OFFICE OF INSPECTOR GENERAL

Evaluation Report 2013-AE-B-008

Board Should Enhance Compliance with Small Entity Compliance Guide Requirements Contained in the Small Business Regulatory Enforcement Fairness Act of 1996

July 1, 2013

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
CONSUMER FINANCIAL PROTECTION BUREAU

Report Contributors

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Abbreviations

Board	Board of Governors of the Federal Reserve System
CFPB	Consumer Financial Protection Bureau
DCCA	Division of Consumer and Community Affairs
FRFA	Final regulatory flexibility analysis
OIG	Office of Inspector General
SBA	U.S. Small Business Administration
SBREFA	Small Business Regulatory Enforcement Fairness Act of 1996

Executive Summary:

Board Should Enhance Compliance with Small Entity Compliance Guide Requirements Contained in the Small Business Regulatory Enforcement Fairness Act of 1996

2013-AE-B-008 **July 1, 2013**

Purpose

Our evaluation assessed the compliance of the Board of Governors of the Federal Reserve System (Board) with certain requirements of the Small Business Regulatory Enforcement Fairness Act of 1996, as amended (SBREFA). We initiated this evaluation to determine the validity of a complaint received by the Office of Inspector General (OIG) Hotline concerning the Board's compliance with SBREFA.

Background

SBREFA became law in 1996 and was later amended by the Small Business and Work Opportunity Act of 2007 to include specific requirements for small entity compliance guides. These guides are created by federal rulemaking agencies to explain the actions a small entity should take to comply with a rule. Section 605(b) of SBREFA generally allows the agency head to certify in the Federal Register, as part of the proposed or final rule, that the final rule will not have a significant economic impact on a substantial number of small entities. In such cases, a compliance guide does not have to be created. The 2007 amendments to SBREFA also included a congressional reporting requirement.

Findings

Our results indicate that the Board was not consistent in developing or updating small entity compliance guides in accordance with SBREFA requirements. In addition, the Board's compliance guides did not consistently provide clear guidance to small entities explaining how to comply with certain rules or when the requirements of the specific rule would be satisfied. Instead, many of the guides merely restated and summarized each section of the rule.

We also evaluated the Board's compliance with the annual congressional reporting requirement to describe the status of the agency's compliance with the small entity compliance guide requirements created by the 2007 amendments to SBREFA. We requested, but did not receive, any documentation evidencing that the annual congressional reporting requirement had been satisfied.

Recommendations

We recommend that the Board establish centralized oversight and a standard method or approach for creating small entity compliance guides. We also recommend that the Board begin submitting the annual reports describing the agency's compliance with small entity compliance guide requirements to the relevant congressional committees as required by section 212(a)(6) of SBREFA, as amended. Management concurred with our recommendations and stated that it will take steps to implement the recommendations.

Access the full report: http://www.federalreserve.gov/oig/files/FRB_SBREFA_compliance_full_Jul2013.pdf

For more information, contact the OIG at 202-973-5000 or visit www.federalreserve.gov/oig.

Summary of Recommendations, OIG Report No. 2013-AE-B-008

Rec. no.	Report page no.	Recommendation	Responsible office
1	6	Establish centralized oversight and a standard method or approach for creating small entity compliance guides.	Board
2	7	Begin submitting annual reports to the relevant congressional committees, as required by section 212(a)(6) of SBREFA, as amended, that describe the Board's compliance with small entity compliance guide requirements.	Board

OFFICE OF INSPECTOR GENERAL

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

CONSUMER FINANCIAL PROTECTION BUREAU

July 1, 2013

MEMORANDUM

TO: Sandra F. Braunstein
Director, Division of Consumer and Community Affairs
Board of Governors of the Federal Reserve System

Scott G. Alvarez
General Counsel, Legal Division
Board of Governors of the Federal Reserve System

FROM: Melissa M. Heist
Associate Inspector General for Audits and Evaluations
Office of the Inspector General

SUBJECT: OIG Report No. 2013-AE-B-008: *Board Should Enhance Compliance with Small Entity Compliance Guide Requirements Contained in the Small Business Regulatory Enforcement Fairness Act of 1996*

Attached is the Office of Inspector General report on the subject evaluation. Our objective was to assess the Board's compliance with small entity compliance guide requirements. We conducted this evaluation in response to a complaint submitted to the Office of Inspector General Hotline.

