



Upcoming Rules Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act

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Summary

Congress delegates rulemaking authority to agencies for a variety of reasons and in a variety of ways. The Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203, July 21, 2010, hereafter the “Dodd-Frank Act”) is a particularly noteworthy example of congressional delegation of rulemaking authority to federal agencies. A previous CRS report identified more than 300 provisions in the act that require or permit the issuance of rules to implement the legislation.

One way for Congress to identify upcoming Dodd-Frank Act rules is by reviewing the Unified Agenda of Federal Regulatory and Deregulatory Actions, which is published twice each year (spring and fall) by the Regulatory Information Service Center (RISC), a component of the U.S. General Services Administration, for the Office of Management and Budget’s (OMB) Office of Information and Regulatory Affairs (OIRA). The Unified Agenda lists upcoming activities, by agency, in five separate categories or stages of the rulemaking process: the prerule stage, the proposed rule stage, the final rule stage, long-term actions, and completed actions. All entries in the Unified Agenda have uniform data elements, including the department and agency issuing the rule, the title of the rule, its Regulation Identifier Number (RIN), an abstract describing the nature of action being taken, and a timetable showing the dates of past actions and a projected date for the next regulatory action. Each entry also contains an element indicating the priority of the regulation (e.g., whether it is considered “economically significant” under Executive Order 12866, or whether it is considered a “major” rule under the Congressional Review Act).

This report examines the most recent edition of the Unified Agenda, published on December 20, 2010 (the first edition that RISC compiled and issued after the enactment of the Dodd-Frank Act). The report identifies upcoming proposed and final rules listed in the Unified Agenda that are expected to be issued pursuant to the Dodd-Frank Act. The **Appendix** lists these upcoming proposed and final rules in a table. The report also briefly discusses the long-term actions listed in the Unified Agenda, as well as some options for congressional oversight over the Dodd-Frank Act rules.

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Introduction

Federal regulations generally start with an act of Congress and are the means by which statutes are implemented and specific requirements are established. The Dodd-Frank Wall Street Reform and Consumer Protection Act (hereafter, the “Dodd-Frank Act,” P.L. 111-203, July 21, 2010) is a particularly noteworthy example of congressional delegation of rulemaking authority to federal agencies.¹ A previous CRS report identified 330 provisions in the Dodd-Frank Act that require or permit the issuance of rules to implement the legislation.² Nearly 80% of these 330 provisions assign rulemaking authorities or responsibilities to one of four agencies: the Securities and Exchange Commission (SEC), the Board of Governors of the Federal Reserve System (Board of Governors), the Commodity Futures Trading Commission (CFTC), and the newly created Consumer Financial Protection Bureau (CFPB).

The regulations that these and other agencies will issue pursuant to the Dodd-Frank Act are expected to have a major effect on how the legislation is implemented. As one observer put it, the rules would “turn reform into reality.”³ Shortly after the legislation was enacted, another observer said, “In most pieces of legislation like this, the real teeth is in the regulations.”⁴ Another said that the Dodd-Frank Act “is complicated and contains substantial ambiguities, many of which will not be resolved until regulations are adopted.”⁵ An article in the *New York Times* stated that the legislation

is basically a 2,000-page missive to federal agencies, instructing regulators to address subjects ranging from derivatives trading to document retention. But it is notably short on specifics, giving regulators significant power to determine its impact—and giving partisans on both sides a second chance to influence the outcome.⁶

¹ Among other things, the Dodd-Frank Act created a new Financial Stability Oversight Council with the authority to designate certain financial firms as “systemically significant,” thereby subjecting them to increased regulation; consolidated consumer protection responsibilities in a new Consumer Financial Protection Bureau; consolidated bank regulation by merging the Office of Thrift Supervision into the Office of the Comptroller of the Currency; requires more derivatives to be cleared and traded through regulated exchanges; and attempts to reduce the incentives to take excessive risks by reforming executive compensation and securitization. For more information on the Dodd-Frank Act, see CRS Report R41350, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Issues and Summary*, coordinated by Baird Webel.

² CRS Report R41472, *Rulemaking Requirements and Authorities in the Dodd-Frank Wall Street Reform and Consumer Protection Act*, by Curtis W. Copeland. Most of these provisions amended statutes that were first enacted decades earlier (e.g., the Securities and Exchange Act of 1934, the Commodity Exchange Act, the Investment Advisers Act of 1940, and the Truth in Lending Act). As used in this report, the term “rulemaking” includes all agency actions that may result in rules, including any amendments to existing regulations and rules that are issued without notice and comment.

³ Gretchen Morgenson, “After U.S. Financial Reform Bill, the Hard Work Begins,” *International Herald Tribune*, August 30, 2010, p. 17.

⁴ Lorraine Mirabella, “Lawyers Await Regulations to Spring from Financial Reform,” *McClatchy-Tribune Business News*, July 27, 2010, quoting Cindy Allner, a principal with Miles & Stockbridge in Baltimore.

⁵ “The Uncertainty Principle: Dodd-Frank Will Require at Least 243 New Federal Rule-makings,” *Wall Street Journal*, July 14, 2010, available at <http://online.wsj.com/article/SB10001424052748704288204575363162664835780.html>.

⁶ Binyamin Appelbaum, “On Finance Bill, Lobbying Shifts to Regulations,” *New York Times*, June 27, 2010, p. A1.

Mandatory and Discretionary Rulemaking Provisions

The manner in which Congress delegates rulemaking authority to federal agencies determines the amount of discretion the agencies have in crafting the rules and, conversely, the amount of control that Congress retains for itself. Some of the 330 rulemaking provisions in the Dodd-Frank Act are quite specific, stipulating the substance of the rules, whether certain consultative or rulemaking procedures should be used, and deadlines for their issuance or implementation.⁷ However, more than half of the 330 rulemaking provisions in the Dodd-Frank Act appear to be discretionary in nature, stating that certain agencies “may” issue rules to implement particular provisions, or that the agencies shall issue such rules as they “determine are necessary and appropriate.” Therefore, the agencies may decide to promulgate rules regarding all, some, or none of these provisions, and often have broad discretion to decide what these rules will contain.

In addition, there are numerous other provisions in the Dodd-Frank Act that require regulatory agencies to take certain actions, but do not specifically mention “regulations” or “rules.” For example, Section 732 of the act amended Section 4d of the Commodity Exchange Act (7 U.S.C. § 6d), and states that the CFTC

shall require that futures commission merchants and introducing brokers implement conflict-of-interest systems and procedures that (1) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in trading or clearing activities might potentially bias the judgment or supervision of the persons; and (2) address such other issues as the Commission determines to be appropriate.

It is possible that many of these kinds of provisions will, either by the agencies’ choice or by legal necessity, be implemented through the rulemaking process.⁸

Congressional Oversight and the Unified Agenda

In his book *Building a Legislative-Centered Public Administration*, David H. Rosenbloom noted that rulemaking and lawmaking are functionally equivalent (both have the force of law), and that when agencies issue rules they, in effect, legislate. He went on to say that the “Constitution’s grant of legislative power to Congress encompasses a responsibility to ensure that delegated authority is exercised according to appropriate procedures.”⁹ Congressional oversight of

⁷ Although the law contains a number of deadlines for the issuance of rules, rulemaking deadlines are generally somewhat difficult to enforce, unless the statute itself contains an enforcement mechanism. See, e.g., *In re United Mine Workers of Am. Int’l Union*, 190 F.3d 545, 553-56 (D.C. Cir. 1999).

⁸ Case law and guidance from the Office of Management and Budget indicate that agencies cannot attempt to bind affected parties through policy statements and other non-rule documents. See, for example, *Appalachian Power Co. v. Environmental Protection Agency*, 208 F.3d 1015 (D.C. Cir. 2000); and Office of Management and Budget, “Final Bulletin for Agency Good Guidance Practices,” 72 *Federal Register* 3432, January 25, 2007, which states (on p. 3433) that “The courts, Congress, and other authorities have emphasized that rules which do not merely interpret existing law or announce tentative policy positions but which establish new policy positions that the agency treats as binding must comply with the (Administrative Procedure Act’s) notice-and-comment requirements, regardless of how they initially are labeled.”

⁹ David H. Rosenbloom, *Building a Legislative-Centered Public Administration: Congress and the Administrative State, 1946-1999* (Tuscaloosa, AL: The University of Alabama Press, 2000), pp. 133-134.

rulemaking can address a variety of issues, including the substance of the rules issued pursuant to congressional delegations of authority and the process by which those rules are issued.

In order for Congress to oversee the regulations being issued to implement the Dodd-Frank Act, it would help to have an early sense of what rules the agencies are going to issue, and when. The previously mentioned CRS report identifying the provisions in the act that require or permit rulemaking can be useful in this regard.¹⁰ However, the legislation did not indicate when some of the mandatory rules should be issued, some of the rules that the agencies are permitted (but not required) to issue may never be developed, and many of the rules that the agencies will issue may not be specifically mentioned in the act.

