Standards for Assessing Diversity Policies and Practices of Regulated Entities (Standards). The Standards are a result of section 342 of the Dodd-Frank Act which required the federal financial regulatory agencies to establish an Office of Minority and Women Inclusion (OMWI) and instructed the OMWI director at each agency to develop

standards for assessing the diversity policies and practices of its regulated institutions. The standards and the template may be found at: <https://www.federalreserve.gov/aboutthefed/omwi-regulated-entities-self-assessments.htm>.

▲ FRB has encouraged consumers to closely monitor their financial accounts for unauthorized activity and know where to find help if they spot unauthorized activity. Signs of potential problems may include a notice, bill, or debit card for an account that was not activated or authorized, as well as a notice of fees for unsolicited products or services tied to an existing account. Consumers who see questionable activity should contact their financial institution immediately. Consumers who continue to experience issues may also submit a complaint to the Federal Reserve. The Federal Reserve maintains the Federal Reserve Consumer Help (FRCH) website, which offers an online complaint form and information on filing complaints by fax and phone for consumers. While FRB does not have the authority to resolve every problem, it will refer complaints to the relevant federal

or state agency. Consumers can contact FRCH at 1-888-851-1920, or at [www.federalreserveconsumerhelp.gov](http://www.federalreserveconsumerhelp.gov).

▲ FRB issued a notice indicating its commitment to educating bankers on emerging regulatory and high-interest matters. One way is through the Ask the Fed webinar program. Since 2008, Ask the Fed topics have included troubled debt restructurings, commercial real estate guidance, appraisals, energy lending and the current expected credit loss model. To register to receive notifications of upcoming Ask the Fed webinars and full access to the webinar library, please visit: [www.askthefed.org](http://www.askthefed.org).

▲ CFPB recently announced in a blog that it is reprioritizing its work to increase focus on fair lending during 2017. In particular, CFPB noted it would be looking closely at redlining, mortgage and student loan servicing, and small business lending. The blog may be found at: <http://www.consumerfinance.gov/about-us/blog/fair-lending-priorities-new-year/>.



# Compliance Notes

▲ CFPB recently announced the availability of a report that examines complaints from older student loan borrowers about servicing practices that can jeopardize their long-term financial security. In the last decade, the number of older student loan borrowers has quadrupled and the amount of debt per older borrower has roughly doubled, as many take out loans for children or grandchildren. According to the report, older borrowers struggling to make payments complain about obstacles to enrolling in income-driven payment plans and accessing their protections as cosigners. In 2015, nearly 40 percent of federal student loan borrowers age 65 and older were in default. In addition to the report, CFPB's website contains helpful information concerning options that may be available for repayment of these loans. The release and other related resources may be viewed at: <http://www.consumerfinance.gov/about-us/newsroom/cfpb-warns-student-loan-servicing-problems-can-jeopardize-long-term-financial-security-older-borrowers/>.

▲ FFIEC and HUD have published an updated list of resources for HMDA filers 2017 collection of data. The updates include the 2017 Loan/Application Register (LAR) Formatting Tool, and modifications to the Technology Preview, Filing Instructions Guide for data collected in or after 2018, and Frequently Asked Questions (FAQs). The resources may be found on CFPB's website at: <http://www.consumerfinance.gov/data-research/hmda/for-filers>.

▲ FRB, FDIC, OCC and NCUA have issued Frequently Asked Questions (FAQs) to aid institutions in their implementation of the new accounting standard for credit losses recently issued by the Financial

Accounting Standards Board (FASB). These FAQs expand upon the agencies' June 2016 *Joint Statement on the New Accounting Standard on Financial Instruments – Credit Losses*. The agencies plan to issue a series of FAQs between now and the implementation date of the standard to address questions on the implementation of CECL. The initial set of FAQs along with other related resources may be found at: <https://www.federalreserve.gov/bankinforeg/srletters/sr1619.htm>.

