DEPARTMENT OF THE TREASURY (TREAS)

Statement of Regulatory Priorities

The primary missions of the Department of the Treasury are:

- To promote prosperous and stable American and world economies, including promoting domestic economic growth and maintaining our Nation's leadership in global economic issues, supervising national banks and thrift institutions, and helping to bring residents of distressed communities into the economic mainstream.
- To manage the Government's finances by protecting the revenue and collecting the correct amount of revenue under the Internal Revenue Code, overseeing customs revenue functions, financing the Federal Government and managing its fiscal operations, and producing our Nation's coins and currency.
- To safeguard the U.S. and international financial systems from those who would use these systems for illegal purposes or to compromise U.S. national security interests, while keeping them free and open to legitimate users.

Consistent with these missions, most regulations of the Department and its constituent bureaus are promulgated to interpret and implement the laws as enacted by the Congress and signed by the President. It is the policy of the Department to comply with the requirement to issue a notice of proposed rulemaking and carefully consider public comments before adopting a final rule. Also, in particular cases, the Department invites interested parties to submit views on rulemaking projects while a proposed rule is being developed.

In response to the events of September 11, 2001, the President signed the USA PATRIOT Act of 2001 into law on October 26, 2001. Since then, the Department has accorded the highest priority to developing and issuing regulations to implement the provisions in this historic legislation that target money laundering and terrorist financing. These efforts, which will continue during the coming year, are reflected in the regulatory priorities of the Financial Crimes Enforcement Network (FinCEN).

To the extent permitted by law, it is the policy of the Department to adhere to the regulatory philosophy and principles set forth in Executive Order 12866, and to develop regulations that maximize aggregate net benefits to society while minimizing the economic and paperwork burdens imposed on persons and businesses subject to those regulations.

Emergency Economic Stabilization Act

On October 3, 2008, the President signed the Emergency Economic Stabilization Act of 2008 (EESA) (Pub. L. 110-334). Section 101(a) of EESA authorizes the Secretary of the Treasury to establish a Troubled Assets Relief Program (TARP) to "purchase, and to make and fund commitments to purchase, troubled assets from any financial institution, on such terms and conditions as are determined by the Secretary, and in accordance with this Act and policies and procedures developed and published by the Secretary."

EESA provides authority to issue regulations and guidance to implement the program. Regulations and guidance required by EESA include conflicts of interest, executive compensation, and tax guidance. The Secretary is also charged with establishing a program that will guarantee principal of, and interest on, troubled assets originated or issued prior to March 14, 2008.

To date, the Department has issued guidance and regulations and will continue to provide program information through the next year. In October 2008, the Department issued an interim final rule that set forth executive compensation guidelines for the TARP Capital Purchase Program (73 FR 62205). Related tax guidance on executive compensation was announced in IRS Notice 2008-94. In addition, among other EESA tax guidance, the IRS issued interim guidance regarding loss corporation and ownership changes in Notice 2008-100, providing that any shares of stock owned by the Department of the Treasury under the Capital Purchase Program will not be considered to cause Treasury's ownership in such corporation to increase. On October 14, 2008, the Department released a request for public input on an insurance program for troubled assets.

During the remainder of Fiscal Year 2009, the Department will continue implementing the EESA

authorities to restore capital flows to the consumers and businesses that form the core of the nation's economy.

Terrorism Risk Insurance Program Office

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002 (TRIA). The new law, which was enacted as a consequence of the events of September 11, 2001, established a temporary Federal reinsurance program under which the Federal Government shares the risk of losses associated with certain types of terrorist acts with commercial property and casualty insurers. The Act, originally scheduled to expire on December 31, 2005, was extended to December 31, 2007 by the Terrorism Risk Insurance Extension Act of 2005 (TRIEA). The Act has since been extended to December 31, 2014, by the Terrorism Risk Insurance Program Reauthorization Act of 2007 (TRIPRA).

The Office of the Assistant Secretary for Financial Institutions is responsible for developing and promulgating regulations implementing TRIA, as extended and amended by TRIEA and TRIPRA. The Terrorism Risk Insurance Program Office, which is part of the Office of the Assistant Secretary for Financial Institutions, is responsible for operational implementation of TRIA. The purposes of this legislation are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for a transition period for the private markets to stabilize and build capacity while preserving State insurance regulation and consumer protections.

Over the past year, the Office of the Assistant Secretary has issued guidance implementing changes authorized by TRIPRA. In addition, the following priority regulation projects should be published by December 31, 2008:

- *Terrorism Risk Insurance Program Reauthorization Act Implementation*. This interim rule will implement certain aspects of TRIPRA (the Reauthorization Act) including mandatory availability, disclosure requirements, and conforming changes.
- *Recoupments of Federal Share of Compensation for Insured Losses.* This proposed rule would implement and establish requirements for determining amounts to be recouped and for procedures insurers are to use for collecting terrorism policy surcharges and remitting them to the Treasury.
- *Cap on Annual Liability and Pro Rata Share of Insured Losses*. This proposed rule would establish, for purposes of the $100 billion cap on annual liability, how Treasury will determine whether aggregate insured losses will exceed $100 billion and, if so, how Treasury will determine the pro rata share of insured losses to be paid by each insurer that incurs insured losses under the Program.

During 2009, Treasury will continue the ongoing work of implementing TRIA and revising operations as a result of the TRIPRA related regulation changes.

Customs Revenue Functions

On November 25, 2002, the President signed the Homeland Security Act of 2002 (the Act), establishing the Department of Homeland Security (DHS). The Act transferred the United States Customs Service from the Department of the Treasury to the DHS, where it is was known as the Bureau of Customs and Border Protection (CBP). Effective March 31, 2007, DHS changed the name of the Bureau of Customs and Border Protection to the U.S. Customs and Border Protection (CBP) pursuant to section 872(a)(2) of the Act (6 USC 452(a)(2)) in a Federal Register notice (72 FR 20131) published on April 23, 2007. Notwithstanding the transfer of the Customs Service to DHS, the Act provides that the Secretary of the Treasury retains sole legal authority over the customs revenue functions. The Act also authorizes the Secretary of the Treasury to delegate any of the retained authority over customs revenue functions to the Secretary of Homeland Security. By Treasury Department Order No. 100-16, the Secretary of the Treasury delegated to the Secretary of Homeland Security authority to prescribe regulations pertaining to the customs revenue functions. This Order further provided that the Secretary of

the Treasury retained the sole authority to approve any such regulations concerning import quotas or trade bans, user fees, marking, labeling, copyright and trademark enforcement, and the completion of entry or substance of entry summary including duty assessment and collection, classification, valuation, application of the U.S. Harmonized Schedules, eligibility or requirements for preferential trade programs and the establishment of recordkeeping requirements relating thereto.

