DEPARTMENT OF THE TREASURY

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 requirements 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).

On July 21, 2010, the President signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, 124 Stat. 1376). Over the next several months, the Department will continue implementing the Act, including promulgating regulations required under the Act.

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 Asset 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.

The Department has issued guidance and regulations and will continue to provide program information through the next year. Regulatory actions taken to date include the following:

Executive compensation. 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 June 15, 2009, the Department issued a revised interim final rule that sets forth executive compensation guidelines for all TARP program participants (74 FR 28394), implementing amendments to the executive compensation provisions of EESA made by the American Recovery and Reinvestment Act of 2009 (Pub. L.111-5). Public comments on the revised interim final rule regarding executive compensation were due by August 14, 2009, and will be considered as part of the process of issuing a final rule on this subject.

Insurance program for trouble assets. On October 14, 2008, the Department released a request for public input on an insurance program for troubled assets.

Conflicts of interest. On January 21, 2009, the Department issued an interim final rule providing guidance on conflicts of interest pursuant to section 108 of EESA (74 FR 3431). Comments on the interim final rule, which were due by March 23, 2009, will be considered as part of the process of issuing a final rule.

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

The Terrorism Risk Insurance Act of 2002 (TRIA) was signed into law on November 26, 2002. The 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 proposed rules implementing changes authorized by TRIA as revised by TRIPRA. The following regulations should be published by December 31, 2010:

Final Netting. This rule would establish procedures by which, after the Secretary has determined that claims for the Federal share of insured losses arising from a particular Program Year shall be considered final, a final netting of payments to or from insurers will be accomplished.

Affiliates. This rule would make changes to the definition of "affiliate" to conform to the language in the statute

Civil Penalty. This rule establishes procedures by which the Secretary may assess civil penalties against any insurer that the Secretary determines, on the record after an opportunity for a hearing has violated provisions of the Act.

Renewals. Certain claims rules will be published for renewal without change.

During 2011, Treasury will continue the ongoing work of implementing TRIA and carrying out revised 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 U.S. Customs and Border Protection (CBP) pursuant to section 872(a)(2) of the Act (6 U.S.C. 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 subject to certain exceptions. 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 was a final rule that adopted the interim amendments updating the regulatory provisions relating to the requirement under the United States-Bahrain FTA (BFTA) that a good must be “imported directly” from Bahrain to the United States or from the United States to Bahrain to qualify for preferential tariff treatment. The change removed the condition that a good passing through the territory of an intermediate country must remain under the control of the customs authority of the intermediate country. CBP also finalized the interim regulations, which implemented the preferential tariff treatment provisions of the Dominican Republic-Central America-United States Free Trade Agreement (also known as “CAFTA-DR”) Implementation Act.

In addition, during the past fiscal year, CBP finalized the interim amendments of the regulations to implement certain provisions of the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (Pub. L. 110-286) (the "JADE Act") and Presidential Proclamation 8294 of September 26, 2008, which includes new Additional U.S. Note 4 to chapter 71 of the Harmonized Tariff Schedule of the United States (“HTSUS”). The final amendments prohibit the importation of Burmese-covered articles of jadeite, rubies, and articles of jewelry containing jadeite or rubies, and sets forth restrictions for the importation of non-Burmese covered articles of jadeite, rubies, and articles of jewelry containing jadeite or rubies.

As a result of the Softwood Lumber Act of 2008, CBP finalized the interim regulations to parts 12 and 163 of the regulations that prescribed 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. The regulations also implemented the Act’s recordkeeping requirements applicable to certain imports of SWL home packages and kits that are subject to declaration requirements but that are not subject to the SWL importer declaration program.

This past fiscal year, consistent with the practice of continuing to move forward with Customs Modernization provisions of the North American Free Trade Implementation Act to improve its regulatory procedures, Treasury and CBP finalized its proposal to establish the remote location filing program, which had been a test program under the Customs Modernization Act for many years. This rule permits remote location filing of electronic entries of merchandise from a location other than where the merchandise arrives. In addition, Treasury and CBP also finalized a proposal which was published in August 2008 regarding the electronic payment and refund of quarterly harbor maintenance fees. The rule provides the trade with expanded electronic payment/refund options for quarterly harbor maintenance fees and it modernizes and enhances CBP's port use fee collection efforts.

During fiscal year 2011, 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's preferential trade benefit provisions. 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.

Free Trade Agreements. Treasury and CBP also plan to finalize interim regulations this fiscal year to implement the preferential tariff treatment provisions of the United States-Singapore Free Trade Agreement Implementation Act. Treasury and CBP also expect to issue interim regulations implementing the United States-Australia Free Trade Agreement Implementation Act, the United States-Oman Free Trade Agreement Implementation Act, and the United States-Peru 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. Based upon the public comments received on its July 25, 2008, proposal regarding establishing uniform rules governing CBP's determinations of the country of origin of imported merchandise, Treasury and CBP has decided not to proceed with this proposal. Instead, Treasury and CBP plan to withdraw the proposal to establish uniform rules of origin to all trade and to adopt as final regulations certain proposed amendments to the country of origin rules codified in part 102 of the CBP regulations applicable to pipe fittings and flanges, greeting cards, glass optical fiber, rice preparations, and certain textile products.

Customs and Border Protection's Bond Program. Treasury and CBP plan to finalize its proposal to amend the regulations to reflect the centralization of the continuous bond program at CBP's Revenue Division. The changes proposed support CBP's bond program by ensuring an efficient and uniform approach to the approval, maintenance, and periodic review of continuous bonds as well as accommodating the use of information technology and modern business practices.

Courtesy Notices of Liquidation. Treasury and CBP plan to finalize its proposal to amend the regulations pertaining to the method by which CBP issues courtesy notices of liquidation in an effort to streamline the notification process and reduce printing and mailing costs.

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 CDFI 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 addition the CDFI Fund administers the Financial Education and Counseling Pilot Program (FEC) and the Capital Magnet Fund (CMF).

In fiscal year (FY) 2011, subject to funding availability, the Fund will provide awards through the following programs:

Native American CDFI Assistance (NACA) Program. Through the NACA Program, the CDFI 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.

Bank Enterprise Award (BEA) Program. Through the BEA Program, the CDFI Fund will provide financial incentives to encourage insured depository institutions to engage in eligible development activities and to make equity investments in CDFIs.

New Markets Tax Credit (NMTC) Program. 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 to be used to make loans and equity investments in low-income communities. The CDFI Fund administers the NMTC Program in coordination with the Office of Tax Policy and the Internal Revenue Service.