The Unified Agenda

One way for Congress to identify upcoming Dodd-Frank Act rules is by reviewing the Unified Agenda of Federal Regulatory and Deregulatory Actions (hereafter, “Unified Agenda”), which is published twice each year (spring and fall) by the Regulatory Information Service Center (RISC), a component of the U.S. General Services Administration, for the Office of Management and Budget’s (OMB) Office of Information and Regulatory Affairs (OIRA).¹¹ The Unified Agenda helps agencies fulfill two current transparency requirements:

- The Regulatory Flexibility Act (5 U.S.C. § 602) requires that all agencies publish semiannual regulatory agendas in the *Federal Register* describing regulatory actions that they are developing that may have a significant economic impact on a substantial number of small entities.¹²
- Section 4 of Executive Order 12866 on “Regulatory Planning and Review” requires that all executive branch agencies “prepare an agenda of all regulations under development or review.”¹³ The stated purposes of this and other planning requirements in the order are, among other things, to “maximize consultation and the resolution of potential conflicts at an early stage” and to “involve the public and its State, local, and tribal officials in regulatory planning.” The executive order also requires that each agency prepare, as part of the fall edition of the Unified Agenda, a “regulatory plan” of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form during the upcoming fiscal year.

The Unified Agenda lists upcoming regulatory activities, by agency, in five separate categories or stages of the rulemaking process:

- *prerule stage* (i.e., advance notices of proposed rulemaking (ANPRM) that are expected to be issued in the next 12 months);¹⁴

¹⁰ CRS Report R41472, *Rulemaking Requirements and Authorities in the Dodd-Frank Wall Street Reform and Consumer Protection Act*, by Curtis W. Copeland.

¹¹ The current edition of the Unified Agenda is available at <http://www.reginfo.gov/public/do/eAgendaMain>.

¹² This requirement applies to all agencies covered by the Administrative Procedure Act (5 U.S.C. 551(1)).

¹³ Executive Order 12866, “Regulatory Planning and Review,” 58 *Federal Register* 51735, October 4, 1993. Although most of the requirements in this executive order do not apply to independent regulatory agencies (e.g., the Securities and Exchange Commission), this section includes these agencies.

¹⁴ According to the Unified Agenda, an ANPRM is “a preliminary notice, published in the *Federal Register*, (continued...)”

- *proposed rule stage* (i.e., notices of proposed rulemaking (NPRM) that are expected to be issued in the next 12 months, or for which the closing date of the comment period is the next step);
- *final rule stage* (i.e., final rules or other final actions that are expected to be issued in the next 12 months);
- *long-term actions* (i.e., items under development that agencies do not expect to take action on in the next 12 months); and
- *completed actions* (i.e., final rules or rules that have been withdrawn since the last edition of the Unified Agenda).

All entries in the Unified Agenda have uniform data elements, including the department and agency issuing the rule, the title of the rule, its Regulation Identifier Number (RIN),¹⁵ an abstract describing the nature of action being taken, and a timetable showing the dates of past actions and a projected date (sometimes just the projected month and year) for the next regulatory action. Each entry also contains an element indicating the priority of the regulation (e.g., whether it is considered “economically significant” under Executive Order 12866, or whether it is considered a “major” rule under the Congressional Review Act).¹⁶

There is no penalty for issuing a rule without a prior notice in the Unified Agenda, and some prospective rules listed in the Unified Agenda never get issued, reflecting the fluid nature of the rulemaking process. Nevertheless, the Unified Agenda can help Congress and the public know what regulatory actions are about to occur; and it arguably provides federal agencies with the most systematic, government-wide method to alert the public about their upcoming proposed rules. A previously issued CRS report indicated that about three-fourths of the significant proposed rules published after having been reviewed by OIRA in 2008 were previously listed in the “proposed rule” section of the Unified Agenda.¹⁷

(...continued)

announcing that an agency is considering a regulatory action. An agency may issue an ANPRM before it develops a detailed proposed rule. An ANPRM describes the general area that may be subject to regulation and usually asks for public comment on the issues and options being discussed. An ANPRM is issued only when an agency believes it needs to gather more information before proceeding to a notice of proposed rulemaking.”

¹⁵ RINs are assigned by RISC, and the Office of Management and Budget has asked agencies to include RINs in the headings of their rulemaking documents when they are published in the *Federal Register* to make it easier for the public and agency officials to track the publication history of regulatory actions. For a copy of this memorandum, see http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/IncreasingOpenness_04072010.pdf.

¹⁶ Section 3(f) of Executive Order 12866 defines a “significant” regulatory action as one that is likely to result in a rule that may “(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive order.” Regulatory actions meeting the first of these four criteria are considered “economically significant.” The definition of a “major” rule under the Congressional Review Act (5 U.S.C. §§801-808) is essentially the same as “economically significant.”

¹⁷ CRS Report R40713, *The Unified Agenda: Implications for Rulemaking Transparency and Participation*, by Curtis W. Copeland.

This Report

The December 20, 2010, edition of the Unified Agenda and Regulatory Plan is the first edition that RISC has compiled and issued after the enactment of the Dodd-Frank Act.¹⁸ Federal agencies were required to submit data to RISC for the Unified Agenda by September 10, 2010, although some of the agencies did not submit the data until early October.¹⁹ Therefore, the information in the Unified Agenda was current as of September/October 2010.

This report examines the December 20, 2010, edition of the Unified Agenda and identifies upcoming proposed and final rules that are expected to be issued pursuant to the Dodd-Frank Act, as well as long-term actions. To identify those upcoming rules and actions, CRS searched all fields of the Unified Agenda (all agencies) using the term “Dodd-Frank,” identifying items in the proposed rule and final rule stages of rulemaking and the “long-term actions” category. The results included all actions that were being issued pursuant to the Dodd-Frank Act, or that would have an impact on its implementation.²⁰

The results of the searches for proposed and final rules are provided in the **Appendix** to this report. For each upcoming proposed and final rule listed, the table identifies the department and agency expected to issue the rule, the title of the rule and its RIN, an abstract describing the anticipated rulemaking action, and the date that the proposed or final rule was expected to be issued. The abstracts presented in the table were taken verbatim from the Unified Agenda entries, although CRS sometimes shortened them or used other information from the entries to identify the section of the Dodd-Frank Act being implemented by the regulatory action when the agency-provided abstracts did not do so. Within the proposed and final rule sections of the table, the entries are organized in terms of the expected dates of issuance, with the earliest dates presented first.

Upcoming and Recently Issued Dodd-Frank Act Proposed Rules

The December 20, 2010, edition of the Unified Agenda listed 30 Dodd-Frank Act-related actions in the “proposed rule stage” of rulemaking (indicating that the agencies expected to issue proposed rules on the topics within the next 12 months, or for which the closing dates of the comment periods are the next step). Twenty-two of the 30 upcoming proposed rules were expected to be issued by the CFTC. Four of the remaining eight proposed rules were to be issued by the Department of the Treasury’s Office of Thrift Supervision (OTS) or the Comptroller of the Currency (two rules each); two rules were to be issued by the SEC; and the remaining rule was to be issued by the Department of Housing and Urban Development’s (HUD) Office of Housing.

¹⁸ The Dodd-Frank Act was enacted on July 21, 2010, after the spring edition of the Unified Agenda was published.

¹⁹ E-mail from John Thomas, Director, Regulatory Information Service Center, January 4, 2010.

²⁰ For example, the Federal Trade Commission indicated that it was issuing one rule under the Fair and Accurate Credit Transactions Act of 2003, but noted that under the Dodd-Frank Act, the responsibilities would be transferred on July 21, 2011, to the Consumer Financial Protection Bureau. Although not issued pursuant to the Dodd-Frank Act, this rule was included because it could have an impact on the Dodd-Frank Act’s implementation.

Although most of these Unified Agenda entries referred to specific upcoming proposed rules, one of the SEC entries was more general. Entitled “Proposed Rules Under the Dodd-Frank Wall Street Reform and Consumer Protection Act,” the entry said the following:

The Dodd-Frank Wall Street Reform and Consumer Protection Act was enacted on July 21, 2010. The Act includes a significant number of rulemaking provisions applicable to the Commission. The Commission is in the process of considering the legislation and determining whether and how to consolidate some of the rulemakings. It will add specific rules under the Act to the Regulatory Flexibility Act agenda as it proceeds.

Therefore, it appears that the SEC could ultimately issue multiple proposed rules related to the Dodd-Frank Act pursuant to this Unified Agenda entry, or the SEC could issue no proposed rules.

