

Regulation Digest Weekly

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Marketplace of Ideas

American Action Forum

- Small Business Regulation: A Case Study and Options for Reform, *Sam Batkins & Ike Brannon*
- The Week in Regulation: October 29 to November 2, *Sam Batkins*

American Enterprise Institute

- Dodd-Frank and too big to fail receive too little attention, *Peter Wallison*

Americans for Prosperity

- Welcome to ObamaCare Part XIV: Medicaid Admits Lower Payments Equals Less Care, *Nicole Kaeding*

Cato Institute

- The Coming Regulatory Tsunami, *Richard Rahn*

Center for Progressive Reform

- Comments on Five IRIS Assessments Show Industry Clogging up Process with Not Relevant Information, *Ben Somberg*
- Obama 2.0: Looking Forward, Mindful of the Past, *Rena Steinzor*

Center for Public Integrity

- IMPACT: Federal inspectors step up enforcement of rules to prevent black lung, *Chris Hamby*

Feature Story

CFPB Proposes to Remove Ability-to-Pay Requirement from Regulation Z

The Consumer Financial Protection Bureau published a [proposed rule](#) that would remove the Bureau's ability-to-pay requirements from its existing Regulation Z (Truth in Lending). Currently, Regulation Z prohibits credit card issuers from opening new accounts or increasing credit limits for customers without considering the consumer's independent ability to pay. The Truth in Lending Act (TILA), which underpins Regulation Z, was amended to require credit card issuers to consider the independent ability to pay for a credit card account or increased credit limit of consumers under the age of 21. The Bureau exercised its discretion to expand the regulatory requirement to all consumers in the previous rulemaking, blocking some adults (such as stay-at-home spouses) from obtaining credit cards for lack of "independent" ability to pay. "The Bureau is proposing to amend 12 CFR 1026.51 and the official interpretation to the regulation in order to address concerns that, in light of the statutory framework established by sections 150 and 127(c)(8) of TILA, current § 1026.51(a) may be unduly limiting the ability of certain individuals 21 or older, including spouses or partners who do not work outside the home, to obtain credit." [Comments](#) are due on January 7th.

In the News

10/31/12

[Swap-Trading Rules Won't Be Finished by November, O'Malia Says](#), *Bloomberg*

11/1/12

[Bond market watchdog seeks SEC approval for stricter disclosure of bond referendum campaigns](#), *Washington Post*

[Facing Criticism, FDA Rethinking Some Therapeutic Equivalence Standards](#), *Regulatory Focus*

[Sterility Issues Found at Second Compounder as FDA Anticipates New Drug Shortages](#), *Regulatory Focus*

[CME Among Clearinghouses Winning Jan. 14 Margin Delay From CFTC](#), *Bloomberg*

[Too-Big-To-Fail: FSB to Cut List of Banks to 28](#), *Bloomberg TV*

[Tests find bacterial contamination in Mass. pharmacy products, significance unclear](#), *Washington Post*

[Bond market watchdog seeks SEC approval for stricter disclosure of bond referendum campaigns](#), *Washington Post*

[Bill Would Tighten Pharmacy Rules](#), *Wall Street Journal*

[Inhofe continues push for regulatory transparency after Obama administration misses his deadline for releasing regulatory plans](#), *Daily Caller*

11/2/12

[Obama Administration Sits on Key Regulations](#), *National Journal*

[Oil trader nightmare: regulated like a bank](#), *Reuters*

[Intercontinental Asks SEC to Clear European Sovereign Swaps](#), *Bloomberg*



Competitive Enterprise Institute

▪ CEI's Battered Business Bureau: The Week In Regulation, *Ryan Young*

Federal Regulations Advisor

▪ Monday Morning Regulatory Review – 11/5/12, *Leland Beck*

Heritage Foundation

▪ Obama's Regulatory Agenda: Calm Before the Superstorm, *Diane Katz*
▪ Morning Bell: Administration Ignores Law, Delays Exposing New Regulations, *Diane Katz*

House Committee on Education and the Workforce

▪ Obama Administration Continues to Play Game of Regulatory Hide-and-Seek, *John Kline*

The Mercatus Center

▪ EVENT: The Future of Regulations: Moving From Presumption to Proof, November 13th
▪ Forget Elections, We Suffer An Anonymous Governing Class, *Hester Peirce*

National Bureau of Economic Research

▪ Challenges in Identifying and Measuring Systemic Risk, *Lars Peter Hansen*

OMB Watch

▪ Anti-Regulatory Bill Would Limit the SEC's Ability to Protect Investors

Penn Program on Regulation

▪ The Regulatory Week in Review: November 2, 2012
▪ Regulation on Election Day, *Sean Moloney*

[Mid-Sized Banks Split From Wall Street in D.C. Lobbying](#), *Bloomberg*
[FTC Staff Said to Formally Recommend Google Patent Suit](#), *Bloomberg*
[US Environmental Protection Agency audit finds inflated gas mileage in Hyundai, Kia models](#), *Washington Post*
[President Obama Leads in Regulations Issued](#), *Real Clear Policy*
[Groupon responds to SEC inquiry on accounting](#), *Reuters*
[Regulators Close Banks in Florida, Illinois](#), *Wall Street Journal*