Financial Education and Counseling (FEC) Pilot Program. Through the FEC Pilot Program, the CDFI Fund will provide grants to eligible organizations to provide a range of financial education and counseling services to prospective homebuyers. The CDFI Fund will administer the FEC Program in coordination with the Office of Financial Education.

Capital Magnet Fund (CMF). Through the Capital Magnet Fund, the CDFI Fund will provide competitively awarded grants to CDFIs and qualified nonprofit housing organizations to finance affordable housing and related community development projects. In FY 2010, the Fund expects to draft and publish regulations to govern the application process, award selection, and compliance components of the CMF.

Bond Guarantee (Small Business Jobs and Credit Act of 2010, Pub. L. No. 111-240, Section 1134). Pursuant to section 1134 of Public Law No. 111-240, the Treasury Department is required to promulgate regulations implementing the bond guarantee provisions by September 2011. The program must then be implemented no later than September 2012 and sunsets on September 30, 2014.

Financial Crimes Enforcement Network

As chief administrator of the Bank Secrecy Act (BSA), the Financial Crimes Enforcement Network (FinCEN) is responsible for developing and implementing regulations that are 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 Governmentwide 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 2010, FinCEN issued the following regulatory actions:

Administrative Rulings. On November 17, 2009, FinCEN issued a final technical rule change to update the BSA provisions to reflect that Administrative Rulings are published on the FinCEN Web site, rather than in the **Federal Register**, allowing information to be distributed more broadly and more expediently.

Prepaid Access—Regulatory Framework for Activity Previously Referred to as Stored Value. On June 28, 2010, FinCEN issued a Notice of Proposed Rulemaking (NPRM) that would establish a more comprehensive regulatory framework for non-bank prepaid access. The proposed rule, which focuses on prepaid programs that pose the greatest potential risks of money laundering and terrorist financing, was developed in close cooperation with law enforcement and regulatory authorities.

The proposed changes impose obligations on the party within any given prepaid access transaction chain with predominant oversight and control, as well as others who might be in a position to provide meaningful information to regulators and law enforcement, such as prepaid access sellers. Although mandated by the Credit Card Accountability, Responsibility, and Disclosure Act (CARD Act) of 2009 (section 503) to issue a final rule "regarding issuance, sale, redemption, or international transport of stored value," rulemaking activities were already underway. Just prior to the enactment of the CARD Act, FinCEN issued an NPRM clarifying the applicability of BSA regulations with respect to MSB activities. As part of this NPRM, FinCEN solicited comments on various prepaid/stored value issues to assist with future rulemakings.

Confidentiality of Suspicious Activity Reports. On March 3, 2009, FinCEN issued a Notice of Proposed Rulemaking clarifying the non-disclosure provisions with respect to the existing regulations pertaining to the confidentiality of suspicious activity reports (SARs). In conjunction with this notice, FinCEN issued for comment two guidance documents, SAR Sharing with Affiliates for depository institutions and SAR Sharing with Affiliates for securities and futures industry entities, to solicit comment permitting certain financial institutions to share SARs with their U.S. affiliates that are also subject to SAR reporting requirements. FinCEN expects to publish the final rule before the end of 2010.

Mutual Funds. On April 14, 2010, FinCEN issued a Final Rule to include mutual funds within the general definition of "financial institutions" in BSA regulations, subjecting mutual funds to rules on the filing of Currency Transaction Reports (CTRs) for cash transactions over $10,000 in lieu of current obligations to file Form 8300s, and on the creation, retention, and transmittal of records or information for transmittals of funds. In addition, the final rule harmonized the definition of mutual fund in the AML program rule with the definitions found in the other BSA rules to which mutual funds are subject.

Non-Bank Residential Mortgage Lenders and Originators. On July 21, 2009, FinCEN issued an Advance Notice of Proposed Rulemaking to solicit public comment on a wide range of questions pertaining to the possible application of anti-money laundering (AML) program and suspicious activity report (SAR) regulations to a specific sub-set of loan and finance companies, i.e., non-bank residential mortgage lenders and originators FinCEN is working on a Notice of Proposed Rulemaking that would require nonbank residential mortgage lenders and originators to implement AML program and SAR filing requirements, which is expected to be published prior to the end of 2010.

Expansion of Special Information Sharing Procedures (pursuant to section 314(a) of the BSA). On February 10, 2010, FinCEN issued a Final Rule to amend the BSA regulations to allow certain foreign law enforcement agencies, State and local law enforcement agencies, as well as FinCEN and other appropriate components of the Department of the Treasury to submit requests for information to financial institutions.

FBAR Requirements. On February 26, 2010, working with Treasury Tax Policy and the IRS, FinCEN issued an NPRM with regard to revising the regulations governing the filing of Reports of Foreign Bank and Financial Accounts (FBARs). Among other things, FinCEN and the IRS will seek comments regarding when a person with signature authority over, but no financial interest in, a foreign financial account should be relieved of filing an FBAR for the account, and when an interest in a foreign entity (e.g., a corporation, partnership, trust or estate) should be subject to FBAR reporting. The final rule is expected to be published in FY 2011.

Cross Border Electronic Transmittal of Funds. FinCEN drafted a Notice of Proposed Rulemaking (NPRM) 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. The NPRM proposes requirements for certain banks and money transmitters to submit reports of transmittal orders associated with certain cross border electronic transmittals of funds. In addition, the proposal would require an annual filing with FinCEN by all banks of a list of taxpayer identification numbers of accountholders who transmitted or received a cross border electronic transmittal of funds that is subject to reporting. FinCEN published the NPRM on September 30, 2010.

Renewal of Existing Rules. FinCEN renewed without change a number of information collections associated with existing requirements: The Currency Transaction Report requiring financial institutions to report cash transactions over $10,000 (FinCEN Form 104), regulations requiring businesses to report cash payments over $10,000 received in a trade or business (FinCEN Form 8300), two USA PATRIOT Act regulations imposing special measures against the Commercial Bank of Syria including its subsidiary, Syrian Lebanese Commercial Bank, a USA Patriot Act regulation imposing special measures against Banco Delta Asia, and regulations requiring certain financial institutions to establish special due diligence programs for correspondent accounts for foreign financial institutions.

Special Due Diligence Programs for Certain Foreign Accounts. As a result of a congressional mandate to prescribe regulations under the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, FinCEN is revising the BSA regulations to incorporate an additional relevant factor for a covered financial institution to consider when assessing the money laundering risks presented by correspondent accounts for foreign financial institutions. FinCEN expects to issue a final rule change to 103.176 before the end of 2010.