During the past fiscal year, among the Treasury- retained CBP customs-revenue function regulations issued were final rules adopting the interim regulations which implemented the preferential trade benefit provisions of the United States - Jordan Free Trade Agreement Implementation Act, the United States – Bahrain Free Trade Agreement Implementation Act and the United States – Morocco Free Trade Agreement Implementation Act. CBP also published an interim rule regarding the implementation of the preferential tariff treatment and other customs-related provisions of the Dominican Republic-Central America-United States Free Trade Agreement (also known as "CAFTA-DR"). In addition, during the past fiscal year, CBP amended the regulations on an interim basis to implement the duty-free provisions of the Haitian Hemispheric Opportunity Through Partnership Encouragement Act of 2006 (the "HOPE I") Act of 2006 which concerned the extension of certain trade benefits to Haiti in the Tax Relief and Health Care Act of 2006. As a result of the changes necessitated by enactment of the Haitian Hemispheric Opportunity through Partnership Encouragement ("HOPE II") Act of 2008 which is contained in the recent Food, Conservation and Energy Act of 2008 (commonly referred to as the "Farm Bill" legislation), CBP published in one final rule both the HOPE I Act and the HOPE II Act on September 30, 2008, the statutory deadline.

During this past year, CBP also finalized its interim regulations, which established special entry requirements applicable to shipments of softwood lumber products from Canada for purposes of monitoring the 2006 Softwood Lumber Agreement between the Governments of Canada and the United States. As a result of the Softwood Lumber Act of 2008, which is also part of the recent "Farm Bill" legislation, CBP published implementing interim regulations which prescribe special entry requirements as well as an importer declaration program applicable to certain softwood lumber (SWL) and SWL products exported from any country into the United States.

During fiscal year 2009, CBP and Treasury plan to give priority to the following regulatory matters involving the customs revenue functions not delegated to DHS:

- *Trade Act of 2002*. Treasury and CBP plan to finalize several interim regulations that implement the trade benefit provisions of the Trade Act of 2002 including the Caribbean Basin Economic Recovery Act and the African Growth and Opportunity Act.
- *Preferential trade benefit provisions*. Treasury and CBP also plan to finalize interim regulations this fiscal year to implement the preferential trade benefit provisions of the United States-Singapore Free Trade Agreement Implementation Act and the Dominican Republic -- Central America -- United States Free Trade Agreement (CAFTA-DR) Implementation Act.
- *United States-Australia Free Trade Agreement*. Treasury and CBP expect to issue interim regulations implementing the United States-Australia Free Trade Agreement Implementation Act
- *Country of Origin of Textile and Apparel Products*. Treasury and CBP also plan to publish a final rule adopting an interim rule that was published on the Country of Origin of Textile and Apparel Products, which implemented the changes brought about, in part, by the expiration of the Agreement on Textile and Clothing and the resulting elimination of quotas on the entry of textile and apparel products from World Trade Organizations (WTO) members.
- *North American Free Trade Agreement country of origin rules.* Treasury and CBP plan to finalize a proposal, which was published in July 2008 seeking public comment regarding uniform rules governing the determination of the country of origin of imported merchandise. These uniform rules would extend the application of the North American Free Trade Agreement country of origin rules to all trade if this proposal is finalized.
- *Customs Modernization provisions of the North American Free Trade Implementation Act (Customs Mod Act).* Treasury and CBP also plan to continue moving forward with amendments

to improve its regulatory procedures began under the authority granted by the Customs Mod Act. These efforts, in accordance with the principles of Executive Order 12866, have involved and will continue to involve significant input from the importing public. CBP will also continue to test new programs to see if they work before proceeding with proposed rulemaking to establish permanently the programs. Consistent with this practice, we expect to finalize a proposal to establish permanently the remote location filing program, which has been a test program under the Customs Mod Act. This rule would allow remote location filing of electronic entries of merchandise from a location other than where the merchandise will arrive.

Community Development Financial Institutions Fund

The Community Development Financial Institutions Fund (Fund) was established by the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq*.). The primary purpose of the Fund is to promote economic revitalization and community development through the following programs: the Community Development Financial Institutions (CDFI) Program, the Bank Enterprise Award (BEA) Program, the Native American CDFI Assistance (NACA) Program, and the New Markets Tax Credit (NMTC) Program.

In fiscal year (FY) 2009, subject to funding availability, the Fund will provide the following financial assistance awards and technical assistance grants through the CDFI Program.

- *Native American CDFI Assistance (NACA) Program*. Through the NACA Program, subject to funding availability, the Fund will provide technical assistance grants and financial assistance awards to promote the development of CDFIs that serve Native American, Alaska Native, and Native Hawaiian communities. In FY 2009, the Fund expects to revise the CDFI Program regulations to include certain programmatic policy changes and application processing streamlining efforts.
- *Bank Enterprise Award (BEA).* Subject to funding availability for the BEA Program, the Fund will provide financial incentives to encourage insured depository institutions to engage in eligible development activities and to make equity investments in CDFIs. In FY 2009, the Fund expects to revise the BEA Program regulations to include certain new programmatic policy changes and application processing streamlining efforts.
- *New Markets Tax Credit (NMTC).* Through the NMTC Program, the CDFI Fund will provide allocations of tax credits to qualified community development entities (CDEs). The CDEs in turn provide tax credits to private sector investors in exchange for their investment dollars; investment proceeds received by the CDEs are be used to make loans and equity investments in low-income communities. The Fund administers the NMTC Program in coordination with the Office of Tax Policy and the Internal Revenue Service.

Financial Crimes Enforcement Network

As chief administrator of the Bank Secrecy Act (BSA), FinCEN's regulations constitute the core of the Department's anti-money laundering and counter terrorism financing programmatic efforts. FinCEN's responsibilities and objectives are linked to, and flow from, that role. In fulfilling this role, FinCEN seeks to enhance U.S. national security by making the financial system increasingly resistant to abuse by money launderers, terrorists and their financial supporters, and other perpetrators of crime.

The Secretary of the Treasury, through FinCEN, is authorized by the BSA to issue regulations requiring financial institutions to file reports and keep records that are determined to have a high degree of usefulness in criminal, tax, or regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism. Those regulations also require designated financial institutions to establish anti-money laundering programs and compliance procedures. To implement and realize its mission, FinCEN has established regulatory objectives and priorities to safeguard the financial system from the abuses of financial crime, including terrorist financing, money

laundering, and other illicit activity. These objectives and priorities include: (1) issuing, interpreting, and enforcing compliance with regulations implementing the BSA; (2) supporting, working with, and, as appropriate, overseeing compliance examination functions delegated to other Federal regulators; (3) managing the collection, processing, storage, and dissemination of data related to the BSA; (4) maintaining a Government-wide access service to that same data, and for network users with overlapping interests; (5) conducting analysis in support of policymakers, law enforcement, regulatory and intelligence agencies, and the financial sector; and (6) coordinating with and collaborating on anti-terrorism and anti-money laundering initiatives with domestic law enforcement and intelligence agencies, as well as foreign financial intelligence units.

