DEPARTMENT OF THE TREASURY (TREAS)

Statement of Regulatory Priorities

The primary missions of the Department of the Treasury are:

- To promote prosperous and stable American and world economies, including promoting domestic economic growth and maintaining our Nation's leadership in global economic issues, supervising national banks and thrift institutions, and helping to bring residents of distressed communities into the economic mainstream.
- To manage the Government's finances by protecting the revenue and collecting the correct amount of revenue under the Internal Revenue Code, overseeing customs revenue functions, financing the Federal Government and managing its fiscal operations, and producing our Nation's coins and currency.
- To safeguard the U.S. and international financial systems from those who would use these systems for illegal purposes or to compromise U.S. national security interests, while keeping them free and open to legitimate users.

Consistent with these missions, most regulations of the Department and its constituent bureaus are promulgated to interpret and implement the laws as enacted by the Congress and signed by the President. It is the policy of the Department to comply with requirements to issue a notice of proposed rulemaking and carefully consider public comments before adopting a final rule. Also, in particular cases, the Department invites interested parties to submit views on rulemaking projects while a proposed rule is being developed.

In response to the events of September 11, 2001, the President signed the USA PATRIOT Act of 2001 into law on October 26, 2001. Since then, the Department has accorded the highest priority to developing and issuing regulations to implement the provisions in this historic legislation that target money laundering and terrorist financing. These efforts, which will continue during the coming year, are reflected in the regulatory priorities of the Financial Crimes Enforcement Network (FinCEN).

To the extent permitted by law, it is the policy of the Department to adhere to the regulatory philosophy and principles set forth in Executive Order 12866, and to develop regulations that maximize aggregate net benefits to society while minimizing the economic and paperwork burdens imposed on persons and businesses subject to those regulations.

Emergency Economic Stabilization Act

On October 3, 2008, the President signed the Emergency Economic Stabilization Act of 2008 (EESA) (Pub. L. 110-334). Section 101(a) of EESA authorizes the Secretary of the Treasury to establish a Troubled Asset Relief Program (TARP) to ''purchase, and to make and fund commitments to purchase, troubled assets from any financial institution, on such terms and conditions as are determined by the Secretary, and in accordance with this Act and policies and procedures developed and published by the Secretary.''

EESA provides authority to issue regulations and guidance to implement the program. Regulations and guidance required by EESA include conflicts of interest, executive compensation, and tax guidance. The Secretary is also charged with establishing a program that will guarantee principal of, and interest on, troubled assets originated or issued prior to March 14, 2008.

The Department has issued guidance and regulations and will continue to provide program information through the next year. Regulatory actions taken to date include the following:

- *Executive compensation.* In October 2008, the Department issued an interim final rule that set forth executive compensation guidelines for the TARP Capital Purchase Program (73 FR 62205). Related tax guidance on executive compensation was announced in IRS Notice 2008-94. In addition, among other EESA tax guidance, the IRS issued interim guidance regarding loss corporation and ownership changes in Notice 2008-100, providing that any shares of stock owned by the Department of the Treasury under the Capital Purchase Program will not be considered to cause Treasury's ownership in such corporation to increase. On June 15, 2009, the Department issued a revised interim final rule that sets forth executive compensation guidelines for all TARP program participants (74 FR 28394), implementing amendments to the executive compensation provisions of EESA made by the American Recovery and Reinvestment Act of 2009 (Pub. L.111-5). Public comments on the revised interim final rule regarding executive compensation were due by August 14, 2009 and will be considered as part of the process of issuing a final rule on this subject.
- *Insurance program for trouble assets.* On October 14, 2008, the Department released a request for public input on an insurance program for troubled assets.
- *Conflicts of interest.* On January 21, 2009, the Department issued an interim final rule providing guidance on conflicts of interest pursuant to section 108 of EESA (74 FR 3431). Comments on the interim final rule, which were due by March 23, 2009, will be considered as part of the process of issuing a final rule.

During Fiscal Year 2010, the Department will continue implementing the EESA authorities to restore capital flows to the consumers and businesses that form the core of the nation's economy.

Terrorism Risk Insurance Program Office

The Terrorism Risk Insurance Act of 2002 (TRIA) was signed into law on November 26, 2002. The law, which was enacted as a consequence of the events of September 11, 2001, established a temporary Federal reinsurance program under which the Federal Government shares the risk of losses associated with certain types of terrorist acts with commercial property and casualty insurers. The Act, originally scheduled to expire on December 31, 2005, was extended to December 31, 2007 by the Terrorism Risk Insurance Extension Act of 2005 (TRIEA). The Act has since been extended to December 31, 2014, by the Terrorism Risk Insurance Program Reauthorization Act of 2007 (TRIPRA).

The Office of the Assistant Secretary for Financial Institutions is responsible for developing and promulgating regulations implementing TRIA, as extended and amended by TRIEA and TRIPRA. The Terrorism Risk Insurance Program Office, which is part of the Office of the Assistant Secretary for Financial Institutions, is responsible for operational implementation of TRIA. The purposes of this legislation are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for a transition period for the private markets to stabilize and build capacity while preserving State insurance regulation and consumer protections.

Over the past year, the Office of the Assistant Secretary has issued proposed rules implementing changes authorized by TRIA as revised by TRIPRA. The following regulations should be published by December 31, 2009:

- *Recoupment of Federal Share of Compensation for Insured Losses.* This final rule would implement and establish requirements for determining amounts to be recouped and for procedures insurers are to use for collecting terrorism policy surcharges and remitting them to the Treasury.
- *Cap on Annual Liability and Pro Rata Share of Insured Losses.* This final rule would establish, for purposes of the $100 billion cap on annual liability, how Treasury will determine whether aggregate insured losses will exceed $100 billion and, if so, how Treasury will determine the pro rata share of insured losses to be paid by each insurer that incurs insured losses under the Program.

During 2010, Treasury will continue the ongoing work of implementing TRIA and carrying out revised operations as a result of the TRIPRA related regulation changes.

Customs Revenue Functions

On November 25, 2002, the President signed the Homeland Security Act of 2002 (the Act), establishing the Department of Homeland Security (DHS). The Act transferred the United States Customs Service from the Department of the Treasury to the DHS, where it is was known as the Bureau of Customs and Border Protection (CBP). Effective March 31, 2007, DHS changed the name of the Bureau of Customs and Border Protection to U.S. Customs and Border Protection (CBP) pursuant to section 872(a)(2) of the Act (6 USC 452(a)(2)) in a Federal Register notice (72 FR 20131) published on April 23, 2007. Notwithstanding the transfer of the Customs Service to DHS, the Act provides that the Secretary of the Treasury retains sole legal authority over the customs revenue functions. The Act also authorizes the Secretary of the Treasury to delegate any of the retained authority over customs revenue functions to the Secretary of Homeland Security. By Treasury Department Order No. 100-16, the Secretary of the Treasury delegated to the Secretary of Homeland Security authority to prescribe regulations pertaining to the customs revenue functions. This Order further provided that the Secretary of the Treasury retained the sole authority to approve any such regulations concerning import quotas or trade bans, user fees, marking, labeling, copyright and trademark enforcement, and the completion of entry or substance of entry summary including duty assessment and collection, classification, valuation, application of the U.S. Harmonized Schedules, eligibility or requirements for preferential trade programs and the establishment of recordkeeping requirements relating thereto.

During the past fiscal year, among the Treasury-retained CBP customs-revenue function regulations issued was an interim rule to amend the regulatory provisions relating to the requirement under the United States-Bahrain FTA (BFTA) that a good must be ''imported directly'' from Bahrain to the United States or from the United States to Bahrain to qualify for preferential tariff treatment. The change removed the condition that a good passing through the territory of an intermediate country must remain under the control of the customs authority of the intermediate country. CBP plans to finalize this rulemaking in the upcoming fiscal year.

In addition, during the past fiscal year, CBP amended the regulations on an interim basis to implement certain provisions of the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (Public Law 110-286) (the ''JADE Act'') and Presidential Proclamation 8294 of September 26, 2008, which includes new Additional U.S. Note 4 to Chapter 71 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The interim amendments prohibit the importation of Burmese-covered articles of jadeite, rubies and articles of jewelry containing jadeite or rubies, and sets forth restrictions for the importation of non-Burmese covered articles of jadeite, rubies and articles of jewelry containing jadeite or rubies.