Administrative Rulings and Written Guidance. FinCEN issued 37 Administrative Rulings, written responses to interpretive questions, and written guidance pieces interpreting the BSA and providing clarity to regulated industries.

FinCEN’s regulatory priorities for fiscal year 2011 include finalizing any initiatives mentioned above that are not finalized by fiscal year end, as well as the following projects:

Reorganization of BSA Rules. On October 23, 2008, FinCEN issued a Notice of Proposed Rulemaking 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.

Money Services Businesses-Definitions and Other Regulations. On May 12, 2009, FinCEN issued a Notice of Proposed Rulemaking revising the definitions for Money Services Businesses (MSBs) to delineate more clearly the scope of entities regulated as MSBs, incorporating previously issued Administrative Rules and guidance with regard to MSBs, and ensuring that certain foreign-located persons engaging in MSB activities within the United States are subject to BSA rules. FinCEN expects to issue a Final Rule in fiscal year 2011.

Anti-Money Laundering Programs. Pursuant to section 352 of the USA PATRIOT Act, certain financial institutions are required to establish AML programs. Continued from prior fiscal years, FinCEN is researching and developing rulemaking to require State-chartered credit unions and other depository institutions without a Federal functional regulator to implement AML programs. FinCEN also is researching and developing AML program (and SAR reporting) requirements for investment advisers. Finally, FinCEN also will continue to consider regulatory options regarding additional loan and finance companies, and certain corporate and trust service providers.

Other Requirements. 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 IRS 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 2011, the IRS will accord priority to the following regulatory projects:

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. The IRS and Treasury intend to finalize those regulations.

Arbitrage Investment Restrictions on Tax-Exempt Bonds. The arbitrage investment restrictions on tax-exempt bonds under section 148 generally limit issuers from investing bond proceeds in higher-yielding investments. Treasury and the IRS plan to issue proposed regulations to address selected current issues involving the arbitrage restrictions, including guidance on the issue price definition used in the computation of bond yield, working capital financings, grants, investment valuation, modifications and terminations of qualified hedging transactions, and selected other issues.

Tax Credit Bonds. Tax credit bonds are bonds in which the holder receives a Federal tax credit in lieu of some or all of the interest on the bond. The American Recovery and Reinvestment Act of 2009 created a number of new types of tax credit bonds and modified the law as it concerned several existing types of tax credit bonds. The Hiring Incentives to Restore Employment Act added subsection (f) to section 6431 which authorizes issuers to receive Federal direct payments of allowances of refundable tax credits in lieu of the Federal tax credits that otherwise would be allowed to holders of certain tax credit bonds. The IRS and Treasury intend to provide guidance on selected legal issues concerning tax credit bonds and remedial actions involving refundable tax credit bonds.

Build America Bonds. Treasury and the IRS plan to issue proposed regulations to provide guidance on interpretative issues that have arisen in implementing the broad new Build America Bond program in section 54AA, which was created by the American Recovery and Reinvestment Act of 2009.

Guidance on the Tax Treatment of Distressed Debt. A number of tax issues relating to the amount, character, and timing of income, expense, gain, or loss on distressed debt remain unresolved. In addition, the tax treatment of distressed debt, including distressed debt that has been modified, may affect the qualification of certain entities for tax purposes or result in additional taxes on the investors in such entities, such as regulated investment companies, real estate investment trusts, and real estate mortgage investment conduits (REMICs). During fiscal year 2010, Treasury and the IRS have addressed some of these issues through published guidance, including (1) two revenue procedures providing relief for certain modifications of distressed commercial mortgage loans held by a REMIC, (2) a notice providing that interest deductions for certain refinanced corporate indebtedness issued in 2010 would not be deferred or disallowed under section 163(e)(5), and (3) proposed regulations clarifying that the deterioration in the financial condition of the issuer of a modified debt instrument is not taken into account to determine whether the instrument is debt or equity. Treasury and the IRS plan to address more of these issues in published guidance.

Elective Deferral of Certain Business Discharge of Indebtedness Income. In the recent economic downturn, many business taxpayers realized income as a result of modifying the terms of their outstanding indebtedness or refinancing on terms subjecting them to less risk of default. The American Recovery and Reinvestment Act of 2009 includes a special relief provision allowing for the elective deferral of certain discharge of indebtedness income realized in 2009 and 2010. The provision, section 108(i) of the Code, is complicated and many of the details will have to be supplied through regulatory guidance. On August 9, 2009, Treasury and the IRS issued Revenue Procedure 2009-37 that prescribes the procedure for making the election. Treasury and the IRS recently promulgated temporary and proposed regulations (TD 9497 and TD 9498), which were published in the **Federal Register** on August 13, 2010. These regulations provide additional guidance on such issues as the types of indebtedness eligible for the relief, acceleration of deferred amounts, the operation of the provision in the context of flow-through entities, the treatment of the discharge for the purpose of computing earnings and profits, and the operation of a provision of the statute deferring original issue discount deductions with respect to related refinancings. Treasury and the IRS intend to issue final regulations.

Regulation of Tax Return Preparers. In June 2009, the IRS launched a comprehensive review of the tax return preparer program with the intent to propose a set of recommendations to ensure uniform and high ethical standards of conduct for all tax return preparers and to increase taxpayer compliance. The IRS published findings and recommendations in Publication 4832, Return Preparer Review. In the report, the IRS recommended increased oversight of the tax return preparer industry, including but not limited to, mandatory preparer tax identification number (PTIN) registration and usage, competency testing, continuing education requirements, and ethical standards for all tax return preparers. As part of a multi-step effort to increase oversight of Federal tax return preparers, Treasury and the IRS published regulations authorizing the IRS to require tax return preparers who prepare all or substantially all of a tax return for compensation after December 31, 2010, to use PTINs as the preparer's identifying number on all tax returns and refund claims that they prepare. On September 30, 2010, Treasury and the IRS published regulations that set the user fee for obtaining a PTIN at $50 plus a third-party vendor's fee. On August 23, 2010, Treasury and IRS published proposed amendments to Circular 230, which will establish registered tax return preparers as a new category of tax practitioner and will extend the ethical rules for tax practitioners to any individual who is a tax return preparer. Treasury and the IRS intend to finalize these regulations in 2010 or 2011 and publish additional guidance as necessary to implement the recommendations in the report.

