

Regulation Digest Weekly

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Marketplace of Ideas

American Action Forum

- The State by State Impact of ACA Regulations, *Sam Batkins*
- The Week in Regulation: October 1-5, *Sam Batkins*

American Enterprise Institute

- The election and Dodd-Frank, *Peter J. Wallison*

Americans for Prosperity

- Americans for Prosperity Foundation Comments Regarding: Use of Eminent Domain to Restructure Performing Loans, *Jason Hughey*

The Brattle Group

- Potential Coal Plant Retirements: 2012 Update, *Metin Celebi, Frank Graves, & Charles Russell*

Competitive Enterprise Institute

- CEI's Battered Business Bureau: The Week In Regulation, *Ryan Young*
- Where Is Obama's Unified Agenda Of Federal Regulations?, *Wayne Crews*

Federal Regulations Advisor

- Monday Morning Regulatory Review – 10/8/12, *Leland Beck*
- SCOTUS to Decide on Deference to Agency Jurisdiction Interpretations, *Leland Beck*

Feature Story

FHFA Proposed Rule Defines “Stress Test” and Expands Applicability to Banks Smaller than \$10 Billion

The Federal Housing Finance Agency published a [proposed rule](#) under the Dodd-Frank Act that would define stress testing and its applicability to entities regulated by the Agency: Fannie Mae, Freddie Mac, and Federal Home Loan Banks. FHFA proposes to define “stress test” as “a process to assess the potential impact on the consolidated earnings and capital of a regulated entity, of different economic and financial conditions over a set planning horizon (“scenarios”), taking into account the current condition of the regulated entity and the regulated entity's risks, exposures, strategies and activities.”

This action accompanies a Treasury [final rule](#) yesterday establishing stress testing procedures and limiting the scope of the rule to banks with more than \$10 billion in total consolidated assets. “Each of FHFA's regulated entities currently has total consolidated assets of more than \$10 billion and is currently subject to the annual stress test requirement. *FHFA proposes expressly to retain to the Director the discretion to require any regulated entity to conduct the stress test annually if its total consolidated assets fall below \$10 billion in a particular year.* FHFA's proposal reflects its preliminary supervisory judgment that under some unforeseen circumstances prudential supervision of a regulated entity that has dropped below the \$10 billion total consolidated asset threshold of the Dodd-Frank Act, may be enhanced by application of the stress-test regime... FHFA's authority to exercise its discretion to apply the proposed stress test requirements to any regulated entity that falls below the \$10 billion threshold of the Dodd-Frank Act rests in its general supervisory authorities conferred by the Safety and Soundness Act and the Bank Act. FHFA intends that the company-run stress test regulations will be codified...and expects that the stress test requirements will apply annually to each of the regulated entities that has total consolidated assets of at least \$10 billion.” [Comments](#) are due on November 5th.

In the News

10/3/12

[Video: How candidates feel about regulation](#), *CNN*

10/4/12

[Romney stresses he wants bank regulation, but slams Obama reforms](#), *Reuters*
[SEC officials urge comprehensive review of U.S. marketplace](#), *Reuters*
[Credit derivative markets need new rules: regulator](#), *Reuters*
[After CFTC loss in court, limits battle could drag on](#), *Reuters*
[Housing regulator seeks input on mortgage financing plan](#), *Reuters*
[How a moderate Mitt Romney says he'd regulate Wall Street](#), *Wonk Blog*
[Obama administration asks Supreme Court to rule on generic-drug delays](#), *Washington Post*

The George Washington University Regulatory Studies Center

- Are We Witnessing a Regulatory Drawback?, *Susan Dudley*

Government Accountability Office

- Additional FAA Efforts Could Help Identify and Mitigate Safety Risks, *Gerald Dillingham*
- Information on Shale Resources, Development, and Environmental and Public Health Risks, *Franklin Rusco*
- Key Environmental and Public Health Requirements, *David Trimble*
- EPA Has Improved Its Review of Effluent Guidelines but Could Benefit from More Information on Treatment Technologies, *David Trimble*

