

# InfoBytes

November 4, 2011

## Topics In This Issue

- [Federal Issues](#)
- [Firm News](#)
- [Mortgages](#)
- [Banking](#)
- [Consumer Finance](#)

## Federal Issues

**FinCEN Proposes Anti-Money Laundering and SAR Reporting Rules for GSEs.** On November 3, the Financial Crimes Enforcement Network (FinCEN) proposed regulations that would require government-sponsored enterprises (GSEs) Fannie Mae, Freddie Mac and the Federal Home Loan Banks to develop anti-money laundering (AML) programs and file suspicious activity reports (SARs) directly with FinCEN. Under current regulations, the GSEs file fraud reports with their regulator, the Federal Housing Finance Agency, which then files SARs with FinCEN when warranted under FinCEN's reporting standards. The expected benefits from the proposed regulations include streamlining the reporting process and providing more timely access to data about potential fraud. In addition, the GSEs and their directors, officers and employees now qualify for the Bank Secrecy Act's "safe harbor" provisions in order to encourage financial institutions to report suspicious activities without fear of liability. The comment period on these proposed regulations is open for 60 days from the date of publication in the *Federal Register*. [Click here for copies of the press release and proposed regulations.](#)

**CFPB Seeks Comments on Proposed Information Collection.** On November 2, the Consumer Financial Protection Bureau (CFPB) began soliciting comments regarding its proposed collection of information for the development and testing of new and existing model forms, disclosures, tools, and similar related materials. The Dodd-Frank Act and federal consumer financial laws require the CFPB to create and prescribe standard model forms, disclosures, and other similar materials to explain and notify consumers about complex financial information in a way consumers can understand. To facilitate the development and implementation of the model forms and documents, the CFPB plans to collect qualitative data about existing forms through a variety of collection methods, including consumer interviews and research. The CFPB also plans to collect information from covered entities to ensure that the new model materials can be implemented as easily and cost-effectively as possible. The CFPB's data collection tools will include consent forms, questionnaires and protocols for individual interviews, and internet applications. The CFPB emphasized that the information gathered will yield qualitative information but that the collections will not be designed or expected to yield statistically reliable results. The CFPB's stated core objective for the data collection is to help identify, evaluate and refine specific features of the content or design of the model forms to maximize

communication effectiveness while minimizing compliance burden. Comments on the proposed collection must be received on or before January 3, 2012 to be assured of consideration. [Click here for a copy of the Federal Register Notice.](#)

**Federal Reserve and FDIC Issue Final Rule Regarding Resolution Plan Requirements.** On November 1, the Board of Governors of the Federal Reserve System (Federal Reserve) and Federal Deposit Insurance Corporation (FDIC) adopted a final rule, which will be effective on November 30, 2011, implementing the requirements in section 165(d)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) regarding resolution plans. This section of the Dodd-Frank Act requires (i) each nonbank financial company designated by the Financial Stability Oversight Counsel (the FSOC) for enhanced supervision by the Federal Reserve and (ii) each bank holding company with assets of \$50 billion or more (together, "covered companies") to report periodically to the Federal Reserve, the FDIC, and the FSOC, its plan for rapid and orderly resolution in the event of material financial distress or failure. The stated purpose of the requirement is to improve the likelihood of efficient resolution of each covered company through advance planning and to assist the Federal Reserve in its supervisory efforts to ensure that each covered company operates in a safe and sound manner that does not pose risks to financial stability generally.

The resolution plan or "living will" is required to be approved by the covered company's board of directors and must contain the following sections: (i) an executive summary; (ii) a strategic analysis of the plan's components; (iii) a description of the covered company's corporate governance structure for resolution planning; (iv) information regarding the covered company's overall organizational structure; (v) information regarding the covered company's management information systems; (vi) a description of interconnections and interdependencies among the covered company and its material entities; and (vii) supervisory and regulatory information. Certain covered companies are allowed to submit tailored plans that are subject to fewer requirements and concentrate on nonbank operations. To address confidentiality concerns, the rule provides for resolution plans to be divided into a public section and a confidential section. The rule also provides that the covered company should submit a properly substantiated request for FOIA exemption.

