



9575 Katy Freeway, Suite 300

Houston, TX 77024

Phone: 713-871-0005

Fax: 713-871-1358

Thomas E. Black, Jr., P. C. *

Calvin C. Mann, Jr., P. C.

Gregory S. Graham, P. C.

David F. Dulock

Diane M. Gleason

Benjamin R. Idziak **

Shawn P. Black **

Margaret A. Noles

Robert J. Brewer

Regina Uhl

Ali Hedayatifar

Of Counsel

David M. Tritter

* Also Licensed in New York, Washington,
West Virginia and Iowa

** Also Licensed in New York

July 21, 2011

To: Clients and Friends

From: David F. Dulock

Subject: Final List of Federal Regulations Enforced by the Consumer Financial Protection Bureau Starting July 21, 2011

This is to advise you that in the July 21, 2011 *Federal Register*, the Bureau of Consumer Financial Protection (CFPB) published the attached final list of the federal regulations that will be enforced by the CFPB starting today, July 21, 2011, the designated transfer date established under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). The CFPB's publication of this list will not have a substantive effect on any regulations or the parties who may be subject to them; it merely provides a convenient reference source. The inclusion or exclusion of any regulation does not alter the CFPB's authority, as Title X of the Dodd-Frank Act and other applicable law defines CFPB's authority. In addition, the Dodd-Frank Act does not require the CFPB to update, correct, or otherwise maintain the final list.

We are also providing the following link to the pages of the *Federal Register* attached to this memorandum for your information and use:

<http://www.gpo.gov/fdsys/pkg/FR-2011-07-21/pdf/2011-18426.pdf>.

This memorandum is for informational purposes only and does not require any action on your part.

This Memorandum is provided as general information in regard to the subject matter covered, but no representations or warranty of the accuracy or reliability of the content of this information are made or implied. Opinions expressed in this memorandum are those of the author alone. In publishing this information, neither the author nor the law firm of Black, Mann & Graham L.L.P. is engaged in rendering legal services. While this information concerns legal and regulatory matters, it is not legal advice and its use creates no attorney-client relationship or any other basis for reliance on the information. Readers should not place reliance on this information alone, but should seek independent legal advice regarding the law applicable to matters of interest or concern to them. The law firm of Black, Mann & Graham L.L.P. expressly disclaims any obligation to keep the content of this information current or free of errors.

(columns A and B) and Line 11 (column B), any successor form issued by the FFIEC, and any other fiduciary and related assets defined in the "Notice of Comptroller of the Currency Fees."

§ 8.7 [Amended]

- 44. Amend § 8.7, paragraph (a) by:
 - a. Removing "and" after "Federal branch," and adding ", and each Federal savings association" after "each Federal agency" in the first sentence; and
 - b. Adding ", each Federal savings association," after "each national bank" in the second sentence.

PART 28—INTERNATIONAL BANKING ACTIVITIES

- 45. The authority citation for part 28 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24 (Seventh), 93a, 161, 602, 1818, 3101 *et seq.*, and 3901 *et seq.*

§ 28.16 [Amended]

- 46. Section 28.16 is amended by removing in paragraph (b) introductory text the term "\$100,000" and adding in its place "the standard maximum deposit insurance amount as defined in 12 U.S.C. 1821(a)(1)(E)".

PART 34—REAL ESTATE LENDING AND APPRAISALS

- 47. The authority citation for part 34 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 25b, 29, 93a, 371, 1465, 1701j–3, 1828(o), 3331 *et seq.*, 5101 *et seq.*, and 5412(b)(2)(B).

Subpart A—General

- 48. Amend § 34.4 by:
 - a. Revising paragraph (a) introductory text;
 - b. Revising paragraph (b) introductory text;
 - c. Revising footnote 2 in paragraph (b)(3); and
 - d. Revising paragraph (b)(9).

The revisions read as follows:

§ 34.4 Applicability of state law.