As a result of last year's ''Farm Bill'' legislation, CBP implemented interim regulations on the Softwood Lumber Act of 2008, which prescribed special entry requirements as well as an importer declaration program applicable to certain softwood lumber (SWL) and SWL products exported from any country into the United States; CBP plans to finalize the interim rule in the upcoming fiscal year.

During fiscal year 2010, CBP and Treasury plan to give priority to the following regulatory matters involving the customs revenue functions not delegated to DHS:

- *Trade Act of 2002's preferential trade benefit provisions.* Treasury and CBP plan to finalize several interim regulations that implement the trade benefit provisions of the Trade Act of 2002 including the Caribbean Basin Economic Recovery Act and the African Growth and Opportunity Act.
- *Free Trade Agreements.* Treasury and CBP also plan to finalize interim regulations this fiscal year to implement the preferential tariff treatment provisions of the United States-Singapore Free Trade Agreement Implementation Act and the Dominican Republic-Central America-United States Free Trade Agreement (also known as ''CAFTA-DR'') Implementation Act. Treasury and CBP expect to issue interim regulations implementing the United States-Australia Free Trade Agreement Implementation Act, the United States-Oman Free Trade Agreement Implementation Act, and the United States-Peru Free Trade Agreement Implementation Act.
- *Country of Origin of Textile and Apparel Products.* Treasury and CBP also plan to publish a final rule adopting an interim rule that was published on the Country of Origin of Textile and Apparel Products, which implemented the changes brought about, in part, by the expiration of the Agreement on Textile and Clothing and the resulting elimination of quotas on the entry of textile and apparel products from World Trade Organizations (WTO) members.
- *North American Free Trade Agreement country of origin rules.* Treasury and CBP are determining how to proceed regarding a proposal which was published in July 2008 seeking public comment regarding uniform rules governing the determination of the country of origin of imported merchandise. The proposal attracted considerable interest from the trading community. If finalized, the proposed amendments would extend the application of the North American Free Trade Agreement country of origin rules to all trade.
- *Customs Modernization provisions of the North American Free Trade Implementation Act (Customs Mod Act).* Treasury and CBP also plan to continue moving forward with amendments to improve its regulatory procedures began under the authority granted by the Customs Mod Act. These efforts, in accordance with the principles of Executive Order 12866,

have involved and will continue to involve significant input from the importing public. CBP will also continue to test new programs to see if they work before proceeding with proposed rulemaking to establish permanently the programs. Consistent with this practice, we expect to finalize a proposal to establish permanently the *remote location filing* program, which has been a test program under the Customs Mod Act. This rule would allow remote location filing of electronic entries of merchandise from a location other than where the merchandise will arrive. In addition, Treasury and CBP plan to finalize a proposal which was published in August 2008 regarding the *electronic payment and refund of quarterly harbor maintenance fees*. The rule would provide the trade with expanded electronic payment/refund options for quarterly harbor maintenance fees and would modernize and enhance CBP's port use fee collection efforts.

Community Development Financial Institutions Fund

The Community Development Financial Institutions Fund (Fund) was established by the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*). The primary purpose of the Fund is to promote economic revitalization and community development through the following programs: the Community Development Financial Institutions (CDFI) Program, the Bank Enterprise Award (BEA) Program, the Native American CDFI Assistance (NACA) Program, and the New Markets Tax Credit (NMTC) Program. In addition the Fund administers the Financial Education and Counseling Pilot Program (FEC) and the Capital Magnet Fund (CMF).

In fiscal year (FY) 2010, subject to funding availability, the Fund will provide awards through the following programs:

- *Native American CDFI Assistance (NACA) Program.* Through the NACA Program, the Fund will provide technical assistance grants and financial assistance awards to promote the development of CDFIs that serve Native American, Alaska Native, and Native Hawaiian communities.
- *Bank Enterprise Award (BEA) Program.* Through the BEA Program, the Fund will provide financial incentives to encourage insured depository institutions to engage in eligible development activities and to make equity investments in CDFIs.
- *New Markets Tax Credit (NMTC) Program.* Through the NMTC Program, the CDFI Fund will provide allocations of tax credits to qualified community development entities (CDEs). The CDEs in turn provide tax credits to private sector investors in exchange for their investment dollars; investment proceeds received by the CDEs are be used to make loans and equity investments in low-income communities. The Fund administers the NMTC Program in coordination with the Office of Tax Policy and the Internal Revenue Service.
- *Financial Education and Counseling (FEC) Pilot Program.* Through the FEC Pilot Program, the CDFI Fund will provide grants to eligible organizations to provide a range of financial education and counseling services to prospective homebuyers. The Fund will administer the FEC Program in coordination with the Office of Financial Education.
- *Capital Magnet Fund (CMF).* Through the Capital Magnet Fund, the CDFI Fund will provide competitively awarded grants to CDFIs and qualified nonprofit housing organizations to finance affordable housing and related community development projects. In FY 2010, the Fund expects to draft and publish regulations to govern the application process, award selection, and compliance components of the CMF.

Financial Crimes Enforcement Network

As chief administrator of the Bank Secrecy Act (BSA), FinCEN's regulations constitute the core of the Department's anti-money laundering and counter-terrorism financing programmatic efforts. FinCEN's responsibilities and objectives are linked to, and flow from, that role. In fulfilling this role, FinCEN seeks to enhance U.S. national security by making the financial system increasingly resistant to abuse by money launderers, terrorists and their financial supporters, and other perpetrators of crime.

The Secretary of the Treasury, through FinCEN, is authorized by the BSA to issue regulations requiring financial institutions to file reports and keep records that are determined to have a high degree of usefulness in criminal, tax, or regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism. Those regulations also require designated financial institutions to establish anti-money laundering programs and compliance procedures. To implement and realize its mission, FinCEN has established regulatory objectives and priorities to safeguard the financial system from the abuses of financial crime, including terrorist financing, money laundering, and other illicit activity. These objectives and priorities include: (1) issuing, interpreting, and enforcing compliance with regulations implementing the BSA; (2) supporting, working with, and, as appropriate, overseeing compliance examination functions delegated to other Federal regulators; (3) managing the collection, processing, storage, and dissemination of data related to the BSA; (4) maintaining a Government-wide access service to that same data, and for network users with overlapping interests; (5) conducting analysis in support of policymakers, law enforcement, regulatory and intelligence agencies, and the financial sector; and (6) coordinating with and collaborating on anti-terrorism and anti-money laundering initiatives with domestic law enforcement and intelligence agencies, as well as foreign financial intelligence units.

During fiscal year 2009, FinCEN issued, or plans to issue, the following regulatory actions:

- *Currency Transaction Reporting Exemptions.* FinCEN published a Final Rule that simplifies the existing currency transaction reporting (CTR) exemption regulatory requirements. The amendments were recommended by the Government Accountability Office in GAO-08-355. By simplifying the regulatory requirements regarding CTR exemptions, FinCEN believes that more depository institutions will avail themselves of the exemptions. The rule was finalized with an effective date of January 5, 2009.
- *Administrative Rulings.* Prior to the end of the fiscal year, FinCEN will issue a final technical rule change to update the Bank Secrecy Act provisions to reflect that Administrative Rulings are published on the FinCEN Web site, rather than in the Federal Register.
- *Reorganization of BSA Rules.* On October 23, 2008, FinCEN issued a Notice of Proposed Rulemaking to re-designate and reorganize the BSA regulations in a new chapter within the Code of Federal Regulations. The re-designation and reorganization of the regulations in a new chapter is not

intended to alter regulatory requirements. The regulations will be organized in a more consistent and intuitive structure that more easily allows financial institutions to identify their specific regulatory requirements under the BSA. The new chapter will replace 31 CFR Part 103.