During fiscal year 2008, FinCEN issued the following final rules: a final rule updating the list of financial institutions exempt from establishing anti-money laundering programs to reflect previous actions with regard to mutual funds and insurance companies; withdrawals of the proposed rulemakings against one jurisdiction and one foreign financial institution deemed to be of primary money laundering concern pursuant to section 311 of the USA PATRIOT Act; and a renewal of a rule without change imposing special measures against a foreign financial institution deemed to be of primary money laundering concern pursuant to section 311 of the USA PATRIOT Act. FinCEN issued 10 Administrative Rulings and 10 written guidance pieces (as of August 2008) interpreting the BSA and providing clarity to regulated industries.

In addition, FinCEN has been working on the following initiatives that should be issued in September 2008, or (if not) prior to December 31, 2008:

- *Currency Transaction Reporting Exemptions.* FinCEN published a notice of proposed rulemaking in the Federal Register on April 23, 2008 that would simplify the existing currency transaction reporting exemption regulatory requirements. The amendments were recommended by the Government Accountability Office in GAO-08-355. By simplifying the regulatory requirements regarding CTR exemptions, FinCEN believes that more depository institutions will avail themselves of the exemptions. FinCEN intends to finalize the notice of proposed rulemaking prior to September 30, 2008.
- *Reorganization of BSA Rules.* As part of Secretary Paulson's BSA Effectiveness and Efficiency initiative, FinCEN is proposing to re-designate and reorganize the BSA regulations in a new chapter within the Code of Federal Regulations. The re-designation and reorganization of the regulations in a new chapter is not intended to alter regulatory requirements. The regulations will be organized in a more consistent and intuitive structure that more easily allows financial institutions to identify their specific regulatory requirements under the BSA. The new chapter will replace 31 CFR Part 103. FinCEN intends to issue the proposal prior to December 31, 2008.
- *Money Services Businesses.* Also as part of Secretary Paulson's BSA Effectiveness and Efficiency initiative, FinCEN intends to issue a notice of proposed rulemaking addressing definitional thresholds for Money Services Businesses (MSBs), incorporating previously issued Administrative Rules and guidance with regard to MSBs, and addressing the issue of foreign-located MSBs. In addition, FinCEN intends to issue an advance notice of proposed rulemaking concerning MSB agents. FinCEN intends to issue the proposal and advance notice prior to December 31, 2008.
- *Confidentiality of Suspicious Activity Reports.* FinCEN intends to issue a notice of proposed rulemaking clarifying the non-disclosure provisions with respect to the existing regulations pertaining to the confidentiality of suspicious activity reports. FinCEN intends to issue the proposal prior to December 31, 2008.
- *Mutual Funds.* FinCEN intends to issue a notice of proposed rulemaking addressing the definition of financial institution in the BSA's implementing regulations to include open-end investment companies (mutual funds). Despite the fact that mutual funds are already required to comply with anti-money laundering and customer identification program requirements, file Suspicious Activity Reports, comply with due diligence obligations pursuant to rules implementing section 312 of the USA PATRIOT Act, and perform other BSA compliance functions, a mutual

fund is not designated as a 'financial institution' under the BSA implementing regulations. The proposed rule would address obligations to file Currency Transaction Reports for cash transactions over $10,000 vis-à-vis obligations to file Form 8300s. FinCEN intends to issue the proposal prior to December 31, 2008.

- *Withdrawal of Proposed Rules.* FinCEN plans to withdraw the proposed rules (issued in 2002 and 2003) for investment advisers, commodity trading advisors, and unregistered investment companies. Withdrawing the proposed rules will eliminate uncertainty associated with the existence of out-of-date proposed rules. It will also allow FinCEN to issue new notices of proposed rulemaking at a later date that take into account industry regulatory developments with respect to investment advisers, commodity trading advisors, and unregistered investment companies since 2003. FinCEN intends to withdraw the proposals prior to December 31, 2008.

FinCEN's regulatory priorities for fiscal year 2009 include concluding any of the initiatives mentioned above that are not concluded as of September 30, 2008, as well as the following projects:

- *Anti-Money Laundering Programs*. Pursuant to section 352 of the USA PATRIOT Act, certain financial institutions are required to establish anti-money laundering programs. FinCEN will propose rulemaking to require state-chartered credit unions and other depository institutions without a federal functional regulator to implement anti-money laundering programs. FinCEN expects to finalize the anti-money laundering program rule for dealers in precious metals, precious stones, or jewels. FinCEN will continue to research and analyze issues regarding potential regulation of the loan and finance industry (including pawnbrokers). Finally, FinCEN also will continue to consider regulatory options regarding certain corporate and trust service providers.
- *Regulatory Framework for Stored Value*. FinCEN will evaluate the current regulatory framework for stored value to take into consideration the development and use of these products, which has grown significantly over the last 10 years. Currently, issuers, sellers, and redeemers of stored value are subject to a less comprehensive BSA/AML regime than are other actors falling within the scope of FinCEN's regulations. Suspicious activity is not reported and the lack of transparency inherent in many products makes it difficult to assess the money laundering risks and abuses. FinCEN will explore options to address the existing vulnerabilities without impeding continued development of the industry and without imposing competitive disadvantages.

Other Requirements. FinCEN will consider the need for regulatory action in conjunction with the feasibility study prepared pursuant to the Intelligence Reform and Terrorism Prevention Act of 2004 concerning the issue of obtaining information about certain cross-border funds transfers and transmittals of funds. FinCEN also will continue to issue proposed and final rules pursuant to Section 311 of the USA PATRIOT Act, as appropriate. Finally, FinCEN expects to propose various technical and other regulatory amendments in conjunction with its ongoing, comprehensive review of existing regulations to enhance regulatory efficiency.

Internal Revenue Service

The Internal Revenue Service (IRS), working with the Office of the Assistant Secretary (Tax Policy), promulgates regulations that interpret and implement the Internal Revenue Code and related tax statutes. The purpose of these regulations is to carry out the tax policy determined by Congress in a fair, impartial, and reasonable manner, taking into account the intent of Congress, the realities of relevant transactions, the need for the Government to administer the rules and monitor compliance, and the overall integrity of the Federal tax system. The goal is to make the regulations practical and as clear and simple as possible.

Most Internal Revenue Service regulations interpret tax statutes to resolve ambiguities or fill gaps in the tax statutes. This includes interpreting particular words, applying rules to broad classes of circumstances, and resolving apparent and potential conflicts between various statutory provisions.

