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## Approaching the Fiscal Cliff:

### Three things you should know about the impending sequestration

By Mitria Wilson

1. ***It's coming January 2, 2013.*** An automatic sequester will be ushering in the start of this New Year. After the Budget Control Act's super-committee failed to agree upon \$1.5 trillion in budget savings, the law triggers an automatic \$1.2 trillion reduction in budget authority over the next ten years. The \$109 billion annual reduction applies to both defense and nondefense discretionary and mandatory spending.

2. ***Federal dollars for housing, community development and workforce programs will shrink by 38% in FY2013.*** To achieve the required reduction in FY 2013, the

mandatory cuts to these programs will result in a cumulative 36% reduction in FY 2013 funds according to an analysis performed by the United States Conference of Mayors.

3. ***It is projected to cause more than 2,000,000 people to lose their jobs next year.*** That's nearly half of the total amount of jobs added to the U.S. economy in the past four years. In addition to these job losses, analysts project that enforcing sequestration in 2013 will decrease personal workforce earnings by \$109.4 billion and will also reduce the nation's GDP by \$215 billion.

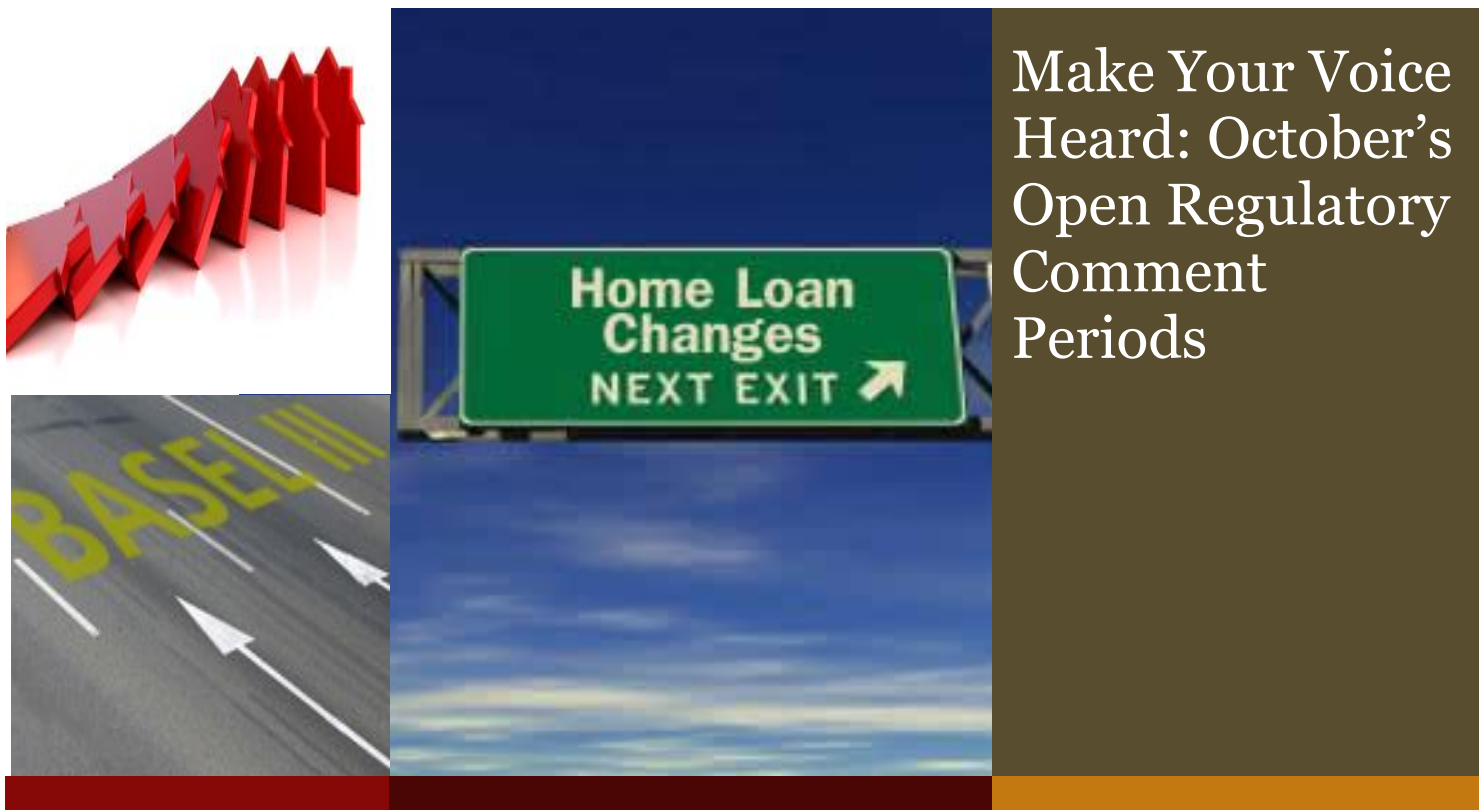


## Also in this Issue:

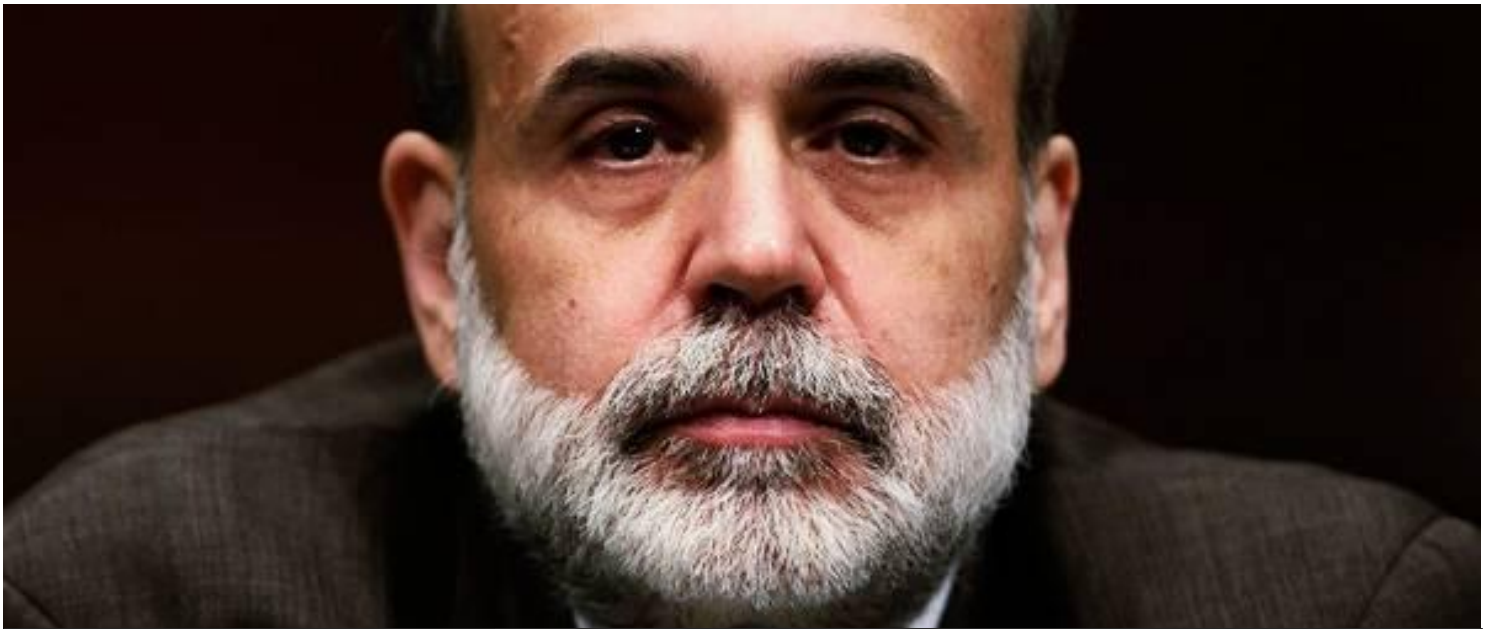
**Banks Behaving Badly:  
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| REGULATION                                                                                                                                                                          | AGENCY  | DEADLINE          |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|-------------------|
| 2012 Real Estate Settlement Procedures Act (Regulation X) Mortgage Servicing                                                                                                        | CFPB    | October 9, 2012   |
| 2012 Truth In Lending Act (Regulation Z) Mortgage Servicing                                                                                                                         | CFPB    | October 9, 2012   |
| Equal Credit Opportunity Act (Regulation B)                                                                                                                                         | CFPB    | October 15, 2012  |
| Appraisals for Higher Risk Mortgage Loans                                                                                                                                           | CFPB    | October 15, 2012  |
| Truth in Lending Act (Regulation Z); Loan Originator Compensation                                                                                                                   | CFPB    | October 16, 2012  |
| CFPB: 5 year strategic plan                                                                                                                                                         | CFPB    | October 25, 2012  |
| Request for Information on Effective Financial Education                                                                                                                            | CFPB    | October 31, 2012  |
| Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z)                                          | CFPB    | November 6, 2012  |
| Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action | OCC/FED | October 22, 2012  |
| Elimination of Prohibition Against General Solicitation And General Advertising in Certain Offerings                                                                                | SEC     | October 5, 2012   |
| FR-5476-N-02 Homeless Emergency Assistance and Rapid Transition to Housing: Continuum of Care Program                                                                               | HUD     | November 16, 2013 |
| Small Business Size Standards: Finance and Insurance and Management of Companies and Enterprises                                                                                    | SBA     | November 13, 2012 |