The Mercatus Center

- Risk Assessment, Safety Assessment, and the Estimation of Regulatory Benefits, *Rick Belzer*

OMB Watch

- Underestimating the Benefits of Public Protections

Penn Program on Regulation

- The Regulatory Week in Review: October 5, 2012, *Mima Mohammed*
- Consumers and Lenders May See Different Credit Scores, *Alix McKenna*
- Presidential Candidates Spar Over Role for Regulation, *Brian Ryoo*
- Have Increased Regulations Made the U.S. Less Competitive?, *Ted Oxholm*

Sunlight Foundation

- Survey: How Many States Publish Rules and Regulations Online?, *Matt Rumsey*

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[Romney's Nuanced Debate Attack on Dodd-Frank](#), *Wall Street Journal*

10/5/12

[Analysis: Big funds seek to rein in pay at Wall Street banks](#), *Reuters*

[Safety regulators look into problems with Ford Escape throttles at request of consumer group](#), *Washington Post*

[Federal safety agency investigating complaints that Hyundai Veloster sunroofs can shatter](#), *Washington Post*

[US safety regulators investigating Honda Pilot, Odyssey as vehicles can roll off unexpectedly](#), *Washington Post*

[Banks Raise Fresh Challenges to Exchanges' Safeguards](#), *Wall Street Journal*

[An Overview of the SEC's Final Rule Requiring Resource Extraction Issuers to Disclose Certain Payments](#), *CFO Journal*

[Courts taking up opposition to Dodd-Frank](#), *Washington Post*

[Judge weighs whether to strike CFTC investment fund rule](#), *Reuters*

[FDA cites risk, but MS patients seek unproven therapy](#), *Reuters*

[US can save \\$100 bln if EPA flexible on power plant rules-study](#), *Reuters*

[Funds Face New Battle On Rules](#), *Wall Street Journal*

[FTC Seeks Supreme Court's Intervention in 'Pay-for-Delay' Cases](#), *Regulatory Focus*

10/6/12

[Study: EPA regulations squelch US coal industry](#), *Christian Science Monitor*

[Federal officials are crafting uniform safety rules for Metro, other subways](#), *Washington Post*

10/8/12

[Are Regulations to Blame for Tight Mortgage Credit?](#), *WSJ Blogs*

[In Wake of Meningitis Outbreak, Senator Calls for New FDA Authority to Regulate](#), *Regulatory Focus*

10/9/12

[Meningitis outbreak stirs calls for FDA pharmacy oversight](#), *Reuters*

[Three Strategies for Thriving under Dodd-Frank](#), *CFO Journal*

[U.S. regulators struggle to police shale energy boom: report](#), *Reuters*

[CFTC staff recommends appeal of commodity limits ruling: source](#), *Reuters*

[Money market pioneer Bent fights SEC fraud claim at trial](#), *Reuters*

[U.S. bank regulators to vote on final stress test rule](#), *Reuters*

[Democrats want FDA to regulate compounding pharmacies following meningitis outbreak](#), *Washington Post*

[Goldman in Push On Volcker Limits](#), *Wall Street Journal*

[Romney Talks Regulation, Farming In Iowa](#), *NPR*

[Regulator Prepares to Appeal Dodd-Frank Court Ruling](#), *NYT DealBook*

10/10/12

[Calls for oversight grow as US meningitis death toll mounts](#), *Reuters*

[US safety regulators warn about counterfeit airbags](#), *Reuters*

[New Chemical Testing Method to Reduce Reliance on Animal Eye Testing](#), *Regulatory Focus*

[As Compounding Crisis Widens, Legislators Propose Regulatory Fixes](#), *Regulatory Focus*

Rulemaking

Department of the Treasury

OCC Finalizes Rule Establishing Annual Stress Test Requirements for Banks with Over \$10 Billion in Assets