Timing of Upcoming Proposed Rules

The Unified Agenda indicated that 25 upcoming proposed rules pursuant to the Dodd-Frank Act would be issued in December 2010. As of January 14, 2011, 20 of these 25 proposed rules had been published.²¹ As discussed later in this report, most of these published proposed rules are expected to result in final rules at some point in 2011. The five proposed rules that the Unified Agenda indicated would be issued in December 2010 but that had not been issued as of January 14, 2011, were as follows:

- A Treasury/OTS rule on “Alternatives to the Use of External Credit Ratings in the Regulatory Capital Guidelines of the Federal Banking Agencies”
- A Treasury/OTS rule on “Alternatives to the Use of External Credit Ratings in the Regulations of the OTS”
- A CFTC rule on “Identity Theft Red Flag Rules for CFTC Regulated Institutions Under Fair Credit Reporting Act”
- A CFTC rule on “Position Limits on Agricultural Commodities”
- A CFTC rule on “Position Limits on Exempt Commodities”

Three of the upcoming Dodd-Frank proposed rules were expected to be issued in March 2011:

- A HUD/Office of Housing rule on “Housing Counseling: New Program Requirements”
- A Treasury/OCC rule on “Regarding Alternatives to the Use of External Credit Ratings in the Regulatory Capital Guidelines of the Federal Banking Agencies”
- A Treasury/OCC rule on “Regarding Alternatives to the Use of External Credit Ratings in the Regulations of the OCC”

One of the upcoming Dodd-Frank proposed rules was expected to be issued in April 2011 (a CFTC action entitled “Volcker Rule” which would reportedly proposed limitations on proprietary trading, investment in hedge funds, and other activities by financial institutions); and one was expected to be issued in August 2011 (the previously

²¹ To identify the 20 proposed rules that had been published by January 14, 2011, see the **Appendix** of this report.

mentioned SEC general entry entitled “Proposed Rules Under the Dodd-Frank Wall Street Reform and Consumer Protection Act”).

Notable Proposed Rules

The Unified Agenda indicated that none of the 30 upcoming Dodd-Frank Act proposed rules would be “economically significant” or “major” rules (i.e., none were expected to have a \$100 million annual effect on the economy). However, one of the rules was considered important enough to have been included in the regulatory plan: the HUD/Office of Housing rule on “Housing Counseling: New Program Requirements.” Expected to be published in March 2011, the Unified Agenda indicated that the proposed rule would “amend HUD’s regulations for the Housing Counseling program to address the new program requirements and certification requirements for HUD approved housing counselors as provided by the [Dodd-Frank Act],” and would “enhance the choices and protections afforded borrowers participating in HUD’s single family mortgage insurance programs.”

The Unified Agenda indicated that 20 of the 30 upcoming proposed rules were “other significant,” indicating that although they were not listed in the regulatory plan or expected to be “major” or “economically significant,” they were expected to be significant enough to be reviewed by OIRA under Executive Order 12866, or were considered a priority by the agency head.²² Seventeen of the 20 rules were to be issued by CFTC. These “other significant” proposed rules included the following:

- A HUD/Office of Housing rule on “Housing Counseling: New Program Requirements”
- A Treasury/OTS rule on “Alternatives to the Use of External Credit Ratings in the Regulatory Capital Guidelines of the Federal Banking Agencies”
- A CFTC rule on “Governance and Possible Limits on Ownership and Control (DCOs, SEFs, and DCMs)”
- A CFTC rule on “Identity Theft Red Flag Rules for CFTC Regulated Institutions Under Fair Credit Reporting Act”
- A CFTC rule on “Swap Execution Facilities Registration Requirements and Core Principle Rulemaking, Interpretation and Guidance”

Expected Effects on Small Businesses

The Regulatory Flexibility Act (5 U.S.C. §§ 601-612) generally requires federal agencies to assess the impact of their forthcoming regulations on “small entities” (i.e., small businesses, small governments, and small not-for-profit organizations).²³ The agencies indicated that none of the upcoming proposed rules pursuant to the Dodd-Frank Act would require a regulatory flexibility

²² Executive Order 12866 requires covered agencies (all except independent regulatory agencies like the Securities and Exchange Commission) to submit their “significant” rules to OIRA for review before publication as a proposed or final rule. For more information, see CRS Report RL32397, *Federal Rulemaking: The Role of the Office of Information and Regulatory Affairs*, by Curtis W. Copeland.

²³ For more information, see CRS Report RL34355, *The Regulatory Flexibility Act: Implementation Issues and Proposed Reforms*, by Curtis W. Copeland.

analysis, and only one of the rules would have any effect on small entities—the Federal Reserve System’s “Regulation Z—Truth in Lending” proposed rule, which FRS indicated would be issued in December 2010.²⁴

Upcoming Dodd-Frank Act Final Rules

The December 20, 2010, edition of the Unified Agenda listed 12 Dodd-Frank Act-related actions in the “final rule stage” of rulemaking (indicating that the agency expected to issue final rules or take other final actions on the subjects within the next 12 months). Eight of the 12 agenda entries were from the SEC; two were from the Federal Trade Commission (FTC); and two were from the Occupational Safety and Health Administration (OSHA) within the Department of Labor.

However, it is possible that these entries will not result in 12 final rules. As was the case for upcoming proposed rules under the Dodd-Frank Act, one of the SEC final rule entries in the Unified Agenda (“Final Rules under the Dodd-Frank Wall Street Reform and Consumer Protection Act”) was very general:

The Dodd-Frank Wall Street Reform and Consumer Protection Act was enacted on July 21, 2010. The Act includes a significant number of rulemaking provisions applicable to the Commission. Some of the provisions require final rulemakings. The Commission is in the process of considering the legislation and determining whether and how to consolidate some of the rulemakings. It will add specific rules under the Act to the Regulatory Flexibility Act agenda as it proceeds.

Although this Unified Agenda entry indicated that the upcoming action would be an interim final rule to be issued in September 2011, the rule’s legal authority was characterized as “Not Yet Determined.” Therefore, it appears that the SEC could ultimately issue multiple final rules related to the Dodd-Frank Act pursuant to this Unified Agenda entry, or the SEC could issue no final rules.

Three other SEC “final rule” entries (two of which were entitled “References to Ratings of Nationally Recognized Statistical Rating Organizations,”²⁵ and one on “Security Ratings”²⁶) were scheduled for action in July 2011. All three entries referenced prior notices of proposed rulemaking, with the agency indicating that it was considering how to proceed in light of the Dodd-Frank Act. Therefore, these entries may result in a final rule, or may result in the agency concluding action without issuing a final rule.

Another SEC final rule entry was entitled “Transitional Registration as a Municipal Advisor,” and references an interim final rule that was issued in September 2010 that is effective through

²⁴ The proposed rule was actually published on December 16, 2010 (75 *Federal Register* 78636). FRS ultimately did conduct a regulatory flexibility analysis for this rule.

²⁵ The Unified Agenda contained two separate entries on this issue with the same title but different RINS. It is not clear whether this is one rule or two rules. The SEC published a proposed rule on this issue in 2008, and is reportedly considering how to proceed in light of the Dodd-Frank Act.

²⁶ The SEC published a proposed rule on this issue in 2008, and is reportedly considering how to proceed in light of the Dodd-Frank Act.

December 2011. The agency did not indicate whether this interim final rule would be continued, or whether it would just be allowed to expire.

Timing of Upcoming Final Rules

The Unified Agenda indicated that one FTC final rule on “Rulemaking Proceeding With Respect to Mortgage Loans” would be issued in December 2010, and that rule was issued on schedule.²⁷ As of January 14, 2011, the remaining 11 upcoming Dodd-Frank Act final rules had not been issued. Three of those rules were scheduled to be issued during the first two months of 2011:

- Two SEC rules on “Reporting of Proxy Votes on Executive Compensation and Other Matters,” and “Shareholder Approval of Executive Compensation and Golden Parachute Compensation,” both of which were expected to be issued in January 2011
- An FTC rule on the “Fair and Accurate Credit Transactions Act of 2003,” which was scheduled to be issued in February 2011

One other Dodd-Frank Act rule was scheduled for the first half of the year—an April 2011 SEC final rule on “Family Offices” (which is expected to define the type of “family offices” that would be excluded from the definition of an investment adviser under the Investment Advisers Act of 1940).

The remaining Dodd-Frank Act final rules were not expected to be issued until the later part of 2011. For example, two OSHA final rules were scheduled for September 2011—one on “Procedures for the Handling of Retaliation Complaints Under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, As Amended”; and one on “Complaints Under the Employee Protection Provision of the Consumer Financial Protection Act of 2010, Section 1057 of the Dodd-Frank Wall Street Reform and Consumer [Protection Act].” OSHA indicated that both of these regulations would be issued as interim final rules.