We provided you with a draft of our report for review and comment. In your consolidated response, included as appendix D, you concurred with our recommendations and communicated your intent to implement them.

We appreciate the cooperation that we received from the Board's Legal Division and Division of Consumer and Community Affairs staff during our evaluation. Please contact me if you would like to discuss this report or any related issues.

cc: David G. Caperton
Stephanie Martin
James A. Michaels

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Introduction

Objective

The Office of Inspector General (OIG) assessed the Board of Governors of the Federal Reserve System's (Board's) compliance with the small entity compliance guide requirements of the Small Business Regulatory Enforcement Fairness Act of 1996, as amended (SBREFA). We initiated this evaluation to determine the validity of an OIG Hotline complaint concerning the Board's compliance with these SBREFA requirements.

Background

Small Entity Compliance Guide Requirements

SBREFA became law in 1996 and was later amended by the Small Business and Work Opportunity Act of 2007 to include specific requirements for small entity compliance guides.[1] Under section 212(a)(1) of SBREFA, an agency must create a compliance guide if a final regulatory flexibility analysis (FRFA) indicates that the rule would have a significant economic effect on a substantial number of small entities.[2] As part of the FRFA, an agency must include in the final rule a synopsis of the significant issues raised as a result of public comment and, among other things, describe the number of small entities affected by the rule.[3] However, section 605(b) of the Regulatory Flexibility Act generally allows the agency head to certify in the Federal Register, as part of the proposed or final rule, that the final rule will not have a significant economic impact on a substantial number of small entities. If the agency head certifies that there is no significant impact, then an FRFA does not have to be performed and a compliance guide does not have to be created.

The Small Business and Work Opportunity Act of 2007 amended SBREFA to require an agency to satisfy the following small entity compliance guide requirements:

- Publish one or more guides to assist small entities in complying with the rule, and title such publications "small entity compliance guides."
- Publish any guides in an easily identified location on the agency's website.

1. The Small Business and Work Opportunity Act of 2007 appears in the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. No. 110-28, 121 Stat. 112, 204-05 (2007)).

2. Under regulations issued by the U.S. Small Business Administration (SBA), an entity is considered small if it has $175 million or less in assets for banks and other depository institutions and $7 million or less in revenues for nonbank mortgage brokers.

3. SBREFA defines "agency" as it appears in 5 U.S.C. § 551, which defines an agency as "each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include, (1) the Congress; (2) the courts of the United States; (3) the governments of the territories or possessions of the United States; (4) the government of the District of Columbia…"

- Distribute any guides to known industry contacts affected by the rule, such as small entities, associations, or industry leaders.

- Publish any guide on the same date as the date of publication of the final rule (or as soon as possible after that date), but no later than the effective date of the rule.

- Explain the actions a small entity should take to comply with a rule, including actions to (1) meet the requirements of a rule and (2) enable a small entity to know when such requirements have been satisfied.

- Use sufficiently plain language likely to be understood by affected small entities in accordance with the agency's sole discretion, taking into account the subject matter of the rule and the language of relevant statutes.

