

# Regulatory and Supervisory Roundup

This section provides an overview of recently released regulations and supervisory guidance, arranged in reverse chronological order. Press Release (PR) or Financial Institution Letter (FIL) designations are included so the reader can obtain more information.

Subject	Summary
<b>FDIC Adopts Revised Guidelines for Appeals of Material Supervisory Determinations and for Appeals of Deposit Insurance Assessments (FIL-113-2004, October 13, 2004)</b>	Both sets of revised guidelines, which took effect June 28, 2004, govern appeals by FDIC-supervised institutions. One set governs appeals by institutions that choose to dispute decisions made by onsite FDIC examiners or an FDIC Regional Office regarding supervisory ratings, the adequacy of loan loss reserve provisions, certain violations of laws and regulations, and other material supervisory determinations. The second set of guidelines sets forth procedures to be followed when an institution disputes the computation of its deposit insurance assessment or the risk classification used in computing the assessment.
<b>FDIC Announces Steps to Help Rebuild Areas Affected by Recent Hurricanes and Severe Storms (FIL-107-2004, September 17, 2004)</b>	The FDIC has distributed guidelines that encourage FDIC-supervised banks to work constructively with borrowers who, because of recent natural disasters, are experiencing difficulties beyond their control. The guidelines address extending payment terms, restructuring existing loans, easing terms for new loans, and other types of regulatory relief.
<b>Agencies Publish Informational Brochure to Help Consumers Identify Internet "Phishing" Scams (FIL-103-2004, September 13, 2004)</b>	The federal banking, thrift, and credit union regulatory agencies have published an informational brochure to help consumers identify and prevent a new type of fraud called "phishing," a scam that includes fraudulently obtaining and using an individual's personal or financial information. The brochure explains the basics of phishing, the steps consumers can take to protect themselves, and the actions that consumers can take if they become a victim of identity theft.
<b>FDIC Seeks Additional Comments on Proposed Rule Regarding the Community Reinvestment Act (FIL-96-2004, August 23, 2004)</b>	The proposed change to Part 345 of the FDIC's Rules and Regulations would change the definition of "small bank" to include banks up to \$1 billion in asset size, add a community development activity criterion to the streamlined evaluation method for small banks with assets greater than \$250 million and less than \$1 billion, and expand the definition of "community development." Comments were due by October 20, 2004.
<b>Agencies Seek Comment on Interim Rule Regarding Community Reinvestment Act (CRA) Regulations (FIL-91-2004, August 5, 2004)</b>	The joint interim rule makes the federal banking and thrift agencies' CRA regulations conform to recent changes in (1) the Standards for Defining Metropolitan and Micropolitan Statistical Areas, published by the Office of Management and Budget; (2) definitions related to census tracts as designated by the U.S. Bureau of the Census; and (3) Federal Reserve Board Regulation C, which implements the Home Mortgage Disclosure Act.
<b>Guidance Issued on Customer Identification Programs (FIL-90-2004, July 28, 2004)</b>	The federal banking, thrift and credit union regulatory agencies, the Financial Crimes Enforcement Network, and the Department of the Treasury have jointly issued interpretive guidance regarding the Customer Identification Program required by Section 326 of the USA PATRIOT Act. The guidance augments the procedures issued in FIL-79-2003, "New Examination Procedures for Assessing Anti-Money Laundering Programs and Bank Secrecy Act Compliance."
<b>Updated Guidance Issued on Managing Information Technology (IT) Services and Outsourcing Technology Services (FIL-89-2004, July 29, 2004)</b>	The Federal Financial Institutions Examination Council (FFIEC) issued two more booklets as part of its ongoing effort to update the <i>1996 FFIEC Information Systems Examination Handbook</i> . The <i>Management Booklet</i> provides guidance on the risks and risk management practices applicable to IT activities. The <i>Outsourcing Technology Services Booklet</i> provides guidance applicable to the outsourcing of IT activities.