Notable Upcoming Final Rules

None of the upcoming final rules pursuant to the Dodd-Frank Act were included in the regulatory plan, and none were considered “economically significant” or “major” rules. Three of the rules were considered “other significant,” indicating that they could be reviewed by OIRA, or were considered a priority by the agency’s leadership:

- A DOL/OSHA rule on “Procedures for the Handling of Retaliation Complaints Under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, As Amended”
- A DOL/OSHA rule on “Complaints Under the Employee Protection Provision of the Consumer Financial Protection Act of 2010, Section 1057 of the DODD-FRANK Wall Street Reform and Consumer”
- An FTC rule on “Fair and Accurate Credit Transactions Act of 2003”

²⁷ U.S. Federal Trade Commission, “Mortgage Assistance Relief Services,” *75 Federal Register* 75092, December 1, 2010.

Effects on Small Entities

Two of the upcoming final rules under the Dodd-Frank Act were expected to trigger the requirement for an analysis under the Regulatory Flexibility Act:

- An SEC rule on “Shareholder Approval of Executive Compensation and Golden Parachute Compensation”
- An SEC rule on “Transitional Registration as a Municipal Advisor”

Two other rules were expected to have an impact on small entities, although not enough to require a regulatory flexibility analysis:

- An FTC rule on “Fair and Accurate Credit Transactions Act of 2003”
- An FTC rule on “Rulemaking Proceeding With Respect to Mortgage Loans”

Proposed Rules Leading to Final Rules

As noted earlier in this report, 20 of the 25 proposed rules that were expected to be issued in December 2010 had been published by January 14, 2011. The Unified Agenda indicated that 17 of these 20 proposed rules had final rule statutory deadlines at some point during 2011, were expected to result in final rules at some point during 2011, or both.²⁸ Fifteen of these 17 final rules were expected to be issued by CFTC. For example, see the following rules:

- A CFTC proposed rule on “Larger Trader Reporting” was published on November 2, 2010, and the statutory deadline for the final rule is reportedly January 18, 2011
- A CFTC proposed rule on “Review of Rules To Find Alternatives to Reliance of Credit Ratings” was published on November 2, 2010, and the final rule was expected to be issued in March 2011
- A CFTC proposed rule on “Whistleblowers” was published on December 6, 2010, and the final rule was expected to be issued in April 2011
- A CFTC proposed rule on “Systemically Important DCO Rules Authorized Under Title VII” was published on October 14, 2010, and the final rule was expected to be issued in June 2011
- An SEC proposed rule on “Definitions Contained in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act” was published on December 21, 2010, and the final rule was expected to be issued in July 2011

Therefore, many more Dodd-Frank Act final rules may be published in 2011 than were listed in the “final rule” section of the Unified Agenda.

²⁸ See the **Appendix** of this report for the details regarding these 17 rules.

Dodd-Frank Act Long-Term Actions

As noted earlier in this report, the Unified Agenda also identifies “long-term actions”—i.e., regulatory actions that are under development in the agencies that the agencies do not expect to take action on in the next 12 months. The December 20, 2010, edition of the Unified Agenda listed two long-term actions related to the Dodd-Frank Act—one each by CFTC and the Federal Deposit Insurance Corporation (FDIC). In the CFTC entry, the agency stated that the “Commission is directed by the Dodd-Frank Act of 2010, to adopt an interim final rule (IFR) to establish a timeframe for reporting to a registered swap data repository swaps entered into prior to enactment of the Dodd-Frank Act whose terms had not expired on the date of enactment.” CFTC published the interim final rule on October 14, 2010,²⁹ and the agency indicated that the nature and timing of its next step was “to be determined.”

The FDIC entry indicated that the Dodd-Frank Act “requires Federal agencies to review their regulations that (1) require an assessment of the credit-worthiness of a security or money market instrument and (2) contain references to or requirements regarding credit ratings. In addition, the agencies are required to remove such requirements that refer to or rely upon credit ratings, and to substitute in their place uniform standards of credit-worthiness.” FDIC and three other agencies jointly published an advance notice of proposed rulemaking on August 25, 2010,³⁰ seeking comment on alternative standards of credit-worthiness that may be used for risk-based capital requirements. The agency said its next step was “undetermined.”

Concluding Observations

As noted earlier in this report, when federal agencies issue substantive regulations, they are carrying out legislative authority delegated to them by Congress. Therefore, it is appropriate for Congress to oversee the rules that agencies issue to ensure that they are consistent with congressional intent and the rulemaking requirements established in various statutes and executive orders. In order for Congress to oversee the rules being issued pursuant to the Dodd-Frank Act, it must first know that they are being issued—ideally as early as possible. The Unified Agenda is perhaps the best vehicle to provide that early information, describing not only what rules agencies are expected to issue, but also providing information regarding their significance and timing.

However, some of the entries in the December 20, 2010, edition of the Unified Agenda related to the Dodd-Frank Act do not identify particular upcoming rules, and therefore are not as helpful as other entries. For example, the SEC included entries in both the proposed and final rule sections of the Unified Agenda stating that the Dodd-Frank Act “includes a significant number of rulemaking provisions applicable to the Commission,” and that the agency was considering how

²⁹ U.S. Commodity Futures Trading Commission, “Interim Final Rule for Reporting Pre-enactment Swap Transactions,” 75 *Federal Register* 63080, October 14, 2010. Section 729 of the Dodd-Frank Act required the CFTC to adopt the interim final rule within 90 days of enactment.

³⁰ U.S. Department of the Treasury, Office of the Comptroller of the Currency; Federal Reserve System; Federal Deposit Insurance Corporation; and Department of the Treasury, Office of Thrift Supervision, “Advance Notice of Proposed Rulemaking Regarding Alternatives to the Use of Credit Ratings in the Risk-Based Capital Guidelines of the Federal Banking Agencies,” 75 *Federal Register* 52283, August 25, 2010.

to proceed. Therefore, the SEC may issue a dozen or more proposed and final rules pursuant to this provision, or may issue no rules at all.

Congressional Oversight Options

Congress has a range of tools available to oversee the rules that federal agencies are expected to issue to implement the Dodd-Frank Act, including oversight hearings and confirmation hearings for the heads of regulatory agencies. Individual members of Congress may also participate in the rulemaking process by, among other things, meeting with agency officials and filing public comments.³¹ Congress, committees, and individual members can also request that the Government Accountability Office (GAO) evaluate the agencies' rulemaking activities. However, the act itself contains more than 40 provisions requiring GAO to conduct studies and write reports. For example, see the following:

- Section 412 of the act requires GAO to examine compliance costs associated with SEC rules regarding custody of funds or securities of clients by investment advisers, and any additional costs if a portion of a rule relating to operational independence is eliminated. GAO is required to submit a report on the results of the study to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services not later than three years after the date of enactment (i.e., by July 21, 2013).
- Section 939E requires GAO to study the feasibility and merits of creating an independent professional organization for rating analysts employed by nationally recognized statistical rating organizations. GAO is to submit a report on the results of the study to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services not later than one year after the date of publication of the rules issued by the commission pursuant to Section 936 of the act.
- Section 1421 requires GAO to submit a report to Congress within one year of the date of enactment (i.e., by July 21, 2011) assessing the effects of the Dodd-Frank Act on the availability and affordability of credit for consumers, small businesses, homebuyers, and mortgage lending.

Another option is the Congressional Review Act (CRA, 5 U.S.C. §§801-808), which was enacted in 1996 in an attempt to reestablish a measure of congressional authority over rulemaking “without at the same time requiring Congress to become a super regulatory agency.”³² The act generally requires federal agencies to submit all of their covered final rules to both houses of Congress and GAO before they can take effect.³³ It also established expedited legislative procedures (primarily in the Senate) by which Congress may disapprove agencies' final rules by

³¹ For example, in *Sierra Club v. Costle* (657 F.2d 298, D.C. Cir. 1981), the D.C. Circuit concluded (at 409) that it was “entirely proper for congressional representatives vigorously to represent the interests of their constituents before administrative agencies engaged in informal, general policy rulemaking, so long as the individual Members of Congress do not frustrate the intent of Congress as a whole as expressed in statute, nor undermine applicable rules of procedure.”

³² Joint statement of House and Senate Sponsors, 142 *Cong. Rec.* E571, at E571 (daily ed. April 19, 1996); 142 *Cong. Rec.* S3683, at S3683 (daily ed. April 18, 1996).

³³ If a rule is considered “major” (e.g., has a \$100 million annual effect on the economy), then the CRA generally prohibits it from taking effect until 60 days after the date that it is submitted to Congress.

enacting a joint resolution of disapproval.³⁴ The definition of a covered rule in the CRA is quite broad, arguably including any type of document (e.g., legislative rules, policy statements, guidance, manuals, and memoranda) that the agency wishes to make binding on the affected public.³⁵ After these rules are submitted, Congress can use the expedited procedures specified in the CRA to disapprove any of the rules. CRA resolutions of disapproval must be presented to the President for signature or veto.