Requirement for Certain Taxpayers to File Forms Disclosing Uncertain Tax Positions. Section 6011 of the Internal Revenue Code provides that persons liable for a tax imposed by title 26 must make a return when required by regulations prescribed by the Secretary of the Treasury according to the forms and regulations prescribed by the Secretary. Treasury Regulation section 1.6011-1 requires every person liable for income tax to make such returns as are required by regulation. Section 6012 requires corporations subject to an income tax to make a return with respect to that tax. Treasury Regulation section 1.6012-2 sets out the corporations that are required to file returns and the form those returns must take. Treasury and the IRS issued proposed regulations on September 9, 2010, that would require corporations to file a Schedule UTP consistent with the forms, instructions, and other appropriate guidance provided by the IRS. The IRS intends to implement the authority provided in this regulation initially by issuing a schedule and explanatory publication that require those corporations that prepare audited financial statements to file a schedule identifying and describing the uncertain tax positions, as described in FIN 48 and other generally accepted accounting standards, that relate to the tax liability reported on the return.

Basis Reporting. Section 403 of the Energy Improvement and Extension Act of 2008 (Pub. L. No. 110-343), enacted on October 3, 2008, added sections 6045(g), 6045A, and 6045B to the Internal Revenue Code. Section 6045(g) provides that every broker required to file a return with the Service under section 6045(a) showing the gross proceeds from the sale of a covered security must include in the return the customer's adjusted basis in the security and whether any gain or loss with respect to the security is long-term or short-term. Section 6045A further provides that, beginning in 2011, a broker and any other specified person (transferor) that transfers custody of a covered security to a receiving broker must furnish to the receiving broker a written statement that allows the receiving broker to satisfy the basis reporting requirements of section 6045(g). The transferor must furnish the statement to the receiving broker within 15 days after the date of the transfer or at a later time provided by the Secretary. Proposed regulations implementing these provisions and a notice of public hearing were published on December 17, 2009, and a hearing was held on February 17, 2010. Final regulations and a Notice providing transitional relief from the transfer reporting requirements for calendar year 2011 were issued in October 2010.

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) will be effective for payments made after December 31, 2011. On March 11, 2008, the IRS 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). After considering the many comments, the IRS and Treasury issued a Notice of Proposed Rulemaking, which was published in the **Federal Register** on December 4, 2008. A hearing on the proposed regulations was held on April 16, 2009, and the IRS has received 168 comments from stakeholders on the proposed regulations. The IRS and Treasury are considering the comments and intend to issue final regulations.

Information Reporting for Foreign Accounts of U.S. Persons. In March 2010, chapter 4 (sections 1471 to 1474) was added to subtitle A of the Internal Revenue Code as part of the Hiring Incentives to Restore Employment Act (HIRE Act) (Pub. L. 111-147). Chapter 4 was enacted to address concerns with offshore tax evasion, and generally requires foreign financial institutions (FFIs) to enter into an agreement (FFI Agreement) with the IRS to report information regarding certain financial accounts of U.S. persons and foreign entities with significant U.S. ownership. An FFI that does not enter into an FFI Agreement generally will be subject to a withholding tax on the gross amount of certain payments from U.S. sources, as well as the proceeds from disposing of certain U.S. investments. Treasury and the IRS published Notice 2010-60, which provides preliminary guidance and requests comments on the most important and time-sensitive issues under chapter 4. Treasury and the IRS expect to follow up this notice with proposed regulations, a proposed model FFI Agreement, and other guidance before the general effective date of chapter 4, which applies to payments made on or after January 1, 2013. This guidance will address numerous issues, notably the definition of FFI, the due diligence required of withholding agents and FFIs in identifying U.S. accountholders, and the requirements for reporting U.S. accounts.

Withholding on Certain Dividend Equivalent Payments under Notional Principal Contracts. The HIRE act also added section 871(l) to the Code (now section 871(m)), which designates certain substitute dividend payments in security lending and sale-repurchase transactions and dividend-referenced payments made under certain notional principal contracts as U.S.-source dividends for purposes of the Federal withholding tax obligations of withholding agents and foreign persons (dividend equivalents). In response to this legislation, on May 20, 2010, the IRS issued Notice 2010-46, addressing the requirements for determining the proper withholding in connection with substitute dividends paid in foreign-to-foreign security lending and sale-repurchase transactions. The IRS and Treasury intend to issue regulations to implement the provisions of this Notice as well as regulations addressing cases where dividend equivalents should be found to arise in connection with notional principal contracts and other financial derivatives.

Foreign Financial Asset Reporting (section 6038D). Section 6038D was enacted by section 511 of the HIRE Act, effective for taxable years beginning after March 18, 2010. Section 6038D requires an individual taxpayer to include a disclosure statement with the individual's income tax return and to report certain information required by section 6038D(c) if the aggregate value of the taxpayer's interests in specified foreign financial assets exceeds $50,000 for the taxable year, or such higher dollar amount as the Secretary may prescribe. In addition, if a domestic entity is formed or availed of for the purpose of holding, directly or indirectly, specified foreign financial assets, then the Secretary may require the domestic entity to comply with section 6038D and report its specified foreign financial assets in the same manner as if the domestic entity were an individual. Treasury and the IRS intend to issue regulations, as well as a form and instructions, to implement section 6038D.

New International Tax Provisions of the Education, Jobs and Medicaid Assistance Act. On August 10, 2010, the Education, Jobs, and Medicaid Assistance Act of 2010 (Pub L. 111-226) was signed into law. The new law includes a significant package of international tax provisions. These provisions include limitations on the availability of foreign tax credits in certain cases where U.S. tax law and foreign tax law provide different rules for recognizing income and gain, and in cases where income items treated as foreign source under certain tax treaties would otherwise be sourced in the United States. The legislation also limits the ability of multinationals to reduce their U.S. tax burdens by using a provision intended to prevent corporations from avoiding U.S. income tax on repatriated corporate earnings. Other new provisions under this legislation limit the ability of multinational corporations to use acquisitions of related party stock to avoid U.S. tax on what would otherwise be taxable distributions of dividends. The statute also includes a new provision intended to tighten the rules under which interest expense is allocated between U.S.- and foreign-source income within multinational groups of related corporations when a foreign corporation has significant amounts of U.S.-source income that is effectively connected with a U.S. business. Treasury and the IRS expect to issue regulatory guidance on most of these provisions.

