

# Regulatory Roundup

December 2009

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*Welcome to the third installment of **Regulatory Roundup**, the Federal Reserve Bank of Cleveland's compilation of legislative and regulatory updates on matters related to community development and consumer finance in the Fourth Federal Reserve District. We welcome your feedback. Please direct comments and suggestions to Joseph Ott, [joseph.c.ott@clev.frb.org](mailto:joseph.c.ott@clev.frb.org), or Mary Helen Petrus, [mary.h.petrus@clev.frb.org](mailto:mary.h.petrus@clev.frb.org).*

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## FEDERAL REGULATION<sup>1</sup>

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**On November 12, 2009, the Federal Reserve Board announced** final rules that prohibit financial institutions from charging consumers fees for paying overdrafts on automated teller machine (ATM) and one-time debit card transactions, unless a consumer consents, or opts in, to the overdraft service for those types of transactions. Before opting in, the consumer must be provided a notice that explains the financial institution's overdraft services, including the fees associated with the service and the consumer's choices.

The Federal Register notice can be found at:

[www.federalreserve.gov/newsevents/press/bcreg/bcreg20091112a1.pdf](http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20091112a1.pdf)

**The Federal Reserve Board announced in September** that it will implement a consumer compliance supervision program in nonbank subsidiaries of bank holding companies (BHCs) and foreign banking organizations (FBOs) with activities covered by the consumer protection laws and regulations the Federal Reserve has the authority to enforce. The policy, which took effect immediately, also provides for the investigation of consumer complaints against these nonbank entities.

The Federal Reserve has authority to examine nonbank subsidiaries for compliance with the Truth in Lending Act (TILA); Equal Credit Opportunity Act (ECOA); Home Ownership and Equity Protection Act (HOEPA); Fair Credit Billing Act (FCBA); Consumer Leasing Act (CLA); Fair Credit Reporting Act (FCRA); Fair Debt Collection Practices Act (FDCPA); Home Mortgage Disclosure Act (HMDA); Truth in Savings Act (TISA); any rules promulgated pursuant to the Federal Trade Commission Act (FTC Act); and the Real Estate Settlement Procedures Act (RESPA).

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<sup>1</sup> Regulatory announcements taken from:

<http://www.federalreserve.gov/newsevents/press/bcreg/2009bcreg.htm>

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**The Federal Reserve Board announced July 23, 2009**, a proposal to make significant changes to Regulation Z (Truth in Lending). The proposed changes, which are open for public comment until December 24, 2009, include revisions to the timing and content of closed-end and HELOC mortgage disclosures, prohibit payments to a mortgage broker or a loan officer based on a loan's interest rate or other terms, and prohibit "steering" consumers to mortgage transactions with the intent of increasing broker or loan officer compensation. In addition, the HELOC-proposed changes prohibit creditors from terminating an account for payment-related reasons unless the consumer is more than 30 days late in making a payment, and provide for additional consumer protections.

For additional information on the proposals, or to view model forms and samples, go to: [www.federalreserve.gov/newsevents/press/bcreg/20090723a.htm](http://www.federalreserve.gov/newsevents/press/bcreg/20090723a.htm)

To comment on these proposed changes or any of the Board's proposed amendments, go to: [www.federalreserve.gov/bankinfo/reglisting.htm](http://www.federalreserve.gov/bankinfo/reglisting.htm)

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## FEDERAL LEGISLATION

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Enacted May 20, 2009, the **Fraud Enforcement and Recovery Act of 2009 (FERA)** expands the Department of Justice's authority to prosecute mortgage fraud; expands the definition of 'financial institution'; prohibits the manipulation of the mortgage lending business by making it a crime to make a materially false statement or to willfully overvalue a property in order to influence any action by a mortgage lending business (currently, the offense only applies to federally regulated institutions); modifies the False Claims Act; and appropriates funds to various agencies to investigate mortgage fraud and protect funds expended under TARP and the Recovery Act.<sup>2</sup>

**The Credit Card Accountability Responsibility and Disclosure Act of 2009** was enacted in May. This legislation amends the Consumer Credit Protection Act by freezing interest rate terms and fees on canceled credit cards, prohibiting universal default, limiting issuance of credit cards to persons under the age of 21, and providing for additional consumer protections.

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<sup>2</sup> [www.whitehouse.gov/the\\_press\\_office/Reforms-for-American-Homeowners-and-Consumers-President-Obama-Signs-the-Helping-Families-Save-their-Homes-Act-and-the-Fraud-Enforcement-and-Recovery-Act](http://www.whitehouse.gov/the_press_office/Reforms-for-American-Homeowners-and-Consumers-President-Obama-Signs-the-Helping-Families-Save-their-Homes-Act-and-the-Fraud-Enforcement-and-Recovery-Act)

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Since it was introduced in March, **H.R. 1479, the Community Reinvestment Modernization Act of 2009** has gained 53 co-sponsors. The bill proposes to expand CRA coverage to additional financial institutions, including mortgage affiliates of depository institutions and certain credit unions; provide for additional disclosure requirements, including women- or minority-owned small business information; and expand consideration of racial characteristics beyond the current focus of income. This bill is in the House Financial Services Committee and the House Committee on Rules for consideration.