The 2007 amendments to SBREFA also created an annual congressional reporting requirement related to small entity compliance guides. To comply with this requirement, the agency head must submit to the Senate Committee on Small Business and Entrepreneurship, the House Committee on Small Business, and any other committee of relevant jurisdiction a report describing the agency's compliance with small entity compliance guide requirements. This annual reporting requirement became effective May 25, 2008.[4]

In accordance with SBREFA, the Board has published small entity compliance guides for 21 regulations. The Board's public website indicates that the purpose of the guides is to (1) encourage the effective participation of small businesses in the federal regulatory process, (2) simplify the language of federal regulations affecting small businesses, and (3) develop more accessible sources of information on the regulatory and reporting requirements for small businesses. Depending on the regulation's content, guides may contain links to required forms, Official Staff Interpretations, and contact information for additional questions.[5]

It is important to note that section 1061(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act generally transferred the authority to prescribe rules, issue orders, and produce guidance related to federal consumer financial laws from the Board to the Consumer Financial Protection Bureau (CFPB) on July 21, 2011.[6] Therefore, rulemaking authority concerning federal consumer financial laws that may affect small entities has been transferred from the Board to the CFPB.[7] Nevertheless, the Board retains rulemaking authority for specific consumer protection rules that might affect small entities, including the Community Reinvestment Act, the National

4. The reporting requirement became effective a year after the enactment of the Fair Minimum Wage Act of 2007.

5. Generally, the Board issues interpretive guidance and commentary on its regulations through Official Staff Commentaries or Official Staff Interpretations.

6. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, §1061(b), 124 Stat. 1376, 2036 (2010) (codified at 12 U.S.C. § 5581(b)).

7. While our office is the Inspector General for the Board and the CFPB, the scope of this evaluation is limited to the Board's compliance with SBREFA. As part of this evaluation, we did not test the CFPB's compliance with SBREFA requirements for any rulemakings.

Flood Insurance Act, one provision of the Electronic Fund Transfer Act, and two provisions of the Fair Credit Reporting Act.[8]

OIG Hotline Complaint

On January 26, 2011, the OIG Hotline received an e-mail complaint concerning the Board's proposed rule related to loan originator compensation (74 Fed. Reg. 43,232 (Aug. 26, 2009)). The complaint outlined several concerns related to the Board's rulemaking process for the proposed rule. One of the concerns the complainant discussed with the Board's "regulatory staff" was that the Board did not adequately meet the small entity compliance guide requirements contained in SBREFA.

The complainant referred to concerns in two memorandums from the U.S. Small Business Administration's (SBA's) Office of Advocacy.[9] In its first memorandum, dated January 13, 2011, the Office of Advocacy expressed concerns that the Board did not publish a compliance guide for Regulation Z, Truth in Lending. The Office of Advocacy noted that its concerns did not reflect the views of the SBA as a whole. The Board posted a compliance guide related to the loan originator compensation rule prior to the rule's effective date. Subsequently, the Office of Advocacy sent a memorandum that expressed concerns that the Board's compliance guide for Regulation Z "may not meet the requirements of SBREFA." In addition, the Office of Advocacy "[did] not believe that the guide ha[d] sufficient information to enable a small entity to know when the requirements [of the loan originator compensation rule] ha[d] been met."[10] However, a Board official indicated that Board attorneys reviewed the compliance guide and concluded that the guide complied with SBREFA.

In response to the Hotline complaint and the complaint raised to the Board's regulatory staff, representatives from the Board's OIG met with the complainant. The OIG initiated this evaluation to assess the Board's compliance with SBREFA.

8. Consumer protection rulemaking concerning most automobile dealers also remains with the Board.

9. The Office of Advocacy is an independent office within the SBA. The memorandums are located in the "Newsroom" section of the Office of Advocacy's website and can be found at http://www.sba.gov/advocacy/808/13715.

10. As an independent office within the SBA, the Office of Advocacy's views do not represent the views of the SBA.

Finding 1: Board Should Centralize Compliance Guide Processes

Overall, we found that the Board did not implement a consistent approach for developing small entity compliance guides. As a result, the Board has inconsistently created and updated guides, and the guides have inconsistent content. In our opinion, the Board can considerably improve its approach to ensure that its compliance guides consistently (1) explain the actions a small entity should take to comply with the corresponding final rules and (2) enable a small entity to know when such requirements have been satisfied. We attribute inconsistencies among the guides to the Board's decentralized process for developing the compliance guides. Without a consistent, centralized approach for small entity compliance guides, the Board risks not meeting SBREFA's substantive content requirements and small entities may not be consistently receiving effective guidance on how to comply with applicable regulations.