- *Money Services Businesses.* On May 12, 2009, FinCEN issued a Notice of Proposed Rulemaking addressing definitional thresholds for Money Services Businesses (MSBs), incorporating previously issued Administrative Rules and guidance with regard to MSBs, and addressing the issue of foreign-located MSBs.
- *Confidentiality of Suspicious Activity Reports.* On March 3, 2009, FinCEN issued a Notice of Proposed Rulemaking clarifying the non-disclosure provisions with respect to the existing regulations pertaining to the confidentiality of suspicious activity reports (SARs). In conjunction with this notice, FinCEN issued for comment two guidance documents, SAR Sharing with Affiliates for depository institutions and SAR Sharing with Affiliates for securities and futures industry entities, to solicit comment permitting certain financial institutions to share SARs with their U.S. affiliates that are also subject to SAR reporting requirements.
- *Mutual Funds.* On June 5, 2009, FinCEN issued a Notice of Proposed Rulemaking addressing the definition of financial institution in the BSA's implementing regulations to include open-end investment companies (mutual funds). Despite the fact that mutual funds are already required to comply with anti-money laundering and customer identification program requirements, file SARs, comply with due diligence obligations pursuant to rules implementing section 312 of the USA PATRIOT Act, and perform other BSA compliance functions, a mutual fund is not designated as a 'financial institution' under the BSA implementing regulations. The proposed rule would address obligations to file Currency Transaction Reports for cash transactions over $10,000 in lieu of current obligations to file Form 8300s.
- *Non-Bank Residential Mortgage Lenders and Originators.* On July 21, 2009, FinCEN issued an Advance Notice of Proposed Rulemaking (ANPRM) to solicit public comment on a wide range of questions pertaining to the possible application of anti-money laundering (AML) program and suspicious activity report regulations to a specific sub-set of loan and finance companies, i.e., non-bank residential mortgage lenders and originators
- *Expansion of Special Information Sharing Procedures (pursuant to section 314(a) of the BSA).* Prior to the end of the fiscal year, FinCEN will issue a Notice of Proposed Rulemaking to amend the BSA regulations to allow certain foreign law enforcement agencies, State and local law enforcement agencies, and FinCEN itself to submit requests for information to financial institutions.
- *Withdrawal of Proposed Rules.* On October 30, 2008, FinCEN withdrew the proposed rules (issued in 2002 and 2003) for investment advisers, commodity trading advisors, and unregistered investment companies. The proposed rules were withdrawn to eliminate uncertainty associated with the existence of out-of-date proposed rules, and to allow FinCEN to issue new notices of proposed rulemaking at a later date that take into account industry regulatory developments with respect to investment advisers, commodity trading advisors, and unregistered investment companies since 2003.
- *Renewal of Existing Rules.* FinCEN renewed without change the information collections associated with the existing regulations requiring money services businesses, mutual funds, operators of credit card systems, dealers in precious metals, precious stones, or jewels, and certain insurance companies to develop and implement written anti-money laundering programs. Also, FinCEN renewed without change the information collections associated with the existing regulations requiring futures commission merchants, introducing brokers in commodities, banks, savings associations, credit unions, certain non-federally regulated banks, mutual funds, and securities broker-dealers to develop and implement customer identification programs.
- *Administrative Rulings and Written Guidance.* FinCEN issued 10 Administrative Rulings and written guidance pieces (as of August 2009) interpreting the BSA and providing clarity to regulated industries.

FinCEN's regulatory priorities for fiscal year 2010 include finalizing the proposed initiatives mentioned above, as well as the following projects:

- *Anti-Money Laundering Programs.* Pursuant to section 352 of the USA PATRIOT Act, certain financial institutions are required to establish AML programs. Continued from fiscal year 2009, FinCEN will propose a rulemaking to require state-chartered credit unions and other depository institutions without a federal functional regulator to implement AML programs. With the added information from the ANPRM regarding non-bank residential mortgage lenders or originators, FinCEN will research and analyze issues regarding potential regulation of the loan and finance industry, and may issue proposed rulemaking with regard to non-bank residential mortgage lenders and originators. Finally, FinCEN also will continue to consider regulatory options regarding certain corporate and trust service providers.
- *Regulatory Framework for Stored Value.* The Credit Card Accountability, Responsibility, and Disclosure Act (CARD Act) of 2009 (Section 503) requires FinCEN to issue a final rule ''regarding issuance, sale, redemption, or international transport of stored value'' by mid-February 2010. This act has imposed a timetable to activities that were already underway. Just prior to the enactment of the CARD Act, FinCEN issued a Notice of Proposed Rulemaking clarifying the applicability of BSA regulations with respect to MSB activities. As part of this Notice of Proposed Rulemaking, FinCEN solicited comment on the treatment of stored value as money transmission under FinCEN's regulations. In the accelerated rulemaking environment resulting from the CARD Act, FinCEN is consulting with law enforcement and other regulators with the intent to issue a Notice of Proposed Rulemaking and then a Final Rule to meet the established deadline. *FBAR Requirements.* FinCEN will work with the IRS and other pertinent offices within the Department of the Treasury to issue a Notice of Proposed Rulemaking with regard to revising the regulations governing the filing of Reports of Foreign Bank and Financial Accounts (FBARs). Among other things, FinCEN and the IRS will seek comments regarding when a person with signature authority over, but no financial interest in, a foreign financial account should be relieved of filing an FBAR for the account, and when an interest in a foreign entity

(e.g., a corporation, partnership, trust or estate) should be subject to FBAR reporting.

Other Requirements. FinCEN will continue to consider regulatory action in conjunction with the feasibility study prepared pursuant to the Intelligence Reform and Terrorism Prevention Act of 2004 concerning the issue of obtaining information about certain cross-border funds transfers and transmittals of funds. FinCEN also will continue to issue proposed and final rules pursuant to Section 311 of the USA PATRIOT Act, as appropriate. Finally, FinCEN expects to propose various technical and other regulatory amendments in conjunction with its ongoing, comprehensive review of existing regulations to enhance regulatory efficiency.

Internal Revenue Service

The Internal Revenue Service (IRS), working with the Office of the Assistant Secretary (Tax Policy), promulgates regulations that interpret and implement the Internal Revenue Code and related tax statutes. The purpose of these regulations is to carry out the tax policy determined by Congress in a fair, impartial, and reasonable manner, taking into account the intent of Congress, the realities of relevant transactions, the need for the Government to administer the rules and monitor compliance, and the overall integrity of the Federal tax system. The goal is to make the regulations practical and as clear and simple as possible.

Most IRS regulations interpret tax statutes to resolve ambiguities or fill gaps in the tax statutes. This includes interpreting particular words, applying rules to broad classes of circumstances, and resolving apparent and potential conflicts between various statutory provisions.

During fiscal year 2010, the IRS will accord priority to the following regulatory projects:

- *Deduction and Capitalization of Costs for Tangible Assets.* Section 162 of the Internal Revenue Code allows a current deduction for ordinary and necessary expenses paid or incurred in carrying on any trade or business. Under section 263(a) of the Code, no immediate deduction is allowed for amounts paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate. Those expenditures are capital expenditures that generally may be recovered only in future taxable years, as the property is used in the taxpayer's trade or business. It often is not clear whether an amount paid to acquire, produce, or improve property is a deductible expense or a capital expenditure. Although existing regulations provide that a deductible repair expense is an expenditure that does not materially add to the value of the property or appreciably prolong its life, the IRS and Treasury believe that additional clarification is needed to reduce uncertainty and controversy in this area. In August 2006, the IRS and Treasury issued proposed regulations in this area and received numerous comments. In March 2008, the IRS and Treasury withdrew the 2006 proposed regulations and issued new proposed regulations, which have generated relatively few comments. The IRS and Treasury intend to finalize those regulations.
- *Arbitrage Investment Restrictions on Tax-Exempt Bonds.* The arbitrage investment restrictions on tax-exempt bonds under section 148 generally limit issuers from investing bond proceeds higher-yielding investments. Treasury and the IRS plan to issue proposed regulations to address selected current issues involving the arbitrage restrictions, including clarification of the issue price definition used in the computation of bond yield, clarification and simplification of the rules regarding modifications and terminations of qualified hedging transactions, guidance on the treatment of working capital financing, and selected other issues.
- *Tax Credit Bonds.* Tax credit bonds are bonds in which the holder receives a federal tax credit in lieu of some or all of the interest on the bond. The American Recovery and Reinvestment Act of 2009 created a number of new types of tax credit bonds and modified the law as it concerned several existing types of tax credit bonds. The IRS and Treasury intend to provide guidance on numerous legal issues concerning tax credit bonds and to develop clear guidelines for the IRS Tax Exempt Bond enforcement program.
- *Build America Bonds.* Treasury and the IRS plan to issue proposed regulations to provide guidance on interpretative issues that have arisen in implementing the broad new Build America Bond program in section 54AA under the American Recovery and Reinvestment Act of 2009.
- *Private Activity Bonds.* Treasury and the IRS to issue final regulations on allocation and accounting rules for application of the private business restrictions on tax-exempt governmental bonds under section 141. These regulations will include guidance on public-private partnerships and mixed use arrangements in which projects are used in part by State and local governments and in part by private businesses. These regulations will finalize 2006 proposed regulations with modifications in consideration of the public comments.
- *Guidance on the Tax Treatment of Distressed Debt.* Recent events in the financial markets have highlighted a number of unresolved tax issues relating to the amount, character, and timing of income, expense, gain, or loss on distressed debt. In addition, the tax treatment of distressed debt, including distressed debt that has been modified, may affect the qualification of certain entities for tax purposes or result in additional taxes on the investors in such entities, such as regulated investment companies, real estate investment trusts, and real estate mortgage investment conduits. During fiscal year 2009, Congress, Treasury, and the IRS have addressed some of these issues through statutory changes and published guidance. Treasury and the IRS plan to address more of these issues in published guidance.
- *Classification of Series LLCs and Cell Companies.* Series LLCs were first introduced in Delaware in 1996, and since then, series LLC statutes have been adopted in several other states. These statutes typically permit the entity to segregate assets and liabilities and to associate certain members with specified assets and liabilities. In the insurance and foreign arena, similar entities are sometimes referred to as cell companies. In Notice 2008-19, the IRS requested comments on when a cell of a protected cell company should be treated as a separate insurance company for federal income tax purposes. The IRS also requested comments on similar segregated arrangements, such as series LLCs that do not involve insurance. It is likely that, over time, the use of series LLCs and cell companies will increase. Accordingly, it is important to provide timely guidance to clarify the classification and other tax treatment of this new form of organization. Guidance has been requested on the federal tax classification of these domestic and foreign entities. The IRS

and Treasury intend to issue guidance that will address the characterization of domestic and foreign series and cells for federal tax purposes.

- *Elective Deferral of Certain Business Discharge of Indebtedness Income.* In the recent economic downturn, many business taxpayers realized income as a result of modifying the terms of their outstanding indebtedness or refinancing on terms subjecting them to less risk of default. The American Recovery and Reinvestment Act of 2009 includes a special relief provision allowing for the elective deferral of certain discharge of indebtedness income realized in 2009 and 2010. The provision, section 108(i) of the Code, is complicated and many of the details will have to be supplied through regulatory guidance. This guidance will have to be provided expeditiously so taxpayers will be able to evaluate the benefits of electing deferral. Treasury and the IRS recently issued Revenue Procedure 2009-37 that prescribes the procedure for making the election. The IRS and Treasury intend to issue additional guidance on such issues as the types of indebtedness eligible for the relief, acceleration of deferred amounts, the operation of the provision in the context of flow-through entities, the treatment of the discharge for the purpose of computing earnings and profits, and the operation of a provision of the statute deferring original issue discount deductions with respect to related refinancings.
- *Rules under the Pension Protection Act of 2006* and Other Retirement-Related Guidance. Significant new rules regarding the funding of qualified defined benefit pension plans were enacted as part of the Pension Protection Act of 2006 (PPA). The IRS and Treasury prioritized the various pieces of guidance required to comply with those rules. The IRS and Treasury intend to issue additional guidance on the provisions of the PPA related to funding. In addition, the IRS and Treasury will be issuing various items of administrative guidance that facilitate or enhance retirement savings and security.
- *Withholding on Government Payments for Property and Services*. Section 3402(t) was added to the Internal Revenue Code by the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA). Section 3402(t) requires all Federal, State and local Government entities (except for certain small State entities) to deduct and withhold an income tax equal to 3 percent from all payments (with certain enumerated exceptions) the Government entity makes for property or services. Section 3402(t) will be effective with respect to payments made after December 31, 2011. On March 11, 2008, the IRS issued Notice 2008-38 soliciting public comments regarding guidance to be provided to Federal, State and local governments required to withhold under section 3402(t). After considering the many comments, the IRS and Treasury issued a Notice of Proposed Rulemaking, which was published in the Federal Register on December 4, 2008. A hearing on the proposed regulations was held on April 16, 2009, and the IRS has received 168 comments from stakeholders on the proposed regulations. The IRS and Treasury are considering the comments and intend to issue final regulations.
- *Information Reporting of Basis by Brokers and Others*. Section 403 of the Energy Improvement and Extension Act of 2008 (Pub. L. No. 110-343) enacted on October 3, 2008, amended section 6045 to require brokers to report both the basis and gross proceeds of securities sold by customers. Form 1099-B is used for this purpose. Basis reporting generally will be required for stock acquired after December 31, 2010. Basis reporting will be required for debt securities, such as bonds, acquired after December 31, 2012. The legislation also imposed basis reporting requirements on others in certain circumstances. The IRS and Treasury intend to issue proposed and final regulations under to address these new reporting requirements.
- *Information Reporting Concerning Payment Card Transactions*. Section 6050W was added to the Internal Revenue Code by the Housing Assistance Tax Act of 2008, enacted on July 30, 2008. Section 6050W requires information returns to be made for each calendar year beginning after December 31, 2010, by merchant-acquiring entities and third-party settlement organizations with respect to payment card transactions and third-party payment network transactions occurring in that calendar year. Certain payment card transactions subject to information reporting under section 6050W are subject to backup withholding if the payee has not provided a valid taxpayer identification number (TIN). Announcement 2009-6, 2009-9 IRB 643 (Feb. 6, 2009), advised section 6050W filers that they may participate in the TIN matching program under the procedures established in Rev. Proc. 2003-9, 2003-1 C.B. 516, which permits program participants to verify the payee TINs required to be reported on information returns and payee statements. Notice 2009-19, 2009-10 IRB 660 (Feb. 20, 2009), requested public comments regarding guidance to be provided to payment settlement entities and other affected persons concerning the new requirements under section 6050W. The IRS and Treasury intend to issue proposed and final regulations under sections 6050W to address these requirements.
- *Withholding Tax and the Role of Financial Intermediaries.* In 1997 the IRS and Treasury issued regulations under the section 1441 provisions for withholding tax on certain items of portfolio investment income from U.S. sources. The qualified intermediary (QI) system was a key element. In October 2008 the IRS issued Announcement 2008-98 concerning proposed amendments to the qualified intermediary agreements and rules to address early notice of failures of internal controls, evaluation of risk that foreign accounts may be subject to control by U.S. persons, and association of a U.S. auditor to the oversight of QI performance. The IRS and Treasury intend to issue regulations to address these various areas of compliance involving the withholding taxes on portfolio investment income.
- *Foreign Bank Account Reporting (FBAR).* In May 2009 the Treasury issued budget proposals for Fiscal Year 2010 which included proposed legislation to address FBAR related issues. In August 2009, the IRS and Treasury issued Notice 2009-62 providing an extension until June 30, 2010 to file FBARs for 2008 and earlier calendar years, pending the preparation of further guidance. The IRS and Treasury intend to issue regulations to address these FBAR issues.

Office of the Comptroller of the Currency

The Office of the Comptroller of the Currency (OCC) was created by Congress to charter national banks, to oversee a nationwide system of banking institutions, and to assure that national banks are safe and sound, competitive and profitable, and capable of serving in the best possible manner the banking needs of their customers.

The OCC seeks to assure a banking system in which national banks soundly manage their risks, maintain the ability to compete effectively with other providers of financial services, meet the needs of their communities for credit and financial services, comply with laws and regulations, and provide fair access to financial services and fair treatment of their customers.