For a variety of reasons, however, the CRA has been used to disapprove only one rule in the 14 years since it was enacted.³⁶ Perhaps most notably, it is likely that a President would veto a resolution of disapproval to protect rules developed under his own administration, and it may be difficult for Congress to muster the two-thirds vote in both houses needed to overturn the veto. Congress can also use regular (i.e., non-CRA) legislative procedures to disapprove agencies' rules, but such legislation may prove even more difficult to enact than a CRA resolution of disapproval (primarily because of the lack of expedited procedures in the Senate), and if enacted may also be vetoed by the President.

Although the CRA has been used only once to overturn an agency rule, Congress has regularly included provisions in the text of agencies' appropriations bills directing or preventing the development of particular regulations. Such provisions include prohibitions on the finalization of particular proposed rules, restrictions on certain types of regulatory activity, and restrictions on implementation or enforcement of certain provisions.³⁷ Appropriations provisions can also be used to prompt agencies to issue certain regulations, or to require that certain procedures be followed before or after their issuance. The inclusion of regulatory provisions in appropriations legislation as a matter of legislative strategy appears to arise from two factors: (1) Congress's ability via its "power of the purse" to control agency action, and (2) the fact that appropriations bills are considered "must pass" legislation. Congress's use of regulatory appropriations restrictions has fluctuated somewhat over time, and previous experience suggests that they may be somewhat less frequent when Congress and the President are of the same party.³⁸

³⁴ For a detailed discussion of CRA procedures, see CRS Report RL31160, *Disapproval of Regulations by Congress: Procedure Under the Congressional Review Act*, by Richard S. Beth.

³⁵ For more on the potential scope of the definition of a "rule" under the CRA, see CRS Report RL30116, *Congressional Review of Agency Rulemaking: An Update and Assessment of The Congressional Review Act after a Decade*, by Morton Rosenberg.

³⁶ The rule overturned in March 2001 was the Occupational Safety and Health Administration's ergonomics standard. This reversal was the result of a unique set of circumstances in which the incoming President (George W. Bush) did not veto the resolution disapproving the outgoing President's (William J. Clinton's) rule. See CRS Report RL30116, *Congressional Review of Agency Rulemaking: An Update and Assessment of The Congressional Review Act after a Decade*, by Morton Rosenberg, for a description of several possible factors affecting the CRA's use, and for other effects that the act may have on agency rulemaking.

³⁷ See CRS Report RL34354, *Congressional Influence on Rulemaking and Regulation Through Appropriations Restrictions*, by Curtis W. Copeland.

³⁸ *Ibid.*, p. 35. This report indicated that some appropriations restrictions were repeated every year for 10 years, some were repeated several years in a row but then stopped, and some appeared in only one appropriations bill. Some restrictions appeared to be intended to stop particular rules issued at the end of presidential administrations.

Appendix. Upcoming Proposed and Final Rules Pursuant to the Dodd-Frank Act

Department/ Agency	Title of Rule (RIN)	Abstract	Expected Publication Date
Proposed Rules			
Treasury/OTS	Alternatives to the Use of External Credit Ratings in the Regulatory Capital Guidelines of the Federal Banking Agencies (1550-AC43)	The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS) (collectively, the agencies) are seeking to gather information as they begin to work toward revising their regulations to comply with the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act). Section 939A of the Act requires all federal agencies to review their regulations that reference or require the use of credit ratings to assess the creditworthiness of an instrument. In addition, the Act further directs the agencies to remove such requirements that refer to or rely upon credit ratings, and to substitute in their place uniform standards of creditworthiness.	12/2010 (Note: An advance notice of proposed rulemaking (ANPRM) was published 08/25/2010; no notice of proposed rulemaking (NPRM) published as of 01/14/11; deadline for final rule is reportedly 07/21/2011.)
TREAS/OTS	Alternatives to the Use of External Credit Ratings in the Regulations of the OTS (1550-AC44)	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 creditworthiness of a security or money market instrument and any reference to or requirements in regulations regarding credit ratings. The OTS is seeking public comment to obtain information to implement this statutory provision with respect to its regulations (other than the capital regulations which are subject to a separate rulemaking).	12/2010 (Note: ANPRM was published 10/14/2010 under RIN 1557-AC44; no NPRM published as of 01/14/11; deadline for final rule is reportedly 07/21/2011.)
CFTC	Business Conduct Standards—Internal (3038-AC96)	Notice of Proposed Rulemaking to implement certain provisions of section 731 of The Dodd-Frank Wall Street Transparency and Accountability Act of 2010 related to internal business conduct standards for swap dealers and major swap participants. This matter incorporates prior RIN 3038-AC74 entitled “Electronic Recordkeeping Requirements Applicable to Futures Commission Merchants, Introducing Brokers and Members of Contract Markets” which is being withdrawn.	12/2010 (Note: NPRM published 12/28/2010 (75 FR 81519); deadline for final rule is reportedly 07/15/2011.)
CFTC	Governance and Possible Limits on Ownership and Control (DCOs, SEFs, and DCMs) (3038-AD01)	Rulemaking to implement the following sections of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”), insofar as they pertain to conflicts of interest, governance and fitness: Section 726 (Rulemaking on Conflict of Interest); sections 725(c) and (d) (DCO Core Principles and Conflicts of Interest); section 735(b) (DCM Core Principles); section 733 (SEF Core Principles); and section 728 (SDR Core Principles).	12/2010 (Note: NPRMs were published 10/18/2010 (75 FR 63732) and 01/06/2011 (76 FR 722); deadline for final rule is reportedly 07/20/2011.)

Department/ Agency	Title of Rule (RIN)	Abstract	Expected Publication Date
CFTC	Systemically Important DCO Rules Authorized Under Title VIII (3038-AD02)	Pursuant to Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the proposed regulation would establish risk management standards for derivatives clearing organizations that have been designated as systemically important.	12/2010 (Note: NPRM was published 10/14/2010 (75 FR 63113); final action is expected 06/2011.)
CFTC	Whistleblowers (3038-AD04)	Section 748 of the Dodd-Frank Wall Street Reform and Consumer Protection Act regarding "Commodity Whistleblower Incentives and Protection," requires the Commission to issue final rules to implement its provisions. The Commission will propose rules establishing a program for whistleblowers to voluntarily provide original information to Commission. The program will include provisions for the payment of awards to whistleblowers whose original information leads to the successful resolution of certain judicial or administrative actions brought by the Commission under the Commodity Exchange Act.	12/2010 (Note: NPRM was published 12/06/2010 (75 FR 75728); final action expected 04/2011.)
CFTC	Further Definitions of Terms Relating to Swaps and Security-Based Swaps (3038-AD06)	Title VII of the Dodd-Frank Act requires that the CFTC and the SEC, in consultation with the Board of Governors of the Federal Reserve System, jointly: 1) Further define certain key terms (specifically, "swap," "security-based swap," "swap dealer," "security-based swap dealer," "major swap participant," "major security-based swap participant," "eligible contract participant," and "security-based swap agreement"); and 2) prescribe regulations regarding "mixed swaps," as that term is used in title VII of the Dodd-Frank Act.	12/2010 (Note: NPRM was published 12/21/2010 (75 FR 80174); deadline for final rule is reportedly 07/15/2011.)
CFTC	Part 40, Rule Certification and Approval Procedures (3038-AD07)	The Commodity Futures Trading Commission proposes to amend its part 40 rules pertaining to the Commission's review, certification, and approval processes for handling registered entity rules and contracts in order to implement section 735 of the Dodd-Frank Act. The Commission proposes to implement procedures for submitting advance notice of rules that could "materially affect" the nature of level of risk presented by a systematically important derivatives clearing organization. The Commission also proposes to implement procedures for review of certain event contracts based on excluded commodities.	12/2010 (Note: NPRM was published 11/02/2010 (75 FR 67282).)
CFTC	Real Time Public Reporting of Swaps Transactions (3038-AD08)	The Commission is soliciting comment on the proposed rules relating to reporting in real time of specific swaps transaction data mandated by section 727 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.	12/2010 (Note: NPRM was published 12/07/2010 (75 FR 76140); final rule reportedly required by 07/15/2011.)