During fiscal year 2009, the Internal Revenue Service will accord priority to the following

regulatory projects:

- *Unified Rule for Loss on Subsidiary Stock*. Prior to the opinion in Rite Aid Corp. v. United States, 255 F.3d 1357 (2001), Treas. Reg. § 1.1502-20 (the loss disallowance rule or LDR) addressed both noneconomic and duplicated loss on subsidiary stock by members of consolidated groups. In Rite Aid, the Federal Circuit rejected the validity of the duplicated loss component of the LDR. Following Rite Aid, the IRS and Treasury issued temporary regulations, Treas. Reg. §§ 1.337(d)-2T (to address noneconomic loss on subsidiary stock) and 1.1502-35T (to address loss duplication within consolidated groups). The regulations were promulgated as an interim measure to address both concerns while a broader study of the issues was conducted. Both regulations were finalized, but the preamble to each regulation alerted taxpayers of the ongoing nature of the study and the intent to propose a new approach to both issues. In January 2007, the IRS and Treasury proposed regulations that addressed noneconomic and duplicated stock loss, as well as certain related issues presented by the investment adjustment system. During fiscal year 2009, the IRS and Treasury intend to finalize those regulations.
- *Issue Price and Treatment of Qualified Hedges for a Tax-Exempt Bond Issue*. The arbitrage rules under section 148 generally prohibit issuers of tax-exempt bonds from investing the proceeds of those bonds in investments with a yield that is materially higher than the bond yield. The yield on the bonds is calculated using the issue price of the bonds, which, in the case of publicly offered bonds, is based upon the amount received from the sale of the bonds to the public. Questions have arisen regarding the definition of issue price, including whether sales to certain parties are sales to the public for this purpose. The issue price definition broadly affects all issuers of tax-exempt bonds. Further, issuers often enter into qualified hedges, the payments for and receipts from which are integrated with the payments for and receipts from the bonds in calculating the bond yield. Due to the restructuring or refunding of auction rate bonds, many of these hedges have been terminated or deemed to be terminated. The industry is uncertain as to how the arbitrage rules under section 148 apply to these terminations. During fiscal year 2009, the IRS and Treasury intend to issue proposed regulations to clarify the definition of issue price, to clarify the treatment of hedge terminations under the qualified hedging rules, and to clarify and simplify selected other aspects of the arbitrage regulations.
- *Financial Instruments and Products*. In February 2004, the IRS and Treasury issued proposed regulations regarding (i) the timing of income or deduction of contingent nonperiodic payments on notional principal contracts, and (ii) the character of payments made pursuant to notional principal contracts and other financial transactions. In July 2004, the IRS and Treasury released Notice 2004-52, requesting comments and information with respect to transactions frequently referred to as credit default swaps. On December 7, 2007, the IRS and Treasury released Notice 2008-2, requesting comments and information with respect to transactions frequently referred to as prepaid forward contracts. The IRS and Treasury intend to finalize the regulations proposed in 2004 and issue other guidance relating to credit default swaps and prepaid forward contracts, in light of comments received.
- *Deduction and Capitalization of Costs for Tangible Assets*. Section 162 of the Internal Revenue Code allows a current deduction for ordinary and necessary expenses paid or incurred in carrying on any trade or business. Under section 263(a) of the Code, no immediate deduction is allowed for amounts paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate. Those expenditures are capital expenditures that generally may be recovered only in future taxable years, as the property is used in the taxpayer's trade or business. It often is not clear whether an amount paid to acquire, produce, or improve property is a deductible expense or a capital expenditure. Although existing regulations provide that a deductible repair expense is an expenditure that does not materially add to the value of the property or appreciably prolong its life, the IRS and Treasury believe that additional clarification is needed to reduce uncertainty and controversy in this area. In August 2006, the IRS and Treasury issued proposed regulations in this area and received numerous comments. In March 2008, the IRS and Treasury withdrew the 2006 proposed regulations and issued new proposed regulations,

which have generated relatively few comments. In fiscal year 2009, the IRS and Treasury intend to finalize those regulations.

- *Transfer Pricing Initiatives*. In August 2005, the IRS and Treasury issued proposed regulations providing guidance on "cost sharing arrangements," where related parties agree to share the costs and risks of intangible development in proportion to their reasonable expectations of their share of anticipated benefits from their separate exploitation of the developed intangibles. The proposed regulations are designed to prevent abuses possible under the existing rules, and to ensure that Congressional intent underlying section 482 of the Internal Revenue Code is fulfilled by requiring that cost sharing arrangements between controlled taxpayers produce results consistent with the arm's length standard. In August 2006, the IRS and Treasury issued temporary regulations that provide guidance regarding the treatment of controlled services transactions under section 482 and the allocation of income from intangibles, in particular with respect to contributions by a controlled party to the value of an intangible owned by another controlled party. The regulations provide much-needed guidance on the transfer pricing methods to determine the arm's length price in a services transaction, including a new method that allows routine back-office services to be charged at cost with no markup. As part of a continuing effort to modernize the transfer pricing rules to keep them current with changing business practices, the IRS and Treasury intend to finalize both the cost-sharing and services regulations during fiscal year 2009. The IRS and Treasury also intend to issue proposed regulations addressing the source and allocation of income and expense related to the operation of a global dealing operation.
- *Foreign Tax Credit*. In April 2006, the IRS and Treasury issued temporary regulations addressing the elimination of the separate foreign tax credit category for so-called 10-50 companies. In August 2006, the IRS and Treasury issued proposed regulations to clarify who is considered to pay foreign tax for purposes of determining the foreign tax credit. On July 16, 2008, the IRS and Treasury issued temporary regulations relating to the determination of the amount of taxes paid for purposes of the foreign tax credit. The IRS and Treasury intend to finalize all of these regulations during fiscal year 2009. In addition, the IRS and Treasury intend to continue issuing regulations and other guidance implementing provisions of the American Jobs Creation Act, including section 901(l), which relates to minimum withholding taxes on gain and income other than dividends.
- *Subpart F Anti-deferral Regime Initiatives*. On February 27, 2008, the IRS and Treasury issued proposed regulations that addressed the use of contract manufacturing arrangements under the foreign base company sales income rules. The proposed regulations would update regulations that have been in effect since 1964, a time when the subpart F issues raised by cross-border manufacturing were significantly different than they are today. The IRS and Treasury intend to finalize these regulations during fiscal year 2009. In January 2007, the IRS and Treasury issued Notice 2007-13, which announced that the IRS and Treasury will amend the foreign base company services rules to limit the definition of substantial assistance. During fiscal year 2009, the IRS and Treasury intend to issue proposed regulations that will limit the definition of substantial assistance, and therefore limit the instances in which foreign base company services income may result.
- *Classification of Series LLCs and Cell Companies*. Series LLCs were first introduced in Delaware in 1996, and since then, series LLC statutes have been adopted in several other states. In the insurance and foreign arena, similar entities are sometimes referred to as cell companies. In Notice 2008-19, the Service requested comments on when a cell of a protected cell company should be treated as an insurance company for federal income tax purposes. The Service also requested comments on similar segregated arrangements, such as series LLCs, that do not involve insurance. It is likely that, over time, the use of series LLCs and cell companies will increase. Accordingly, it is important to provide timely guidance to clarify the classification and other tax treatment of this new form of organization. The use of series LLCs and cell companies may facilitate the capital markets by providing more efficient methods of formation and operation.