Significant rules issued during fiscal year 2009 include:

- *Fair Credit Reporting, Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies (12 CFR Part 41).* The banking agencies,[1] the National Credit Union Administration (NCUA), and the Federal Trade Commission (FTC) issued a joint final rule to implement section 312 of the FACT Act. Section 312 requires the issuance of guidelines regarding the accuracy and integrity of information entities furnish to a consumer reporting agency (CRA). Section 312 also requires the issuance of regulations requiring entities that furnish information to a CRA to establish reasonable policies and procedures for the implementation of the guidelines. In addition, section 312 requires jointly prescribed regulations that identify the circumstances under which a furnisher of information to a CRA shall be required to investigate a dispute concerning the accuracy of information contained in a consumer report based on the consumer's direct request to the furnisher. A final rule was issued on July 1, 2009 (74 FR 31484).
- *Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance; Capital – Residential Mortgage Loans Modified Pursuant to the Home Affordable Program (12 CFR Part 3).* In order to support and facilitate the timely implementation of the Home Affordable Program (Program) announced by the U.S. Department of Treasury and to promote the stability of banking organizations and the financial system, the banking agencies issued an interim final rule providing that a residential mortgage loan (whether a first-lien or a second-lien loan) modified under the Program will retain the risk weight assigned to the loan prior to the modification, so long as the loan continues to meet other relevant supervisory criteria. The rule minimizes disincentives to bank participation in the Program that could otherwise result from agencies' regulatory capital regulations. The banking agencies believe that this treatment is appropriate in light of the overall important public policy objectives of promoting sustainable loan modifications for at-risk homeowners that balance the interests of borrowers, servicers, and investors. Joint agency action is essential to ensure that the regulatory capital consequences of participation in the Program are the same for all commercial banks and thrifts. An interim final rule was issued on June 30, 2009. (74 FR 31160).
- *Registration of Mortgage Loan Originators (12 CFR Part 34).* The banking agencies, the NCUA, and Farm Credit Administration (FCA) proposed amendments to their rules to implement the S.A.F.E. Mortgage Licensing Act of 2008, Title V of the Housing and Economic Recovery Act of 2008, P.L. 110-289. These amendments require an employee of a depository institution, an employee of a depository institution subsidiary regulated by a Federal banking agency, or an employee of an institution regulated by the FCA that engages in the business of a mortgage loan originator to register with the Nationwide Mortgage Licensing System and Registry (NMLSR) and to obtain a unique identifier. These amendments also provide that these institutions must require their employees who act as mortgage loan originators to comply with this Act's registration and unique identifier requirements and must adopt and follow written policies and procedures to assure compliance with these requirements. A notice of proposed rulemaking was issued on June 9, 2009 (74 FR 27386). The OCC has included this rulemaking project in the Regulatory Plan (1557-AD23).
- *Risk-Based Capital Guidelines — Money Market Mutual Funds (12 CFR Part 3).* On September 19, 2008, the Board of Governors of the Federal Reserve System adopted the Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility (the ''AMLF'' or ''ABCP Lending Facility'') which enables depository institutions and bank holding companies to borrow from the Federal Reserve Bank of Boston on a nonrecourse basis if they use the proceeds of the loan to purchase certain asset-backed commercial paper (ABCP) from money market mutual funds. The purpose of this action was to reduce strains being experienced by money market mutual funds. To facilitate national bank participation in the program, the OCC adopted on September 19, 2008,[2] on an interim final basis, an exemption from its risk-based capital guidelines for ABCP held by a national bank as a result of its participation in this program. The AMLF was set to expire on January 30, 2009. However, to encourage the stability of money market mutual funds, the program has been extended. This rule finalizes the risk-based capital exemption and extends the risk-based capital exemption to ABCP purchased beyond the original January 30, 2009 date. This final rule applies the risk-based capital exemption to any ABCP purchased as a result of a national bank's participation in the facility. The risk-based capital exemption will continue to apply if the AMLF has not expired. A final rule was issued on March 27, 2009 (74 FR 13336).
- *Minimum Capital Ratios; Capital Adequacy Guidelines; Capital Maintenance; Capital: Deduction of Goodwill Net of Associated Deferred Tax Liability (12 CFR Part 3).* The banking agencies issued a final rule to allow their institutions to elect to reduce the amount of goodwill that a bank must deduct from tier 1 capital by the amount of any deferred tax liability associated with that goodwill. This treatment is currently permitted only in the case of goodwill acquired in a nontaxable purchase business combination. This change effectively reduces the amount of goodwill that a bank must deduct from tier 1 capital and reflects a bank's maximum effective exposure to loss in the event that such goodwill is impaired or derecognized for financial reporting purposes. A final rule was issued on December 30, 2008 (74 FR 79602).
- *Standards Governing the Release of a Suspicious Activity Report (12 CFR Part 4).* The OCC proposed to revise its regulations governing the release of non-public OCC information set forth in 12 CFR part 4, subpart C. The proposal would clarify that the OCC's decision to release a suspicious activity report (SAR) will be governed by the standards set forth in proposed amendments to the OCC's SAR regulation, 12 CFR 21.11(k), that are part of a separate, but simultaneously issued, rulemaking. A notice of

[1] Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision.

[2] 73 FR 55704 (September 26, 2008).

proposed rulemaking was published on March 9, 2009 (74 FR 10136).

- *Confidentiality of Suspicious Activity Reports (12 CFR Part 21).* The OCC proposed to amend its regulations implementing the Bank Secrecy Act governing the confidentiality of a suspicious activity report (SAR) to: clarify the scope of the statutory prohibition on the disclosure by a national bank of a SAR; address the statutory prohibition on the disclosure by the government of a SAR as that prohibition applies to the OCC's standards governing the disclosure of SARs; clarify that the exclusive standard applicable to the disclosure of a SAR, or any information that would reveal the existence of a SAR, by the OCC is ''to fulfill official duties consistent with the purposes of the BSA''; and modify the safe harbor provision in its rules to include changes made by the USA PATRIOT Act. This proposal is based upon a similar proposal issued simultaneously by the Financial Crimes Enforcement Network (FinCEN). A notice of proposed rulemaking was published on March 9, 2009 (74 FR 10130).
- *Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments (12 CFR Part 24).* The OCC adopted without change the interim final rule, issued on August 11, 2008, which implemented the statutory change to national banks' community development investment authority made in the Housing and Economic Recovery Act of 2008 (HERA). The OCC also revised Appendix 1 to part 24, the CD-1 National Bank Community Development (Part 24) Investments Form, to make technical changes that are consistent with the HERA provision and the revised regulation. Section 2503 of the HERA revised the community development investment authority in section 24(Eleventh) to restore a national bank's authority to make investments designed primarily to promote the public welfare. A final rule was published on April 7, 2009 (74 FR 15657).
- *Community Reinvestment Act Regulations (12 CFR Part 25).* On August 14, 2008, the Higher Education Opportunity Act (HEOA) was enacted into law. Section 1031 of the HEOA revised the Community Reinvestment Act (CRA) to require the banking agencies, when evaluating a bank's record of meeting community credit needs, to consider, as a factor, low-cost education loans provided by the bank to low-income borrowers. The banking agencies issued a proposal that would implement section 1031 of the HEOA. In addition, the proposal would incorporate into the banking agencies' rules statutory language that allows them to consider as a factor when evaluating a bank's record of meeting community credit needs capital investment, loan participation, and other ventures undertaken by nonminority- and nonwomen-owned financial institutions in cooperation with minority- and women-owned financial institutions and low-income credit unions. A notice of proposed rulemaking was published on June 30, 2009 (74 FR 31209).