(a) A national bank may make real estate loans under 12 U.S.C. 371 and § 34.3, without regard to state law limitations concerning:

* * * * *

(b) State laws on the following subjects are not inconsistent with the real estate lending powers of national banks and apply to national banks to the extent consistent with the decision of the Supreme Court in *Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al.*, 517 U.S. 25 (1996):

* * * * *

(3) Criminal law;²

² But see the distinction drawn by the Supreme Court in *Easton v. Iowa*, 188 U.S. 220, 238 (1903), where the Court stated that "[u]ndoubtedly a state has the legitimate power to define and punish crimes by general laws applicable to all persons within its jurisdiction * * *. But it is without lawful power to make such special laws applicable to banks organized and operating under the laws of the United States." *Id.* at 239 (holding that Federal law governing the operations of national banks preempted a state criminal law prohibiting insolvent banks from accepting deposits).

* * * * *

(9) Any other law that the OCC determines to be applicable to national banks in accordance with the decision of the Supreme Court in *Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al.*, 517 U.S. 25 (1996), or that is made applicable by Federal law.

- 49. Add § 34.6 to subpart A to read as follows:

§ 34.6 Applicability of state law to Federal savings associations and subsidiaries.

In accordance with section 1046 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 25b), Federal savings associations and their subsidiaries shall be subject to the same laws and legal standards, including regulations of the OCC, as are applicable to national banks and their subsidiaries, regarding the preemption of state law.

Dated: July 14, 2011.

John Walsh,

Acting Comptroller of the Currency.

[FR Doc. 2011–18231 Filed 7–20–11; 8:45 am]

BILLING CODE 4810–33–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–HQ–2011–1]

12 CFR Chapter X

Identification of Enforceable Rules and Orders

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final list.

SUMMARY: Section 1063(i) of the Consumer Financial Protection Act of 2010 ("Act")¹ requires the Bureau of Consumer Financial Protection ("CFPB") to publish in the Federal Register not later than the designated

¹ The Act is Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203.

transfer date a list of the rules and orders that will be enforced by the CFPB. This document sets forth that list.

FOR FURTHER INFORMATION CONTACT: Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1801 L Street, NW., Washington, DC 20036, 202–435–7275.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Act, on the designated transfer date, July 21, 2011,² certain consumer financial protection authorities will transfer from seven transferor agencies³ to the CFPB, and the CFPB will also assume certain new authorities. Subject to the limitations and other provisions of the Act, the CFPB will be authorized to enforce, *inter alia*, rules and orders issued by the transferor agencies under the enumerated consumer laws.⁴ The CFPB will also have authority to enforce in some circumstances the Federal Trade Commission's Telemarketing Sales Rule and its rules under the Federal Trade Commission Act, although the Federal Trade Commission will retain full authority over these rules.⁵

Section 1063(i) of the Act provides that, not later than the designated transfer date, the CFPB "(1) shall, after consultation with the head of each transferor agency, identify the rules and orders that will be enforced by the [CFPB]; and (2) shall publish a list of such rules and orders in the Federal Register." The CFPB consulted with each transferor agency pursuant to section 1063(i) and developed an initial list of rules. After consultation, neither the transferor agencies nor the CFPB identified any orders for inclusion in the list.⁶

² The Secretary of the Treasury designated this date pursuant to section 1062 of the Act. See 75 FR 57252–02, Sept. 20, 2010.

³ Section 1061(a)(2) of the Act defines the terms "transferor agency" and "transferor agencies" to mean, respectively, "(A) the Board of Governors (and any Federal reserve bank, as context requires), the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Department of Housing and Urban Development, and the heads of those agencies, and (B) the agencies listed in subparagraph (A) collectively."

⁴ "Enumerated consumer laws" is defined in section 1002(12) of the Act and section 1400(b) of the Mortgage Reform and Anti-Predatory Lending Act, Tit. XIV, Public Law 111–203.

⁵ These rules are listed as items 1 and 6 through 12 in section F ("Federal Trade Commission") of the list below.