Covered companies will be required to file resolution plans in a staggered schedule of three groups. Covered companies with \$250 billion or more in total nonbank assets must submit their initial resolution plans no later than July 1, 2012. Covered companies with assets between \$250 billion and \$100 billion in total nonbank assets must submit their resolution plans no later than July 1, 2013. Covered companies with less than \$100 billion in total nonbank assets must file their resolution plans no later than December 31, 2013. If a company becomes a covered company after the effective date of this final rule, it must submit its resolution plan by the July 1 following the date it becomes a covered entity, provided that date is at least 270 days after the date the company became subject to this requirement. Each covered company is required to submit an updated resolution plan annually on or before the anniversary date of its initial plan submission. The final rule also requires the covered company to file a notice with the Federal Reserve and FDIC within 45 days or other time period specified after the occurrence of a material event.

Finally, the final rule describes the Federal Reserve's and FDIC's review process of the resolution plans, and provides penalties for failure to cure any deficiencies on resubmission of a resolution plan or failure to submit a revised resolution plan. These penalties include subjecting the covered company or any subsidiary to more stringent capital, leverage, or liquidity requirements or restrictions on growth, activities, or operations and ordering the covered company to divest assets or operations. [Click here for a copy of the final rule.](#)

**Federal Reserve Announces Fee Schedule Changes.** On October 31, the Board of Governors of the Federal Reserve System (Federal Reserve) announced changes to the Private Sector Adjustment Factor (PSAF) and fees for priced services and its decision to maintain the current earnings credit rate on clearing balances. Effective January 3, 2012, the overall price level for priced services will increase approximately 4 percent over the 2011 price level, and the Federal Reserve anticipates recovering 100.8 percent of their priced services costs in 2012. The Federal Reserve states that this projected price level increase takes into account various fee adjustments for Check 21 services, FedACH services, Fedwire Funds and National Settlement Services, Fedwire Securities Service and changes to electronic access fees. In addition, the Federal Reserve approved the PSAF of \$29.9 million for Reserve Bank priced services, which the Federal Reserve states should not adversely affect private sector service providers' ability to compete. Fee schedules and additional information can be found at [FRBservices.org](http://FRBservices.org). [Click here for a copy of the announcement.](#)

**Freddie Mac Issues Bulletin Covering Updates to Servicing Requirements.** On October 26, Freddie Mac published Bulletin 2011-19, which provides information regarding updates to chapters 64, 65, C65, and 66 of its Servicing Requirements. The six updates covered in the bulletin are effective immediately. Under the updates, servicers are now allowed to use the results from statistical models that predict the relative likelihood of worsening delinquency for the purpose of tailoring its collection and solicitation efforts, including in determining when to send a Borrower Solicitation Package. Servicers using these statistical tools must make the model specifications and analysis demonstrating its predictions available to Freddie Mac upon request, and Servicers must conduct periodic reviews to ensure the tools' effectiveness and compliance with applicable laws. Pursuant to another update in the Bulletin, for borrowers who were less than 60 days delinquent at the time of the evaluation which found they did not qualify for any alternative to foreclosure, servicers must continue solicitation and collection efforts once the borrower becomes 60 days delinquent. As a reminder, the Bulletin addresses the obligation of servicers to instruct their foreclosure attorneys and trustees to send post-referral solicitation letters to borrowers. The Bulletin also provides guidance on how to complete the recently published Form 710, the "Uniform Borrower Assistance Form," when the borrower's hardship is not listed on the form. In those cases, the Servicer must advise the borrower to provide a written explanation of the hardship and provide relevant documentation to support the explanation. Pursuant to the Home Affordable Modification Program, the Bulletin introduces a tiered incentive fee structure that applies to all permanent modifications under the program with a Trial Period Plan Effective Date on or after October 1, 2011. The incentives range from \$400 to \$1,600, depending on the number of days delinquent at the trial plan effective date. Finally, the Bulletin notifies Servicers of newly available Spanish translations of certain borrower solicitation documents. [Click here for a copy of the Bulletin.](#)