Department/ Agency	Title of Rule (RIN)	Abstract	Expected Publication Date
CFTC	DCM Core Principle Rulemaking, Interpretation and Guidance (3038-AD09)	Pursuant to title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Commodity Futures Trading Commission (Commission or CFTC) proposes to issue rules to implement section 735 of the Dodd-Frank Act. In relevant part, section 735 of the Dodd-Frank Act amends Section 5 of the Commodity Exchange Act (Act) pertaining to the designation and operation of contract markets (DCMs). Among other changes, section 735 of the Dodd-Frank Act : (i) Eliminates the eight pre-existing Designation Criteria contained in former section 5(b) of the Act and incorporates these criteria into the various DCM core principles in section 5(d); and (ii) adds five additional DCM core principles. In addition to revising the DCM core principles, section 733 of the Dodd-Frank Act requires that all swaps subject to clearing must be executed on either a DCM or a Swap Execution Facility. This Rulemaking implements the 23 core principles that boards of trade must now comply with as a condition of obtaining and maintaining designation as a contract market, and expands the DCM regulatory framework to include the listing, trading and execution of swaps. This rulemaking proposes amendments to part 38 of the Commission's regulations to implement the amendments to the Act relevant to designated contract markets.	12/2010 (Note: NPRM was published 12/22/2010 (75 FR 80572); deadline for final rule reportedly 07/15/2011.)
CFTC	End-User Exemption (Commercial End User Exemption and To Consider for Small Banks, Farm Credit Institutions and Credit Unions) (3038-AD10)	Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) contains a general requirement that swaps that are subject to a clearing mandate must be submitted for clearing to a registered derivatives clearing organization. The Dodd-Frank Act also provides that users of swaps that are not financial entities (referred to as end users) and that use swaps to hedge or mitigate "commercial risk" may claim an exception from the general clearing requirement if the end user notifies the CFTC of how the end user generally meets its financial obligations associated with entering into swaps that are not cleared. The CFTC will propose a rule stating the manner in which end users are to submit such notification, and defining the meaning of the term "commercial risk" in this context.	12/2010 (Note: NPRM was published on 12/23/2010 (75 FR 80747); final action expected 07/2011.)
CFTC	Review of Rules To Find Alternatives to Reliance of Credit Ratings (3038-AD11)	The rulemaking is being done to comply with the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act [Section 939A] that direct agencies to review their regulations for any references to or reliance on credit ratings, and to remove those references or instances of reliance.	12/2010 (Note: NPRM was published 11/02/2010; final rule expected 03/2011; deadline for review of regulations is reportedly 07/21/2011.)

Department/ Agency	Title of Rule (RIN)	Abstract	Expected Publication Date
CFTC	Disposal and Affiliate Sharing of Consumer, Nonpublic Information Under Fair and Accurate Credit Transactions Act of 2003 and Fair Credit Reporting Act (3038-AD12)	Section 1088 of the Dodd-Frank Wall Street Reform and Consumer Protection Act contains amendments to the Fair Credit Reporting Act (FCRA) and Fair and Accurate Credit Transactions Act of 2003 (FACT Act). In particular, it provides the CFTC with authority to propose rules implementing: (1) Section 216 of the FACT Act; and (2) section 624 of the Fair Credit Reporting Act (FCRA). The rules implementing section 216 of the FACT Act will require persons regulated by the CFTC who possess or maintain consumer report in connection with their business activities to develop and implement a written program for the proper disposal of such information. The rules implementing section 624 of the FCRA will require persons regulated by the CFTC who possess or maintain consumer report information to develop and implement a written program that restricts business affiliates of those persons from receiving or using such information for the purposes of cross-marketing.	12/2010 (Note: NPRM was published 10/27/2010 (75 FR 66018); no projected date for final rule.)
CFTC	Privacy Rules for CFTC Regulated Institutions Under the Gramm-Leach Bliley Act (3038-AD13)	Section 1093 of the Dodd-Frank Wall Street Reform and Consumer Protection Act contains amendments to section 504(a) of the Gramm-Leach-Bliley Act (GLB Act), which sets out certain privacy protections for nonpublic, consumer information. The CFTC will be proposing to issue rules implementing section 504, which would require a financial institution regulated by the CFTC to: (1) Provide notice to its consumers about the institution's privacy policies and practices; (2) restrict the ability of the institution to share nonpublic, consumer information to nonaffiliated third parties; and (3) permit consumers to prevent the institution from disclosing non-public, consumer information about such consumers to certain nonaffiliated third parties by "opting out" of that disclosure.	12/2010 (Note: NPRM was published 10/27/2010 (75 FR 66014); no projected date for final rule.)
CFTC	Identity Theft Red Flag Rules for CFTC Regulated Institutions Under Fair Credit Reporting Act (3038-AD14)	Section 1088 of the Dodd-Frank Wall Street Reform and Consumer Protection Act contains amendments to the Fair Credit Reporting Act (FCRA). These amendments add the CFTC and the SEC (together referred to as the Agencies) to the list of Federal agencies that are required to promulgate regulations relating to the development and implementation of identity theft programs under the FCRA. The Agencies' rules implementing section 621 of the FCRA will require financial institutions and creditors that are regulated by either of both of the Agencies to develop and implement written identity theft programs to detect, prevent and mitigate identity theft in connection with the opening of certain accounts or certain existing accounts.	12/2010 (No NPRM published as of 01/14/2011.)

Department/ Agency	Title of Rule (RIN)	Abstract	Expected Publication Date
CFTC	Position Limits on Agricultural Commodities (3038-AD15)	The Commission has been mandated by Congress in the Dodd-Frank Act) to impose position limits, on an aggregate basis, on futures and swaps relating to agriculture in order to (a) diminish, eliminate, or prevent excessive speculation; (b) deter and prevent market manipulation, squeezes, and corners; (c) ensure sufficient market liquidity for bona fide hedgers; and (d) ensure that the price discovery function of an underlying market is not disrupted. Given the potential effects of position limits on various market participants, the Commission intends to issue a notice of proposed rulemaking to solicit and consider the public's comments in advance of issuing final rules. The rulemaking would also include amendments to the Commission's reporting rules to permit for or further facilitate the filing of electronic Forms 40, 102, and '04s reports. In addition, the Commission may propose amendments to improve the information reported on Form 40. [Sec. 737]	12/2010 (Note: No NPRM published as of 01/14/2011; deadline for final rule reportedly 01/18/2011; final rule expected 01/2012.)
CFTC	Position Limits on Exempt Commodities (3038-AD16)	The Commission has been mandated by Congress (in the Dodd-Frank Act) to impose position limits, on an aggregate basis, on futures and swaps relating to exempt in order to (a) diminish, eliminate, or prevent excessive speculation; (b) deter and prevent market manipulation, squeezes, and corners; (c) ensure sufficient market liquidity for bona fide hedgers; and (d) ensure that the price discovery function of an underlying market is not disrupted. Given the potential effects of position limits on various market participants, the Commission intends to issue a notice of proposed rulemaking to solicit and consider the public's comments in advance of issuing final rules. The rulemaking would also include amendments to the Commission's reporting rules to permit for or further facilitate the filing of electronic Forms 40, 102, and '04s reports. In addition, the Commission may propose amendments to improve the information reported on Form 40. [Sec. 737]	12/2010 (Note: No NPRM published as of 01/14/2011; deadline for final rule reportedly 01/18/2011; final rule expected 01/2011.)
CFTC	Large Trader Reporting (3038-AD17)	The Commission has been mandated by Congress (in the Dodd-Frank Act) to impose position limits on futures and swaps relating to exempt and agricultural commodities. A separate rulemaking will establish swap data repositories to allow proper surveillance of the interconnected commodity derivatives markets and enforce these position limits. In the interim, the Commission will conduct the necessary surveillance by implementing, through this rulemaking, a large trader reporting system for additional derivatives, including covered swaps. Given the new and additional reporting requirements that may be imposed on various market participants, the Commission believes that it is appropriate to solicit and consider the public's comments (in response to the notice of proposed rulemaking) in advance of issuing a final rule. [Sec. 737]	12/2010 (Note: NPRM was published on 11/02/2010 (75 FR 67258); deadline for final rule reportedly 01/18/2011; final action expected 01/2011.)