Guidance on Tax-Related Health Care Provisions. On March 23, 2010, the President signed the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148) and on March 30, 2010, the President signed the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152) (referred to collectively as the Affordable Care Act (ACA)). The ACA's comprehensive reform of the health insurance system affects individuals, families, employers, health care providers, and health insurance providers. The ACA provides authority for Treasury and the IRS to issue regulations and other guidance to implement tax provisions in the ACA, some of which are effective immediately and some of which will become effective over the next several years. In the past few months, Treasury and the IRS, together with the Department of Health and Human Services and the Department of Labor, have issued a series of temporary and proposed regulations implementing various provisions of the ACA related to individual and group market reforms. In addition, Treasury and the IRS have issued guidance on specific ACA provisions relating to the tax treatment of health care benefits provided to children under age 27 (sec. 105 of the Code), the credit for small employers that provide health insurance coverage (sec. 45R), the credit for qualifying therapeutic discovery projects (sec. 48D), additional requirements for tax-exempt hospitals (sec. 501(r)), the tax on indoor tanning services (sec. 5000B), and information reporting for payments to corporations (sec. 6041). Providing additional guidance to implement tax provisions of the ACA is a priority for Treasury and the IRS.

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 Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, 124 Stat. 1376, July 21, 2010) imposes a significant number of rulemaking requirements that must be completed during fiscal year 2011. Most of them are to be issued jointly with other agencies. The exact details and timing of the rulemakings have not yet been determined and, therefore, they are not included here or in our regulatory agenda. When more information is known, we will promptly add them to our regulatory agenda and report them in our fiscal year 2012 regulatory plan.

Significant rules issued during fiscal year 2010 include:

- *Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance; Capital – Residential Mortgage Loans Modified Pursuant to the Making Home Affordable Program (12 CFR part 3).* In order to support and facilitate the timely implementation of the Making Home Affordable Plan (MHAP) announced by the U.S. Department of Treasury and to promote the stability of banking organizations and the financial system, the banking agencies issued a final rule providing that a residential mortgage loan (whether a first-lien or a second-lien loan) modified under the MHAP will retain the risk weight assigned to the loan prior to the modification, so long as the loan continues to meet other relevant supervisory criteria. The rule minimizes disincentives to bank participation in the MHAP that could otherwise result from agencies' regulatory capital regulations. The banking agencies believe that this treatment is appropriate in light of the overall important public policy objectives of promoting sustainable loan modifications for at-risk homeowners that balance the interests of borrowers, servicers, and investors. Joint agency action was essential to ensure that the regulatory capital consequences of participation in the MHAP are the same for all commercial banks and thrifts. A final rule was issued on November 20, 2009. (74 FR 60137)

- *Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Regulatory Capital; Impact of Modifications to Generally Accepted Accounting Principles; Consolidation of Asset-Backed Commercial Paper Programs; and Other Related Issues (12 CFR part 3).* The Federal banking agencies amended their general risk-based and advanced risk-based capital adequacy frameworks by adopting a final rule that eliminates the exclusion of certain consolidated asset-backed commercial paper programs from risk-weighted assets; provides for an optional two-quarter implementation delay followed by an optional two-quarter partial implementation of the effect on risk-weighted assets that will result from changes to U.S. generally accepted accounting principles pertaining to the transfer and consolidation assets; provides for an optional two-quarter delay, followed by an optional two-quarter phase-in, of the application of the agencies' regulatory limit on the inclusion of the allowance for loan and lease losses (ALLL) in tier 2 capital for the portion of the ALLL associated with the assets a banking organization consolidates as a result of changes to U.S. generally accepted accounting principles; and provides a reservation of authority to permit the agencies to require a banking organization to treat entities that are not consolidated under accounting standards as if they were consolidated for risk-based capital purposes, commensurate with the risk relationship of the banking organization to the structure. The delay and subsequent phase-in periods of the implementation apply only to the agencies' risk-based capital requirements, not the leverage ratio requirement. This final rule was issued on January 28, 2010 (75 FR 4636).

- *Registration of Mortgage Loan Originators (12 CFR part 34).* The banking agencies, the NCUA, and Farm Credit Administration (FCA) issued final rules to implement the S.A.F.E. Mortgage Licensing Act of 2008, title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289. These amendments require an employee of a depository institution, an employee of a depository institution subsidiary regulated by a Federal banking agency, or an employee of an institution regulated by the FCA who engages in the business of a mortgage loan originator to register with the Nationwide Mortgage Licensing System and Registry (NMLSR) and to obtain a unique identifier. These amendments also provide that these institutions must require their employees who act as mortgage loan originators to comply with this Act's registration and unique identifier requirements and must adopt and follow written policies and procedures to assure compliance with these requirements. The final rules were issued on July 28, 2010 (75 FR 44656). The OCC has included this rulemaking project in The Regulatory Plan (1557-AD23).
- *Community Reinvestment Act Regulations (12 CFR part 25).* The banking agencies issued proposed regulations to revise provisions of their rules implementing the Community Reinvestment Act. The agencies proposed revising the term "community development" to include loans, investments, and services by financial institutions that support, enable or facilitate projects or activities that meet the criteria described in section 2301(c)(3) of the Housing and Economic Recovery Act of 2008 (HERA) and are conducted in designated target areas identified in plans approved by the U.S. Department of Housing and Urban Development under the Neighborhood Stabilization Program (NSP), established by HERA. This notice of proposed rulemaking was published on June 24, 2010 (75 FR 36016).
- *Community Reinvestment Act Regulations (12 CFR part 25).* On August 14, 2008, the Higher Education Opportunity Act (HEOA) was enacted into law (Pub. L. 110-315, 122 Stat. 3078). Section 1031 of the HEOA revised the Community Reinvestment Act (CRA) to require the banking agencies, when evaluating a bank's record of meeting community credit needs, to consider, as a factor, low-cost education loans provided by the bank to low-income borrowers. The banking agencies issued a final rule that would implement section 1031 of the HEOA. In addition, the rule would incorporate into the banking agencies' rules statutory language that allows them to consider as a factor when evaluating a bank's record of meeting community credit needs capital investment, loan participation, and other ventures undertaken by nonminority- and nonwomen-owned financial institutions in cooperation with minority- and women-owned financial institutions and low-income credit unions. The joint final rule was published on October 4, 2010 (75 FR 61046)
- *Alternatives to the Use of External Credit Ratings in the Regulations of the OCC (12 CFR parts 1, 16, and 28).* Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act directs all Federal agencies to review, no later than one year after enactment, any regulation that requires the use of an assessment of credit-worthiness of a security or money market instrument and any references to or requirements in regulations regarding credit ratings. The agencies are also required to remove references or requirements of reliance on credit ratings and to substitute an alternative standard of credit-worthiness. Through an advanced notice of proposed rulemaking (ANPRM), the OCC is seeking to gather information as it begins to review its regulations pursuant to the Dodd-Frank Act. This ANPRM describes the areas where the OCC's regulations, other than those that establish regulatory capital requirements, currently rely on credit ratings; sets forth the considerations underlying such reliance; and requests comment on potential alternatives to the use of credit ratings. The ANPRM was published on August 13, 2010 (75 FR 49423).
- *Advance Notice of Proposed Rulemaking Regarding Alternatives to the Use of Credit Ratings in the Risk-Based Capital Guidelines of the Federal Banking Agencies (12 CFR part 3)*. Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act directs all Federal agencies to review, no later than 1 year after enactment, any regulation that requires the use of an assessment of credit-worthiness of a security or money market instrument and any references to or requirements in regulations regarding credit ratings. The agencies are also required to remove references or requirements of reliance on credit ratings and to substitute an alternative standard of credit-