⁶ Section 1063(i) requires the CFPB to list only the rules and orders issued by transferor agencies that will be enforceable by the CFPB. The list

Because the list under section 1063(i) reflects the CFPB's interpretation of its authority under the Act and relates to agency organization, procedure, or practice, the list is not subject to the notice-and-comment requirements of the Administrative Procedure Act ("APA") (5 U.S.C. 551 *et seq.*).⁷ Nevertheless, on May 31, 2011, the CFPB published a Notice containing an initial list in the *Federal Register* ("May 31 Notice") and requested public comment.⁸

As noted in the May 31 Notice, the CFPB's authority is defined by the Act and other applicable law. As a result, the CFPB's publication of the list called for by section 1063(i) will not have a substantive effect on any rules or orders or the parties who may be subject to them; it merely provides a convenient reference source. Accordingly, the inclusion or exclusion of any rule or order does not alter the CFPB's authority.⁹ In addition, section 1063(i) does not require the CFPB to update, correct, or otherwise maintain the final list.

II. Discussion of Comments and Clarifications

In response to the May 31 Notice, the CFPB received 12 comments from regulated entities, trade associations, and consumer groups, among others. None of the comments recommended that any items be added to or removed from the list. The list contained in this document is identical to the list published in the May 31 Notice, except that the final list contains a technical correction to the ordering of the Department of Housing and Urban Development ("HUD") rules and reflects the addition of two rules issued after the May 31 Notice: the FTC's Mortgage Acts and Practices—Advertising rule, and HUD's rule implementing the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.¹⁰

contained in this notice therefore does not include any rules and orders issued by non-transferor agencies that will be enforceable by the CFPB.

⁷ Because publication of the list under section 1063(i) is not subject to the APA's notice-and-comment requirements, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

⁸ 76 FR 31222, May 31, 2011. Section 1066 of the Act grants the Secretary of the Treasury interim authority to perform certain functions of the CFPB. Pursuant to that authority, Treasury published the May 31 Notice and is publishing this document on behalf of the CFPB.

⁹ For example, the inclusion of rules relating to HUD administrative enforcement procedures does not detract from the CFPB's authority to bring lawsuits and administrative enforcement actions under subtitle E of the Act.

¹⁰ This rule will become effective on August 29, 2011. See 76 FR 34864, June 30, 2011. The list

Some comments inquired about the CFPB's application of guidance issued by the transferor agencies in connection with the rules contained on the list. The CFPB does not consider guidance or similar documents as falling within the meaning of enforceable "rules and orders" that are required to be listed pursuant to section 1063(i). However, by way of clarification, the CFPB notes that for laws with respect to which rulemaking authority will transfer to the CFPB, the official commentary, guidance, and policy statements issued prior to July 21, 2011, by a transferor agency with exclusive rulemaking authority for the law in question (or similar documents that were jointly agreed to by all relevant agencies in the case of shared rulemaking authority) will be applied by the CFPB pending further CFPB action. The CFPB will give due consideration to the application of other written guidance, interpretations, and policy statements issued prior to July 21, 2011, by a transferor agency in light of all relevant factors, including: whether the agency had rulemaking authority for the law in question; the formality of the document in question and the weight afforded it by the issuing agency; the persuasiveness of the document; and whether the document conflicts with guidance or interpretations issued by another agency. The CFPB will seek over time to improve the clarity and uniformity of guidance regarding the laws it will administer as necessary in order to facilitate compliance with the Federal consumer financial laws.

Several other comments addressed policy issues that are outside the scope of the list called for by section 1063(i), such as specific recommendations regarding the CFPB's exercise of its rulemaking authority.¹¹ The CFPB values this input, but has determined that this document is not the appropriate forum in which to address the issues raised.

Finally, it bears noting that, later this year, the CFPB intends to publish in

contained in this notice does not include proposed rules that are currently pending.

¹¹ For example, these comments included: requests that CFPB take or refrain from taking regulatory action with respect to certain entities or industries; requests that the CFPB not impose new or duplicative regulatory burdens; and requests that the CFPB appropriately take into account differences between regulated entities (e.g., differences between credit unions and banks). Some comments indicated support for the Act's consolidation of certain consumer financial protection functions into a single federal agency, while others expressed concern about such consolidation. Other comments emphasized the importance of involving stakeholders in the rulemaking process and requested information on the CFPB's plans for doing so.

chapter X of title 12 of the Code of Federal Regulations the rules for which rulemaking authority transfers to the CFPB. These rules will contain conforming amendments to reflect both the transfer of authority to the CFPB under the Act and certain other changes made by the Act to the underlying statutes.¹² In the interim, the existing rules will continue in effect and the changes made by the Act to transfer authority to the CFPB will be effective as of the designated transfer date by operation of law.¹³

