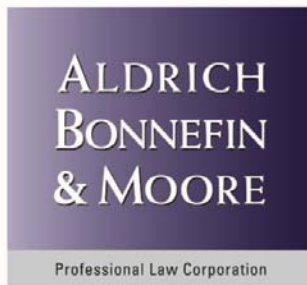


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Our File Number:

CONSUMER FINANCIAL PROTECTION BUREAU RE-PUBLISHES VARIOUS CONSUMER REGULATIONS

The Consumer Financial Protection Bureau (CFPB) is acting quickly to codify certain federal consumer laws now under its jurisdiction. On December 16, 2011 it published new interim final rules in the Federal Register, re-publishing four Federal Trade Commission (FTC) regulations to its own series of rules. Shortly thereafter, on December 19, 2011, it issued three additional interim final rules, re-publishing two regulations previously under the FRB's rulemaking authority and SAFE Act regulations previously issued by the banking and credit union agencies. Each of the new interim final rules becomes effective December 30, 2011.

General. The CFPB notes that each of the new interim final rules makes only non-substantive, technical changes to the existing text of the regulation, such as renumbering, changing internal cross-references, and replacing appropriate nomenclature to reflect the transfer of authority from the prior agencies to the CFPB.

Given the technical nature of these changes, and the fact that the interim final rules do not impose any additional substantive requirements on covered entities, the CFPB stated that an opportunity for proper public comment prior to the publication of the rules was unnecessary. Nonetheless the CFPB is accepting comments on the interim final rules through February 14, 2012.

Prior FRB and other banking agencies rules. The following rules were re-published on December 19th:

- Regulation C – Home Mortgage Disclosure Act (new CFPB rule 12 CFR Part 1003, formerly 12 CFR 203) (76 FR 78465);
- Regulation M – Consumer Leasing (new CFPB rule 12 CFR Part 1013, formerly 12 CFR 213) (76 FR 78500); and
- SAFE Act Mortgage Licensing Act (new CFPB Regulations G and H (12 CFR Part 1007 and 1008)) (76 FR 78483).⁷

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Regulation C (HMDA) – According to the CFPB, the interim final rule substantially duplicates the FRB’s Regulation C as the CFPB’s new Regulation C. The interim final rule does not impose any new substantive requirements, but rather only makes technical revisions, such as revising internal cross-references and replacing references to the FRB with references to the CFPB. To minimize any potential confusion, the CFPB is preserving the past numbering of the FRB’s Regulation C, other than the new part number and the enumeration of individual definitions in Section 1003.2. The CFPB also has incorporated existing appendices (including model forms), and the text of the commentary to the FRB’s prior rule.

Regulation M (Consumer Leasing) – The CFPB’s Regulation M interim final rule, 12 CFR Part 1013, duplicates the FRB’s prior Regulation M. As with revisions made to Regulation C (discussed above) no substantive changes were made to the regulation. Rather, only technical revisions have been made, such as revising internal cross-references and replacing references to the FRB with references to the CFPB. In addition, the CFPB is preserving the past numbering of the FRB’s Regulation M, other than the new part number, and incorporating existing appendices (including model forms and clauses), and the text of the commentary to the FRB’s prior rule.

Regulations G and H (SAFE Act Mortgage Licensing) – New Regulation G is being issued to implement the federal registration of residential mortgage loan originators. It essentially duplicates and consolidates the rules previously issued by the federal banking and credit union agencies (that is, the FRB, OCC, FDIC and NCUA) as well as HUD and the Farm Credit Administration. New Regulation H implements rules with respect to states’ compliance with the SAFE Act and the maintenance of a licensing and registration system for a state or territory that does not have a system in place for licensing loan originators that meets the requirements of the SAFE Act.

Prior FTC Rules. The rules re-published by the CFPB on December 16th relate to:

- Disclosure Requirements for Depository Institutions Lacking Federal Deposit Insurance (new CFPB Regulation I, formerly 16 CFR Part 320) (76 FR 78126);
- Fair Debt Collection Practices Act (FDCPA) (new CFPB Regulation F, formerly 16 CFR Part 901) (76 FR 78121);
- Mortgage Acts and Practices Advertising (new CFPB Regulation N, formerly 16 CFR 321) (76 FR 78130); and
- Mortgage Assistance Relief Services (new CFPB Regulation O, formerly 16 CFR 322) (76 FR 78130).

It appears the application of these rules is limited in scope. For example, new CFPB Regulation I applies only to institutions lacking federal deposit insurance. Furthermore, new CFPB Regulation F relates to states seeking exemptions from the CFPB with respect to classes of debt collection practices covered by the federal FDCPA. Finally, new CFPB Regulations N and O apply to entities over which the FTC had jurisdiction under the Federal Trade Commission

Act, and thus would appear to exclude banks, savings associations and federal credit unions from coverage.

New CFPB Regulation I – The CFPB’s new Regulation I, 12 CFR Part 1009, is a re-published version of the former FTC regulations at 16 CFR Part 320. Regulation I applies to all depository institutions lacking federal deposit insurance, and governs disclosure requirements related to lacking federal deposit insurance. The interim final rule does not appear to impose any new substantive obligations on regulated entities, but rather only makes technical revisions, such as revising internal cross-references and replacing references to the FTC with references to the CFPB.

New CFPB Regulation F – The CFPB’s new Regulation F, 12 CFR Part 1006, is a re-published version of the former FTC regulations at 16 CFR Part 901. These regulations govern procedures and criteria for states (not individual businesses) which wish to apply to the CFPB for an exemption with respect to a class of debt collection practices within the state from the provisions of the federal FDCPA.

The interim final rule appears to make only non-substantive, technical changes to the existing text of the regulation, such as changing internal cross-references, replacing references to the FTC to reflect the transfer of authority to the CFPB, and changing the address for reviewing applications submitted by state officials and notices.

New CFPB Regulations N and O – The CFPB’s new Regulation N, 12 CFR Part 1014, is a re-published version of the former FTC regulations at 16 CFR Part 321. These regulations govern mortgage advertising by covered entities, including prohibited representations and required disclosures. The CFPB’s new Regulation O, 12 CFR Part 1015, is a re-published version of the former FTC regulations at 16 CFR Part 322. These regulations govern mortgage assistance relief services and require mortgage relief companies to provide certain disclosures to their customers.

New Regulations N and O only apply to persons over which the FTC has jurisdiction under the Federal Trade Commission Act (FTCA). As such, these regulations do not appear to apply to banks, savings associations and federal credit unions, since the FTCA exempts these entities from the FTC’s jurisdiction (see 15 USC 45(a)(2); 15 USC 57a(f)). However, it appears state credit unions would be subject to this rule as they have long been subject to FTC jurisdiction. That said, the CFPB noted that it may amend Regulations N and O in the future to expand the regulations’ scope to include persons currently excluded from the rules’ coverage.

While new Regulation N on mortgage advertising practices does not apply to banks, thrifts and federal credit unions in its current form, the law firm has previously suggested that Bankers’ Compliance Group members look to the regulation in its former iteration as an FTC issuance for general guidance as to advertising. This suggestion becomes even more pressing in light of the probable expansion of the regulation to cover banks and thrifts. When this might happen cannot be guessed at but the Bureau has the undoubted power to regulate consumer creditors of all types and pointedly reserved the right in the issuance discussed in this article to amend Regulation N at some future point to expand its coverage.