

Feature Story

DOL Finalizes Rule Requiring Overtime Pay for Companionship Workers

The Department of Labor published a [final rule](#) that would apply the requirements of the Fair Labor Standards Act (FLSA) to domestic employees who provide companionship services to the elderly, the ill, and disabled. Companionship workers are currently excluded from FLSA coverage pursuant to the 1974 amendments to the FLSA, although other domestic service employees are covered by DOL regulations. DOL argues that the 1974 FLSA amendments were intended to cover babysitters and those who provide companion services to the elderly, and were not intended to cover trained personnel (such as nurses) who now often provide companionship services to the elderly and disabled. To this extent, DOL is revising the definition of exempt “companionship services” to encompass only workers who are providing

the sorts of limited, non-professional services (such as babysitting) and to allow trained personnel to be covered by the FLSA standards. In its analysis of this rule, DOL estimates that the “primary effect ... is the transfer of income from home care agencies (and payers because a portion of costs will likely be passed through via price increases) to direct care workers, due to more workers being protected under the FLSA; the Department projects an average annualized transfer of \$321.8 million in the medium-impact scenario (using a 7 percent real discount rate). These income transfers result from the narrowing of the companionship services exemption, specifically: payment for time spent by direct care workers traveling between individuals receiving services (consumers) for the same employer, and payment of an overtime premium when hours worked exceed 40 hours per week. Transfers resulting from the requirement to pay the minimum wage are expected to be zero because current wage data suggests that few affected workers, if any, are currently paid less than the federal minimum wage per hour.” These changes will be effective January 1st, 2015.



Opinion

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Marketplace of Ideas

American Action Forum

- Week in Regulation, *Sam Batkins*
- Regulation Review: Final “Domestic Worker” FLSA Rule, *Sam Batkins*
- The Paperworkers: Examining Trends in Regulatory Specialist Employment, *Sam Batkins*
- Health Care Exchanges Impose \$5.3 Billion in Costs, 16 Million Hours, *Sam Batkins*

American Enterprise Institute

- Making bank capital requirements simpler, more comparable, and more transparent, *Richard Herring & Robert A. Eisenbeis*
- The new Qualified Residential Mortgage rule

In the News

Congress & Regulatory Reform

[Sen. King makes case for opposing ‘dumb’ regulations](#), *The Hill*

[25 Regulations to Watch](#), *The Hill*

[Regulators prepare to be ‘handcuffed’ in shutdown](#), *The Hill*

[CFTC already prepping for shutdown](#), *The Hill*

[Shutdown would choke flow of federal regulations](#), *The Hill*

[GOP lawmaker cheers EPA shutdown](#), *The Hill*

[Disgraced EPA official pleads the Fifth in House investigation](#), *The Hill*

[Regs chief warns shutdown would halt rule review progress](#), *The Hill*

[U.S. Financial Market Oversight to Continue During Shutdown](#),

Bloomberg

Financial Markets & Housing

[SEC making a ‘subtle shift’ in its pursuit of individuals](#), *Washington Post*

[SEC sets zero-tolerance objective for glitches at exchanges](#), *Reuters*

[Financial regulator: Rules shine ‘bright light’ on risky markets](#), *The Hill*

[Official: JPMorgan settlement talks target \\$11B](#), *USA Today*

[Volcker Rule Costs Tallied as U.S. Regulators Press Deadline](#), *Bloomberg*

[CFTC Enforcement Director Meister leaving agency; Lowe named acting enforcement chief](#), *Washington Post*

[Derivatives watchdog gets new top cop](#), *The Hill*

[Derivatives watchdog gets new top cop](#), *The Hill*



proposal, *George G. Kaufman & Peter Wallison*

Center for Progressive Reform

- Waiting for the Stormwater Rule, *Dave Owen*
- Important Strides in OSHA's New Silica Rule but Advocates have a Long Road Ahead, *Matt Shudtz*
- The Ongoing Waters War: Understanding the Firestorm Over US EPA's Massive Draft Report and New Army Corps and EPA Proposed Rule on Connectivity of America's Waters, *William Buzbee*
- The SBA's Office of Advocacy Criticism of Its 'Crain and Crain' Report: A Dollar Short and A Day Late, *Sidney Shapiro*
- 20 Years of 12866, *Lisa Heinzerling*

Competitive Enterprise Institute

- CEI's Battered Business Bureau: The Week in Regulation, *Ryan Young*
- Environmental Regulations Threaten Refining Sector Jobs, *Iain Murray*

Federalist Society

- The Regulatory Improvement Act: A 'Least-Best' Solution for Regulatory Inefficiency

