

## The US Consumer Financial Protection Bureau's Busy December: 14 Interim Final Rulemaking Proceedings

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The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) transferred rulemaking authority for a number of consumer financial protection laws from seven federal agencies to the Consumer Financial Protection Bureau (the CFPB) as of July 21, 2011. During the final weeks of 2011, the CFPB implemented this rulemaking authority by promulgating 18 interim final rules, in 14 separate proceedings, all with a common December 30, 2011 effective date. With a few exceptions discussed below, the CFPB's new regulations duplicated the existing regulations except for "certain non-substantive, technical, formatting and stylistic changes." The CFPB in large part preserved the alphabetic rule designations used by the Federal Reserve Board.

Although the CFPB generally asserts that notice and comment rulemaking procedures are not required for these 18 final rules, it nevertheless has solicited comments "to identify any technical issues" and "to identify priorities for streamlining regulations that it has inherited from other Federal agencies to address provisions that are outdated, unduly burdensome, or unnecessary." Comments are due in mid-February, the exact due date depending on the publication date of the CFPB regulations.

Although the CFPB has reserved a number of oft-discussed regulatory revisions (for example, combining RESPA and Truth in Lending disclosures) for future rulemaking proceedings, it did use the December rulemakings to correct some typographical or scrivener's errors in existing regulations and to incorporate a few amendments to consumer protection laws made by the Dodd-Frank Act.

The most significant of these changes was the addition of an "or" in the definition of "private education loan" in Regulation Z, 12 CFR § 1026.46(a)(5)(iii) so that it now reads:

*(5) Private education loan means an extension of credit that: . . . (iii) Does not include open-end credit or any loan that is secured by real property or a dwelling; . . .*

The prior language (without the "or") suggested that the exclusion dealt with only open-end credit secured by a mortgage, the proceeds of which were used for educational purposes. As revised, the CFPB has clarified that open-end credit, whether secured or unsecured, and mortgage loans secured by real property or dwellings, whether open-end or closed-end credit, are not "private educational loans" for purposes of Regulation Z even when the proceeds of such loans are used for educational purposes.

Finally in Regulations E, V and Z, the CFPB has provided financial institutions a transition period permitting the use of existing disclosure materials through January 1, 2013.

For further information about these CFPB interim final rules, or their application, please contact one of the individuals listed in this publication, your principal Squire Sanders lawyer or any of our US financial services lawyers.

The table below summarizes the transfers effective on December 30, 2011.

New CFPB Regulation	Law Implemented	Transferring Agency	Transferring Agency's Regulation	Federal Register Publication	Comment Deadline
12 CFR Part 1002 (Regulation B)	Equal Credit Opportunity Act (12 U.S.C. §§ 1691 et seq.)	Federal Reserve Board	12 CFR Part 202 (Regulation B)	<a href="#">76 FR 79025 (12-21-2011)</a>	2-21-2012
12 CFR Part 1003 (Regulation C)	Home Mortgage Disclosure Act (12 U.S.C. §§ 2801 et seq.)	Federal Reserve Board	12 CFR Part 203 (Regulation C)	<a href="#">76 FR 78465 (12-19-2011)</a>	2-17-2012
12 CFR Part 1005 (Regulation E)	Electronic Fund Transfer Act (15 U.S.C. §§ 1693 et seq.)	Federal Reserve Board	12 CFR Part 205 (Regulation E)	<a href="#">76 FR 81020 (12-27-2011)</a>	2-27-2012
12 CFR Part 1006 (Regulation F)	Fair Debt Collection Practices Act (15 U.S.C. §§ 1692 et seq.)	Federal Trade Commission	16 CFR Part 900	<a href="#">76 FR 78121 (12-16-2011)</a>	2-14-2012
12 CFR Part 1007 & Part 1008 (Regulations G & H)	Secure and Fair Enforcement for Mortgage Licensing (S.A.F.E.) Act (12 U.S.C. §§ 5101 et seq.)	Federal Reserve Board	12 CFR §§ 208.101-105 (Regulation H) & § 211.24(k) (Regulation K)	<a href="#">76 FR 78483 (12-19-2011)</a>	2-17-2012
		OCC	12 CFR Part 34		
		FDIC	12 CFR Part 365		
		OTS	12 CFR Part 563		
		Farm Credit Administration	12 CFR Part 610		
		NCUA	12 CFR Part 761 & § 741.223		
HUD	24 CFR Part 3400				