Department/ Agency	Title of Rule (RIN)	Abstract	Expected Publication Date
CFTC	Swap Execution Facilities Registration Requirements and Core Principle Rulemaking, Interpretation and Guidance (3038-AD18)	Pursuant to title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Commodity Futures Trading Commission (Commission or CFTC) proposes to issue rules to implement section 733 of the Dodd-Frank Act. In relevant part, section 733 of the Dodd-Frank Act amends the provisions of the Commodity Exchange Act (CEA) to create a new registered entity – swap execution facilities (each a SEF or collectively SEFs), providing market participants with the ability to execute or trade swaps. Among other changes, section 733 of the Dodd-Frank Act introduces fifteen core principles relating to the registration and operation of SEFs. Additionally, section 723(a)(8) of the Dodd-Frank Act requires that all swaps subject to clearing must be executed on either a Designated Contract Market or a SEF. This rulemaking implements the process for becoming a SEF as well as the fifteen core principles and other requirements that each applicant must comply with as a condition of obtaining and maintaining its registration as a SEF. This rulemaking proposes to replace current part 37 of the Commission’s regulations, at present addressing rules for DTEFs, with rules to implement the amendments to the CEA relevant to SEFs.	12/2010 (Note: NPRM was published on 01/07/2011 (76 FR 1214); final action expected 07/2011.)
CFTC	Agricultural Swaps Rulemaking (3038-AD21)	The Commission is proposing and requesting comment on rules to allow the trading of swaps in agricultural commodities – agricultural swaps. Agricultural swaps are generally prohibited under the Dodd-Frank Wall Street Reform and Consumer Protection Act, unless allowed via a rule or exemption issued separately by the Commission. (Sec. 723(c)(3) and Sec. 733]	12/2010 (Note: NPRM was published 10/26/2010 (75 FR 65586), albeit under RIN 3038-AD23; final action is expected 07/2011.)
CFTC	Business Conduct Standards for Swap Dealers and Major Swap Participants Dealing With Counterparties (3038-AD25)	Section 731 of the Dodd-Frank Wall Street Reform and Consumer Protection Act regarding “Registration and Regulation of Swap Dealers and Major Swap Participants” directs the Commission to promulgate certain mandatory business conduct standards rules, as well as grants the Commission authority to promulgate discretionary rules. The rules will establish disclosure obligations and due diligence requirements, as well as outright prohibitions on certain types of abusive conduct.	12/2010 (Note: NPRM was published 12/22/2010 (75 FR 80638); final action expected 07/2011.)
CFTC	Disruptive Trading (3038-AD26)	Section 747 of the Dodd-Frank Wall Street Reform and Consumer Protection Act regarding “Antidisruptive Practices Authority” authorizes the Commission to issue rules that, in its judgment, are necessary to prohibit disruptive trading practices. The Commission will propose rules prohibiting certain enumerated practices that are disruptive to fair and equitable trading.	12/2010 (Note: NPRM published 11/02/2010; final action expected 07/2011.)

Department/ Agency	Title of Rule (RIN)	Abstract	Expected Publication Date
CFTC	Anti-Manipulation (3038-AD27)	The Commission will propose rules prohibiting fraud and manipulation in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, consistent with Section 753 of the Dodd-Frank Wall Street Reform and Consumer Protection Act regarding "Anti-Manipulation Authority."	12/2010 (Note: NPRM published 11/03/2010 (75 FR 67657); final action expected 07/2011.)
SEC	Definitions Contained in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (3235-AK65)	The Commission published an advance notice of proposed rulemaking regarding definitions and the regulation of mixed swaps under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act.	12/2010 (Note: A joint proposed rule with CFTC was issued on 12/21/2010 (75 FR 80174), providing proposed definitions of "swap dealer," "security-based swap dealer," "major swap participant," "major security-based swap participant," and "eligible contract participant." Final action reportedly required by 07/2011.)
FRS	Regulation Z— Truth in Lending (Docket No. R- 1392) (7100- AD54)	The proposed amendments to Regulation Z, Truth in Lending, would implement section 1461 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 1461 amends TILA to provide a separate, higher threshold for determining coverage of the Board's escrow requirement applicable to higher-priced mortgage loans, for loans that exceed the maximum principal balance eligible for sale to Freddie Mac. The proposed rulemaking is to implement a statutory revision to the loan-pricing threshold for determining coverage of the Board's escrow requirement applicable to higher-priced mortgage loans for "jumbo" loans.	12/2010 (Note: NPRM was published 09/24/2010 (75 FR 58505); "further action" expected 12/2010.)

Department/ Agency	Title of Rule (RIN)	Abstract	Expected Publication Date
HUD/OH	Housing Counseling: New Program Requirements (FR-5446) (2502-A194)	<p>This proposed rule would amend HUD’s regulations for the Housing Counseling program to address the new program requirements and certification requirements for HUD approved housing counselors as provided by the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203, approved July 21, 2010). The proposed rule would also reflect the authority and responsibility of HUD’s new Office of Housing Counseling to coordinate and administer HUD’s Housing Counseling program. HUD’s Housing Counseling program is authorized by section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x). Section 106 authorizes HUD to provide, make grants to, or contract with public or private organizations to provide a broad range of housing counseling services to homeowners and tenants to assist them in improving their housing conditions and in meeting the responsibilities of tenancy or homeownership. The regulations contained in this part prescribe the procedures and requirements by which the Housing Counseling program will be administered. These regulations apply to all agencies participating in HUD’s Housing Counseling program. The proposed regulatory amendments will implement the changes made to section 106 of the Housing and Urban Development Act of 1968 by the Dodd-Frank Wall Street Reform and Consumer Protection Act, which include directing that HUD-approved housing counseling agencies provide counseling that addresses the entire process of homeownership and that HUD establish materials and forms to be used by HUD-approved housing counselors.</p>	<p>03/2011</p> <p>(Note: No NPRM published as of 01/14/2011.)</p>
TREAS/OCC	Regarding Alternatives to the Use of External Credit Ratings in the Regulatory Capital Guidelines of the Federal Banking Agencies (1557-AD35)	<p>Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act requires agencies to review their regulations that require the use of an assessment of credit-worthiness of a security or money market instrument and make reference to, or have requirements regarding, credit ratings. The agencies must modify their regulations to remove any reference to, or requirements of reliance on, credit ratings in such regulations and substitute in their place other standards of credit-worthiness that the agencies determine to be appropriate for such regulations. The Federal banking agencies are issuing an advance notice of proposed rulemaking describing the areas in their risk-based capital standards, as well as changes to those standards proposed by the Basel Committee on Banking Supervision, that make reference to credit ratings and requesting comment on potential alternatives to the use of credit ratings.</p>	<p>03/2011</p> <p>(Note: ANPRM was published 08/25/2010; no NPRM published as of 01/14/2011; deadline for final rule is reportedly 07/21/2011.)</p>

Department/ Agency	Title of Rule (RIN)	Abstract	Expected Publication Date
TREAS/OCC	Regarding Alternatives to the Use of External Credit Ratings in the Regulations of the OCC (1557-AD36)	Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act directs all Federal agencies to review, no later than one year from 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. The OCC issued an advance notice of proposed rulemaking to seek comment on implementation of the statute with respect to its regulations (other than risk-based capital regulations, which will be addressed separately), including alternative measures of credit-worthiness that may be used in lieu of credit ratings.	03/2011 (Note: ANPRM was published 08/13/2010; no NPRM published as of 01/14/2011; deadline for final rule is reportedly 07/21/2011.)
CFTC	Volcker Rule (Section 619) (3038-AD05)	Rulemaking would implement section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which requires limitations on proprietary trading, investment in hedge funds, and other activities by financial institutions.	04/2011 (Note: No NPRM published as of 01/14/2011; deadline for final rule is reportedly 10/21/2011.)
SEC	Proposed Rules Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (3235-AK63)	The Dodd-Frank Wall Street Reform and Consumer Protection Act was enacted on July 21, 2010. The Act includes a significant number of rulemaking provisions applicable to the Commission. The Commission is in the process of considering the legislation and determining whether and how to consolidate some of the rulemakings. It will add specific rules under the Act to the Regulatory Flexibility Act agenda as it proceeds.	08/2011 (Note: No NPRM published as of 01/14/2011; Unified Agenda says there are "various" deadlines for rulemakings.)
Final Rules			
FTC	Rulemaking Proceeding With Respect to Mortgage Loans (3084-AB18)	Section 626 of the Omnibus Appropriations Act of 2009 directed the Federal Trade Commission to initiate a rulemaking proceeding with respect to mortgage loans within 90 days after the date of enactment of that Act.... To implement the Act, the Commission has commenced a rulemaking proceeding in two parts.... (One) ANPRM, the Mortgage Assistance Relief Services Rulemaking (MARS), addresses the practices of entities (other than mortgage servicers) who offer assistance to consumers in dealing with owners or servicers of their loans to modify them or avoid foreclosure (74 FR 26130). The Commission sought public comment with regard to the unfair and deceptive acts and practices that should be prohibited or restricted pursuant to any rules adopted in this proceeding.... On February 4, 2010, the Commission announced an NPRM for MARS. The proposed MARS rule published for comment, among other things, would prohibit providers of these services from making false or misleading claims, mandate that providers disclose certain information about these services, bar the collection of advance fees for these services, prohibit persons from providing substantial assistance or support to an entity	12/2010 (Note: The final rule was published on 12/01/2010 (75 FR 75092), and was generally effective on 12/29/2010, although one section takes effect on 01/31/2011.)