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<b>Subject</b>	<b>Summary</b>
<b>Agencies Issue Final Rule on Capital Requirements for Commercial Paper Programs (FIL-87-2004, July 28, 2004)</b>	The four federal bank and thrift regulators issued a final rule establishing more risk-sensitive, risk-based capital standards for liquidity facilities related to asset-backed commercial paper (ABCP) programs. Such facilities are generally provided by large banking institutions; therefore, the rule is expected to have no impact on most community banks. The rule makes permanent the exclusion of ABCP program assets consolidated under Financial Accounting Standards Board Interpretation No. 46, Consolidation of Variable Interest Entities.
<b>FDIC Proposes Several Amendments Relating to International Banking (FIL-85-2004, July 22, 2004)</b>	The proposed amendments concern Parts 303, 325, 327, and 347 of the FDIC's Rules and Regulations. The amendments would reorganize existing rules for clarity, expand the availability of general consent for foreign branching and investments, address the transferability of grandfathered U.S. branches, and provide for asset maintenance based on an insured branch's daily third-party liabilities. A risk-based asset pledge requirement would replace the existing 5 percent fixed percentage. Comments were due by September 17, 2004.
<b>FDIC Issues Guidance on the Risks Associated with Instant Messaging (FIL-84-2004, July 21, 2004)</b>	The guidance contains information on the risks associated with instant messaging (IM) and network file sharing and how these risks can be mitigated. These real-time communication channels were not developed with commercial use in mind and lack standard security features. IM can expose financial institutions to security, privacy, and legal risks. After examining the business need for IM and assessing the risks involved, banks should establish policies governing employees' use of IM.
<b>Proposed Rule Requires Financial Institutions to Allow Consumers to Opt Out of Marketing Solicitations That Use Information Obtained from an Affiliate (FIL-82-2004, July 15, 2004)</b>	Financial institution regulatory agencies have proposed rules that would prohibit an institution from using certain information about a consumer it received from an affiliate to make a solicitation to the consumer, unless the consumer has been notified and given a chance to opt out of such solicitations. A consumer's election to opt out would be applicable for at least five years. The proposed rules would implement Section 214 of the Fair and Accurate Credit Transactions Act. Comments were due by August 16, 2004.
<b>Comment Solicited on Proposed Rule by the SEC Regarding the Securities Activities of Banks (FIL-79-2004, July 6, 2004)</b>	Banks were invited to comment on proposed rulemaking by the Securities and Exchange Commission (SEC) that would implement provisions of the Gramm-Leach-Bliley Act of 1999 (GLBA). Prior to GLBA, banks were excluded from the definition of "broker" contained in the Securities Exchange Act of 1934. The proposed rule provides four primary exceptions to the broker definition and several targeted exceptions. Comments were due to the SEC by August 2, 2004.
<b>Agencies Propose Rules on Disposal of Consumer Information (FIL-73-2004, June 17, 2004)</b>	The federal bank and thrift regulators have invited public comment on an interagency proposal to amend customer information security guidelines to require financial institutions to properly dispose of consumer information derived from credit reports. The proposed rule implements Section 216 of the Fair and Accurate Credit Transactions Act. Comments were due by July 23, 2004.