worthiness. Through an advanced notice of proposed rulemaking, the Federal banking agencies are seeking to gather information as they begin to review their regulations and capital standards pursuant to the Dodd-Frank Act. This ANPRM describes the areas in the agencies' risk-based capital standards (including the general risk-based capital rules, market risk rules, and advanced approaches rules) where the agencies rely on credit ratings, as well as the Basel Committee on Banking Supervision's recent amendments to the Basel Accord, which could affect those standards. The ANPRM then requests comment on potential alternatives to the use of credit ratings. The ANPRM was published on August 25, 2010 (75 FR 52283).

The OCC's regulatory priorities for fiscal year 2011 include the following:

- *Standards Governing the Release of a Suspicious Activity Report (12 CFR part 4). Confidentiality of Suspicious Activity Reports (12 CFR part 21).*

  The OCC is issuing final regulations governing the release of non-public OCC information set forth in 12 CFR part 4, subpart C. The final rule clarifies that the OCC's decision to release a suspicious activity report (SAR) will be governed by the standards set forth in amendments to the OCC's SAR regulation, 12 CFR 21.11(k), that are part of a separate, but simultaneously issued, final rulemaking discussed below.

  The OCC's final regulations implementing the Bank Secrecy Act governing the confidentiality of a suspicious activity report (SAR) will: Clarify the scope of the statutory prohibition on the disclosure by a national bank of a SAR; address the statutory prohibition on the disclosure by the government of a SAR as that prohibition applies to the OCC's standards governing the disclosure of SARs; clarify that the exclusive standard applicable to the disclosure of a SAR, or any information that would reveal the existence of a SAR, by the OCC is "to fulfill official duties consistent with the purposes of the BSA"; and modify the safe harbor provision in its rules to include changes made by the USA PATRIOT Act. This final rule is based upon a similar rule prepared by the Financial Crimes Enforcement Network (FinCEN).

- *Collective Investment Funds (12 CFR part 9).* The OCC plans to develop and issue a notice of proposed rulemaking to update the regulation of short term investment funds (STIFs). The proposal would seek comment on: A proposed requirement for STIFs to adopt a stable Net Asset Value (NAV) as a fund objective; a shortened period for securities maturities, liquidity standards, and a contingency funding plan; proposed stress testing of funds; a proposal to compare NAV to market value, contingency plans, and actions to be taken at certain variances between NAV and market value; proposed disclosures to fund participants; and a proposed bank notification to the OCC if certain events impact a STIF.

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. The banking agencies currently are working jointly on rules to implement provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) and to update capital standards to maintain and improve consistency in agency rules. These rules include revisions to implement the *International Convergence of Capital Management and Capital Standards: A Revised Framework (Basel II Framework)* and include:

- *Risk-Based Capital Standards: Market Risk:* In 2006, the banking agencies issued an NPRM on Market Risk. In the NPRM, OTS proposed to require savings associations to measure and hold capital to cover their exposure to market risk. The banking agencies did not finalize the 2006 NPRM. Subsequently, the Basel Committee directed international revisions, which were completed in July 2009. At that time, the banking agencies began drafting a new NPRM based upon the international revisions, as well as on the comments received on the 2006 NPRM. The banking agencies plan to issue a new NPRM in 2011.
- *Risk-Based Capital Standards: Standardized Approach:* In 2008, 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. 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. The banking agencies are considering how best to move forward in adopting this proposal, particularly in light of section 939A of the Dodd-Frank Act, which directs Federal agencies to review their regulations that reference or require the use of credit ratings to assess the creditworthiness of an instrument and replace such references with uniform standards of creditworthiness.
- *Risk-Based Capital Standards: Alternatives to the Use of Credit Ratings.* The banking agencies are seeking to gather information as they begin work toward revising their capital regulations to comply with the Dodd-Frank Act. Section 939A of the Act directs all Federal agencies to review their regulations that reference or require the use of credit ratings to assess the creditworthiness of an instrument. The Act further directs the agencies to remove such requirements and to substitute in their place uniform standards of creditworthiness.
- *Excessive Incentive-Based Compensation; Compensation Structure Disclosure:* Section 956 of the Dodd-Frank Act requires the banking agencies, the National Credit Union Administration (NCUA), the Securities and Exchange Commission (SEC), and the Federal Housing Finance Agency, to jointly prescribe regulations or guidance prohibiting any types of incentive-based payment arrangement, or any feature of any such arrangement, that the regulators determine encourages inappropriate risks by covered financial institutions by providing an executive officer, employee, director, or principal shareholder with excessive compensation, fees, or benefits, or that could lead to material financial loss to the covered financial institution. The Act also requires such agencies to jointly prescribe regulations or guidance requiring each covered financial institution to disclose to its regulator the structure of all incentive-based compensation arrangements offered by such institution sufficient to determine whether the compensation structure provides any officer, employee, director, or principal shareholder with excessive compensation or could lead to material financial loss to the institution.

In addition to the interagency risk-based capital regulatory project involving alternatives to the use of credit ratings referenced above, OTS also will undertake:

- *Alternatives to the Use of External Credit Ratings in the Regulations of the OTS:* Pursuant to the requirements of section 939 of the Dodd-Frank Act, OTS will review any non-capital regulation that requires the use of an assessment of creditworthiness of a security or money market instrument and any references to or requirements in regulations regarding credit ratings, and will remove references to or requirements of reliance on credit ratings and will substitute an alternative standard of creditworthiness.