▲ OCC has issued the "Management Interlocks" booklet of the *Comptroller's Licensing Manual*, which replaces the booklet of the same title issued in October 2009. The revised booklet incorporates updated requirements following the integration of the Office of Thrift Supervision into the OCC in 2011 and clarifies guidance for both national banks and federal savings associations. The booklet may be viewed at: <https://www.occ.gov/news-issuances/bulletins/2017/bulletin-2017-4.html>.

▲ OCC has issued the "Changes of Corporate Title and Address" booklet of the *Comptroller's Licensing Manual*, which revises the booklet of the same title issued in October 2009. The revised booklet incorporates updated procedures and requirements following the integration of the Office of Thrift Supervision (OTS) into the OCC in 2011 and the issuance of revised regulations (12 CFR 5) that became effective July 1, 2015. The booklet may be viewed at: <https://www.occ.gov/news-issuances/bulletins/2017/bulletin-2017-2.html>.

▲ OCC has issued the revised "Internal and External Audits" booklet of the *Comptroller's Handbook*. This revised booklet replaces the "Internal

and External Audits" booklet issued in April 2003. The revised booklet provides guidance to examiners assessing audit exposures, associated risks, and risk management practices.

In addition, the revised booklet replaces two sections of the *Office of Thrift Supervision Examination Handbook*—section 350, "External Audit," and section 355, "Internal Audit." These sections, and their various parts, were issued in February 2002 and April 2011 for the examination of federal savings associations. This revised booklet also reflects current OCC compliance efforts with the Economic Growth and Regulatory Paperwork Reduction Act of 1996. The revised booklet may be viewed at: <https://www.occ.gov/news-issuances/bulletins/2016/bulletin-2016-47.html>.

▲ OCC has issued an update to the "Consigned and Other Customer Services" booklet of the *Comptroller's Handbook*. This booklet provides updated guidance to examiners assessing the risks associated with consigned items and other customer services. Consigned items include traveler's checks, money orders, and U.S. commemorative coins. Other customer services include safe deposit boxes and messenger services. The booklet may be found at: <https://www.occ.gov/news-issuances/bulletins/2016/bulletin-2016-44.html>.

▲ OCC has released its *Semiannual Risk Perspective for Fall 2016*. The report covers risks facing national banks and federal savings associations based on data through June 30, 2016. It presents data in four main areas: the operating environment, bank performance, trends in key risks, and regulatory actions. It focuses on issues that pose threats to the safety and soundness of those financial



# Compliance Notes

institutions regulated by the OCC and is intended as a resource to the industry, examiners, and the public. Highlights of the report include:

- Strategic risk remains high as banks consider business model changes and face challenges in growing revenue. Strategic planning remains important as banks adopt innovative products, services, and processes in response to the evolving demands for financial services and the entrance of new competitors, such as out-of-market banks and financial technology firms.
- Banks continue to ease underwriting practices to boost loan volume and to respond to competition from bank and nonbank lenders. These actions are evident in commercial, commercial real estate and auto lending. The level of risk is increasing due to increased risk layering, rising loan policy exceptions, increasing loan-to-value ratios, and weaker covenant protection.
- Operational risk remains a concern as banks face changing cybersecurity threats, increased reliance on third-party relationships, and address the need for sound governance over sales practices.
- Banks face challenges meeting the integrated mortgage disclosure requirements and amended Military Lending Act regulatory requirements, the latter of which compliance was required by October 3, 2016, and managing Bank Secrecy Act risks.

The report may be found at: <https://www.occ.gov/news-issuances/news-releases/2017/nr-occ-2017-4.html>.