The OCC's regulatory priorities for fiscal year 2010 include the following:

- *Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Regulatory Capital; Impact of Modifications to Generally Accepted Accounting Principles; Consolidation of Asset-Backed Commercial Paper Programs; and Other Related Issues (12 CFR Part 3).* The banking agencies issued a notice of proposed rulemaking to: (i) modify their general risk-based capital standards and advanced risk-based capital adequacy frameworks to eliminate the exclusion of certain consolidated asset-backed commercial paper programs from risk-weighted assets; and (ii) provide a reservation of authority in their general risk-based capital standards to permit the agencies' to require banking organizations to treat structures that are not consolidated under accounting standards as if they were consolidated for risk-based capital purposes commensurate with the risk relationship of the banking organization to the structure. The banking agencies also requested comment on the effect on regulatory capital requirements of the consolidation of assets required by the Financial Accounting Standard Board's (FASB) recent issuance of Statement of Financial Accounting Standards No. 166, Accounting for Transfers of Financial Assets, an Amendment of FASB Statement No. 140 and Statement of Financial Accounting Standards No. 167, Amendments to FASB Interpretation No. 46(R). A notice of proposed rulemaking was published on September 15, 2009 (74 FR 47138).
- *Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Basel II Standardized Approach (12 CFR Part 3).* As part of the banking agencies' ongoing efforts to develop and refine the capital standards to enhance their risk sensitivity and ensure the safety and soundness of the banking system, they issued a notice of proposed rulemaking to amend various provisions of the capital rules on July 29, 2008, at 73 FR 43982. The changes involve amending the current capital rules for those banks that will not be subject to the advanced internal ratings-based approaches. Work on a final rule is underway.
- *Risk-Based Capital Standards: Market Risk (12 CFR Part 3).* The banking agencies plan to issue a second notice of proposed rulemaking to amend the market risk capital requirements for national banks. The banking agencies issued a notice of proposed rulemaking on September 25, 2006 (71 FR 55958). The rule would make the current market risk capital requirements generally more risk sensitive with respect to the capital treatment of trading activities in banks and bank holding companies.
- *Interagency Proposal for Model Privacy Form under Gramm-Leach-Bliley Act (12 CFR Part 40).* The banking agencies, along with the NCUA, FTC, the Commodity Futures Trading Commission, and the Securities and Exchange Commission (SEC), issued a joint notice of proposed rulemaking pursuant to section 728 of the Financial Services Regulatory Relief Act of 2006 (Pub. L. 109-351) on March 29, 2007 (72 FR 14940). Specifically, a safe harbor model privacy form was proposed that financial institutions may use to provide the disclosures under the privacy rules. After further consumer testing of this model form, the SEC published for comment in the *Federal Register* a report analyzing this testing on April 20, 2009. 74 FR 17925. The final rule will be published in November 2009.

Office of Thrift Supervision

As the primary Federal regulator of the thrift industry, the Office of Thrift Supervision (OTS) has established regulatory objectives and priorities to supervise thrift institutions effectively and efficiently. These objectives include maintaining and enhancing the safety and soundness of the thrift industry; a flexible, responsive regulatory structure that enables savings associations to

provide credit and other financial services to their communities, particularly housing mortgage credit; and a risk-focused, timely approach to supervision.

OTS, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the banking agencies) continue to work together on regulations where they share the responsibility to implement statutory requirements. For example, the banking agencies are working jointly on several rules to update capital standards to maintain and improve consistency in agency rules. These rules implement revisions to the *International Convergence of Capital Management and Capital Standards: A Revised Framework (Basel II Framework) and include:*

- *Risk-Based Capital Guidelines: Implementation of Revised Basel Capital Accord.* The final Basel II Advanced Approaches rule was published by the banking agencies on December 7, 2007 and became effective April 1, 2008. The OTS, in conjunction with the other banking agencies, is working on implementing the Advanced Approaches rule first for core banking organizations. This is an institution-specific and multi-year process of evaluating each organization's readiness and qualification to move forward into transitional capital floors.
- *Risk-Based Capital Standards: Market Risk.* On September 25, 2006, the Agencies issued an NPRM on Market Risk. In this rule, OTS proposed to require savings associations to measure and hold capital to cover their exposure to market risk. The Agencies did not finalize the 2006 NPRM. Subsequently, the Basel Committee directed international revisions which were completed in July 2009. At that time the Agencies began drafting a new NPR, based upon the international revisions as well as on the comments received in 2006. The new NPRM should be issued in 2010.
- *Risk-Based Capital Standards: Standardized Approach.* The banking agencies issued an NPRM implementing the Standardized Approach to credit risk and approaches to operational risk that are contained in the Basel II Framework. 73 FR 43982 (July 29, 2008). Banking organizations would be able to elect to adopt these proposed revisions or remain subject to the agencies' existing risk-based capital rules, unless the banking organization uses the Advanced Capital Adequacy Framework described above. The comment period closed October 27, 2008 and the proposal is still pending final action by the banking agencies.
- *Risk-Based Capital Guidelines: Impact of Modifications to Generally Accepted Accounting Principles; Consolidation of Asset-Backed Commercial Paper Programs.* The banking agencies are proposing to modify its general risk-based capital standards and advanced risk-based capital adequacy framework to eliminate the exclusion of certain consolidated asset-backed commercial paper programs from risk-weighted assets; and permit the banking agencies to require banking organizations to treat structures that are not consolidated under accounting standards as if they were consolidated for risk-based capital purposes commensurate with the risk relationship of the banking organization to the structure. The agencies issued an NPRM on September 15, 2009 (74 FR 47138).

Significant proposed rules issued during fiscal year 2009 include:

- *S.A.F.E. Mortgage Licensing.* On June 9, 2009, the banking agencies and the Farm Credit Administration (FCA) issued a joint NPRM proposing to amend their rules to implement the Secure and Fair Enforcement for Mortgage Licensing Act (the S.A.F.E. Act). These amendments require an employee of a depository institution, an employee of a depository institution subsidiary regulated by a Federal banking agency, or an employee of an institution regulated by the FCA that engages in the business of a mortgage loan originator to register with the Nationwide Mortgage Licensing System and Registry and to obtain a unique identifier. These amendments also provide that these institutions must require their employees who act as mortgage loan originators to comply with this Act's registration and unique identifier requirements and must adopt and follow written policies and procedures to assure compliance with these requirements. The comment period on this proposal closed on July 9, 2009, and comments are being reviewed in preparation for drafting a final rule in 2010.

Significant final rules issued during fiscal year 2009 include:

- OTS, FRB and NCUA issued a final rule on January 29, 2009 (74 FR 5498) to prohibit certain unfair or deceptive acts or practices in the areas of credit cards and overdrafts and proposed clarifications to that final rule on May 5, 2009 (84 FR 20804). The comment period closed on July 30, 2009 and, in accordance with the statute, the agencies may issue further clarifications at a later date.
- OTS anticipates implementing section 728 of the Financial Services Regulatory Relief Act by amending its privacy rules under the Gramm-Leach Bliley Act to include a safe harbor model privacy form. The banking agencies, NCUA, FTC, Commodity Futures Trading Commission (FTC), and SEC expect to issue final amendments to their rules requiring initial and annual privacy notices to their customers. And, pursuant to Section 728 of the Financial Services Regulatory Relief Act of 2006, the agencies are adopting a model privacy form that financial institutions may rely on as a safe harbor to provide disclosures under the privacy rules.

Alcohol and Tobacco Tax and Trade Bureau

The Alcohol and Tobacco Tax and Trade Bureau (TTB) issues regulations to enforce the Federal laws relating to alcohol, tobacco, firearms, and ammunition taxes and relating to commerce involving alcohol beverages. TTB's mission and regulations are designed to:

1) Regulate with regard to the issuance of permits and authorizations to operate in the alcohol and tobacco industries;

2) Assure the collection of all alcohol, tobacco, and firearms and ammunition taxes, and obtain a high level of voluntary compliance with all laws governing those industries; and

3) Suppress commercial bribery, consumer deception, and other prohibited practices in the alcohol beverage industry.

TTB plans to pursue one significant regulatory action during FY 2010. In 2007, the Department approved the publication of a notice of proposed rulemaking soliciting comments on a proposal to require a serving facts statement on alcohol beverage labels. The proposed statement would include information about the serving size, the number of servings per container, and per-serving information on calories and grams of carbohydrates, fat, and protein. The proposed rule would also require

information about alcohol content. This regulatory action was initiated under section 105(e) of the Federal Alcohol Administration Act, 27 U.S.C. 205(e), which confers on the Secretary of the Treasury authority to promulgate regulations for the labeling of alcoholic beverages, including regulations that prohibit consumer deception and the use of misleading statements on labels and that ensure that such labels provide the consumer with adequate information as to the identity and quality of the product. TTB received and reviewed approximately 800 comments on the serving facts proposal and plans to put forward for Department approval a final rule on this matter in FY 2010.