OTS is also working on joint rulemakings with the OCC, FRB, and FDIC to implement regulations related to other statutes, including the Community Reinvestment Act (CRA) and the Gramm-Leach-Bliley Act (GLBA):

- *CRA Higher Education Loans final rule:* The banking agencies published a proposed rule on June 30, 2009, to implement section 1031 of the Higher Education Opportunity Act, which requires the agencies, when evaluating an institution's record of meeting community credit needs to consider, as a factor, low-cost education loans provided by the institution to low-income borrowers (74 FR 31209). The banking agencies plan to issue a final rule in the fall of 2010.
- *CRA Neighborhood Stabilization Program (NSP) final rule:* On June 24, 2010, the banking agencies published a proposed rule to revise the term "community development" to include loans, investments,

and services by institutions that support, enable, or facilitate projects or activities that meet the criteria described in section 2301(c)(3) of the Housing and Economic Recovery Act of 2008 and are conducted in designated target areas identified in plans approved by the U.S. Department of Housing and Urban Development under the NSP (75 FR 36016). The agencies plan to issue a final rule in the fall of 2010.

- *Recordkeeping Requirements for Securities Activities, Joint Notice of Proposed Rulemaking*: The GLBA requires the banking agencies to adopt recordkeeping requirements sufficient to facilitate and demonstrate compliance with the exceptions to the definitions of “broker” or “dealer” for banks in the Securities Exchange Act of 1934. The banking agencies plan to issue the NPRM in the fall of 2010.

Significant final rules issued by OTS during fiscal year 2010 include:

- *Risk-Based Capital Guidelines: Impact of Modifications to Generally Accepted Accounting Principles; Consolidation of Asset-Backed Commercial Paper Programs.* On January 28, 2010 (75 FR4636), the banking agencies modified their general risk-based capital standards and advanced risk-based capital adequacy framework to eliminate the exclusion of certain consolidated asset-backed commercial paper programs from risk-weighted assets; and permit the banking agencies to require banking organizations to treat structures that are not consolidated under accounting standards as if they were consolidated for risk-based capital purposes commensurate with the risk relationship of the banking organization to the structure.
- *S.A.F.E. Mortgage Licensing:* The banking agencies, the NCUA, and the Farm Credit Administration issued a joint final rule on July 28, 2010, to amend their rules to implement the Secure and Fair Enforcement for Mortgage Licensing Act (the S.A.F.E. Act) (75 FR 44656). These amendments require an employee of a depository institution or a depository institution subsidiary regulated by a Federal banking agency, or an employee of an institution regulated by the NCUA or FCA, that engages in the business of a mortgage loan originator to register with the Nationwide Mortgage Licensing System and Registry and to obtain a unique identifier. The amendments also provide that these regulated institutions must require their employees who act as mortgage loan originators to comply with the S.A.F.E. Act’s registration and unique identifier requirements and must adopt and follow written policies and procedures to assure compliance with such requirements.
- *Privacy Notices*: On December 1, 2009, OTS implemented section 728 of the Financial Services Regulatory Relief Act of 2006 by amending its privacy rules under the GLBA to include a safe harbor model privacy form (74 FR 62894). The banking agencies, the SEC, the Federal Trade Commission, and the Commodities Futures Trading Commission issued final amendments to their rules requiring that initial and annual privacy notices be sent to their customers. And, pursuant to section 728, the banking agencies adopted a model privacy form that financial institutions may rely on as a safe harbor to provide disclosures under the privacy rules.

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 the issuance of permits and authorizations 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.

TTB plans to pursue one significant regulatory action during FY 2011. In 2007, the Department approved the publication of 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. This regulatory action was initiated under section 105(e) of the Federal Alcohol Administration Act, 27 U.S.C. 205(e), which confers on the Secretary of the Treasury authority to promulgate regulations for the labeling of alcoholic beverages, including regulations that prohibit consumer deception and the use of misleading statements on labels and that ensure that such labels provide the consumer with adequate information as to the identity and quality of the product. TTB anticipates publication of a final rule in FY 2011.

In addition to the regulatory action described above, in FY 2011, TTB 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 (CFR). 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 parts in chapter I of title 27 of the CFR 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 parts of title 27 of the CFR 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 parts represent nearly all the tax revenue that TTB collects. The remaining five parts rated "high" consist of regulations covering imports and exports (part 27—Importation of Distilled Spirits, Wines, and Beer; part 28—Exportation of Alcohol; and part 44—Exportation of Tobacco Products and Cigarette Papers and Tubes, Without Payment of Tax, or With Drawback of Tax), as well as regulations addressing the American Viticultural Area program (part 9) and TTB procedures (part 70).

To date, related to the modernization plan, TTB has published notices of proposed rulemaking to revise part 19 and to amend part 9 and has reviewed the public comments received in response to those notices. TTB also plans to put forward to the Department for publication approval an advance notice of proposed rulemaking (ANPRM) for the revision of the beer regulations in part 25. We anticipate that the final rules for parts 9 and 19 and the ANPRM for part 25 will be published in FY 2011. In FY 2011, TTB will begin a modernization effort on the export regulations in part 28 and a crosscutting modernization effort to incorporate statutory changes into the regulations.

Allergen Labeling. In FY 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 Federal 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. In FY 2011, TTB will continue its review of mandatory allergen labeling with a view to preparing a final rule document that would take effect on the same date as the serving facts regulatory changes discussed above.

Other Wine Labeling Issues. In FY 2011, TTB will continue to act on petitions for the establishment of new American viticultural areas (AVAs) and for the modification of the boundaries of existing AVAs. TTB also will seek Departmental publication approval of a number of other wine labeling rulemaking documents for public comment in FY 2011, including a notice of proposed rulemaking to adopt new label designation standards for wines now generally described as “wine with natural flavors,” and an advance notice of proposed rulemaking seeking comments on a petition requesting that the regulations be amended to limit the use of American appellations to wines produced entirely from U.S. grapes.

Specially Denatured and Completely Denatured Alcohol Formulas. In FY 2011, TTB will submit for publication approval 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.

Alternation of Brewery Premises. In FY 2011, TTB will forward to the Department for publication approval a notice of proposed rulemaking to amend the TTB regulations to set forth specific standards for the approval and operation of alternating proprietorships at the same brewery premises. The proposed regulations will include standards for alternation agreements between host and tenant brewers as well as rules for recordkeeping and segregation of products made by different brewers.

Classification of Tobacco Products. In FY 2011, TTB will continue its review of standards for the classification of different tobacco products. In FY 2010, TTB published an advance notice seeking comments on appropriate standards to distinguish between pipe tobacco and roll-your-own tobacco. TTB will review comments in 2011 and proceed with further rulemaking as appropriate.