## Access to Credit, Basel III, and the Federal Reserve's Proposed Regulations

By Elizabeth Kemp

### What is Basel III?

Basel III is the third installment of global financial regulations developed by the Basel Committee on Banking Supervision in response to the financial crisis. This set of recommendations focuses on increasing the capital requirements for banks and introduces new management requirements for a bank's assets and liabilities.

The Basel Committee's proposed rules cannot be enforced independently, and so must be adopted as regulations in each country. In June 2012, the Federal Reserve, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency proposed a set of regulations that would implement the Basel III reforms. These regulations would apply to all regulated banks, regardless of size and scope of operation.

### Why are these proposed rules important?

The most pressing issue created by the Federal Reserve's proposal is the new capital requirement and its potential effect on consumer access to credit through smaller banks.

Banks are required to maintain some balance between the amount of money deposited and the amount of money that is loaned out so that they are able to cover daily

withdrawals. The amount of money that must remain in the bank to maintain this balance is often referred to as a "capital requirement." The amount of this capital requirement depends on the types of assets the bank possesses, and the level of risk associated with each of those assets. Banks with high-risk assets must keep a greater amount of capital on hand. For some banks, these proposed regulations will double or even triple the capital requirement.

Some critics have suggested that holding smaller banks to Basel III's heightened standard will chill lending in communities and jeopardize access to credit. To comply, community banks may be forced to sell off any remaining high-risk loans, and will likely have to reduce the overall number, variety, and the principal amounts of the loans they make. They assert that it will require twice as much capital for a bank to offer any loan that falls outside the lowest risk category and that, unless a prospective borrower fits this low-risk profile, community banks may not be willing to provide loans or lines of credit.

As an organization committed to ensuring access to credit for low and moderate-income communities and communities of color, NCRC is actively evaluating the impact that Basel III could have on lending. We believe it must be implemented in a way that does not disproportionately shrink access to credit for particular communities.



## The Case to Watch: *Mount Holly*

A case in the Third Circuit Court of Appeals, *Township of Mount Holly v. Mt. Holly Gardens*, is poised to bring the issue of disparate impact back before the Supreme Court.

In *Mount Holly*, the question before the court is whether the federal Fair Housing Act allows disparate impact claims. Under the Fair Housing Act, it is illegal to refuse to sell or rent property because of an individual's race, color, religion, sex, familial status, or national origin. The Act also applies to banks and lending institutions and bans discrimination in making home loans. The Supreme Court has never ruled on whether the Fair Housing Act allows discrimination claims under a disparate impact theory, but—for more than two decades—the federal circuit courts of appeals have held that it does with differing standards of proof.

Last year, the Court granted certiorari in *Magner v. Gallagher*, a case presenting the same issue as *Mount Holly*. In *Magner*, the City of St. Paul, Minnesota subsequently dismissed its petition and, as a result, the Supreme Court never ruled on the question presented. With *Mount Holly*, there is a real possibility that a potentially unfavorable Court will grant certiorari to rule on whether disparate impact claims are cognizable under the Fair Housing Act and, if so, determine the applicable burden of proof.