**Fannie Mae Announces Update to Mortgage Servicing Guide.** On October 26, the Federal National Mortgage Association (Fannie Mae) issued guidance indicating that, effective December 1, 2011, it would no longer permit servicers to charge the enterprise for annual or monthly lender-paid mortgage insurance renewals, even in instances where loans have been modified. Under Fannie Mae's guidance, when a mortgage loan is modified through either a HAMP modification or any type of trial modification, the servicer must fund lender-paid mortgage insurance renewal premiums from its own corporate funds. Similarly, for all other types of modifications, the servicer must fund lender-paid mortgage insurance renewal premiums either from its own corporate funds or from the borrower's escrow account. Should the servicer choose the later option, it must disclose the fee to the customer in accordance with applicable state and federal laws, and must establish an escrow deposit account for the borrower in accordance with Part III, § 103 of Fannie Mae's Servicing Guide. The guidance also reminds servicers that lender-paid mortgage insurance coverage for conventional mortgage loans must be kept in effect until the mortgage loan is paid in full. [Click here for a copy of Fannie Mae's announcement.](#)

**Fannie Mae Releases Updates to Delinquency Management and Default Prevention Requirements.** On October 26, Fannie Mae released a servicing guide announcement regarding delinquency management and default prevention requirements. Servicing Guide Announcement SVC-2011-18 updates and clarifies several delinquency management and default prevention requirements. These include the following: (i) Post Referral to Foreclosure Solicitation Letter, (ii) Uniform Borrower Assistance Form, (iii) Distant Employment Transfer Including Permanent Change of Station Orders, (iv) Imminent Default Eligibility for Fannie Mae Modifications, (v) Housing Finance Agency and Other Third Party Modification Assistance, (vi) Conversion from Fannie Mae non-HAMP Trial Period Plan to a Forbearance Plan, (vii) Modifying Texas Section 50(a)(6) Loans, (viii) Calculating the Monthly Housing Expense-to-Income Ratio, (ix) Timeline for Preparing the Modification Agreement, (x) Extending the Term with a Modification, (xi) Notifying Credit Repositories, (xii) Reminder of Duties Regarding the Fannie Mae HAMP, and (xiii) Certification Prior to Foreclosure Sale. Servicers must follow the policies and procedures outlined for all conventional mortgage loans in the following scenarios: (i) those held in Fannie Mae's portfolio, (ii) those purchased for Fannie Mae's portfolio but subsequently securitized into MBS pools, (iii) those originally delivered as part of an MBS pool that have either a special or regular servicing option or a shared-risk MBS pool that Fannie Mae or the servicer markets the acquired property, or (iv) other mortgage loans sold to Fannie Mae under a recourse or other credit enhancement arrangement. Fannie Mae states it does not require but encourages servicers to use its foreclosure prevention alternatives for regular servicing option MBS mortgage loans, shared-risk MBS pool for which the servicer markets the acquired property, or any other mortgage loans sold to Fannie Mae under a recourse or other credit enhancement arrangement. Servicers are required to implement the revised requirements in this Announcement immediately for all mortgage loans that become delinquent on or after the date of this Announcement and for the loan modification requirements, loans evaluated for a modification on or after the date of this Announcement. [Click here for a copy of the Servicing Guide Announcement SVC-2011-18.](#)

## Firm News

### **Please Join Us for a Complimentary Webinar: Mortgage Servicing Update: Understanding and Complying with the New and Evolving Rules and Regulations in Light of Recent OCC and CFPB Activity**

This year, we have seen tremendous changes in the mortgage servicing landscape. Please join BuckleySandler for a webinar that will discuss where we are now, how we got here and where we are going. In particular, we will focus on:

The new CFPB Servicing Supervision and Examination Manual published in October 2011

OCC Bulletin 2011-29 and other bank regulator guidance on servicing

Compliance with the "rules" and expectations that stem from new examination procedures, recent regulatory guidance, and enforcement actions related to mortgage servicing

Date: Wednesday, November 9, 2011

Time: 2:00 - 3:15 PM ET

Sign up now to attend this important webinar hosted by BuckleySandler LLP.