Department/ Agency	Title of Rule (RIN)	Abstract	Expected Publication Date
		they know or consciously avoid knowing is engaged in a violation of these rules, and impose recordkeeping and compliance requirements. The comment period closed on March 29, 2010. The Commission announced a MARS final rule on 11/19/2010. All provisions of the rule except the advance-fee ban will become effective December 29, 2010. The advance-fee ban provisions will become effective January 31, 2011..... Under the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act, P.L. 111-203, the Commission's rulemaking authority will be transferred to the new Consumer Financial Protection Bureau with the Federal Reserve on July 21, 2011, the transfer date established by the Department of the Treasury.	
SEC	Reporting of Proxy Votes on Executive Compensation and Other Matters (3235-AK67)	The Commission proposed rule amendments to implement Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The proposed amendments to rules and Form N-PX would require institutional investment managers subject to Section 13(f) of the Exchange Act to report how they voted on any shareholder vote on executive compensation or golden parachutes pursuant to Sections 14A(a) and (b) of the Act.	01/2011 (Note: SEC published an NPRM on 10/28/2010 (75 FR 66622), with comments due by 11/18/2010; no final rule published as of 01/12/2011.)
SEC	Shareholder Approval of Executive Compensation and Golden Parachute Compensation (3235-AK68)	The Commission proposed revisions to the proxy rules to implement section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which requires issuers to conduct a separate shareholder advisory vote: (1) To approve the compensation of executives; (2) to determine how often they will conduct such votes; and (3) to approve golden parachute compensation arrangements when issuers are soliciting votes to approve merger or acquisition transactions.	01/2011 (Note: SEC published an NPRM on 10/28/2010 (75 FR 66590), with comments due by 11/18/2010; no final rule published as of 01/12/2011.)
FTC	Fair and Accurate Credit Transactions Act of 2003 (3084-AA94)	The Fair and Accurate Credit Transactions Act of 2003 (the FACT Act or FACTA or the Act) was enacted on December 4, 2003. The Act requires that the Commission undertake a number of rulemakings and studies. Many of these responsibilities will be transferred on July 21, 2011, to the newly created Consumer Financial Protection Bureau within the Board of Governors of the Federal Reserve System (the Federal Reserve) under the recent Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203.... The FCRA requires the Commission to prescribe a model summary of consumers' rights under the FCRA and notices of responsibilities for users and furnishers of credit report information distributed by the credit reporting agencies.... On August 6, 2010, the Commission approved the issuance of proposed revisions to these models to reflect new rules that have been finalized under FACTA and to improve the clarity and usefulness of the documents. 75 FR 52655. Staff anticipates that the Commission will publish final revised forms no later than February 2011.	02/2011 (Note: FTC published an NPRM on 08/27/2010 (75 FR 52655), with comments due by 09/21/2010.)

Department/ Agency	Title of Rule (RIN)	Abstract	Expected Publication Date
SEC	Family Offices (3235-AK66)	The Commission proposed a rule, consistent with Section 409 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, regarding family offices [to define “family offices” that would be excluded from the definition of an investment adviser under the Investment Advisers Act of 1940 and thus would not be subject to regulation under the act].	04/2011 (Note: SEC published an NPRM on 10/18/2010 (75 FR 63753), with comments due by 11/18/2010. Statutory deadline for final rule reportedly 07/11/2011.)
SEC	References to Ratings of Nationally Recognized Statistical Rating Organizations (3235-AK19)	The Commission proposed to amend five rules under the Investment Company Act and the Investment Advisers Act that rely on NRSRO ratings. The proposed amendments are designed to address concerns that the reference to NRSRO ratings in Commission rules may have contributed to an undue reliance on NRSRO ratings by market participants. The Commission adopted certain proposed amendments to Rules 5b-3 and 10f-3 under the Investment Company Act, and re-opened the comment period to request additional comment on the proposed amendments to Rules 3a-7 and 5b-3 under the Investment Company Act and Rule 206(3)-3T under the Investment Advisers Act. The Dodd-Frank Wall Street Reform and Consumer Protection Act was enacted on July 21, 2010. The Division is considering the next steps to recommend to the Commission in light of the Act.	07/2011 (Note: NPRM was published on 07/11/2008 (73 FR 40124); Agenda final rule entry characterized as “Next Action.”)
SEC	References to Ratings of Nationally Recognized Statistical Rating Organizations (3235-AK17)	The Commission proposed to amend various rules and forms under the Exchange Act that rely on NRSRO ratings. The proposed amendments are designed to address concerns that the reference to NRSRO ratings in Commission rules and forms may have contributed to an undue reliance on NRSRO ratings by market participants. The Commission adopted certain of the proposals and reopened the comment period as to others. The Dodd-Frank Wall Street Reform and Consumer Protection Act was enacted on July 21, 2010. The Division is considering the next steps to recommend to the Commission in light of the Act.	07/2011 (Note: NPRM was published on 07/11/2008 (73 FR 40088); Agenda final rule entry characterized as “Next Action.”)
SEC	Security Ratings (3235-AK18)	The Commission proposed replacing rule and form requirements for offerings of corporate debt under the Securities Act and the Exchange Act that rely on security ratings. The Dodd-Frank Wall Street Reform and Consumer Protection Act was enacted on July 21, 2010. The Division is considering the next steps to recommend to the Commission in light of the Act.	07/2011 (Note: NPRM was published on 07/11/2008 (73 FR 40106); Agenda final rule entry characterized as “Next Action.”)

Department/ Agency	Title of Rule (RIN)	Abstract	Expected Publication Date
OSHA	Procedures for the Handling of Retaliation Complaints Under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, As Amended (1218-AC53)	OSHA is proposing to amend 29 CFR 1980, the procedures applicable to the handling and investigation of whistleblower complaints under the Corporate and Criminal Fraud Accountability Act, title VIII of the Sarbanes-Oxley Act, 18 U.S.C. 1514A (SOX), to implement statutory changes enacted by Congress under sections 922 and 929A of the Dodd Frank Wall Street Reform and Consumer Protection Act (DFA) of 2010, and to provide other procedural updates as needed. SOX provides protection for employees who report alleged violations of the Federal mail, wire, bank or securities fraud statutes, or the Securities Exchange Act, or any other Federal law relating to fraud against shareholders. Under the DFA, the amendments to SOX extend the statutory filing period from 90 to 180 days, provide parties with a right to a jury trial, extend coverage to nationally recognized statistical rating organizations, and clarify coverage of corporate subsidiaries. Promulgation of these changes to the regulation is necessary to govern whistleblower investigations conducted under SOX.	09/2011 (Note: Agenda indicates this will be an interim final rule.)
OSHA	Complaints Under the Employee Protection Provision of the Consumer Financial Protection Act of 2010, Section 1057 of the DODD-FRANK Wall Street Reform and Consumer (1218-AC54)	OSHA is promulgating procedures for the handling and investigation of retaliation complaints pursuant to section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA) of 2010. This section established a new whistleblower protection statute to be administered by OSHA that provides protection from retaliation to employees in the consumer financial product and service industries who engage in protected activities under title X of the DFA or any other provision of law that is subject to the jurisdiction of the Bureau of Consumer Financial Protection, an independent bureau within the Federal Reserve System. Pursuant to the statute, the procedures will include remedies and legal burdens of proof provisions, and a "kick-out" provision allowing the complainant to file the complaint in District Court if within 210 days of the filing of the complaint the Secretary has not issued a final determination, or within 90 days after receiving a written determination. Promulgation of a regulation is necessary to govern whistleblower investigations conducted under the new statute, which becomes effective on July 21, 2011. Agency: Department of Labor(DOL)	09/2011 (Note: Agenda indicates this will be an interim final rule.)
SEC	Final Rules under the Dodd-Frank Wall Street Reform and Consumer Protection Act (3235-AK64)	The Dodd-Frank Wall Street Reform and Consumer Protection Act was enacted on July 21, 2010. The Act includes a significant number of rulemaking provisions applicable to the Commission. Some of the provisions require final rulemakings. The Commission is in the process of considering the legislation and determining whether and how to consolidate some of the rulemakings. It will add specific rules under the Act to the Regulatory Flexibility Act agenda as it proceeds.	09/2011 (Note: Agenda indicates these will be interim final rules.)

Department/ Agency	Title of Rule (RIN)	Abstract	Expected Publication Date
SEC	Transitional Registration as a Municipal Advisor (3235-AK69)	The Commission adopted an interim final temporary rule to require all municipal advisors to register with it by October 1, 2010, consistent with the Dodd-Frank Wall Street Reform and Consumer Protection Act.	12/31/2011 (Note: Interim final rule published 09/08/2010 (75 FR 54465), and effective through 12/31/2011.)

Source: Unified Agenda of Federal Regulatory and Deregulatory Actions, December 20, 2010.

Notes: The table includes only those entries in which the Dodd-Frank Act was mentioned as the statutory authority. For cases in which the agency did not provide the statutory authority for each rule in its Unified Agenda abstract but the statutory authority was clearly listed or found elsewhere, CRS reported this information in brackets. All information in the table is as reported in the Unified Agenda (e.g., dates of expected proposed or final rules, and dates final rules are required).

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