The George Washington University Regulatory Studies Center

- Retrospective Review of Risk-Based Regulations, *Susan E. Dudley*

The Mercatus Center

- Reinvigorating, Strengthening, and Extending OIRA's Powers, *John Morrall*

National Federation of Independent Business

- Letter Asking the OMB to Return a Clean Water Act Rule to the EPA, *Susan Eckerly*
- Testimony before the United States Congress on Behalf of the National Federation of Independent Business - The Office of Information and Regulatory Affairs: Federal Regulations and Regulatory Reform, *Nicole Riley*

Penn Program on Regulation

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- White House Completes Review of ADA Revisions, *Margot Campbell*
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[CFTC's Enforcement Chief David Meister Plans Departure](#), *Bloomberg*
[SEC Once Slowed by Data Gap to Report High-Speed Trader Research](#), *Bloomberg*

[Reverse-Mortgage Rule on Surviving Spouse Tossed by Judge](#), *Bloomberg*
[Banks May Need Capital Backstops for Stress Test, Enria Says](#), *Bloomberg*
[Fed Said to Review Commodities at Goldman, Morgan Stanley](#),

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[Big Banks Submit New Round of 'Living Wills' to U.S. Regulators](#), *Bloomberg*

[CFPB Says Card-Fee Problems Persist](#), *Wall Street Journal*

[Groundwork Laid for Stricter Regulation of Asset Managers](#), *Wall Street Journal*

[Swaps Rules Worry Industry](#), *Wall Street Journal*

[Report Urges Changes at Consumer Protection Bureau](#), *Wall Street Journal*

[EU Swaps Platforms in Limbo as CFTC Closed on Deadline Day](#),

Bloomberg

[Bank Credit-Card Fees Face New Scrutiny by U.S. Consumer Bureau](#), *Bloomberg*

[U.S. securities watchdog proposes new rules for "dark pools"](#), *Reuters*

Energy & Environment

[Obama looking to replace energy commission nominee](#), *Washington Post*

[Nominee to lead energy panel withdraws; Lacked support in Senate](#), *Washington Post*

[Greater Coal Use Raises Stakes for Obama Climate Rules](#), *Wall Street Journal*

[EPA to be hit hard in shutdown, could delay renewable fuel standard](#), *Reuters*

[McAuliffe says for first time that he supports EPA rules on coal-fired plants](#), *Washington Post*

[Binz withdraws name for FERC nomination](#), *Washington Post*

[Reducing dangerous greenhouse gas emissions at DOE facilities](#), *Washington Post*

[Report urges EPA to improve rules on secret US email accounts, finds no deliberate wrongdoing](#), *Washington Post*

Health & Safety

[Squabble over new poultry inspection rules intensifies](#), *The Hill*

[Administration sued over missed car safety rule deadline](#), *The Hill*

[FDA Regulators Eye Medical Apps for Mobile Devices](#), *Bloomberg*

[Report: Obamacare Exchanges to Cost \\$5.3 Billion, 16 Million Hours](#), *Weekly Standard*

[Feds issue ObamaCare reporting rules](#), *The Hill*

[Delay of ObamaCare's employer mandate draws legal challenge](#), *The Hill*

[Most FDA workers to remain on the job](#), *The Hill*

Technology

[FAA to weigh easing restrictions on passenger use of smartphones, other devices](#), *Washington Post*

Rulemaking

Securities and Exchange Commission

SEC Cannot Identify Market Failure in Proposed Disclosure of CEO/Employee Pay Ratio for Issuers

Pursuant to Section 953(b) of the Dodd-Frank Act, the Securities Exchange Commission published a [proposed rule](#) requiring certain issuers to disclose the median of the annual total employee compensation, the total compensation of the chief executive officer, and the ratio of the two compensation levels. "The proposed disclosure would be



required in any annual report, proxy or information statement or registration statement that requires executive compensation disclosure pursuant to Item 402 of Regulation S-K. The proposed disclosure requirements would not apply to emerging growth companies, smaller reporting companies or foreign private issuers... As noted above, there is limited legislative history to inform our understanding of the legislative intent behind Section 953(b) or the specific benefits the provision is intended to secure. In particular, the lack of a specific market failure identified as motivating the enactment of this provision poses significant challenges in quantifying potential economic benefits, if any, from the pay ratio disclosure... the potential value of this disclosure for assessing issues related to employee morale, productivity and investment in human capital may be diminished by the indirect costs of creating incentives for registrants to change their business structure.” [Comments](#) are due on December 2nd.