Inconsistent Approach to Determining When to Create Compliance Guides

In general, our results indicate that the Board follows an inconsistent approach to determining when to create a small entity compliance guide. This inconsistent approach may be partly attributable to the fact that the responsibility for creating a compliance guide generally resides with the division that leads the rulemaking. For example, the Board's Division of Consumer and Community Affairs (DCCA) is primarily responsible for consumer-based regulations.

Although the FRFA performed by the Board for each rule within our sample indicated whether the rule would have a significant economic impact on a substantial number of small entities, guides were not created consistent with the FRFA results.[11] For example, the Board's FRFA for a final rule amending Regulation GG, Prohibition on Funding of Unlawful Internet Gambling, indicated that the final rule would not have a significant impact on small entities.[12] Yet, the Board published a Regulation GG compliance guide that explained the final rule. In other instances, the Board determined through FRFAs that the final rules that amended Regulation Z, Truth in Lending; Regulation AA, Unfair or Deceptive Acts of Practices; and Regulation E, Electronic Fund Transfers would have a significant economic impact on a substantial number of small entities. However, the Board did not update the overarching regulations' previously issued guides.[13] Creating a Regulation GG compliance guide but not updating the other compliance guides when those rules had an economic impact on a substantial number of small entities reflects the Board's inconsistent approach.

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11. Details on our scope and methodology are in appendix A, our final sample of rules reviewed is in appendix B, and the detailed results of our review are in appendix C.

12. According to an interviewee, the Board generally prefers not to certify that a final rule will not have a significant economic impact on a substantial number of small entities without conducting a regulatory flexibility analysis. In our opinion, this preference appears to result in uncertainty concerning whether a guide should be created because section 212(a)(1) of SBREFA makes the small business compliance guide requirement contingent on the agency's certification as to whether the rule, if promulgated, will have a significant economic impact on a substantial number of small entities.

13. On February 22, 2010, the final rule amending Regulation AA was withdrawn to avoid duplication and inconsistency with provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009.

Further, the Board has a decentralized process for overseeing the process of distributing the compliance guides. After a guide has been created, the Board does not follow a standard distribution protocol; guides may be distributed directly to industry contacts or they may only be posted to the Board's public website.

Varying Levels of Consistency among Compliance Guides

The guides we sampled evidenced varying levels of consistency in satisfying SBREFA's substantive content requirements for compliance guides. Our analysis also revealed varying approaches used to draft the guides, ranging from a section-by-section summary that merely restates the rule's requirements to a more comprehensive narrative approach that clearly communicates in a readily understandable manner what a small entity needs to do to comply.

For example, although the compliance guide for Regulation GG, drafted by the Legal Division, specifies what is required for entities covered by the rule, DCCA indicated that it generally prefers to produce section-by-section summaries because the Official Staff Interpretation accompanying consumer regulations provides exhaustive guidance on those regulations. However, the section of the Board's public website containing compliance guides only links to the relevant Official Staff Interpretation in 2 of 10 instances in which the Official Staff Interpretation might serve as a useful supplement to the section-by-section summary. Official Staff Interpretations notwithstanding, we believe that the DCCA guides we assessed do not adequately explain (1) the actions a small entity is required to take to comply with a rule or (2) how a small entity can be sure that it has satisfied compliance requirements.

As part of our evaluation, we reviewed another agency's process for creating compliance guides. The agency issued guidance on how to comply with SBREFA's small entity compliance guide requirements. While the guidance acknowledged that SBREFA allows for broad discretion with regard to implementing compliance guide requirements, the agency provided a general template for small entity compliance guides that identified the types or categories of small entities subject to the guide, summarized the new regulation, outlined compliance dates for notifications and other requirements, and provided examples of questions that may be appropriate to address in the compliance guide.