The Office of the Comptroller of the Currency published a [final rule](#) requiring “national banks and Federal savings associations with total consolidated assets over \$10 billion (defined as “covered institutions”) to conduct an annual stress test as prescribed by this rule.” The rule divides the “covered institutions” subject to this rule into two

categories: 1) banks with total consolidated assets between \$10 billion and \$50 billion, and 2) banks with total consolidated assets of more than \$50 billion. Banks with total consolidated assets of less than \$10 billion are not covered by the stress test provisions in this rule; however, the Federal Housing Finance Agency this week [proposed a rule](#) reserving the discretion to extend stress testing requirements to banks with total consolidated assets of less than \$10 billion. “Based on these categories, covered institutions are subject to different stress test requirements and deadlines for reporting and disclosures. A key difference between these categories is that a national bank or Federal savings association that qualifies as an over \$50 billion covered institution as of October 9, 2012 must conduct the annual stress test under this final rule beginning this year; other covered institutions that qualify as \$10 to \$50 billion covered institutions are not subject to the stress test requirements under this final rule until 2013.”

OCC Final Rule Intended to Avoid Risk on Short-Term Investment Funds

The Office of the Comptroller of the Currency published a [final rule](#) revising the OCC’s previous rules on short-term investment funds (STIFs). “Regulations governing Federal savings associations (FSAs) require compliance with the national bank STIF Rule. The final rule adds safeguards designed to address the risk of loss to a STIF’s principal, including measures governing the nature of a STIF’s investments, ongoing monitoring of its mark-to-market value and forecasting of potential changes in its mark-to-market value under adverse market conditions, greater transparency and regulatory reporting about a STIF’s holdings, and procedures to protect fiduciary accounts from undue dilution of their participating interests in the event that the STIF loses the ability to maintain a stable net asset value (NAV).” [Comments](#) on the Paperwork Reduction Act aspects of this rule are due on November 8th.

Environmental Protection Agency

EPA Publishes Direct Final Rule Modifying Renewable Fuel Standard Diesel Sulfur Programs

The Environmental Protection Agency published a [direct final rule](#) and accompanying [proposed rule](#) amending the definition of “heating oil” in the Renewable Fuel Standard (RFS) program under section 211(o) of the Clean Air Act. “This amendment will expand the scope of renewable fuels that can generate Renewable Identification Numbers (RINs) as heating oil to include fuel oil produced from qualifying renewable biomass that will be used to generate heat to warm buildings or other facilities where people live, work, recreate, or conduct other activities. Fuel oils used to generate process heat, power, or other functions will not be included in the amended definition. Producers or importers of fuel oil that meets the amended definition of heating oil will be allowed to generate RINs, provided that the fuel oil meets the other requirements specified in the RFS regulations. This amendment will not modify or limit fuel included in the current definition of heating oil. EPA is also amending the requirements under EPA’s diesel sulfur program related to the sulfur content of locomotive and marine diesel fuel produced by transmix processors. These amendments will allow locomotive and marine diesel fuel produced by transmix processors to meet a maximum 500 parts per million (ppm) sulfur standard provided that; the fuel is used in older technology locomotive and marine engines that do not require 15 ppm sulfur diesel fuel, the fuel is used outside of the Northeast Mid-Atlantic Area, and the fuel is kept segregated from other fuel. These amendments will provide significant regulatory relief for transmix processors while having a neutral or net positive environmental impact.” [Comments](#) are due on November 8th.

Corporation for National and Community Service

CNCS Rule Requires FBI Criminal History Check for AmeriCorps Volunteers and Foster Grandparents

The Corporation for National and Community Service (CNCS) published a [final rule](#) requiring AmeriCorps volunteers, retired and senior volunteers, foster grandparents, and volunteers funded with CNCS grant money to undergo an FBI criminal background check and fingerprinting. This requirement applies to CNCS-funded volunteers who have “recurring access to children 17 years of age or younger, to persons age 60 and older, or to individuals with disabilities.” For the purposes of this regulation, “recurring access” is defined as “having contact with individuals from one or more of the above groups on more than one occasion.”