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## FOURTH DISTRICT STATE LEGISLATION

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### Kentucky

**Kentucky S.B. 27 became law on March 20** and establishes a Brownfield Redevelopment Fund in the State Treasury with the focus of making grants and loans to governmental agencies for brownfield assessments, corrective action, and demolition or other actions to restore the property to beneficial use. In addition, the cabinet will be able to promulgate administrative regulations, specify the sources of moneys that can be credited to the fund, and allow the cabinet to enter into agreements with federal and state agencies to carry out the provisions of the bill.<sup>3</sup>

### Ohio

**Ohio Representative Murray introduced Ohio H.B. 323 on October 21, 2009, to address toxic title and nuisance property issues.** This bill would require foreclosing lenders to take their properties to Sheriff's sale; supplemental information to be filed during foreclosure action including the name of the note holder; court notification on whether or not the mortgage is securitized; and an estimated value of the property. Furthermore, this legislation sets forth restrictions on the foreclosure and sale of property deemed to be a public nuisance.<sup>4</sup>

**Ohio Representative Dolan introduced Ohio H.B. 306 Foreclosure Mediation in October** requiring courts to: establish and operate programs of mandatory foreclosure mediation in non-tax foreclosure actions on occupied residential properties; adopt rules to establish filing fees to cover the costs of the mediation; adopt minimal qualifications for the

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<sup>3</sup> <http://apps.sos.ky.gov/Executive/Journal/ejimages/2009-Reg-SB-0027-1053.pdf>

<sup>4</sup> [www.legislature.state.oh.us/BillText128/128\\_HB\\_323\\_I\\_Y.pdf](http://www.legislature.state.oh.us/BillText128/128_HB_323_I_Y.pdf)

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mediators it appoints; and establish procedures for the operation of foreclosure mediation programs.<sup>5</sup>

## **Pennsylvania**

**Pennsylvania S.B. 170 was passed into law June 29, 2009.** This bill prohibits a mortgage broker or originator from being the sole recipient of communications from lenders. This bill is designed to help ensure that consumers receive monthly statements and other notices intended for them by their lenders.<sup>6</sup>

**Pennsylvania H.B. 985 was also passed into law June 29, 2009,** and shields mortgage company employees who report illegal activity or take part in an investigation from retaliation through reduced salaries, termination, or other actions taken by their employer.<sup>7</sup>

## **West Virginia**

**The West Virginia Legislature passed West Virginia H.B. 3082 on April 8, 2009.** This act requires the clerk of each county commission to file reports on foreclosure data and statistics quarterly with the Division of Banking. Included in these reports will be the disclosure forms of deed of trust foreclosure sales raw data that, in part, includes information such as the original principal amount of the secured debt; original interest rate; whether the loan was adjustable and, if so, its current rate; the number of months the loan is delinquent at time of notice of sale; the appraised value at the time of loan, if available; as well as other transactional information.<sup>8</sup>

**West Virginia S.B. 425** was passed on April 11, 2009. This bill requires during the refinancing or consolidation of certain loans or consumer credit sales by regulated consumer lenders the disclosure of a higher annual percentage rate in any refinancing or consolidation of a nonrevolving consumer loan or consumer credit sale. In addition, this bill requires the documentation of a reasonable, net tangible benefit to the borrower of any refinancing or consolidation of a nonrevolving consumer loan or consumer credit sale secured by residential real estate. This bill went into effect 90 days from passage.<sup>9</sup>

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<sup>5</sup> [www.legislature.state.oh.us/BillText128/128\\_HB\\_306\\_I\\_N.html](http://www.legislature.state.oh.us/BillText128/128_HB_306_I_N.html)

<sup>6</sup> [www.legis.state.pa.us/cfdocs/legis/PN/Public/btCheck.cfm?txtType=HTM&sessYr=2009&sessInd=0&billBody=S&billTyp=B&billNbr=0170&pn=0140](http://www.legis.state.pa.us/cfdocs/legis/PN/Public/btCheck.cfm?txtType=HTM&sessYr=2009&sessInd=0&billBody=S&billTyp=B&billNbr=0170&pn=0140)

<sup>7</sup> [www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2009&sessInd=0&billBody=H&billTyp=B&billNbr=0985&pn=2057](http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2009&sessInd=0&billBody=H&billTyp=B&billNbr=0985&pn=2057)

<sup>8</sup> [www.legis.state.wv.us/Bill\\_Status/bills\\_text.cfm?billdoc=HB3082%20ENR%20SUB.htm&yr=2009&sess type=RS&i=3082](http://www.legis.state.wv.us/Bill_Status/bills_text.cfm?billdoc=HB3082%20ENR%20SUB.htm&yr=2009&sess type=RS&i=3082)

<sup>9</sup> [www.legis.state.wv.us/Bill\\_Status/bills\\_text.cfm?billdoc=sb425%20enr.htm&yr=2009&sesstype=RS&i=425](http://www.legis.state.wv.us/Bill_Status/bills_text.cfm?billdoc=sb425%20enr.htm&yr=2009&sesstype=RS&i=425)

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## WANT TO KNOW MORE?

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For additional resources and information on Community Development issues, please visit our website at:

[www.clevelandfed.org/community\\_development/index.cfm?DCS.nav=Main](http://www.clevelandfed.org/community_development/index.cfm?DCS.nav=Main)

**Recent additions to our lineup of publications:**

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