## The Supreme Court's New Term: What's on the Docket

With the start of October, the Supreme Court's new session is underway. So far, 39 cases have been granted consideration on the merits. Here are NCRC's picks for cases of interest already on the docket:

### ***U.S. v. Bormes*, Docket No. 11-192**

Whether the Little Tucker Act, 28 U.S.C. § 1346(a)(2), waives the sovereign immunity of the United States with respect to damages actions for violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.

### ***Fisher v. University of Texas at Austin*, Docket No. 11-345**

Whether the Supreme Court's decisions interpreting the Equal Protection Clause of the Fourteenth Amendment, including *Grutter v. Bollinger*, permit the University of Texas at Austin's use of race in undergraduate admissions decisions.

### ***Marx v. General Revenue Corp.*, Docket No. 11-1175**

Whether a prevailing defendant in a Fair Debt Collection Practices Act (FDCPA) case may be awarded costs for a lawsuit that was not "brought in bad faith and for the purpose of harassment," when the FDCPA provides that "[o]n a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs" and Federal Rule of Civil Procedure 54(d) provides that "[u]nless a federal statute, these rules, or a court order provides otherwise, costs -- other than attorney's fees -- should be allowed to the prevailing party."



## Banks Behaving Badly: From Fraudulent Credit Card Add Ons to Robbing Servicemembers, Capital One Must be Reigned In

By Matthew Lee, Inner City Press

With Capital One, the television advertisements may be funny, but the sales practices are not. The Consumer Financial Protection Bureau and Office of the Comptroller of the Currency fined Capital One for one of those practices in mid-July of this year: the fraudulent sale of credit card add-ons like payment protection for individuals who lose their job or become disabled.

Capital One hard-sold this protection to people who were already unemployed or disabled, knowingly selling them a useless product. In response, the OCC has required Capital One to return \$150 million to consumers, and the CFPB fined the company \$25 million for violations of section 1036 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. section 5536.

Similarly, Capital One was fined barely a week later for violating the Servicemembers Civil Relief Act by denying legal requests by servicemembers to have rates on credit cards and car loans reduced, and repossessing cars and foreclosing on homes without court orders. Visigoths, indeed.

It now appears that Capital One continues to sell add-ons,

at least through two contracts it claims it cannot get out of. Who is protecting these consumers?

NCRC and our members campaigned hard in 2011 to get Capital One cleaned up. In fact, this payment protection issue was specifically flagged by NCRC in our comments and testimony on the Capital One-ING merger. We told regulators then that Capital One's practices and policies were bad for communities and for consumers. We scored a victory with an extended review of the merger and a conditional approval, but these continued abuses without a more thorough consideration by regulators prove that there is still work to be done. It now appears on these and other issues that NCRC's campaign will have to be continued in 2012 and 2013, if necessary. When banks go wild, NCRC gets serious.

We are firmly committed to ensuring that Capital One changes its practices and provides communities and consumers with the products and services that they need to thrive. Our efforts will not cease until we are confident that Capital One's behavior is consistent with its obligations under the Community Reinvestment Act and the legal requirements imposed by the fair housing and lending statutes. Stay tuned for more information on how you can get involved.





“The financial realm encompasses trillions of dollars of assets and employs more than five million people in the United States. To the extent that we can encourage and influence a broadening of equal opportunity...we will quite possibly make breakthroughs for the principles of diversity and inclusion that will be profound and lasting.”

- Director Richard Cordray,  
Consumer Financial Protection Bureau

## Diversifying the Financial Services Business: The Implementation of Dodd-Frank’s Section 342

### Section 342 and Procurement with Banks

The financial services sector represents trillions of dollars in business opportunity. Yet, traditionally those opportunities have not gone to women-owned or minority-owned businesses. Section 342 of Dodd-Frank seeks to change that by using regulators to encourage institutions to increase the amount of business they do with minority and women-owned businesses. Under Dodd-Frank, every federal financial regulatory agency is now required to have an Office of Minority and Women Inclusion. These OMWI offices have three statutory missions, addressing the diversity of the agency’s: (1) workforce, (2) contractors, and (3) regulated entities. The law’s focus on creating diversity assessment standards for regulated entities contracting and procurement practices should be of particular interest to business owners looking to make headway in the financial services sector.