While SBREFA allows for broad discretion to satisfy compliance guide requirements, the Board's section-by-section summaries did not address questions that may have assisted small entities in comprehending applicable requirements. For illustrative purposes, the other agency we reviewed, which is subject to the same requirements, recommends that the agency's rule writers address the following questions when drafting a small entity compliance guide:

- How can I tell if I am subject to the rule?
- What requirements am I subject to?
- When do I need to comply?
- Where do I go for help?

The framework and guidance provided by the agency to its rule writers evidenced a consistent approach to developing small entity compliance guides.

Commendable Actions

As part of our evaluation, we reviewed two of the Board's compliance guides that could serve as models for future guides. The compliance guide for Regulation P, Privacy of Consumer Information, defines important terms used in the rule and explains the categories of information related to the rule. In addition, the compliance guide for Regulation GG clarifies which small entities are subject to the rule and what is required of businesses covered by the rule in a helpful question-and-answer format.[14] Overall, these guides were comprehensive and addressed the applicability of the respective rule to small entities.

Summary

The Board's decentralized process for developing compliance guides contributes to the inconsistencies we observed among the guides we reviewed. In our opinion, centralized oversight would help ensure that the Board is meeting SBREFA requirements in a consistent manner, including (1) determining whether and when to create or update a guide and (2) confirming that the requirements for the guides have been satisfied.

Recommendation

We recommend that the Board

1. Establish centralized oversight and a standard method or approach for creating small entity compliance guides.

Management's Response

The Board's General Counsel and the Director of the Division of Consumer and Community Affairs agreed with our recommendation. In the consolidated response to recommendation 1, the Board officials indicated their intent to adopt a consistent, centralized approach toward the preparation of small business compliance guides. This approach will "draw on the qualities" of the guides for Regulation P and Regulation GG highlighted in the Commendable Actions section above. The Board officials agreed to improve the overall usefulness of the small business compliance guides.

OIG Comment

In our opinion, the action described by the Board's General Counsel and Division Director is responsive to our recommendation. We plan to follow up on the Board's actions to ensure that the recommendation is fully addressed.

14. The Board did not need to create a compliance guide for Regulation GG because the FRFA associated with the rule indicated that there would not be a significant impact on small entities.

Finding 2: Board Should Comply with SBREFA's Congressional Reporting Requirements

The Board has not submitted annual reports to the relevant congressional committees describing the status of the agency's compliance with paragraphs (1) through (5) in section 212(a) of SBREFA. The 2007 amendments to SBREFA created an annual congressional reporting requirement related to small entity compliance guides. To comply with this requirement, the agency head must submit to the Senate Committee on Small Business and Entrepreneurship, the House Committee on Small Business, and any other committee of relevant jurisdiction a report describing the agency's compliance with small entity compliance guide requirements.

Board Is Not Reporting the Status of Its Compliance to the Relevant Congressional Committees

We reviewed the Board's public reports to Congress listed on the Board's public website to determine whether the Board has provided the Senate Committee on Small Business and Entrepreneurship, the House Committee on Small Business, and any other committee of relevant jurisdiction a report describing the status of compliance with section 212(a) of SBREFA, as amended. We did not find any reports that had been provided to the relevant committees.

In its 2008 Annual Report to Congress, the Board reported that in August of that year, a small entity compliance guide was released for Regulation R, Exceptions for Banks from the Definition of Broker in the Securities Exchange Act of 1934, (12 C.F.R. § 218), which provided a general description of the regulation and contact information for small entities with questions regarding compliance. In our opinion, this 2008 report did not meet the annual reporting requirement because it did not provide the status of the Board's compliance with section 212(a) of SBREFA and was not directed to the appropriate committees. We requested, but did not receive, documentation from the Board evidencing that the annual congressional reporting requirement had been satisfied.