Agencies

Department of the Interior

Interior Seeks Members for New Advisory Committee on Climate Change & Natural Resource Science

The Department of Interior [announced](#) the establishment of the Advisory Committee on Climate Change and Natural Resource Science in the Federal Register, along with a solicitation for membership nominations from the public. “The Committee will provide advice on matters and actions relating to the establishment and operations of the U.S. Geological Survey National Climate Change and Wildlife Science Center and the DOI Climate Science

Centers.” Members of this committee will advise on a national strategy identifying key science priorities to advance natural resource management, mechanisms to ensure high scientific quality and integrity standards by the National Climate Change and Wildlife Science Center, and collaboration and engagement with “key partners at the regional Climate Science Center level.” There are 25 Committee membership positions available; federal lobbyists are not eligible for consideration. [Nominations](#) must be received by November 19th.

Environmental Protection Agency

EPA Announces Three New Approved Equivalent Methods of Measuring Particulate Matter Concentrations

The Environmental Protection Agency [announced](#) the designation of three new equivalent methods of measuring concentrations of PM_{2.5}, PM₁₀, and PM_{10-2.5} in the ambient air. “The new equivalent methods are automated monitoring methods utilizing a measurement principle based on sample collection by filtration and analysis by beta radiation attenuation... As designated equivalent methods, these methods are acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the methods must be used in strict accordance with the operation or instruction manuals associated with the methods and subject to any specifications and limitations (e.g., configuration or operational settings) specified in the applicable designated descriptions.”

EPA Announces Exposure Modeling Public Meeting on October 30th

The Environmental Protection Agency [announced](#) a public meeting on October 30th from 9:00am – 4:00pm on agency exposure modeling applicable to chemical substances under the Toxic Substances Control Act, the Federal Food, Drug, and Cosmetic Act, or the Federal Insecticide, Fungicide, and Rodenticide Act. Among the tentative topics of the meeting EPA includes: 1) Development and evaluation of the Pesticide Root Zone Model (PRZM) for estimating pesticide concentrations in groundwater; 2) Status of Drinking Water intake Watershed PCA development exercise; 3) RQ calculations for specific listed terrestrial mammals, birds, reptiles, and amphibians: Model Parameterization and Knowledge base Development; 4) Standard Operating Procedure for calculating degradation kinetics; 5) Aquatic exposure modeling using field studies; 6) Rice modeling: A case study; 7) Evaluation of a simplified SWAT model approach for prediction of insecticide concentrations in a small watershed in northwestern Oregon; 8) iSTREEM@—a Web-based river chemical concentration estimation model; 9) Development and validation of an approach for modeling pyrethroid insecticides in wastewater treatment processes; 10) Monitoring and modeling the fate and transport of a pesticide metabolite from groundwater recharge to drinking water; 11) Comparison of multiple source ground spray deposition curves for determination of buffers in simulation models; and 12) Using groundwater monitoring data to evaluate the Tier 1 use of drinking water exposure models. Interested participants must [register](#) before October 22nd.

Department of Labor

BLS Announces Technical Advisory Committee Public Meeting on November 9th

The Bureau of Labor Statistics [announced](#) a public meeting of the BLS Technical Advisory Committee on Friday, November 9th from 9:00am – 4:30pm. “The Committee provides advice and makes recommendations to the Bureau of Labor Statistics (BLS) on technical aspects of the collection and formulation of economic measures. The BLS presents issues and then draws on the expertise of Committee members representing specialized fields within the academic disciplines of economics, statistics and survey design.” The agenda for November’s public meeting includes discussion of Occupational Employment Statistics (OES) time series, enhancements to the chained consumer price index (CPI), and future priorities.

Department of Commerce

ESA Announces Bureau of Economic Analysis Advisory Committee Public Meeting on November 16th

The Economics and Statistics Administration [announced](#) a public meeting of the Bureau of Economic Analysis Advisory Committee on November 16th from 9:00am – 3:30pm. “The meeting will address ways in which the national economic accounts can be presented more effectively for current economic analysis and recent statistical developments in national accounting... The Committee advises the Director of BEA on matters related to the development and improvement of BEA's national, regional, industry, and international economic accounts, especially in areas of new and rapidly growing economic activities arising from innovative and advancing technologies, and provides recommendations from the perspectives of the economics profession, business, and government.” Interested participants should contact [Gianna Marrone](#) at (202) 606-9633.