The industry has requested guidance on the federal tax classification of these domestic and foreign entities. During fiscal year 2009, the IRS and Treasury intend to issue regulations under section 7701 that will address whether these domestic and foreign entities are single or multiple entities for federal tax purposes.

- *Understatement of Taxpayer's Liability by Tax Return Preparer*. The Small Business and Work Opportunity Tax Act of 2007 amended the tax return preparer penalty under section 6694 of the Internal Revenue Code to include preparers of estate and gift tax returns, employment tax returns, excise tax returns, and returns of exempt organizations. The standard of conduct under section 6694(a) for underpayments due to unreasonable positions taken on tax returns was also amended in two ways. First, for undisclosed positions, the realistic possibility standard was replaced with a requirement that there be a reasonable belief that the tax treatment of a position taken on a tax return would more likely than not be sustained on its merits. Second, for disclosed positions, the not frivolous standard was replaced with a requirement that there be a reasonable basis for the tax treatment of a position taken on a tax return. Finally, the penalty amounts under both section 6694(a) and 6694(b), relating to understatements due to willful or reckless conduct, were increased. The amendments to section 6694 were effective for tax returns prepared after May 25, 2007. In June 2007, the IRS and Treasury issued Notice 2007-54, which provided transitional relief relating to the standard of conduct under section 6694(a). Additional guidance relating to the tax return preparer penalty, as amended, was provided in Notice 2008-11, Notice 2008-13 and Notice 2008-46. Proposed regulations were published in June 2008. During fiscal year 2009, the IRS and Treasury intend to finalize those regulations.
- *Withholding on Government Payments for Property and Services*. Section 3402(t) was added to the Internal Revenue Code by the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA). Section 3402(t) requires all Federal, State and local Government entities (except for certain small State entities) to deduct and withhold an income tax equal to 3 percent from all payments (with certain enumerated exceptions) the Government entity makes for property or services. Section 3402(t) is effective for payments made after December 31, 2010. On March 11, 2008, the Service issued Notice 2008-38 soliciting public comments regarding guidance to be provided to Federal, State and local governments required to withhold under section 3402(t). Many entities and vendors impacted by this provision requested guidance on the scope of the provision both as to the types of payments on which withholding is required and as to the impact on payees. Many governmental entities requested guidance describing the measures they must take to comply with the requirements for withholding and reporting. During fiscal year 2009, the IRS and Treasury Department intend to issue proposed regulations under section 3402(t) describing the scope of the provision and steps required for compliance, as well as the method of depositing the withheld tax and reporting the amount of the payments and withheld tax to the IRS and to the payees.
- *Rules under the Pension Protection Act of 2006*. Significant new rules regarding the funding of qualified defined benefit pension plans were enacted as part of the Pension Protection Act of 2006 (PPA). The IRS and Treasury Department prioritized the various pieces of guidance required to comply with those rules and issued several proposed regulations during fiscal year 2008. During fiscal year 2009, the IRS and Treasury Department intend to finalize those proposed regulations. Specifically, these final regulations will include rules related to the measurement of assets and liabilities and the determination of the minimum required contributions under new section 430 of the Internal Revenue Code. The IRS and Treasury Department also intend to issue final regulations on the provisions of the PPA related to automatic enrollment in salary deferral plans.

Office of the Comptroller of the Currency

The Office of the Comptroller of the Currency (OCC) was created by Congress to charter national banks, to oversee a nationwide system of banking institutions, and to assure that national banks are safe

and sound, competitive and profitable, and capable of serving in the best possible manner the banking needs of their customers.

The OCC seeks to assure a banking system in which national banks soundly manage their risks, maintain the ability to compete effectively with other providers of financial services, meet the needs of their communities for credit and financial services, comply with laws and regulations, and provide fair access to financial services and fair treatment of their customers.

The OCC's regulatory program furthers these goals. For example, pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), the OCC, together with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration (the agencies), conducted a review of its regulations to identify opportunities to streamline regulations and reduce unnecessary regulatory burden. The agencies' review included: (1) issuing six notices, published in the Federal Register, that solicit comment from the industries they regulate and the public on ways to reduce regulatory burden with respect to specific categories of regulations; and (2) conducting outreach meetings with bankers and consumer groups in cities across the country for the same purpose. The agencies have fulfilled the statutory requirement to publish all categories of their regulations for public comment. They also completed the summary of the comments and recommendations received, as the statute requires. The final report was published in the Federal Register and submitted it to Congress on November 1, 2007. 62 FR 62036 (November 1, 2007).

Significant rules issued during fiscal year 2008 include:

- *Risk-Based Capital Guidelines: Implementation of New Basel Capital Accord (Basel II) (12 CFR Part 3)*. The OCC, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (the banking agencies) issued a final rule based on the International Convergence of Capital Measurement and Capital Standards: A Revised Framework. The new capital adequacy standards, commonly known as Basel II, were published on December 7, 2007 at 72 FR 69288. In particular, the rule described significant elements of the Advanced Internal Ratings-Based approach for credit risk and the Advanced Measurement Approaches for operational risk (together, the advanced approaches). The rule specified criteria that a banking organization must meet to use the advanced approaches. Under the advanced approaches, a banking organization would use internal estimates of certain risk components as key inputs in the determination of its regulatory capital requirements.

- *Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Basel II Standardized Approach (12 CFR Part 3)*. As part of the banking agencies' ongoing efforts to develop and refine the capital standards to enhance their risk sensitivity and ensure the safety and soundness of the banking system, they issued a notice of proposed rulemaking to amend various provisions of the capital rules on July 29, 2008, at 73 FR 43982. The changes involve amending the current capital rules for those banks that will not be subject to the advanced internal ratings-based approaches. The OCC has included this rulemaking project in the Regulatory Plan (1557-AD07).

- *Lending Limits (12 CFR Part 32)*. In FY 2008, the OCC issued an interim final rule with request for comment on March 20, 2008 (73 FR 14922), providing that, with the written approval of the OCC, a national bank may make loans and extensions of credit pursuant to a special temporary lending limit established by the OCC. Use of such a lending limit will be approved only when the OCC determines that it is necessary to address an emergency situation, such as critical financial markets stability, and where the loans and extensions of credit will be of short duration, will be reduced in amount in a timeframe and manner acceptable to the OCC, and will not present unacceptable risk to the lending national bank. In connection with the establishment of a special temporary lending limit, the OCC will impose supervisory oversight and reporting conditions that it determines are appropriate to monitor compliance with the standards contained in the interim final rule.