Recommendation

We recommend that the Board

2. Begin submitting annual reports to the relevant congressional committees, as required by section 212(a)(6) of SBREFA, as amended, that describe the Board's compliance with small entity compliance guide requirements.

Management's Response

The Board's General Counsel and the Director of the Division of Consumer and Community Affairs agreed with our recommendation. In the consolidated response to recommendation 2, the

Board officials stated that they will confirm and ensure that the required reports on the Board's compliance with section 212(a)(6) of SBREFA are filed on a timely basis.

OIG Comment

In our opinion, the action described by the Board's General Counsel and Division Director is responsive to our recommendation. We plan to follow up on the Board's actions to ensure that the recommendation is fully addressed.

Appendix A
Scope and Methodology

Our evaluation assessed the Board's compliance with the following SBREFA small entity compliance guide requirements:

- Publish one or more guides to assist small entities in complying with the rule, and title such publications "small entity compliance guides."
- Publish the guide in an easily identified location on the agency's website.
- Distribute the guide to known industry contacts affected by the rule, such as small entities, associations, or industry leaders.
- Publish the guide on the same date as the date of publication of the final rule (or as soon as possible after that date), but no later than the effective date of the rule.
- Explain the actions a small entity should take to comply with a rule, including actions to (1) meet the requirements of a rule and (2) enable a small entity to know when such requirements have been satisfied.
- Use sufficiently plain language likely to be understood by affected small entities in accordance with the agency's sole discretion, taking into account the subject matter of the rule and the language of relevant statutes.

Initially, we selected 15 final rules promulgated after the 1996 enactment of SBREFA as our preliminary sample. However, to fully assess the Board's compliance with the 2007 amendments to SBREFA outlined above, we reduced our final sample to the 11 rules promulgated after the 2007 amendments. We reviewed the Board's FRFAs that accompanied the remaining 11 final rules in our sample. This review further reduced the size of our sample, because the Board had determined that 5 of the 11 rules would not have a significant impact on small entities and did not trigger the creation of small entity compliance guides. Therefore, we reduced our initial sample of 15 final rules to 6—Regulation AA, Unfair or Deceptive Acts or Practices; Regulation E, Electronic Fund Transfers; and 4 rules related to Regulation Z, Truth in Lending (each final rule in our sample is summarized in appendix B).

To determine whether the Board complied with SBREFA requirements, we reviewed the compliance guides for these rules available on the Board's public website and we assessed the Board's compliance with SBREFA's congressional annual reporting requirement. We also evaluated the small entity compliance guides for Regulation P, Privacy of Consumer Information, and Regulation GG, Prohibition on Funding of Unlawful Internet Gambling, to supplement our final sample (listed in appendix B) because these guides were in a more narrative format that differed from many of the guides in our sample originally selected. In addition, we reviewed guides created by another federal banking regulator as well as the small entity compliance guide development process of yet another federal agency.

As part of our evaluation, we interviewed Board staff from DCCA and the Legal Division who assisted in creating compliance guides to understand each division's process for creating compliance guides. It is our understanding that DCCA created the compliance guides we evaluated, except for the Regulation GG compliance guide, which the Board's Legal Division drafted.

