

InfoBytes

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Federal Issues

FHFA Issues Interim Final Regulation and Requests Comment on Privacy Act Implementation. On August 19, the Federal Housing Finance Agency (FHFA) issued an interim final regulation to update its existing Privacy Act of 1974 regulation. Among other things, the interim final regulation sets forth the procedures and policies by which individuals may obtain notification of whether the FHFA or FHFA Office of Inspector General (FHFA-OIG) system of records contains information about them and, if so, how to access and/or amend a record. It also describes how the FHFA or FHFA-OIG will respond to Privacy Act requests and the steps individuals can take if they are dissatisfied with the response. The interim final regulation became effective August 19, 2011, and comments will be accepted by the FHFA through October 18, 2011. [Click here for a copy of the Interim Final Regulation.](#)

FTC Approves Orders Settling Charges against Credit Report Resellers. On August 19, the Federal Trade Commission (FTC) approved final consent orders against three consumer credit report resellers for violations of various federal privacy laws. The FTC opened its investigation against the credit report resellers for violating provisions of the FTC Act, the Fair Credit Reporting Act, and the FTC's Standards for Safeguarding Customer Information Rule after allegedly deficient privacy protections allowed hackers to obtain more than 1,800 consumer credit reports. The orders require the companies to establish and maintain a comprehensive, written information security programs designed to safeguard private consumer data. Among other things, the data security program shall include (i) the designation of an employee responsible for program oversight, (ii) regular testing and monitoring of the program, and (iii) the development of procedures to ensure that selected vendors are capable of safeguarding personal consumer data and do so. The order also requires an outside auditor to perform periodic assessments of each new security program for a period of 20 years. Several Commissioners also separately issued a statement in which they warned that they will seek civil penalties for similar failures by other resellers in the future. For more information, please see <http://www.ftc.gov/opa/2011/08/creditreporters.shtm> and <http://www.ftc.gov/os/2011/08/110819settlementonstatement.pdf>.

Courts

Third Circuit Limits TILA Presumption of Receipt. On August 16, the Third Circuit held that a borrower's testimony alone is sufficient to overcome the presumption of receipt of required notices under the Truth in Lending Act (TILA). *Cappuccio v. Prime Capital Funding*, No. 09-4055(3d Cir. Aug. 16, 2011). In this case, the borrower testified that she signed the Notices of Right to Cancel at the home of the notary, that when she left the notary's

home, she did not have any documents, and that she received them via UPS after the funds were disbursed. The notary did not have any specific memory of the signing, but testified that her normal practice is to give the borrower the copies and she was confident that she did. The district court instructed the jury that "[i]n a TILA case, something more than just the testimony of the borrower is needed to rebut the presumption that she received two copies of the Notice." The Third Circuit held that the instructions were incorrect because TILA imposes no stronger presumption than that provided in Federal Rule of Evidence 301, which requires only minimal evidence to rebut the presumption. Accordingly, the borrower's testimony, even though it was self interested, was sufficient to rebut the presumption. [Click here for a copy of the opinion.](#)

Miscellany

Government Fines Bank \$10.9 Million for BSA and AML Violations. On August 22, the Federal Deposit Insurance Corporation (FDIC), the Financial Crimes Enforcement Network (FinCEN), and the State of Florida Office of Financial Regulation (OFR) announced the assessment of \$10.9 million in civil money penalties against a Florida bank for failure to implement an effective Compliance Program under the Bank Secrecy Act (BSA) and federal and state anti-money laundering laws. The FDIC, FinCEN, and OFR determined that the bank failed to implement internal controls to timely detect money laundering and other suspicious activity and failed to provide adequate staffing to ensure BSA compliance. The bank consented to the payment without admitting or denying the allegations. [Click here for a copy of the press release.](#)

Firm News

[Jonice Gray Tucker](#) will be moderating a panel focusing on Regulatory and Litigation Developments in Servicing at the California Mortgage Bankers' Servicing Conference on August 29 in Las Vegas.

[James Shreve](#) will speak at the International Association of Privacy Professionals' Privacy Academy in Dallas on September 14-16. Mr. Shreve will lead the "Protecting and Securing a Moving Target: NFC, RFID and Mobile Payments" panel and participate in the panel "Who Am I? Understanding Multi-Factor Authentication in Online Environments."

[Jeff Naimon](#) will be participating in a panel titled "The Future of Lending" at the National Mortgage News Mortgage Regulatory Forum which will be held at the Washington Marriott in Washington, DC from September 19-20. Mr. Naimon will be discussing the effect of recent regulatory and enforcement developments on the direction of the mortgage market, including QM/QRM, Loan Officer Compensation rules, and Federal Housing Administration and fair lending enforcement efforts.

[Benjamin Klubes](#) will be moderating a panel focusing on Preparing for and Responding to New and Emerging Federal and State Enforcement Actions at the ACI's Residential Mortgage Litigation and Regulatory Enforcement Conference on Tuesday, September 20 in Dallas, Texas.

[Andrew Sandler](#), [Benjamin Klubes](#), and [Jonice Gray Tucker](#) will be speaking at the Mortgage Bankers Association's Regulatory Compliance Conference which will be held in Washington, D.C. from September 25-27. Mr. Sandler will be addressing enforcement priorities. Mr. Klubes will address litigation and enforcement trends relating to loan originations and Ms. Tucker will speak on developments in mortgage servicing.

[James Parkinson](#) will be speaking at two International Bar Association training sessions as part of the IBA's Anti-Corruption Strategy for the Legal Profession (<http://www anticorruptionstrategy.org/>) on September 27 (Sao Paulo, Brazil), and on September 29 (Caracas, Venezuela).

[Benjamin Klubes](#) will be speaking at the 2011 PCI CRA and Fair Lending Colloquium on November 7 in Baltimore, MD on "Hot Compliance Topics: Reform Impact, Oversight Trends, Enforcement Actions and More!"

[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.

Firm Publications

[Jonathan Cannon](#) was quoted in an article titled *Proposal for Foreclosed Homes as Rentals Raises Questions* published in the August 19 issue of *Daily Journal*.

Banking

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Litigation

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