Federal Housing Finance Agency

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

The Federal Housing Finance Agency published a [final rule](#) defining stress testing and its applicability to entities regulated by the Agency: Fannie Mae, Freddie Mac, and Federal Home Loan Banks pursuant to the Dodd-Frank Act. 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.”

From the final rule: “Section 165(i)(2) of the Dodd-Frank Act requires certain financial companies with total consolidated assets of more than \$10 billion, and which are regulated by a primary federal financial regulatory agency, to conduct annual stress tests to determine whether the companies have the capital necessary to absorb losses as a result of adverse economic conditions. The FHFA is the primary federal financial regulator of the regulated entities. While each of the regulated entities currently has total consolidated assets of more than \$10 billion, *the final rule expressly retains the Director’s discretion to require any regulated entity that falls below the \$10 billion threshold to conduct the stress test.*”

FHFA Publishes Stress Test Orders for Fannie Mae, Freddie Mac, Federal Home Loan Banks

The Federal Housing Finance Agency published three [orders](#) requiring the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and each of the twelve Federal Home Loan Banks “that has total consolidated assets of more than \$10 billion to conduct annual stress tests to determine whether the companies have the capital necessary to absorb losses as a result of adverse economic conditions.” One of the orders applies to Fannie Mae; one applies to Freddie Mac; and one applies to federal home loan banks. “These initial Orders communicate to the regulated entities their reporting requirements under the framework established by the final rule, and the accompanying Summary Instructions and Guidance provide general information on the reporting requirements. Separate Orders will be issued to advise the regulated entities of the scenarios to be used for the initial stress testing. FHFA anticipates supplementing the rule annually with Orders that provide test scenarios and other instructions and guidance (which may include adjustments to the instructions and advice, changes to the required elements and format, and transmission of the annual scenarios to the regulated entities).”

Federal Reserve System

Fed Board Publishes Interim Final Rule Providing One-Year Transition Period for Certain Stress Tests

The Federal Reserve Board published an [interim final rule](#) that would provide a one-year transition period for the calculation of certain stress tests for banks bigger than \$10 billion. “The Board invites comment on an interim final rule that provides a one-year transition period during which bank holding companies and most state member banks with more than \$10 billion but less than \$50 billion in total consolidated assets would not be required to reflect the revised regulatory capital framework that the Board approved on July 2, 2013 (revised capital framework) in their stress tests for the stress test cycle that begins October 1, 2013. For this stress test cycle, these companies will be required to estimate their pro forma capital levels and ratios over the full nine-quarter planning horizon using the Board’s current regulatory capital rules. The interim final rule also clarifies when a banking organization would estimate its minimum regulatory capital ratios using the advanced approaches for a given stress test cycle.” [Comments](#) are due on November 25th.



Fed Board Interim Final Rule Amends Capital Plan and Stress Test Rules for Banks Bigger Than \$50 Billion

The Federal Reserve Board published an [interim final rule](#) amending the capital plan and stress test rules “to require a bank holding company with total consolidated assets of \$50 billion or more to estimate its tier 1 common ratio using the methodology currently in effect in 2013 under the existing capital guidelines (not the rules as revised on July 2, 2013)... The revised capital framework introduces a new common equity tier 1 capital ratio and supplementary leverage ratio, raises the minimum tier 1 ratio and, for certain banking organizations, leverage ratio, implements strict eligibility criteria for regulatory capital instruments, and introduces a standardized methodology for calculating risk-weighted assets. The new minimum regulatory capital ratios and the eligibility criteria for regulatory capital instruments will begin to take effect as of January 1, 2014, subject to transition provisions, for banking organizations that meet the criteria for the advanced approaches rule (advanced approaches banking organizations). All other banking organizations must begin to comply with the revised capital framework beginning on January 1, 2015.” [Comments](#) are due on November 25th.

Department of Housing and Urban Development

HUD Proposes Qualified Mortgage Definition for Single Family Mortgages Insured or Guaranteed by HUD

The Department of Housing and Urban Development published a [proposed rule](#) that would define which single family mortgages insured or guaranteed by HUD are “qualified mortgages” pursuant to the Dodd-Frank Act. “The Dodd-Frank Act also charges HUD and three other Federal agencies with prescribing regulations defining the types of loans that these Federal agencies insure, guarantee, or administer, as applicable, that are qualified mortgages. Through this proposed rule, HUD submits for public comment its definition of “qualified mortgage” for the types of loans that HUD insures, guarantees, or administers that aligns with the statutory ability-to-repay criteria of TILA and the regulatory criteria of the CFPB's definition, without departing from HUD's statutory missions. In this rulemaking, HUD proposes that any forward single family mortgage insured or guaranteed by HUD shall meet the criteria of a qualified mortgage, as defined in this rule, and HUD seeks comment on all components of its definition.” [Comments](#) are due on October 30th.