▲ IRS has issued Notice 2017-09 which provides guidance to implement changes made by the Protecting Americans from Tax Hikes Act of 2015 regarding the de minimis error safe harbor from information reporting penalties under sections 6721 and 6722 of the Internal Revenue Code (Code) and the payee election to have the safe harbor not apply. These provisions are effective for information returns required to be filed and payee statements required to be furnished after December 31, 2016. Treasury and the IRS intend to issue regulations under sections 6721 and 6722. Under the safe harbor, an error on an information return or payee statement is not required to be corrected, and no penalty is imposed, if the error relates to an incorrect dollar amount and the error differs from the correct amount by no more than \$100 (\$25 in the case of an error with respect to an amount of tax withheld). However, the safe harbor does not apply to any payee statement if the payee makes an election that the safe harbor not apply. The Notice may be found at: <https://www.irs.gov/pub/irs-drop/n-17-09.pdf>.

▲ FinCEN has announced a further extension of time for certain Report of Foreign Bank and Financial Accounts (FBAR) filings in light of the notice of proposed rulemaking FinCEN issued on March 10, 2016, which proposed to revise the regulations implementing the Bank Secrecy Act (BSA) regarding FBARs. Specifically, one of the proposed amendments would expand and clarify the exemptions for certain U.S. persons with signature or other authority over foreign financial accounts. The proposed amendment seeks to address questions raised regarding the filing requirement and its application to

the individuals with signature authority over, but no financial interest in, certain types of accounts as outlined in FinCEN Notice 2015-1.

On December 8, 2015, FinCEN issued Notice 2015-1 to extend the filing date for FinCEN Form 114 - FBAR for certain individuals with signature authority over but no financial interest in one or more foreign financial accounts to April 15, 2017. In the past four years, FinCEN has issued identical extensions that applied to similarly situated individuals. As noted in these previous Notices, FinCEN received questions that required additional consideration with respect to the exemptions addressed in these Notices. As stated above, the proposed amendments seek to address these exemptions. Because the proposal is not yet finalized, FinCEN is further extending the filing due date to April 15, 2018, for individuals whose filing due date for reporting signature authority was previously extended by Notice 2015-1. This extension applies to the reporting of signature authority held during the 2016 calendar year, as well as all reporting deadlines extended by previous Notices 2015-1, 2014-1, 2013-1, 2012-1 and 2012-2, along with Notices 2011-1, and 2011-2. For all other individuals with an FBAR filing obligation, the filing due date remains April 15, 2017. Questions or comments regarding the contents of this notice should be addressed to the FinCEN Resource Center at 1-800-767-2825 or 1-703-905-3591. E-mail inquiries can be sent to [FRC@fincen.gov](mailto:FRC@fincen.gov). The announcement and other related resources may be found at: <https://www.fincen.gov/news/news-releases/fbar-filing-requirement-certain-financial-professionals>.



# Compliance Notes

▲ FinCEN has also announced the new annual due date for filing Reports of Foreign Bank and Financial Accounts (FBAR) for foreign financial accounts is April 15. This date change was mandated by the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (Act). Specifically, section 2006(b)(11) of the Act changes the FBAR due date to April 15 to coincide with the Federal income tax filing season. The Act also mandates a maximum six-month extension of the filing deadline. To implement the statute with minimal

burden to the public and FinCEN, FinCEN will grant filers failing to meet the FBAR annual due date of April 15 an automatic extension to October 15 each year. Accordingly, specific requests for this extension are not required. (Please note: The due date for FBAR filings for foreign financial accounts maintained during calendar year 2016 is April 18, 2017, consistent with the Federal income tax due date.) The announcement may be viewed at: <https://www.fincen.gov/news/news-releases/new-due-date-fbars-0>.

▲ FRFS has issued the December 2016 edition of *FedFlash* which includes articles on 2017 seasonal credit applications and 2016 FedACH activity with the ACH Routing Number Activity Report. The FedFlash may be viewed at: <https://www.frb services.org/fedflash/index.html>.