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<p><b>New Rules and Reference Materials Issued for HMDA Data Collected during 2004 (FIL-71-2004, June 15, 2004)</b></p>	<p>Federal Reserve Board Regulation C, which implements the Home Mortgage Disclosure Act (HMDA), has been revised in several ways that affect application and loan data collected for calendar year 2004; these data must be submitted by March 1, 2005.</p>
<p><b>Revised Guidance Issued on the Uniform Classification of Assets and Appraisal of Securities (FIL-70-2004, June 15, 2004)</b></p>	<p>The federal bank and thrift regulatory agencies have jointly issued the “Uniform Agreement on the Classification of Assets and Appraisal of Securities Held by Banks and Thrifts,” which replaces the policy of the same title last revised in 1979. The policy provides substantive changes to guidance on the appraisal and classification of securities, making it consistent with current accounting literature.</p>
<p><b>Court Reaffirms Safe Harbor Provision Pertaining to the Filing of Suspicious Activity Reports (FIL-67-2004, June 10, 2004)</b></p>	<p>The Financial Crimes Enforcement Network and the five federal financial institution supervisory agencies have jointly issued findings from a recent court case reaffirming the “safe harbor” protections that apply to financial institutions and their employees when they file Suspicious Activity Reports as required by the Bank Secrecy Act and related rules and regulations. The federal district court found the safe harbor provision to afford unqualified protection from civil suit.</p>
<p><b>Updated Guidance Issued on the Development and Acquisition of Information Technology Systems (FIL-64-2004, June 8, 2004)</b></p>	<p>The Federal Financial Institutions Examination Council (FFIEC) has issued a booklet containing guidance on the development and acquisition of information technology. The booklet is the eighth in a series of updates that will eventually replace the <i>1996 FFIEC Information Systems Examination Handbook</i>. The booklet provides guidance to examiners, financial institutions, and technology service providers on development, acquisition, and maintenance projects, including project risks and project management techniques.</p>
<p><b>Regulatory Agencies Seek Comment on Proposed Interagency Guidance on Overdraft Protection (FIL-63-2004, June 7, 2004)</b></p>	<p>The federal financial institution regulatory agencies have proposed guidance on certain fee-based overdraft protection programs. The guidance discusses these bounced-check protection programs, outlines various federal regulations that apply to them, presents existing and potential concerns about the programs, and lists a variety of best practices. Comments were due by August 6, 2004.</p>
<p><b>FDIC Issues Guidance to Banks on Developing Effective Computer Virus Protection Programs (FIL-62-2004, June 7, 2004)</b></p>	<p>The FDIC issued guidance to financial institutions on designing and maintaining programs to mitigate the risks that viruses present to a bank’s computer network, its reputation, and the confidentiality of data. The guidance complements the <i>FFIEC Information Security IT Examination Handbook</i> issued December 2002 and supplements FIL-68-99, “Risk Assessment Tools and Practices for Information System Security.”</p>
<p><b>FDIC Enhances Failed Bank Data on Its Website (PR-62-2004, June 7, 2004)</b></p>	<p>The FDIC has added to its website balance sheet summaries on all failed banks placed in FDIC receivership since October 2000. The website provides information about each failure, the acquiring financial institution, the continuation of banking services after the failure, and special information for loan customers and claimants.</p>

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<b>FDIC Issues Examiner Guidance on Agency-Issued Step-Up Bonds and Other Structured Note Holdings (FIL-59-2004, May 27, 2004)</b>	FDIC examiners were informed that structured-note holdings have increased significantly at certain banks and were provided additional examination guidance. During an examination, examiners should obtain enough information to assess management's compliance with the "Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities" (FIL-45-98). Absent other concerns with interest rate risk, the aggregate levels of structured notes alone should not prompt an expanded review of such activity.
<b>FDIC Notifies Institutions to Begin Planning for the Implementation of the Check Clearing for the 21st Century Act (FIL-54-2004, May 21, 2004)</b>	The FDIC asked the banks it supervises to start considering the operational changes associated with the Check 21 Act. The Act, which took effect October 28, 2004, facilitates check truncation and electronic check exchange by authorizing a new negotiable instrument called a "substitute check," which is the legal equivalent of an original check. Whether they decide to truncate or exchange electronic check images, all banks must be prepared to handle substitute checks after the effective date of the Act.
<b>Regulatory Agencies Seek Comment on a Proposed Statement on Sound Practices for Managing Complex Structured Finance Activities (FIL-52-2004, May 20, 2004)</b>	The federal bank regulatory agencies and the Securities and Exchange Commission drafted guidance on the internal controls and risk management procedures that financial institutions may find particularly effective in identifying and addressing the reputational, legal, and other risks associated with <i>complex</i> structured finance transactions arranged either for customers or for the institutions' own purposes. The guidance encourages certain policies and procedures to ensure that such specially structured and nonstandard transactions are not illegal or inappropriate. Comments were due by July 19, 2004.