Click here to register: <https://www1.gotomeeting.com/register/257198081>. After registering, you will receive a confirmation email containing instructions for joining the webinar.

Presenters:

- [Jeff Naimon](#), Partner, BuckleySandler LLP
- [Jonice Gray Tucker](#), Partner BuckleySandler LLP
- [Joe Reilly](#), Counsel, BuckleySandler LLP

[Andrew Sandler](#) and [Benjamin Klubes](#) will be speaking at the 15th Annual CRA & Fair Lending Colloquium which will be held in Baltimore, Maryland from November 6-8, 2011. Mr. Sandler will be addressing "Hot, Hot, Hot Compliance Topics: Reform Impact, Oversight Trends, Enforcement Actions and More!" on November 7. Mr. Klubes will be moderating a panel on "Non-Mortgage Lending: The Fair Lending Dragon is Breathing Fire" on November 8. For further details on the colloquium please see [www.cracolloquium.com](http://www.cracolloquium.com).

[Margo Tank](#) and [John Richards](#) will participate in the ESRA Fall Conference in Washington, D.C. on November 9 and 10. For details on registration, accommodations, and agenda, please see <http://esignrecords.org/events/>.

[James Parkinson](#) will be speaking on an ABA India Committee telephone conference entitled "Anti-Corruption: Perspectives on Legal Implications for India" on November 16.

[Donna Wilson](#) will be speaking in the Strafford Privacy Data Breach Class Action Webinar on Wednesday, December 7, from 1:00 to 2:30 PM EST/10:00 to 11:30 AM PST. Ms. Wilson's session is entitled: "Class Actions on Data Breach and Privacy on the Rise; Litigating Class Claims, Alleging and Challenging Damages, and Evaluating Insurance."

[David Baris](#), [Sam Buffone](#), and [Donna Wilson](#) will be hosting and presenting in an AABD complimentary webinar entitled "Legal Actions by the FDIC to Recover Losses of Failed Banks: The Potential Liability of Officers and Directors" on December 7, from 3:00 to 4:30 PM EST/12:00 to 1:30 PM PST. Joining Mr. Baris, Mr. Buffone, and Ms. Wilson will be Richard Osterman, head of the FDIC's Professional Liability Program.

[David Krakoff](#) will be participating in a panel at the International Association of Defense Counsel program on worldwide anti-corruption laws in Palm Springs in February 2012.

[James Parkinson](#) will be speaking on a panel entitled "Assessing the Risk of Personal Liability in Bribery Investigations" at the ACI Latin America Summit on Anti-Corruption in Sao Paulo, Brazil on February 8, 2012.

[Donna Wilson](#) will be speaking at the ABA Section of Litigation Insurance Coverage CLE Seminar held at the Loews Ventana Canyon Resort in Tucson, Arizona from March 1-3, 2012. Ms. Wilson will be representing the defense counsel perspective in a plenary session panel entitled "The Credit Crisis and D&O Insurance Coverage: Challenges facing Insureds, Insurers, and Regulators" on March 1 from 1:00 PM to 2:10 PM.

[James Parkinson](#) will chair a panel entitled "The Privileged Profession: Risks Faced by Legal Professionals Advising in International Transactions" at the International Bar Association's 10th Annual Anti-Corruption Conference in Paris on March 14, 2012.

## Mortgages

**FinCEN Proposes Anti-Money Laundering and SAR Reporting Rules for GSEs.** On November 3, the Financial Crimes Enforcement Network (FinCEN) proposed regulations that would require government-sponsored enterprises (GSEs) Fannie Mae, Freddie Mac and the Federal Home Loan Banks to develop anti-money laundering (AML) programs and file suspicious activity reports (SARs) directly with FinCEN. Under current regulations, the GSEs file fraud reports with their regulator, the Federal Housing Finance Agency, which then files SARs with FinCEN when warranted under FinCEN's reporting standards. The expected benefits from the proposed regulations include streamlining the reporting process and providing more timely access to data about potential fraud. In addition, the GSEs and their directors, officers and employees now qualify for the Bank Secrecy Act's "safe harbor" provisions in order to encourage financial institutions to report suspicious activities without fear of liability. The comment period on these proposed regulations is open for 60 days from the date of publication in the *Federal Register*. [Click here for copies of the press release and proposed regulations.](#)