In addition to the regulatory action described above, in FY 2010 TTB plans to give priority to the following regulatory matters:

- *Modernization of title 27, Code of Federal Regulations.* TTB will continue to pursue its multi-year program of modernizing its regulations in title 27 of the Code of Federal Regulations. This program involves updating and revising the regulations to be more clear, current, and concise, with an emphasis on the application of plain language principles. TTB laid the groundwork for this program in 2002 when it started to recodify its regulations in order to present them in a more logical sequence. In FY 2005, TTB evaluated all of the 36 CFR parts in title 27 and prioritized them as ''high,'' ''medium,'' or ''low'' in terms of the need for complete revision or regulation modernization. TTB determined importance based on industry member numbers, revenue collected, and enforcement and compliance issues identified through field audits and permit qualifications, statutory changes, significant industry innovations, and other factors. The 10 parts of title 27, Code of Federal Regulations, that TTB ranked as ''high'' include the five parts directing operation of the major taxpayers under the Internal Revenue Code of 1986: Part 19 - Distilled Spirits Plants; Part 24 - Wine; Part 25 - Beer; Part 40 - Manufacture of Tobacco Products and Cigarette Papers and Tubes; and Part 53 - Manufacturers Excise Taxes - Firearms and Ammunition. These five parts represent nearly all the tax revenue that TTB collects, which is expected to be approximately $22 billion in FY 2010. The remaining five parts rated ''high'' consist of regulations covering imports and exports (Part 27 - Importation of Distilled Spirits, Wine and Beer; Part 28 - Exportation of Alcohol; and Part 41 - Exportation of Tobacco Products and Cigarette Papers and Tubes), as well as regulations addressing the American Viticultural Area program (Part 9) and TTB procedures (Part 70).

  To date, related to the modernization plan, TTB has published notices of proposed rulemaking to revise Part 19 and to amend Part 9 and has reviewed the public comments received in response to those notices, and TTB anticipates that in FY 2010 it will forward to the Department final rules for both parts for publication approval. In FY 2010, TTB plans to put forward to the Department for publication approval an advance notice for proposed rulemaking for the revision of the beer regulations in Part 25.

- *Allergen Labeling.* In FY 2006 TTB published interim regulations setting forth standards for voluntary allergen labeling of alcohol beverages. These regulatory changes were an outgrowth of changes made to the Federal Food, Drug and Cosmetic Act by the Food Allergen Labeling and Consumer Protection Act of 2004. At the same time, TTB published a proposal to make those interim requirements mandatory. In FY 2010 TTB intends to continue its review of mandatory allergen labeling with a view to preparing a final rule document that would take effect on the same date as the serving facts regulatory changes discussed above.

- *Multi-Region Appellations for Imported Wine.* TTB will put forward for Departmental publication approval a proposal to amend its wine labeling regulations to allow the labeling of imported wines with multi-region appellations of origin. The proposed regulatory change would provide labeling treatment for imported wines that is similar to what is currently available for domestic wines, which may be labeled with a multi-state or multi-county appellation of origin.

- *Other wine labeling issues.* In FY 2010 TTB will continue to act on petitions for the establishment of new American viticultural areas (AVAs) and for the modification of the boundaries of existing AVAs. TTB also will seek Departmental publication approval of a number of other wine labeling rulemaking documents for public comment in FY 2010. These initiatives include a clarification of the approval process for the use of American grape varietal names on labels and an updating of the list of approved American grape varietal names. We also plan regulatory action on petitions seeking to adopt new label designation standards for wines now generally described as ''wine with natural flavors,'' and to limit the use of American appellations to wines produced entirely from U.S. grapes.

- *Specially Denatured and Completely Denatured Alcohol Formulas.* TTB will submit for publication approval by the Department a proposal to reclassify some specially denatured alcohol (SDA) formulas as completely denatured alcohol (CDA) for which formula submission to TTB is not required. The proposed regulatory changes would also allow other SDA formulas to be used without the submission of article formulas. These changes would allow TTB to shift its SDA-dedicated resources from the current front-end pre-market formula control approach to a post-market assessment of actual compliance with SDA regulations.

- *Special (Occupational) Tax Repeal.* TTB published in FY 2009 a temporary rule, together with a contemporaneous notice of proposed rulemaking that amended the TTB regulations in response to the statutory repeal of the special (occupational) taxes on producers and marketers of alcoholic beverages. In FY 2010 TTB intends to put forward for Departmental approval a document that adopts those temporary amendments as a final rule.

- *Alternation of Brewery Premises.* In FY 2010 TTB will forward to the Department for publication approval a notice of proposed rulemaking to amend the TTB regulations to set forth specific standards for the approval and operation of alternating proprietorships at the same brewery premises. The proposed regulations will include standards for alternation agreements between host and tenant brewers as well as rules for recordkeeping and segregation of products made by different brewers.

- *Determination of Tax on Large Cigars.* TTB will forward to the Department for publication approval a notice of proposed rulemaking that clarifies the rules for determining the amount of tax that is due on large cigars, which is based on their sale price. The proposed regulatory changes will include specific standards for determining the tax on large cigars

that are provided at no cost in connection with a sale.

- *Time For Payment of Tax on Alcohol Beverages.* In FY 2010 TTB will forward to the Department for publication approval a temporary rule, together with a contemporaneous notice of proposed rulemaking, to reflect statutory standards for the deferred payment of taxes on alcohol beverages in the month of September and for quarterly payment of tax by small producers of alcohol beverages.
- *Classification of Tobacco Products.* In FY 2010 TTB will continue its review of standards for the classification of different tobacco products. In FY 2007 TTB published a notice of proposed rulemaking to set standards for distinguishing between cigars and cigarettes and, after a review of the public comments received in response to that proposal, TTB determined that further review was necessary with a view to possible publication of new proposals for further comment. In addition, TTB will consider the possibility of proposing standards to distinguish between pipe tobacco and roll-your-own tobacco.
- *CHIPRA Tobacco Product and Processed Tobacco Implementation.* In FY 2009 TTB published two temporary rules, together with a contemporaneous notice of proposed rulemaking in each case, to implement changes to the Internal Revenue Code of 1986 made by the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). The changes included tobacco product tax rate increases, changes to the bases for the denial, suspension, or revocation of permits for tobacco manufacturers and importers, permit and related requirements for manufacturers and importers of processed tobacco, and an expansion of the definition of roll-your-own tobacco. TTB anticipates that in FY 2010 it will forward to the Department for publication approval final rules regarding these two regulatory initiatives.

Bureau of the Public Debt

The Bureau of the Public Debt (BPD) has responsibility for borrowing the money needed to operate the Federal Government and accounting for the resulting debt, regulating the primary and secondary Treasury securities markets, and ensuring that reliable systems and processes are in place for buying and transferring Treasury securities.

BPD administers regulations: (1) Governing transactions in Government securities by Government securities brokers and dealers under the Government Securities Act of 1986 (GSA), as amended; (2) Implementing Treasury's borrowing authority, including rules governing the sale and issue of savings bonds, marketable Treasury securities, and State and local Government securities; (3) Setting out the terms and conditions by which Treasury may redeem (buy back) outstanding, unmatured marketable Treasury securities through debt buyback operations; (4) Governing securities held in Treasury's retail systems; and (5) Governing the acceptability and valuation of all collateral pledged to secure deposits of public monies and other financial interests of the Federal Government.

Treasury's GSA rules govern financial responsibility, the protection of customer funds and securities, record keeping, reporting, audit, and large position reporting for all government securities brokers and dealers, including financial institutions.

Treasury maintains regulations governing two retail systems for purchasing and holding Treasury securities: Legacy Treasury Direct, in which investors can purchase, manage, and hold marketable Treasury securities in book-entry form, and TreasuryDirect, in which investors may purchase, manage, and hold savings bonds, marketable Treasury securities, and certificates of indebtedness in an Internet-based system.