Appendix B
Final Sample of Rules Reviewed

Date posted to Federal Register	Regulation	Federal Register citation	Summary	Effective date
06/01/2000	Regulation P—Privacy of Consumer Information[a]	65 Fed. Reg. 35,162	The final rule implements privacy rules pursuant to section 504 of the Gramm-Leach-Bliley Act, which authorizes the federal banking agencies to issue regulations as may be necessary to implement notice requirements and restrictions on a financial institution's ability to disclose nonpublic personal information about consumers to nonaffiliated third parties.	11/13/2000
11/18/2008	Regulation GG—Prohibition on Funding of Unlawful Internet Gambling[a]	73 Fed. Reg. 69,382	The final rule defines terms used in the regulation; designates payment systems that could be used by participants in connection with, or to facilitate, a restricted transaction; exempts certain participants in certain designated payment systems from the requirement of the regulation; requires the participants performing nonexempt functions in a designated payment system to establish and implement policies and procedures reasonably designed to prevent or prohibit restricted transactions, such as by identifying and blocking such transactions; provides nonexclusive examples of policies and procedures for nonexempt participants in each designated payment system; and sets out the regulatory enforcement framework.	01/19/2009
01/29/2009	Regulation Z—Truth in Lending	74 Fed. Reg. 5244	The final rule amends Regulation Z and the staff commentary to the regulation. Except as otherwise noted, the changes apply solely to open-ended credit. Disclosures accompanying credit card applications and solicitations must highlight fees and reasons penalty rates might be applied, such as for paying late. Creditors are required to summarize key terms at account opening and when terms are changed.	07/01/2010
01/29/2009	Regulation AA—Unfair or Deceptive Acts or Practices	74 Fed. Reg. 5498	The final rule, issued under section 5(a) of the Federal Trade Commission Act, prohibits institutions from engaging in certain unfair or deceptive acts or practices in connection with consumer credit card accounts.	07/01/2010

Date posted to Federal Register	Regulation	Federal Register citation	Summary	Effective date
11/17/2009	Regulation E—Electronic Fund Transfers	74 Fed. Reg. 59,033	The final rule limits the ability of a financial institution to assess an overdraft fee for using an automated teller machine and one-time debit card transactions that overdraw a consumer's account, unless the consumer affirmatively consents, or opts in, to the institution's payment of overdrafts for these transactions.	01/19/2010
02/22/2010	Regulation Z—Truth in Lending	75 Fed. Reg. 7658	The final rule amends Regulation Z and the staff commentary to the regulation in order to implement provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 that are effective on February 22, 2010. In particular, the rule limits the application of increased rates to existing credit card balances, requires credit card issuers to consider a consumer's ability to make the required payments, establishes special requirements for extensions of credit to consumers who are under the age of 21, and limits the assessment of fees for exceeding the credit limit on a credit card account.	02/22/2010
06/29/2010	Regulation Z—Truth in Lending	75 Fed. Reg. 37,526	The final rule amends Regulation Z and the staff commentary to the regulation, in order to implement provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 that go into effect on August 22, 2010. In particular, among other requirements, the final rule requires that penalty fees imposed by card issuers be reasonable and proportional to the violation of the account terms.	08/22/2010
09/24/2010	Regulation Z—Truth in Lending	75 Fed. Reg. 58,509	The final rule prohibits payments to loan originators, which includes mortgage brokers and loan officers, based on the terms or conditions of the transaction other than the amount of credit extended; prohibits any person other than the consumer from paying compensation to a loan originator in a transaction where the consumer pays the loan originator directly; and prohibits loan originators from steering consumers to consummate a loan not in their interest based on the fact that the loan originator will receive greater compensation for such loan.	04/01/2011

[a] Reviewed in addition to the six rules in our sample.

Appendix C
Detailed Results of Review

The following describes in more detail our observations concerning each of the major regulations amended that support our overall assessment of the Board's compliance with SBREFA. Each of the rules discussed below, with the exception of Regulation GG, was determined to have a significant impact on small entities as a result of the Board's FRFAs.

Regulation Z, Truth in Lending

Our sample contained four rules that amended Regulation Z. The Board's public website contains a compliance guide for Regulation Z. However, the guide only addresses the loan originator compensation rule (the subject of the OIG Hotline complaint) and does not address the various consumer lending activities covered by Regulation Z. The guide explains the definition of a loan originator as well as who is not considered to be a loan originator. The remainder of the guide explains record retention and prohibited acts or practices.