▲ FRFS has posted the January 2017 issue of *FedFocus*, featuring among others, an article on the advantages of the FedTransaction Analyzer tool. The *FedFocus* may be found at: <https://www.frb services.org/fedfocus/index.html>. ■



# Compliance Calendar

February 2017 – September 2017

## Advocacy

WBA/ABA Washington Visit  
March 20-22 | Washington, DC

ICBA 2017 Washington  
Policy Summit  
April 30-May 3 | Washington, DC

WBA Capitol Day  
May 10 | Madison

## Conferences

WBA 2017 Bank Executives  
Conference  
Feb. 6-8 | Milwaukee

WBA Agricultural  
Bankers Conference  
April 5-6 | Wisconsin Dells

WBA 2017 Women in  
Banking Conference  
April 12 | Wisconsin Dells

WBA 2017 Management  
Conference & Expo  
Sept. 12-13 | Wisconsin Dells

## FIPCO Events

FIPCO Compliance & Software  
Forum – Deposit  
May 11 | Stevens Point

Threat Intelligence Briefing  
May 18 | Wisconsin Dells

(Visit [www.fipco.com/events](http://www.fipco.com/events).)

## Summit

WBA 2017 BOLT Summer  
Leadership Summit  
June 12-13 | Wisconsin Dells

## Schools

WBA Residential Mortgage  
Lending School (2017)  
Feb. 13-17 | Wisconsin Dells

WBA Commercial  
Lending School (2017)  
Feb. 19-24 | Wisconsin Dells

WBA Real Estate  
Compliance School  
March 13-15 | Wisconsin Dells

WBA Introduction to  
Commercial Lending School  
March 21-23 | Wisconsin Dells

WBA School of Bank  
Management  
May 7-12 | Madison

## Seminars/Workshops

WBA/CFT 2017 Branch Manager  
Series: The Evolving Role of  
the Branch Manager (4 sessions)  
Waukesha:  
Jan. 10 | Feb. 7 | April 4 | May 9  
Wisconsin Dells:  
Jan. 11 | Feb. 8 | April 5 | May 10

Ag Problem Loans Workshop  
Feb. 23 | Wisconsin Dells

Call Report Review Workshop  
March 9 | Wisconsin Dells

Advanced IRA Workshops  
March 15 | Wausau  
March 16 | Madison

Security Officer Workshops  
March 21 | Neenah  
March 22 | Eau Claire  
March 23 | Wisconsin Dells

HSA Workshops  
March 27 | Wisconsin Dells

## Webinars (online training)

Reg. E Series: Handling Provi-  
sional Credit Under Reg. E: Rules,  
Best Practices, FAQs Webinar  
Feb. 2 | 2-3:30 p.m.

Open-Ended Lines of Credit –  
Compliance Issues Webinar  
Feb. 6 | 1:30-3:30 p.m.

Basic Estate Planning and  
Estate Settlement Webinar  
Feb. 7 | 10-11:30 a.m.

Compliance Rules for  
Commercial Loans Secured by  
Real Estate Webinar  
Feb. 9 | 1:30-3:30 p.m.

Secrets of Buying and Selling a  
Community Bank Webinar  
Feb. 14 | 10-11 a.m.

Formation and Use of the Bank  
Holding Company Webinar  
Feb. 15 | 10-11 a.m.

Part 2 – New FFIEC Consumer  
Compliance Rating System,  
Effective 3/31/17: Violations of  
Law & Consumer Harm Webinar  
Feb. 17 | 10-11:30 a.m.

Outsourcing Technology –  
Risks and Rewards Webinar  
Feb. 21 | 10-11 a.m.

Signature Card Danger  
Zones Webinar  
Feb. 23 | 1:30-3:30 p.m.

Compliance Questions & Issues  
in Deploying Mobile Remote  
Deposit Capture Webinar  
Feb. 28 | 2-3:30 p.m.

EBC Webinar: Using Risk  
Management to Increase Your  
Bottom Line  
March 7 | 2-3 p.m.

(Register online at [www.wisbank.com/education](http://www.wisbank.com/education).)