- *Identity Theft Red Flags and Address Discrepancies (12 CFR Parts 30 and 41)*. The agencies and Federal Trade Commission issued final rules and guidelines to implement section 114 and final rules to implement 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). The final rules implementing section 114 require financial institutions and creditors to develop and implement a written Identity Theft Prevention Program to detect, prevent, and mitigate identity theft in connection with the opening of certain accounts and certain existing accounts. The rules contain a separate provision for issuers of credit and debit cards requiring that they develop and implement policies and procedures to validate address changes when card holders request an additional or replacement card shortly after sending the issuer a notice of change of address. Guidelines were also issued elaborating on these rules that financial institutions and creditors must consider and adopt if appropriate. The guidelines include a list of 26 examples of patterns, practices, and forms of activity that indicate the possible existence of identity theft ("red flags"). Rules were also issued implementing section 315 regarding reasonable policies and procedures that a user of consumer reports must employ when the user receives a notice of address discrepancy from a consumer reporting agency informing the user of a substantial discrepancy between the address for the consumer that the user provided to request the consumer report and the address(es) in the file for the consumer. The rules and guidelines were issued on November 9, 2007 (72 FR 63718).
- *Fair Credit Reporting; Affiliate Marketing Regulations (12 CFR Part 41).* On November 7, 2007 (72 FR 62910), the agencies issued a final rule to implement the affiliate marketing provisions of section 214 of the FACT Act. The final rule implements the consumer notice and opt-out provisions of the FACT Act regarding the sharing of consumer information among affiliates for making solicitations for marketing purposes.
- *Regulatory Burden Reduction and Technical Amendments (12 CFR Chapter I)*. The OCC issued a final rule to further the goal of reducing regulatory burden for national banks. (73 FR 22216). The changes relieve burden by eliminating or streamlining existing requirements or procedures, enhancing national banks' flexibility in conducting authorized activities, eliminating uncertainty by harmonizing a rule with other OCC regulations or with the rules of another agency, or by making technical revisions to update OCC rules to reflect changes in the law or in other regulations. In a few cases, revisions also add or enhance requirements for safety and soundness reasons.

The OCC's regulatory priorities for fiscal year 2009 include the following:

- *Fair Credit Reporting, Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies (12 CFR Part 41).* The agencies and the Federal Trade Commission (FTC) plan to issue a joint final rule to implement section 312 of the FACT Act. Section 312 requires the issuance of guidelines regarding the accuracy and integrity of information entities furnish to a consumer reporting agency. Section 312 also requires the agencies and the FTC to issue regulations requiring entities that furnish information to a consumer reporting agency to establish reasonable policies and procedures for the implementation of the guidelines. In addition, section 312 requires the agencies and the FTC to jointly prescribe regulations that identify the circumstances under which a furnisher of information to a consumer reporting agency shall be required to investigate a dispute concerning the accuracy of information contained in a consumer report on the consumer based on the consumer's direct request to the furnisher. A notice of proposed rulemaking was issued on December 13, 2007 (72 FR 70944).
- *Risk-Based Capital Standards: Market Risk (12 CFR Part 3).* The banking agencies plan to issue a second notice of proposed rulemaking to amend the market risk capital requirements for national banks. The banking agencies issued a notice of proposed rulemaking on September 25, 2006 (71 FR 55958). The rule would make the current market risk capital requirements generally more risk sensitive with respect to the capital treatment of trading activities in banks and bank holding companies.
- *Interagency Proposal for Model Privacy Form under Gramm-Leach-Bliley Act (GLB Act) (12 CFR Part 40)*. The agencies, along with the Federal Trade Commission, the Commodity Futures Trading

Commission, and the Securities and Exchange Commission, issued a joint notice of proposed rulemaking pursuant to section 728 of the Financial Services Regulatory Relief Act of 2006 (Pub. L. 109-351) on March 29, 2007 (72 FR 14940). Specifically, a safe harbor model privacy form was proposed that financial institutions may use to provide the disclosures under the privacy rules. Work on a final rule is now underway.

- *Recordkeeping Requirements for Bank Exceptions from Securities Broker or Dealer Registration*. The banking agencies plan to issue this rulemaking to implement section 204 of the GLB Act. Section 204 directs the banking agencies to establish recordkeeping requirements for banks relying on exceptions to the definitions of "broker" and "dealer" contained in paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934. Pursuant to section 101 of the Financial Services Regulatory Relief Act of 2006, the SEC and the FRB jointly published final rules to implement the "broker" provisions of the GLB Act on October 3, 2007. The rulemaking to implement section 204 of the GLB Act commenced upon the adoption of a final rule by the SEC and the FRB.

Office of Thrift Supervision

As the primary Federal regulator of the thrift industry, the Office of Thrift Supervision (OTS) has established regulatory objectives and priorities to supervise thrift institutions effectively and efficiently. These objectives include maintaining and enhancing the safety and soundness of the thrift industry; a flexible, responsive regulatory structure that enables savings associations to provide credit and other financial services to their communities, particularly housing mortgage credit; and a risk-focused, timely approach to supervision.

OTS, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the banking agencies) continue to work together on regulations where they share the responsibility to implement statutory requirements. For example, the banking agencies are working jointly on several rules to update capital standards to maintain and improve consistency in agency rules. These rules implement revisions to the *International Convergence of Capital Management and Capital Standards: A Revised Framework (Basel II Framework) and include:*

- *Risk-Based Capital Guidelines: Implementation of Revised Basel Capital Accord.* The final Basel II rule was published by the U.S. Banking Agencies on December 7, 2007 and effective April 1, 2008. The OTS, in conjunction with the other federal banking agencies, is working on implementing issues supporting this extremely complex risk-based capital rule. The banking agencies issued related proposed guidance on credit risk and operation risk (72 FR 9084; Feb. 2, 2007). The banking agencies will issue final guidance in fiscal year (FY) 2009.
- *Risk-Based Capital Standards: Market Risk.* On September 25, 2006, the Agencies issued an NPRM on Market Risk. In this rule, OTS proposed to require savings associations to measure and hold capital to cover their exposure to market risk. The other banking agencies proposed to revise their existing market risk capital rules to implement changes to the market risk treatment contained in Basel II Framework. These changes would enhance risk sensitivity of the existing market risk capital rules and introduce requirements for public disclosure of certain information about market risk (71 FR 55958; Sept. 25, 2006). The banking agencies will issue final market risk rules in FY 2009.
- *Risk-Based Capital Standards: Standardized Approach.* The banking agencies issued an NPRM implementing the Standardized Approach to credit risk and approaches to operational risk that are contained in the Basel II Framework. 73 FR 43982 (July 29, 2008). Banking organizations would be able to elect to adopt these proposed revisions or remain subject to the agencies' existing risk-based capital rules, unless the banking organization uses the Advanced Capital Adequacy Framework described above. This NPRM replaces the NPRM on Domestic Capital Modifications, which was published at 71 FR 77446 on Dec. 26, 2006.