Regulation AA, Unfair or Deceptive Acts or Practices

Our sample included a rule amending Regulation AA that is specifically related to consumer credit card accounts. The Board published an overall Regulation AA guide that describes the regulation section by section and includes a link to staff guidelines on the credit practices rule and another link to interagency guidance on the topic. As mentioned above, this final rule was ultimately withdrawn.

Regulation E, Electronic Fund Transfers

The rule in our sample amends Regulation E to limit the ability of a financial institution to assess overdraft fees. The Board's compliance guide for Regulation E summarizes each section of the regulation and lists the appendixes' titles, but does not explain how a small entity should comply with the regulation; the guide simply restates and summarizes each section of the rule.

Regulation P, Privacy of Consumer Information

Regulation P was promulgated prior to the 2007 amendment to SBREFA. However, we decided to review the compliance guide that was created for it because the guide appeared to provide more information in a narrative format as opposed to many of the guides in our sample. The guide defines important terms used in the rule, explains the categories of information related to the rule and, among other topics, when and how to provide notices. The purpose of the document, as explained in the guide itself, is to help financial institutions within the Board's primary jurisdiction comply with Regulation P.

The Regulation P guide represents, in our opinion, the type of narrative treatment that provides easy-to-understand guidance for small entities and that reflects consistency with the spirit of SBREFA. In addition to the guide, we noted that the Board developed frequently asked questions to further assist financial institutions in complying with Regulation P. The frequently-asked-questions document identifies specific types of financial institutions and consumer groups and explains how Regulation P applies. For example, one of the questions posed in the document clarifies whether a small bank that contracts with a large bank for its credit card operations would have to provide the customer with the initial privacy notice.

Regulation GG, Prohibition on Funding of Unlawful Internet Gambling

A final rule amending Regulation GG, which was in our initial sample, was not included in our final sample because the Board's FRFA determined that there would not be a significant impact on small entities. However, we decided to review the compliance guide because of its unique question-and-answer format. The questions help clarify which small entities are subject to the rule. We viewed this approach as a possible model for future guides.

Appendix D
Management's Response

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, DC 20551

June 24, 2013

Mark Bialek, Inspector General
Federal Reserve Board of Governors
Mail Stop 300
20th Street & Constitution Ave., NW
Washington, D.C. 20551

Dear Inspector General Bialek:

Thank you for providing the Federal Reserve Board an opportunity to comment on your draft Evaluation Report regarding Small Entity Compliance Guide requirements. We appreciate your review of this process and that you identified guides prepared by the Federal Reserve that you consider to be appropriate models for future guides. Your report includes two recommendations that we concur with and will take steps to implement.

First, you reviewed a number of small business compliance guides issued by the Board since 2008 in light of the requirements of the Small Business Regulatory Enforcement Fairness Act ("Act"). The Act requires an agency "in its sole discretion" to "take into account the subject matter of the rule and the language of relevant statutes, [and] ensure that the guide is written using sufficiently plain language likely to be understood by affected small entities." [1] Although it is natural for the complexity of these guides to vary based on the complexity of the regulation at issue, you observed that, at times, the substantive and stylistic differences observed among guides was a result of the Board's decentralized approach to guide creation. You have recommended that the compliance guides prepared by the Board follow a standard method or approach. We agree, and will work to adopt a consistent, centralized approach toward the preparation of small business compliance guides that will draw on the qualities that you found helpful in your review, and improve the overall usefulness of the small business compliance guides.

[1] 2 U.S.C. § 212(a)(5).

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Second, you note that the Act requires the Board to issue annual reports to Congress on the Board's compliance with the requirement to produce small business compliance guides. We will work with the Congressional Liaison Office to confirm and ensure that such reports are filed on a timely basis.

Sincerely,

Scott G. Alvarez
General Counsel

Sandra F. Braunstein
Director
Division of Consumer
And Community Affairs

OFFICE OF INSPECTOR GENERAL

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