**Freddie Mac Issues Bulletin Covering Updates to Servicing Requirements.** On October 26, Freddie Mac published Bulletin 2011-19, which provides information regarding updates to chapters 64, 65, C65, and 66 of its Servicing Requirements. The six updates covered in the bulletin are effective immediately. Under the updates, servicers are now allowed to use the results from statistical models that predict the relative likelihood of worsening delinquency for the purpose of tailoring its collection and solicitation efforts, including in determining when to send a Borrower Solicitation Package. Servicers using these statistical tools must make the model specifications and analysis demonstrating its predictions available to Freddie Mac upon request, and Servicers must conduct periodic reviews to ensure the tools' effectiveness and compliance with applicable laws. Pursuant to another update in the Bulletin, for borrowers who were less than 60 days delinquent at the time of the evaluation which found they did not qualify for any alternative to foreclosure, servicers must continue solicitation and collection efforts once the borrower becomes 60 days delinquent. As a reminder, the Bulletin addresses the obligation of servicers to instruct their foreclosure attorneys and trustees to send post-referral solicitation letters to borrowers. The Bulletin also provides guidance on how to complete the recently published Form 710, the "Uniform Borrower Assistance Form," when the borrower's hardship is not listed on the form. In those cases, the Servicer must advise the borrower to provide a written explanation of the hardship and provide relevant documentation to support the explanation. Pursuant to the Home Affordable Modification Program, the Bulletin introduces a tiered incentive fee structure that applies to all permanent modifications under the program with a Trial Period Plan Effective Date on or after October 1, 2011. The incentives range from \$400 to \$1,600, depending on the number of days delinquent at the trial plan effective date. Finally, the Bulletin notifies Servicers of newly available Spanish translations of certain borrower solicitation documents. [Click here for a copy of the Bulletin.](#)

**Fannie Mae Announces Update to Mortgage Servicing Guide.** On October 26, the Federal National Mortgage Association (Fannie Mae) issued guidance indicating that, effective December 1, 2011, it would no longer permit servicers to charge the enterprise for annual or monthly lender-paid mortgage insurance renewals, even in instances where loans have been modified. Under Fannie Mae's guidance, when a mortgage loan is modified through either a HAMP modification or any type of trial modification, the servicer must fund lender-paid mortgage insurance renewal premiums from its own corporate funds. Similarly, for all other types of modifications, the servicer must fund lender-paid mortgage insurance renewal premiums either from its own corporate funds or from the borrower's escrow account. Should the servicer choose the later option, it must disclose the fee to the customer in accordance with applicable state and federal laws, and must establish an escrow deposit account for the borrower in accordance with Part III, § 103 of Fannie Mae's Servicing Guide. The guidance also reminds servicers that lender-paid mortgage insurance coverage for conventional mortgage loans must be kept in effect until the mortgage loan is paid in full. [Click here for a copy of Fannie Mae's announcement.](#)

**Fannie Mae Releases Updates to Delinquency Management and Default Prevention Requirements.** On October 26, Fannie Mae released a servicing guide announcement regarding delinquency management and default prevention requirements. Servicing Guide Announcement SVC-2011-18 updates and clarifies several delinquency management and default prevention requirements. These include the following: (i) Post Referral to Foreclosure Solicitation Letter, (ii)