Significant final rules issued during fiscal year 2008 include:

- *Prohibited Service at Savings and Loan Holding Companies.* This interim final rule implemented new section 19(e) of the Federal Deposit Insurance Act, which prohibits any person who has been convicted of a criminal offense involving dishonesty, breach of trust, or money laundering (or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense) from holding certain positions with respect to a savings and loan holding company. The interim final rule incorporated the statutory restrictions, prescribed procedures for applying for an OTS order granting case-by-case exemptions from the restrictions, and included two regulatory exemptions from the restrictions (72 FR 29548; May 8, 2007). OTS expects to finalize the interim rule in FY 2009.

OTS anticipates implementing the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) as follows:

- *Fair Credit Reporting -- Accuracy & Integrity of Information Furnished to Consumer Reporting Agencies*. The banking agencies, NCUA, and Federal Trade Commission (FTC) plan to issue a joint proposed rule and joint final rule to implement section 312 of the FACT Act. Section 312 requires the agencies to consult and coordinate with each other in order to issue consistent and comparable regulations requiring persons that furnish information to a consumer reporting agency to establish reasonable policies and procedures for the implementation of the agencies' guidelines regarding the accuracy and integrity of information relating to consumers. In addition, the agencies are to jointly prescribe regulations that identify the circumstances under which a furnisher of information to a consumer reporting agency shall be required to reinvestigate a dispute the accuracy of information contained in a consumer report based on the consumer's direct request to the furnisher. The agencies published an Advance Notice of Proposed Rulemaking (ANPR) on March 22, 2006, at 71 FR 14419.

Under the authority of section 5 of the Federal Trade Commission Act:

- OTS, FRB and NCUA proposed to prohibit certain unfair or deceptive acts or practices in the areas of credit cards and overdrafts at 73 FR 28904 (May 19, 2008).

OTS anticipates implementing section 728 of the Financial Services Regulatory Relief Act by amending its privacy rules under the Gramm-Leach-Bliley Act to include a safe harbor model privacy form. The banking agencies, NCUA, FTC, Commodity Futures Trading Commission (FTC), and SEC published a proposed rule on March 29, 2007.

Alcohol and Tobacco Tax and Trade Bureau

The Alcohol and Tobacco Tax and Trade Bureau (TTB) issues regulations to enforce the Federal laws relating to alcohol, tobacco, firearms, and ammunition taxes and relating to commerce involving alcohol beverages. TTB's mission and regulations are designed to:

1) Regulate with regard to permits to operate in the alcohol and tobacco industries;

2) Assure the collection of all alcohol, tobacco, and firearms and ammunition taxes, and obtain a high level of voluntary compliance with all laws governing those industries; and

3) Suppress commercial bribery, consumer deception, and other prohibited practices in the alcohol beverage industry.

In fiscal year 2009, the Bureau plans to give priority to the following regulatory matters:

- *Modernization of title 27, Code of Federal Regulations. TTB* will continue to pursue its multi-year program of modernizing its regulations in title 27 of the Code of Federal Regulations. This program involves updating and revising the regulations to be more clear, current, and concise, with an emphasis on the application of plain language principles. TTB laid the groundwork for this program in 2002 when it started to recodify its regulations in order to present them in a more

logical sequence. In FY 2005, TTB evaluated all of the 36 CFR parts in title 27 and prioritized them as "high," "medium," or "low" in terms of the need for complete revision or regulation modernization. TTB determined importance based on industry member numbers, revenue collected, and enforcement and compliance issues identified through field audits and permit qualifications, statutory changes, significant industry innovations, and other factors. The 10 CFR parts that TTB ranked as "high" include the five parts directing operation of the major taxpayers under the Internal Revenue Code of 1986: Part 19 - Distilled Spirits Plants; Part 24 - Wine; Part 25 - Beer; Part 40 - Manufacture of Tobacco Products and Cigarette Papers and Tubes; and Part 53 - Manufacturers Excise Taxes - Firearms and Ammunition. These five CFR parts represent nearly all the tax revenue that TTB collects, or $14.7 billion in FY 2007. The remaining five parts rated "high" consist of regulations covering imports and exports (Part 27 - Importation of Distilled Spirits, Wine and Beer; Part 28 - Exportation of Alcohol; and Part 41 - Importation of Tobacco Products and Cigarette Papers and Tubes), the American Viticultural Area program (Part 9), and TTB procedures (Part 70).

To date, related to the modernization plan, the Department of the Treasury has published notices of proposed rulemaking on parts 9 and 19. The Bureau plans to review the comments received regarding these notices and publish final rules on them. In addition, the Bureau will put forward for Department of the Treasury publication an advance notice of proposed rulemaking on part 25. In FY 2009, TTB plans to review the comments received on this modernization document and to move forward as appropriate. In FY 2009, TTB also plans to draft a modernization notice of proposed rulemaking for part 28.

- *Serving Facts*. In 2007, the Department published a notice of proposed rulemaking soliciting comments on a proposal to require a serving facts statement on alcohol beverage labels. The proposed statement would include information about the serving size, the number of servings per container, and per-serving information on calories and grams of carbohydrates, fat, and protein. The proposed rule would also require information about alcohol content. TTB plans to put forward for Department publication a final rule on this matter.
- *Allergen Labeling.* On July 26, 2006, TTB published interim regulations setting forth standards for voluntary allergen labeling of alcohol beverages. These regulatory changes were an outgrowth of changes made to the Food, Drug and Cosmetic Act by the Food Allergen Labeling and Consumer Protection Act of 2004. At the same time, TTB published a proposal to make those interim requirements mandatory. TTB intends to put forward for Department publication a final rule in this matter in 2009.
- *Multi-Region Appellations for Imported Wine.* TTB will put forward for Department publication a proposal to amend its wine labeling regulations to allow the labeling of imported wines with multi-region appellations of origin. The proposed regulatory change would provide labeling treatment for imported wines that is similar to what is currently available for domestic wines, which may be labeled with a multi-state or multi-county appellation of origin.
- *Specially Denatured and Completely Denatured Alcohol Formulas.* TTB will submit for publication by the Department a proposal to reclassify some specially denatured alcohol (SDA) formulas as completely denatured alcohol (CDA) for which formula submission to TTB is not required. The proposed regulatory changes would also allow other SDA formulas to be used without the submission of article formulas. These changes would allow TTB to shift its SDA-dedicated resources from the current front-end pre-market formula control approach to a post-market assessment of actual compliance with SDA regulations.
- *Alcohol Fuel Plants.* TTB intends to put forward for Department publication proposed amendments to the alcohol fuel plant regulations, in recognition of the significant growth in this industry segment. The proposed changes would include updated procedures for producers of distilled spirits intended for fuel use that will enhance their operations consistent with TTB's responsibility to protect the revenue.

- *Special (Occupational) Tax Repeal.* TTB will submit for publication by the Department amendments to conform the TTB regulations to the statutory repeal of the special (occupational) taxes on producers and marketers of alcoholic beverages. The regulatory changes will reflect the replacement of tax payment by a registration procedure.