III. Final List

Accordingly, pursuant to section 1063(i) of the Act, the CFPB sets forth the following list of rules that will be enforceable by the CFPB subject to the limitations and other provisions of the Act:¹⁴

A. Board of Governors of the Federal Reserve

- 12 CFR part 202—Equal Credit Opportunity Act (Regulation B)
- 12 CFR part 203—Home Mortgage Disclosure (Regulation C)
- 12 CFR part 205—Electronic Fund Transfers (Regulation E)
- 12 CFR 208.101–.105 & Appendix A to Subpart I—Registration of Residential Mortgage Loan Originators (Regulation H, Subpart I)
- 12 CFR part 213—Consumer Leasing (Regulation M)
- 12 CFR part 216—Privacy of Consumer Financial Information (Regulation P)
- 12 CFR part 222—Fair Credit Reporting (Regulation V), except with respect to §§ 222.1(c) (effective dates), 222.83 (Disposal of consumer information), 222.90 (Duties regarding the detection, prevention, and mitigation of identity theft), 222.91 (Duties of card issuers regarding changes of address), & Appendix J (Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation)
- 12 CFR part 226—Truth in Lending (Regulation Z)
- 12 CFR part 230—Truth in Savings (Regulation DD)

B. Federal Deposit Insurance Corporation

- 12 CFR part 332—Privacy of Consumer Financial Information
- 12 CFR part 334—Fair Credit Reporting, except with respect to §§ 334.83

¹² Rulemaking authority for all the rules contained on the list below, except items 1 and 6 through 12 in section F ("Federal Trade Commission"), will transfer to the CFPB on the designated transfer date.

¹³ During this interim period, the CFPB may from time to time provide guidance on its Web site, <http://www.consumerfinance.gov>, regarding procedural matters (e.g. how to make certain filings with the CFPB) relating to compliance with the existing regulations in light of the transfer of authority to the CFPB.

¹⁴ Unless otherwise noted, all references to a Part include accompanying appendices and supplements.

(Disposal of consumer information), 334.90 (Duties regarding the detection, prevention, and mitigation of identity theft), 334.91 (Duties of card issuers regarding changes of address), & Appendix J (Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation)

3. 12 CFR 365.101–.105 & Appendix A to Subpart B—Registration of Residential Mortgage Loan Originators

C. Office of the Comptroller of the Currency

1. 12 CFR 34.20–.25—Adjustable-Rate Mortgages (but only as applied to non-federally chartered housing creditors under the Alternative Mortgage Transaction Parity Act (“AMTPA”))
2. 12 CFR 34.101–.105 & Appendix A to Subpart F—Registration of Residential Mortgage Loan Originators
3. 12 CFR part 40—Privacy of Consumer Financial Information
4. 12 CFR part 41—Fair Credit Reporting, except with respect to §§ 41.83 (Disposal of consumer information), 41.90 (Duties regarding the detection, prevention, and mitigation of identity theft), 41.91 (Duties of card issuers regarding changes of address), & Appendix J (Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation)

D. Office of Thrift Supervision

1. 12 CFR 560.35—Adjustments to home loans (but only as applied to non-federally chartered housing creditors under AMTPA)
2. 12 CFR 560.210–220—Alternative Mortgage Transactions (but only as it relates to AMTPA)
3. 12 CFR 563.101–.105 & Appendix A to Subpart D—Registration of Residential Mortgage Loan Originators
4. 12 CFR part 571—Fair Credit Reporting, except with respect to §§ 571.83 (Disposal of consumer information), 571.90 (Duties regarding the detection, prevention, and mitigation of identity theft), 571.91 (Duties of card issuers regarding change of address), & Appendix J (Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation)
5. 12 CFR part 573—Privacy of Consumer Financial Information

E. National Credit Union Administration

1. 12 CFR 701.21—Loans to members and lines of credit to members (but only as applied to non-federally chartered housing creditors under AMTPA)
2. 12 CFR part 707—Truth in Savings
3. 12 CFR part 716—Privacy of Consumer Financial Information
4. 12 CFR part 717—Fair Credit Reporting, except with respect to §§ 717.83 (Disposal of consumer information), 717.90 (Duties regarding the detection, prevention, and mitigation of identity theft), 717.91 (Duties of card issuers regarding changes of address), & Appendix J (Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation)
5. 12 CFR part 741—Requirements for Insurance, but only with respect to

