

February 10, 2012

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## Federal Issues

**FinCEN Finalizes New Anti-Money Laundering Rules for Nonbank Mortgage Lenders and Originators.** On February 7, the Financial Crimes Enforcement Network (FinCEN) [released a final rule](#) that subjects nonbank residential mortgage lenders and originators to certain anti-money laundering (AML) regulations already applicable to other types of financial institutions. Under the [new regulations](#), nonbank lenders and originators will be required to establish anti-money laundering programs and file suspicious activity reports (SARs). The regulations take effect sixty days after being published in the Federal Register. Covered firms will have 180 days after publication to comply. For additional details, [please see BuckleySandler's recent Special Alert about this final rule](#).

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adherence to interest rate risk limits, and (v) decision-making that is informed and guided by interest rate risk measures. The new rule applies to all FICUs with assets greater than \$50 million and to any FICU with assets between \$10 million and \$50 million that has a Supervisory Interest Rate Risk Threshold ratio (SIRRT ratio) greater than 1:1. FICUs can calculate their SIRRT ratio by adding together their portfolios of first mortgage loans and investments with maturities greater than five years, and dividing that figure by the FICU's net worth. The final rule also contains guidance on how to develop an interest rate risk policy and program that is based on generally recognized best practices for safely and soundly managing interest rate risk. The rule is effective September 30, 2012.

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## Firm News

[David Krakoff](#) will be participating in a panel at the [International Association of Defense Counsel's Midyear Meeting](#) in Palms Springs, California on February 15, 2012. The panel is entitled "Worldwide Enforcement of Anti-Corruption Laws-Navigating the International Business Minefield."

[James Shreve](#) will be participating in the panel "When the Cloud Goes Bust: Data Breaches in the Cloud" on February 28, 2012 at the [RSA Conference](#) in San Francisco, CA. The panel will examine unique issues that may arise when a data security breach involves a company's data stored in a cloud and provide guidance on addressing cloud security breach incidents.

[Margo Tank](#) will be participating in a panel at the NACHA - The Electronic Payments Association's Internet Council Meeting in Tampa, Florida on February 29, 2012. The panel will explore the beneficial and harmful effects of data collection and usage, particularly as enabled by a mobile wallet.

[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.

[Andrew Sandler](#) will be speaking at PLI's A Guide to Financial Institutions 2012 Program in New York on March 6, 2012 at 4:00 PM in a session entitled "The New Era of Consumer Protection & Enforcement: The CFPB & Other Initiatives."

[Margo Tank](#) and [James Shreve](#) will be speaking on the panel "Meeting Consumer Protection Requirements in Mobile Payments" at the International Association of Privacy Professionals Global Privacy Summit in Washington, DC on March 7, 2012. The panel will explore the unique and often complex compliance issues for those involved in mobile payments. James Shreve also will be leading the panel "Addressing the Latest Wave of Global Breach Notice Requirements" at the IAPP Summit on March 7. This panel of attorneys from several countries will explore new US and international security breach notification requirements and compliance issues in addressing cross-border incidents.

[David Baris](#) will be speaking on March 13, 2012 at the ICBA 2012 Annual Convention in Nashville, Tennessee in a session entitled "How Do Publicly Held Community Banks and Holding Companies Comply?"

[James Parkinson](#) will be chairing a panel at the International Bar Association's 10th Annual Anti-Corruption Conference in Paris, France on March 13 and 14, 2012. The panel is entitled: "The Privileged Profession: Risks faced by legal professionals advising in international transactions."

[Donna Wilson](#) will be participating in a CLE webinar entitled "[Consumer Finance Class Actions: FCRA and FACTA: Leveraging New Developments in Certification, Damages and Preemption](#)" on March 21, from 1:00pm-2:30pm EDT.

[David Baris](#) will be speaking in the ABA Banking Law Committee CLE panel, "[Dealing with Enforcement Actions and Insider Liability](#)," in Las Vegas on March 23, 2012.

[Jonice Gray Tucker](#) will be speaking at the [ABA Banking Law Committee's Spring Meeting](#) in Las Vegas on March 23, 2012 on a panel entitled "The CFPB Approaches One Year: Experiences and Exposures." The panel will include speakers from PNC Financial Services Group, PayPal, Treliant Risk Advisors, the Consumer Federation of America, and the Federal Trade Commission.

[Andrew Sandler](#) will moderate a panel at the American Conference Institute's 8th National Forum on Residential Mortgage Litigation and Regulatory Enforcement on March 29, 2012 in Washington, DC.

The panel is titled, "[Complying With and Responding to New and Emerging Federal and State Enforcement Actions](#)."

[David Baris](#) will be speaking at the 2012 Virginia Bank Directors Symposium on March 29, 2012 in Tysons Corner, Virginia. Mr. Baris will discuss how bank directors can minimize their risk of personal liability.

[David Baris](#) will be speaking at the NACD/AABD Bank Director Workshop on April 12, 2012 in Fort Lauderdale, Florida. The topic of the presentation is "Bank Director Liability and Practical Steps to Minimize It."

[James Parkinson](#) will be speaking at a PLI program seminar entitled "Foreign Corrupt Practices Act 2012" in San Francisco, California on April 17, 2012 and in New York, New York on May 4, 2012.

## Firm Publications

[Jeremiah Buckley](#) published an article in American Banker on February 1, 2012 entitled "[State Attorneys Generals Are the New Bank Regulators](#)." The article notes that spurred by the financial crisis and its impact on their constituents, state attorneys general appear to be carving out a new role as de facto bank regulators. This trend, an unexpected fall out of the financial crisis and the passage of Dodd-Frank, may not as yet be fully appreciated. However, it seems increasingly clear that state AGs will be important arbiters of the way banks do business on a going forward basis.

[Kirk Jensen](#) and [Jeffrey Naimon](#) published an article entitled, "The Fair Housing Act, Disparate Impact Claims, and *Magner v. Gallagher*: An Opportunity to Return to the Primacy of the Statutory Text" in the February 2012 volume of *The Banking Law Journal*. The authors discuss the text of the Fair Housing Act, its legislative history, and the past federal appellate court decisions holding that the FHA permits disparate impact claims. They argue that recent Supreme Court decisions cast doubt on the past federal appellate court decisions, and show that the statutory text of the FHA, unlike the text of some other civil rights laws, does not permit disparate impact claims. They also discuss the case currently pending before the Court in which the Court may address for the first time whether the FHA permits disparate impact claims. [Click here for a copy of the full article](#).

## Mortgages

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