New CFPB Regulation	Law Implemented	Transferring Agency	Transferring Agency's Regulation	Federal Register Publication	Comment Deadline
12 CFR Part 1009 (Regulation I)	Federal Deposit Insurance Act § 43 (12 U.S.C. § 1831t) <sup>1</sup>	Federal Trade Commission	16 CFR Part 320	<a href="#">76 FR 78126 (12-16-2011)</a>	2-14-2012
12 CFR Part 1010, Part 1011 & Part 1012 (Regulations J, K & L)	Interstate Land Sales Full Disclosure Act (15 U.S.C. §§ 1701 et seq.)	HUD	24 CFR Part 1710, Part 1715 & Part 1720	<a href="#">76 FR 79486 (12-21-2011)</a>	2-21-2012
12 CFR Part 1013 (Regulation M)	Consumer Leasing Act (15 U.S.C. §§ 1667 et seq.)	Federal Reserve Board	12 CFR Part 213 (Regulation M)	<a href="#">76 FR 78500 (12-19-2011)</a> , corrected <a href="#">76 FR 81789 (12-29-2011)</a>	2-17-2012
12 CFR Part 1014 & Part 1015 (Regulations N & O)	2009 Omnibus Appropriations Act, § 6, as amended by Credit Card Accountability Responsibility and Disclosure Act <sup>2</sup>	Federal Trade Commission	16 CFR Part 321 & Part 322	<a href="#">76 FR 78130 (12-16-2011)</a>	2-14-2012

<sup>1</sup> Disclosure requirements for depository institutions lacking federal deposit insurance.

<sup>2</sup> Relates to mortgage advertising acts and practices and to mortgage assistance relief services.

New CFPB Regulation	Law Implemented	Transferring Agency	Transferring Agency's Regulation	Federal Register Publication	Comment Deadline
12 CFR Part 1016 (Regulation P)	Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801 et seq.)	Federal Reserve Board	12 CFR Part 216 (Regulation P)	<a href="#">76 FR 79025 (12-21-2011)</a>	2-21-2012
		OCC	12 CFR Part 40		
		FDIC	12 CFR Part 332		
		OTS	12 CFR Part 573		
		NCUA	12 CFR Part 716 & § 741.220		
FTC <sup>3</sup>	16 CFR Part 313				
12 CFR Part 1022 (Regulation V)	Fair Credit Reporting Act, as amended by Fair and Accurate Credit Transactions Act (15 U.S.C. §§ 1681 et seq.)	Federal Reserve Board	12 CFR Part 222 (Regulation V)	<a href="#">76 FR 79308 (12-21-2011)</a>	2-21-2012
		OCC	12 CFR Part 41		
		FDIC	12 CFR Part 334		
		OTS	12 CFR Part 571		
		NCUA	12 CFR Part 717		
FTC <sup>4</sup>	16 CFR Part 600				

<sup>3</sup> FTC retains rulemaking authority with respect to motor vehicle dealers predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. Additionally, the SEC and CFTC retain their respective rulemaking authority. Parallel regulations, 17 CFR Part 248 (applicable to securities brokers and dealers, investment companies and investment advisors registered with the SEC) and 17 CFR Part 160 (applicable to futures commission merchants, commodity trading advisors, commodity pool operators and introducing brokers subject to the CFTC's jurisdiction) have not been transferred to the CFPB.

<sup>4</sup> FTC retains rulemaking authority under FCRA with respect to motor vehicle dealers predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. Additionally, the FTC retains its rulemaking authority for FCRA § 615(e) (the "Red Flag Guidelines and Regulations") and § 628 ("Disposal of Records").

New CFPB Regulation	Law Implemented	Transferring Agency	Transferring Agency's Regulation	Federal Register Publication	Comment Deadline
12 CFR Part 1024 (Regulation X)	Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601 et seq.)	HUD	24 CFR Part 3500 (Regulation X)	<a href="#">76 FR 78978 (12-20-2011)</a>	2-21-2012
12 CFR Part 1026 (Regulation Z)	Truth in Lending Act (15 U.S.C. §§ 1601 et seq.)	Federal Reserve Board	12 CFR Part 226 (Regulation Z)	<a href="#">76 FR 79768 (12-22-2011)</a>	2-21-2012
12 CFR Part 1030 (Regulation DD)	Truth in Savings Act (12 U.S.C. §§ 4301 et seq.)	Federal Reserve Board <sup>5</sup>	12 CFR Part 230 (Regulation DD)	<a href="#">76 FR 79276 (12-21-2011)</a>	2-21-2012

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<sup>5</sup> Parallel NCUA regulations codified at 12 CFR Part 707 applicable to federal credit unions were not transferred to the CFPB by the Dodd-Frank Act.