### The Process for Creating Procurement Diversity Standards.

Currently, each of the federal financial regulatory agencies are participating on a joint committee to develop procurement diversity standards for all regulated entities. The purpose of the subcommittee is to ensure a common Framework and consistent approach among the agencies

implementing Section 342 to ensure that there are no conflicting mandates.

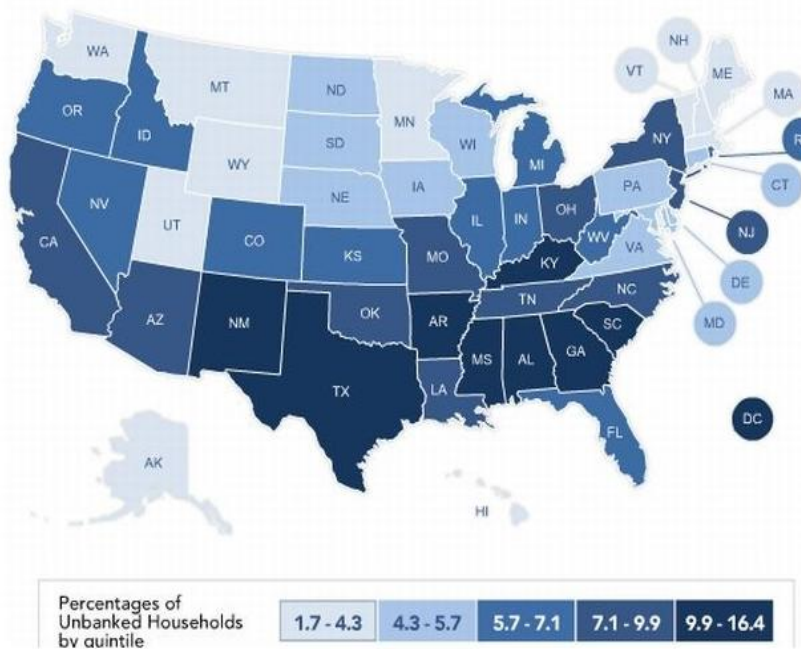
This September, the subcommittee met with NCRC and other groups to outline their framework for developing the standards and assessing diversity for each regulated entity. At that meeting, the subcommittee stated that their goal was to develop an approach that satisfies congressional intent, but that also minimizes any potential regulatory reporting burdens by using pre-existing data sources wherever possible. In addition, the committee established the following four parameters for the newly created standards:

- Must be broad and general enough to be uniformly adopted by institutions of differing sizes and complexities;
- Must encompass currently accepted leading practices within minority and women procurement industries;
- Must be consistent with other federal guidelines and regulations that the entities are required to adhere to; and
- Must not create unreasonable reporting or paperwork requirements.

The subcommittee is expected to release the standards by the end of the year for public comment.

# A Picture Worth 1,000 Words: America's Unbanked

## 2011 Percentages and Locations of Unbanked Households in the United States



## Become a Member of NCRC

NCRC supports and empowers our members to serve as effective leaders and representatives in their communities. By offering policy and advocacy support, organizing assistance, research and training, NCRC helps local organizations attract and preserve the financial resources that make communities prosper. Become a part of our powerful and growing coalition. Contact NCRC's membership and organizing team today:

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Image Source: Pew Charitable Trusts, *Fees and the Unbanked: State Data at a Glance*, [www.pewtrusts.org/our\\_work\\_report\\_detail.aspx?id=85899365577](http://www.pewtrusts.org/our_work_report_detail.aspx?id=85899365577)

The National Community Reinvestment Coalition is a nonprofit, nonpartisan association of more than 600 organizations dedicated to the mission of building and protecting wealth in America's underserved communities. For more than 20 years, we've advocated to ensure vibrant communities for America's working families by actively promoting access to basic banking services and products, homeownership and the development of affordable rental housing, local business growth, and workforce training. Our members include community reinvestment organizations, community development corporations, community financial development institutions, local and state government agencies, faith-based institutions, community organizing and civil rights groups, minority and women-owned business associations, and social service providers from across the nation.

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