Uniform Borrower Assistance Form, (iii) Distant Employment Transfer Including Permanent Change of Station Orders, (iv) Imminent Default Eligibility for Fannie Mae Modifications, (v) Housing Finance Agency and Other Third Party Modification Assistance, (vi) Conversion from Fannie Mae non-HAMP Trial Period Plan to a Forbearance Plan, (vii) Modifying Texas Section 50(a)(6) Loans, (viii) Calculating the Monthly Housing Expense-to-Income Ratio, (ix) Timeline for Preparing the Modification Agreement, (x) Extending the Term with a Modification, (xi) Notifying Credit Repositories, (xii) Reminder of Duties Regarding the Fannie Mae HAMP, and (xiii) Certification Prior to Foreclosure Sale. Servicers must follow the policies and procedures outlined for all conventional mortgage loans in the following scenarios: (i) those held in Fannie Mae's portfolio, (ii) those purchased for Fannie Mae's portfolio but subsequently securitized into MBS pools, (iii) those originally delivered as part of an MBS pool that have either a special or regular servicing option or a shared-risk MBS pool that Fannie Mae or the servicer markets the acquired property, or (iv) other mortgage loans sold to Fannie Mae under a recourse or other credit enhancement arrangement. Fannie Mae states it does not require but encourages servicers to use its foreclosure prevention alternatives for regular servicing option MBS mortgage loans, shared-risk MBS pool for which the servicer markets the acquired property, or any other mortgage loans sold to Fannie Mae under a recourse or other credit enhancement arrangement. Servicers are required to implement the revised requirements in this Announcement immediately for all mortgage loans that become delinquent on or after the date of this Announcement and for the loan modification requirements, loans evaluated for a modification on or after the date of this Announcement. [Click here for a copy of the Servicing Guide Announcement SVC-2011-18.](#)

## Banking

**Federal Reserve Announces Fee Schedule Changes.** On October 31, the Board of Governors of the Federal Reserve System (Federal Reserve) announced changes to the Private Sector Adjustment Factor (PSAF) and fees for priced services and its decision to maintain the current earnings credit rate on clearing balances. Effective January 3, 2012, the overall price level for priced services will increase approximately 4 percent over the 2011 price level, and the Federal Reserve anticipates recovering 100.8 percent of their priced services costs in 2012. The Federal Reserve states that this projected price level increase takes into account various fee adjustments for Check 21 services, FedACH services, Fedwire Funds and National Settlement Services, Fedwire Securities Service and changes to electronic access fees. In addition, the Federal Reserve approved the PSAF of \$29.9 million for Reserve Bank priced services, which the Federal Reserve states should not adversely affect private sector service providers' ability to compete. Fee schedules and additional information can be found at [FRBservices.org](http://FRBservices.org). [Click here for a copy of the announcement.](#)

## Consumer Finance

**CFPB Seeks Comments on Proposed Information Collection.** On November 2, the Consumer Financial Protection Bureau (CFPB) began soliciting comments regarding its proposed collection of information for the development and testing of new and existing model forms, disclosures, tools, and similar related materials. The Dodd-Frank Act and federal consumer financial laws require the CFPB to create and prescribe standard model forms, disclosures, and other similar materials to explain and



notify consumers about complex financial information in a way consumers can understand. To facilitate the development and implementation of the model forms and documents, the CFPB plans to collect qualitative data about existing forms through a variety of collection methods, including consumer interviews and research. The CFPB also plans to collect information from covered entities to ensure that the new model materials can be implemented as easily and cost-effectively as possible. The CFPB's data collection tools will include consent forms, questionnaires and protocols for individual interviews, and internet applications. The CFPB emphasized that the information gathered will yield qualitative information but that the collections will not be designed or expected to yield statistically reliable results. The CFPB's stated core objective for the data collection is to help identify, evaluate and refine specific features of the content or design of the model forms to maximize communication effectiveness while minimizing compliance burden. Comments on the proposed collection must be received on or before January 3, 2012 to be assured of consideration. [Click here for a copy of the \*Federal Register\* Notice.](#)

© BuckleySandler LLP. INFOBYTES is not intended as legal advice to any person or firm. It is provided as a client service and information contained herein is drawn from various public sources, including other publications.

We welcome reader comments and suggestions regarding issues or items of interest to be covered in future editions of InfoBytes.

Email: [infobytes@buckleysandler.com](mailto:infobytes@buckleysandler.com)

For back issues of INFOBYTES (or other BuckleySandler LLP publications), visit <http://www.buckleysandler.com/infobytes/infobytes>