During fiscal year 2010, BPD will accord priority to the following regulatory projects:

- *Savings Bond Issuing and Paying Agent Regulations.* BPD plans to issue a final rule amending the savings bond issuing regulations to equalize the fee structure between definitive and electronic bonds, and amending the savings bond paying agent regulations to replace the EZ Direct system with the EZ Clear system.
- *TreasuryDirect.* BPD plans to issue a final rule revising the TreasuryDirect regulations to support enhancements to the system, primarily to implement a reinvestment option and to revise the purchase process.
- *Marketable Treasury bills, notes, bonds, and non-marketable savings bonds.* BPD plans to amend the regulations to remove certain evidentiary requirements for deceased owner cases.

Financial Management Service

The Financial Management Service (FMS) issues regulations to improve the quality of Government financial management and to administer its payments, collections, debt collection, and Government-wide accounting programs. For fiscal year 2010, FMS's regulatory plan includes the following priorities:

- *Federal Government Participation in the Automated Clearing House.* FMS is proposing to amend our regulation at 31 CFR part 210 governing the use of the Automated Clearing House (ACH) system by Federal agencies. The proposed amendments will adopt, with some exceptions, the ACH Rules developed by NACHA – The Electronic Payments Association (NACHA) as the rules governing the use of the ACH Network by Federal agencies.

  We are issuing this proposed rule to address changes that NACHA has made to the ACH Rules since the publication of NACHA's 2007 ACH Rules book. These changes include new requirements to identify all international payment transactions using a new Standard Entry Class Code and to include certain information in the ACH record sufficient to allow the receiving financial institution to identity the parties to the transaction and to allow the Office of Foreign Assets Control (OFAC) screening.

  In addition, we are proposing (1) to streamline the process for reclaiming post-death benefit payments from financial institutions; (2) to require financial institutions to provide limited account-related customer information related to the reclamation of post-death benefit payments as permitted under the Payment Transactions Integrity Act of 2008; and (3) to modify our previous guidance regarding the requirement that non-vendor payments be delivered to a deposit account in the name of the recipient.
- *Debt Collection Authorities Under the Debt Collection Improvement Act.* FMS is amending its regulation at 31 CFR part 285 governing the centralized offset of federal payments, including tax refund payments, to collect nontax debts owed to the United States. The amendments remove the time limitation on the collection of nontax debts by centralized offset, consistent with a change in the statute on which it is based. The statutory change, enacted

as part of the Food, Conservation and Energy Act of 2008, allows for the use of centralized offset of federal payments, including federal salary payments, to collect nontax debts owed to the United States irrespective of the amount of time the debt has been outstanding.

Domestic Finance – Office of the Fiscal Assistant Secretary (OFAS)

The Office of the Fiscal Assistant Secretary develops policy for and oversees the operations of the financial infrastructure of the federal government, including payments, collections, cash management, financing, central accounting, and delinquent debt collection.

- *Anti-Garnishment*. In FY 2010, Treasury plans to promulgate a joint rule, with Federal benefit agencies, to give better force and effect to various benefit agency statutes that exempt Federal benefits from garnishment. Typically, upon receipt of a garnishment order from a State court, financial institutions will completely freeze an account as they perform due diligence in complying with the order. The joint rule will address this practice of account freezes to ensure that benefit recipients have access to a certain amount of lifeline funds while garnishment orders or other legal processes are resolved or adjudicated, and will provide financial institutions with specific administrative instructions to carry out upon receipt of a garnishment order. The joint rule will apply to financial institutions, but is not expected to have specific provisions for consumers, States, debt collectors, or banking regulators. However, the banking regulators would enforce the policy in cases of non-compliance by means of their general authorities. This proposed regulation will be a new part in Title 31 jointly controlled by Treasury and the Federal benefit agencies.

TREAS—Departmental Offices (DO)

FINAL RULE STAGE

130. EMERGENCY ECONOMIC STABILIZATION ACT; CONFLICTS OF INTEREST

Priority:

Other Significant

Legal Authority:

PL 110–343; 122 Stat 3765

CFR Citation:

31 CFR 31

Legal Deadline:

None

Abstract:

This rule provides guidance on conflicts of interest pursuant to section 108 of the Emergency Economic Stabilization Act of 2008 (EESA), which was enacted on October 3, 2008.

Statement of Need:

This rulemaking is necessary to revise the interim conflicts of interest rule issued in January 2009 based on public comments received. This January 2009 interim rule addressed conflicts that may arise during the selection of individuals or entities seeking a contract or financial agency agreement with the Treasury, particularly those involved in the acquisition, valuation, management, and disposition of troubled assets.

Summary of Legal Basis:

This rule is issued pursuant to section 108 of the Emergency Economic Stabilization Act of 2008 (EESA), which was enacted on October 3, 2008. Section 108 of EESA authorizes the Secretary to issue regulations or guidelines necessary to address and manage or to prohibit conflicts of interest that may arise in connection with the administration and execution of the EESA authorities.

Alternatives:

Not applicable.

Anticipated Cost and Benefits:

Not applicable.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/21/09	74 FR 3431
Interim Final Rule Effective	01/21/09	
Interim Final Rule Comment Period End	03/23/09	
Final Rule	12/00/09	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

Agency Contact:

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TREAS—DO

131. TARP STANDARDS FOR COMPENSATION AND CORPORATE GOVERNANCE

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

PL 110–343; PL 111–5

CFR Citation:

31 CFR 30

Legal Deadline:

None

Abstract:

This interim final rule, promulgated pursuant to sections 101(a)(1), 101(c)(5), and 111(b) of the Emergency Economic Stabilization Act of 2008, Division A of Public Law 110-343 (EESA), as amended, provides further guidance on the executive compensation provisions applicable to participants in the Troubled Assets Relief Program (TARP).

Statement of Need:

EESA provided immediate authority and facilities that the Secretary of the Treasury could use to restore liquidity and stability to the financial system. The rule is necessary to establish standards for executive compensation practices at firms receiving TARP assistance, in order to fully protect the interests of taxpayers and mandate compensation practices that maximize the value of the firm for shareholders.

Summary of Legal Basis:

Section 111 of EESA, as amended, provides that certain entities that receive financial assistance from Treasury under the TARP will be subject to specified executive compensation and corporate governance standards to be established by the Secretary.

Alternatives:

Not yet determined.

Anticipated Cost and Benefits:

Not yet determined.

Risks:

Not yet determined.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/15/09	74 FR 28394
Interim Final Rule Effective	06/15/09	
Interim Final Rule Comment Period End	08/14/09	
Final Rule	12/00/09	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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RIN: 1505–AC09

TREAS—Comptroller of the Currency (OCC)

FINAL RULE STAGE

132. S.A.F.E. MORTGAGE LICENSING ACT

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

12 USC 1 et seq; 12 USC 29; 12 USC 93a; 12 USC 371; 12 USC 1701j–3; 12 USC 1828(o); 12 USC 3331 et seq

CFR Citation:

12 CFR 34

Legal Deadline:

Other, Statutory, July 29, 2009, Implement Registration System.

Implement system for registering employees as mortgage loan originators with the Nationwide Mortgage Licensing System and Registry.

Abstract:

These regulations implement the Federal registration requirement imposed by the S.A.F.E. Mortgage Licensing Act, title V of the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289, 122 Stat. 2654 (2008)) with respect to national banks and their operating subsidiaries. They are being issued by the OCC, FRB, FDIC, OTS, NCUA, and Farm Credit Administration (the Agencies).

Statement of Need:

The S.A.F.E. Act requires the Agencies to develop and maintain a system for registering employees of depository institutions and their subsidiaries regulated by a Federal Banking Agency or employees of institutions regulated by the Farm Credit Administration as registered loan originators with the Nationwide Mortgage Licensing System and Registry. The Agencies determined the best method for implementing this requirement was through a rulemaking.

Summary of Legal Basis:

This rulemaking is based on the requirements of the S.A.F.E. Act's requirements, S.A.F.E. Mortgage Licensing Act, title V of the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289, 122 Stat. 2654 (2008)), and the OCC's general rulemaking authority in 12 U.S.C. 93a.

Alternatives:

Not yet determined.

Anticipated Cost and Benefits:

Not yet determined.

Risks:

Not yet determined.

Timetable:

Action	Date	FR Cite
NPRM	06/09/09	74 FR 27386
NPRM Comment Period End	07/09/09	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

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Related RIN: Related to 1550–AC33

RIN: 1557–AD23

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