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 buy back and redeem 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 collateral pledged to secure deposits of public monies and other financial interests of the Federal Government.

During fiscal year 2011, BPD will accord priority to the following regulatory projects:

Savings Bond Issuing and Paying Agent Regulations. BPD plans to issue a final rule amending the savings bond issuing agent regulations (31 CFR part 317) to allow BPD to reduce the fee it pays issuing agents for submitting savings bond applications in paper form.

TreasuryDirect. BPD is ending the sale of paper savings bonds through payroll savings plans. In October 2010, BPD anticipates a rulemaking that will add electronic payroll savings plans to TreasuryDirect.

SellDirect. BPD plans to eliminate the SellDirect option from Legacy Treasury Direct and TreasuryDirect. The anticipated effective date for this rulemaking is December 31, 2010.

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 Governmentwide accounting programs. For fiscal year 2011, FMS' regulatory plan includes the following priorities:

Management of Federal Agency Disbursements. We are amending our regulation that describes the responsibilities of Federal agencies and recipients with respect to the electronic delivery of Federal payments and establishes the circumstances under which waivers from the electronic funds transfer (EFT) requirement are available. Federal law requires that, unless waived by the Secretary of the Treasury, all Federal payments, other than payments made under the Internal Revenue Code of 1986, must be made electronically, that is, by EFT. The amendments generally require individuals to receive Federal nontax payments by EFT, effective March 1, 2011. Individuals receiving Federal payments by check on the effective date, however, may continue to do so until February 28, 2013.

For Federal benefit recipients, this means that individuals who apply for Federal benefits on or after March 1, 2011, would receive their benefit payments by direct deposit. Individuals who do not choose direct deposit of their payments to an account at a financial institution would be enrolled in the Direct Express® Debit MasterCard® card program, a prepaid card program established pursuant to terms and conditions approved by FMS. Beginning on March 1, 2013, all recipients of Federal benefit and other non-tax payments would receive their payments by direct deposit, either to a bank account or to a Direct Express® card account.

Federal Government Participation in the Automated Clearing House. We are amending our regulation governing the use of the Automated Clearing House (ACH) system by Federal agencies. The amendments adopt, with some exceptions, the ACH Rules developed by NACHA—The Electronic Payments Association (NACHA), as the rules governing the use of the ACH Network by Federal agencies. We are issuing this rule to address changes that NACHA has made to the ACH Rules since the publication of NACHA's 2007 ACH Rules book. These changes include new requirements to identify all international payment transactions using a new Standard Entry Class Code and to include certain information in the ACH record sufficient to allow the receiving financial institution to identity the parties to the transaction and to allow transactions to be screened for compliance with for Office of Foreign Assets Control (OFAC) requirements.

In addition, the amendments will: (1) Streamline the process for reclaiming post-death benefit payments from financial institutions; (2) require financial institutions to provide limited account-related customer information related to the reclamation of post-death benefit payments as permitted under the Payment Transactions Integrity Act of 2008; and (3) modify our previous guidance regarding the requirement that non-vendor payments be delivered to a deposit account in the name of the recipient.

Indorsement and Payment of Checks Drawn on the United States Treasury. By amending our regulation governing the indorsement and payment of checks drawn on the United States Treasury, we will provide Treasury with authority to debit a financial institution's reserve account at the financial institution’s servicing Federal Reserve Bank for all check reclamations that the financial institution has not protested. Financial institutions will continue to have the right to file a protest with FMS if they believe a proposed reclamation is in error.

Debt Collection Authorities Under the Debt Collection Improvement Act. We are amending our regulation governing the offset of Federal tax refunds to collect delinquent State income tax obligations. The SSI Extension for Elderly and Disabled Refugees Act of 2008 amended section 6402 of the Internal Revenue Code to authorize the offset of Federal tax refunds to collect certain delinquent unemployment compensation debts owed to States by taxpayers. Treasury will incorporate the procedures necessary to collect State unemployment compensation debts reported by States as part of our centralized Treasury Offset Program.

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.

Anti-Garnishment. On April 19, 2010, Treasury issued a joint proposed rule with the Office of Personnel Management, the Railroad Retirement Board, the Social Security Administration, and Veterans Affairs. Treasury plans to promulgate a final joint rule, with the Federal benefit agencies, to give force and effect to various benefit agency statutes that exempt Federal benefits from garnishment. Typically, upon receipt of a garnishment order from a State court, financial institutions will freeze an account as they perform due diligence in complying with the order. The joint rule will address this practice of account freezes to ensure that benefit recipients have access to a certain amount of lifeline funds, while garnishment orders or other legal processes are resolved or adjudicated, and will provide financial institutions with specific administrative instructions to carry out upon receipt of a garnishment order. The joint rule will apply to financial institutions but is not expected to have specific provisions for consumers, debt collectors, or banking regulators. However, the banking regulators would enforce the policy in cases of noncompliance by means of their general authorities.

Small Business Jobs Act

The Small business Jobs Act created two programs that Treasury is implementing during FY2011. First, the Act established the Small Business Lending Fund, a $30 billion fund to help small and community banks provide new loans to small businesses. The Act also established the State Small Business Credit Initiative, which provides funding to strengthen state small business lending programs. As required by the Act, Treasury expects issue guidance and regulations to implement these programs.

Federal Insurance Office (FIO)

Title V of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank” or “Act”) established the Federal Insurance Office (FIO) with the Department of the Treasury. FIO will provide the federal government with dedicated expertise regarding the insurance industry. The Office will monitor the insurance industry, including identifying gaps or issues in the regulation of insurance that could contribute to a systemic crisis in the insurance industry or the United States financial system. FIO may receive and collect data and information on and from the insurance industry and insurers, enter into information-sharing agreements, analyze and disseminate data and information, and issue reports and regulations.

Office of Financial Research

Title I, Subtitle B of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203) (“Dodd-Frank Act”) establishes the Office of Financial Research (OFR). The OFR is an office within the Department of the Treasury and will be headed by a Director, appointed by the President, by and with the advice and consent of the Senate. Congress created the OFR to help facilitate financial market data gathering and analyses for the new Financial Stability Oversight Council (FSOC), which is responsible for monitoring the financial system as a whole in order to promote financial stability and for the member agencies of the FSOC. Section 153(c) of the Dodd-Frank Act provides that the OFR “shall issue rules, regulations, and orders” to carry out specified purposes and duties under the Act.