§§ 741.217 (Truth in savings), 741.220 (Privacy of consumer financial information), & 741.223 (Registration of residential mortgage loan originators)

6. 12 CFR part 761—Registration of Mortgage Loan Originators

F. Federal Trade Commission

1. 16 CFR part 310—Telemarketing Sales Rule
2. 16 CFR part 313—Privacy of Consumer Financial Information
3. 16 CFR part 320—Disclosure Requirements for Depository Institutions Lacking Federal Depository Insurance
4. 16 CFR part 321—Mortgage Acts and Practices—Advertising
5. 16 CFR part 322—Mortgage Assistance Relief Services
6. 16 CFR part 425—Use of Prenotification Negative Option Plans
7. 16 CFR part 429—Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations
8. 16 CFR part 433—Preservation of Consumers’ Claims and Defenses
9. 16 CFR part 444—Credit Practices
10. 16 CFR part 435—Mail or Telephone Order Merchandise
11. 16 CFR part 436—Disclosure Requirements and Prohibitions Concerning Franchising
12. 16 CFR part 437—Disclosure Requirements and Prohibitions Concerning Business Opportunities
13. 16 CFR Subchapter F, Parts 603 *et seq.*—Fair Credit Reporting Act, except with respect to Part 681 (Identity Theft Rules), Part 682 (Disposal of Consumer Report Information and Records), & Appendix A to Part 681 (Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation)
14. 16 CFR part 901—Procedures for State Application for Exemption from the Provisions of the [Fair Debt Collection Practices] Act

G. Department of Housing and Urban Development

1. 24 CFR 26.28–.56—Hearing Procedures Pursuant to the Administrative Procedure Act
2. 24 CFR part 30—Civil Money Penalties: Certain Prohibited Conduct (but only as applied to the Real Estate Settlement Procedures Act of 1974 (“RESPA”), the Interstate Land Sales Full Disclosure Act (“ILSA”), and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008)
3. 24 CFR part 1710—Land Registration
4. 24 CFR part 1715—Purchasers’ Revocation Rights, Sales Practices, and Standards
5. 24 CFR part 1720—Formal Procedures and Rules of Practice
6. 24 CFR part 3400—SAFE Mortgage Licensing Act: Minimum Licensing Standards and Oversight Responsibilities
7. 24 CFR part 3500—Real Estate Settlement Procedures Act
8. 24 CFR part 3800—Investigations in Consumer Regulatory Programs (but only as applied to RESPA and ILSA)

Dated: July 14, 2011.

Alastair Fitzpayne,
Deputy Chief of Staff and Executive Secretary,
Department of the Treasury.

[FR Doc. 2011–18426 Filed 7–20–11; 8:45 am]

BILLING CODE 4810–25–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 126

RIN 3245–AG45

**Small Business HUBZone Program;
Government Contracting Programs**

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule amends the U.S. Small Business Administration’s regulations pertaining to the Historically Underutilized Business Zone (HUBZone Program). Specifically, this interim final rule allows a declined or decertified HUBZone small business to reapply ninety (90) calendar days after the decline or decertification decision is rendered, rather than wait one year to reapply, provided that it meets the eligibility requirements at that time of application.

DATES: *Effective Date:* This rule is effective July 21, 2011.

Comment Date: Comments must be received on or before August 22, 2011.

ADDRESSES: You may submit comments, identified by RIN 3245–AG45 by any of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov> and follow the instructions for submitting comments.
- *Mail, for paper, disk, or CD-ROM submissions:* Mariana Pardo, Deputy Director, HUBZone Program, 409 Third Street, SW., Washington, DC 20416.
- *Hand Delivery/Courier:* Mariana Pardo, Deputy Director, HUBZone Program, 409 Third Street, SW., Washington, DC 20416.

SBA will post all comments on <http://www.Regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.Regulations.gov>, please submit the information to Mariana Pardo and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make a final determination of whether the information will be published or not.