Office of Personnel Management

OPM Finalizes Rule Limiting Congressional Staff to Purchasing Healthcare via ACA Exchanges

The Office of Personnel Management published a 4-page [final rule](#) amending the Federal Employees Health Benefits (FEHB) Program regulations regarding coverage for Congress members and their staff pursuant to the provisions of the Affordable Care Act (ACA). The ACA states that “the only health plans that the Federal Government may make available to Members of Congress and congressional staff with respect to their service as a Member of Congress or congressional staff shall be health plans that are—(I) created under this Act (or an amendment made by this Act); or (II) offered through an Exchange established under this Act (or an amendment made by this Act).” Currently, these members of Congress are eligible for the FEHB program through OPM; however, these health benefit plans were not created under the Affordable Care Act or offered through the exchanges. This rule implements these ACA provisions by excluding members of Congress and their staff from purchasing the health benefits plans contracted under the Office of Personnel Management. “Current FEHB health plan enrollment for Members of Congress and congressional staff employed by the official office of a Member of Congress will terminate at midnight on December 31, 2013.”

Department of the Interior

Interior Extends Comment Period for Outer Continental Shelf Oil, Sulfur, and Gas Production Requirements

The Department of the Interior is [extending](#) the comment period for its August 22, 2013 proposed rule, [Oil and Gas and Sulphur Operations on the Outer Continental Shelf-Oil and Gas Production Safety Systems](#). This proposed rule would amend and update the regulations regarding oil and natural gas production on the Outer Continental Shelf (OCS) and address issues including safety and pollution prevention equipment lifecycle analysis, production safety systems, subsurface safety devices, and safety device testing. “This proposed rule would amend and update the Subpart H, Oil and Gas Production Safety Systems regulations. Subpart H has not had a major revision since it was first published in 1988. Since that time, much of the oil and gas production on the OCS has moved into deeper waters and the regulations have not kept pace with the technological advancements. These regulations address issues such as production safety systems, subsurface safety devices, and safety device testing. These systems play a critical role in protecting workers and the environment.” [Comments](#) are now due on December 5th.



Agencies

Office of the Federal Register

Federal Register Announces Procedures for Publication during Government Shutdown

The Office of the Federal Register published a [notice](#) announcing the procedures for publishing government documents—such as proposed rules, final rules, and agencies notices—in the absence of government funding. “In the event of an appropriations lapse, the Office of the Federal Register (OFR) would be required to publish documents directly related to the performance of governmental functions necessary to address imminent threats to the safety of human life or protection of property. Since it would be impracticable for the OFR to make case-by-case determinations as to whether certain documents are directly related to activities that qualify for an exemption under the Antideficiency Act, the OFR will place responsibility on agencies submitting documents to certify that their documents relate to emergency activities authorized under the Act.”

Commodity Futures Trading Commission

CFTC Publishes Procedures for Agency Operation during Government Shutdown

The Commodity Futures Trading Commission published a [notice](#) outlining the continuation, shutdown, and resumption of certain operations of the Commission in the absence of government funding. “Under 31 U.S.C. 1341 (the “Antideficiency Act”), the Commission is prohibited from expending or obligating any funds in the absence of appropriations, subject to a narrow set of exceptions. The Commission may use one of the exceptions to the Antideficiency Act set forth in 31 U.S.C. 1342, which permits agencies to obligate funds before an appropriations measure has been enacted and to accept voluntary services during a lapse when certain employees are needed to perform emergency or “excepted” functions. The Department of Justice's Office of Legal Counsel has determined that government work performed so that the commodities and futures markets can continue to operate and so that trading may continue qualifies as an “excepted” function as set forth in 31 U.S.C. 1342... Consequently, in the event of a lapse in appropriations, the Commission may incur obligations to allow certain employees who perform “excepted” functions to continue to perform those functions. This authority, however, does not permit the Commission to fund ongoing, regular functions, the suspension of which would not imminently threaten the safety of human life or the protection of property during a lapse in appropriations.”

Export-Import Bank

Ex-Im Bank Receives Application for \$100+ Million to Fund Boeing Exports to South Korea

The Export-Import Bank published a [notice](#) announcing the receipt of an application for a long-term loan or financial guarantee in excess of \$100 million to fund the export of commercial Boeing aircraft to South Korea. These exports would be used “for the transportation of air cargo between the Republic of Korea and other countries.” [Comments](#) are due on October 22nd.

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