Bureau of the Public Debt

The Bureau of the Public Debt (BPD) has responsibility for borrowing the money needed to operate the Federal Government and accounting for the resulting debt, regulating the primary and secondary Treasury securities markets, and ensuring that reliable systems and processes are in place for buying and transferring Treasury securities.

BPD administers regulations: (1) Governing transactions in Government securities by Government securities brokers and dealers under the Government Securities Act of 1986 (GSA), as amended; (2) Implementing Treasury's borrowing authority, including rules governing the sale and issue of savings bonds, marketable Treasury securities, and State and local Government securities; (3) Setting out the terms and conditions by which Treasury may redeem (buy back) outstanding, unmatured marketable Treasury securities through debt buyback operations; (4) Governing securities held in Treasury's retail systems; and (5) Governing the acceptability and valuation of all collateral pledged to secure deposits of public monies and other financial interests of the Federal Government.

Treasury's GSA rules govern financial responsibility, the protection of customer funds and securities, record keeping, reporting, audit, and large position reporting for all government securities brokers and dealers, including financial institutions.

Treasury maintains regulations governing two retail systems for purchasing and holding Treasury securities: Legacy Treasury Direct, in which investors can purchase, manage, and hold marketable Treasury securities in book-entry form, and TreasuryDirect, in which investors may purchase, manage, and hold savings bonds, marketable Treasury securities, and certificates of indebtedness in an Internet-based system.

During fiscal year 2009, BPD will accord priority to the following regulatory projects:

- *TreasuryDirect.* To date, only individuals have been able to open accounts in TreasuryDirect. BPD plans to issue a final rule to permit a trustee of a trust, corporation, limited liability company, partnership, sole proprietorship, legal representative of a decedent’s estate, and legal guardian of the estate of an incompetent person or minor to open accounts in TreasuryDirect and conduct transactions in eligible Treasury securities. BPD will also take the opportunity to make non-substantive technical corrections to the regulations.
- *Series I Savings Bonds*. BPD plans to issue a final rule amending the regulations for Series I savings bonds to clarify that the fixed rate of return and the composite rate will always be greater than or equal to zero percent. The amendment makes no substantive change to the regulations but will benefit investors by clarifying that the fixed rate and the composite rate will not be negative under any market conditions.

Financial Management Service

The Financial Management Service (FMS) issues regulations to improve the quality of Government financial management and to administer its payments, collections, debt collection, and Government-wide accounting programs. For fiscal year 2009, FMS's regulatory plan includes the following priority:

- *Management of Federal Agency Disbursements.* FMS is amending 31 CFR part 208 to increase the use of agency electronic payments. Currently, 31 CFR § 208.6 requires that Federal electronic payments other than vendor payments be directed to a deposit account at the financial institution "in the name of" the individual. Treasury waived this requirement for Federal agencies

issuing part or all of an employee's travel reimbursement to the travel card issuing bank for crediting to the employee's travel card account. In fiscal year 2009, a proposed rule will codify the terms of the waiver. In addition, the proposed rule would prohibit a Federal agency from making a check payment to another Federal agency, and would instead require that all agency-to-agency payments be made through the Intra-Governmental Payment and Collection System.

Domestic Finance – Office of the Fiscal Assistant Secretary (OFAS)

The Office of the Fiscal Assistant Secretary develops policy for and oversees the operations of the financial infrastructure of the federal government; including payments, collections, cash management, financing, central accounting, and delinquent debt collection.

Treasury strongly encourages electronic payment of Federal benefits, but electronic payments may cause problems in certain instances. Specifically, individuals who have bank accounts and are subject to garnishment actions may find direct deposit unattractive. Financial institutions may freeze accounts that receive federal benefits as they perform due diligence in complying with State garnishment orders, even though Federal statues exempt most Federal benefits from garnishment.

In FY 2009, Treasury plans to promulgate a joint rule, with federal benefit agencies, to address the practice of account freezes and holds to ensure that benefit recipients have access to a certain amount of lifeline funds while garnishment orders or other legal processes are adjudicated.

The regulation will provide financial institutions with specific instructions on the manner and extent to which accounts with exempt funds can be frozen in the face of a garnishment order. It may also include some provisions aimed at Federal benefit agencies necessary to help financial institutions comply with the instructions. We do not expect the policy to have specific provisions for consumers, States, debt collectors, or banking regulators. However, the banking regulators would enforce the policy in cases of non-compliance by means of their general authorities.

The regulation will not specifically address the process for adjudicating garnishment orders, State debt collection or claims laws in a broader sense, or other banking practices and procedures. This proposed regulation will be a new part in Title 31.

The 1 Actions Described in the Regulatory Plan

Title	Regulation Identifier Number	Rulemaking Stage
Basel II Standardized Approach	1557-AD07	Final Rule Stage

Department of the Treasury (TREAS)
Comptroller of the Currency (OCC) **RIN:** 1557-AD07

View Related Documents

Title: Basel II Standardized Approach

Abstract: The OCC, FRB, FDIC, and OTS have decided to withdraw the proposed revisions to the existing domestic risk-based capital framework known as Basel 1A. Instead, the Federal banking agencies proposed a new risk-based capital framework based on the Standardized Approach for credit risk and the Basic Indicator approach for operational risk described in the capital adequacy framework titled "International Convergence of Capital Measures and Capital Standards: A Revised Framework," published by the Basel Committee on Banking Supervision.

Priority: Economically Significant
Agenda Stage of Rulemaking: Final Rule
Major: Yes
Unfunded Mandates: Private Sector
CFR Citation: 12 CFR 3 (To search for a specific CFR, visit the Code of Federal Regulations)
Legal Authority: 12 USC 93a; 12 USC 3907; 12 USC 3909
Legal Deadline: None

Regulatory Plan:

Statement of Need: This rulemaking is necessary to enhance the risk-sensitivity of the risk-based capital rules for those banks that will not be subject to the New Basel Capital Accord (Basel II) capital framework.

Legal Basis: The OCC is implementing the Basel II Standardized Approach capital framework for domestic financial institutions that choose to adopt it. This initiative is based on the OCC's general rulemaking authority in 12 U.S.C. 93a and its specific authority under 12 U.S.C. 3907 and 3909. 12 U.S.C. 3907(a)(2) specifically authorizes the OCC to establish minimum capital levels for financial institutions that the OCC, in its discretion, deems necessary or appropriate.

Alternatives: Please see the OCC's regulatory impact analysis, which can be found in its entirety at http://www.occ.treas.gov/law/basel.htm under the link of "Regulatory Impact Analysis for Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Standardized Risk-Based Capital Rules (Basel II: Standardized Option), Office of the Comptroller of the Currency, International and Economic Affairs (2008)."

Costs and Benefits: Not yet determined.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	07/29/2008	73 FR 43982
NPRM Comment Period End	10/27/2008	
Final Action	09/00/2009	

Regulatory Flexibility Analysis Required: No
Government Levels Affected: No
Federalism: No
Energy Affected: No
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