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[SEC Questioned Groupon Over Weak Financial Controls](#), *Bloomberg*

11/4/12

[November surprise: EPA planning major post-election anti-coal regulation](#), *Washington Examiner*
[Lawyers' In-House Roles Grow With New Regulation](#), *Wall Street Journal*

11/5/12

[Report: Obama cut back substantially on 'economically significant' regulations in October](#), *Daily Caller*
[US regulation may prompt iron ore swaps volume migration](#), *Reuters*
[Insight: Banks struggle to adapt or survive in commodities](#), *Reuters*
[Post-election flood of 'Obamacare' rules expected](#), *Politico*
[New Legislation Aims to Provide FDA with New Authority to Regulate Compounds](#), *Regulatory Focus*
[Previous fungal meningitis outbreak a decade ago resulted in no oversight changes](#), *Washington Post*
[Government crackdown on money laundering to cost banks billions](#), *Washington Post*
[Congressional committee summons FDA head to appear at first hearing on meningitis outbreak](#), *Washington Post*

11/6/12

[Novo's Insulin Tresiba Has Heart Safety Risks, FDA Says](#), *Bloomberg*
[Romney Victory May Stall Financial Rulemaking, Barnier Says](#), *Bloomberg*
[Report: Inefficient Clinical Trials Cost Industry Billions Each Year](#), *Regulatory Focus*
[FDA in Sustained Push to Show Public Benefits of Regulatory Science](#), *Regulatory Focus*

11/7/12

[Harsher energy regulations coming in Obama's second term](#), *Reuters*
[Global Swaps Regulators Work to Avert Delay on Risk Rules](#), *Bloomberg*
[FERC Proposes Rule to Improve the Reliability of the Power Grid](#), *RegBlog*

Rulemaking

Securities and Exchange Commission

SEC Finalizes Rule Establishing Clearing Agency Standards

The Securities and Exchange Commission published a [final rule](#) establishing minimum requirements for registered clearing agencies to maintain effective risk management procedures and controls. The rule “requires registered clearing agencies to establish, implement, maintain and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis...The Commission anticipates that the clearing agency's rules and procedures will likely continue to evolve so that the clearing agency can adequately respond to changes in technology, legal requirements, trading volume, trading practices, linkages between financial markets and the financial instruments traded in the markets that a clearing agency serves. Accordingly, registered clearing agencies must evaluate continually and make appropriate updates and improvements to their operations and risk management practices to facilitate the prompt and accurate clearance and settlement of securities transactions and to safeguard securities and funds in their custody or control.”



Consumer Product Safety Commission

CPSC Finalizes Rule Strengthening Voluntary Infant Swing Safety Requirements

The Consumer Product Safety Commission published a [final rule](#) establishing mandatory safety standards for infant swings, incorporating voluntary industry standards by reference and increasing labeling stringency for products manufactured after May 7th, 2013. Among the new requirements, manufacturers are required to add an additional label to infant swings: “Keep swing seat fully reclined until child is at least 4 months old AND can hold up head without help. Young infants have limited head and neck control. If seat is too upright, infant's head can drop forward, compress the airway, and result in DEATH.” Manufacturers are not required to print these warning labels in non-English languages, as infant swing incident data did not show a pattern of incidents involving people not literate in English. The Commission disagreed with some commenters requesting additional labeling requirements, saying: “We do not believe that the product should include warnings about general product misuse. Consumers are less likely to read numerous warnings, especially about hazards that are highly unlikely. Therefore, warning about general product misuse or about numerous instances of product misuse that, individually, are very rare, would increase the likelihood that consumers will not receive the most important hazard information for the product.”

Federal Housing Finance Agency

FHFA Extends Comment Deadline for Proposed Stress Testing Rule

The Federal Housing Finance Agency is [extending](#) the comment deadline for its October 5th [proposed rule](#), *Stress Testing of Regulated Entities*. The proposed rule 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.”

FHFA's proposed rule accompanies an October 9th Treasury [final rule](#) 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 now due on December 4th.

Federal Reserve System

Fed Board Delays Effective Date for Regulation D Reserve Requirements

The Federal Reserve Board [published notice](#) that it is delaying the effective date of its April 12th [final rule](#), *Reserve Requirements of Depository Institutions: Reserves Simplification* until June 27th, 2013. “The final rule's effective date is being delayed to allow for further development and testing of the automated systems necessary to support the implementation of certain provisions.” The rule creates a common two-week maintenance period for all depository institutions, creates a penalty-free band around reserve balance requirements in place of carryover and routine penalty waivers, discontinues as-of adjustments related to deposit report revisions, replaces all other as-of adjustments with direct compensation, and eliminates the contractual clearing balance program.

Agencies

Environmental Protection Agency

EPA Announces Workshop to Gauge Efficacy of Policies to Reduce PM_{2.5}

The Environmental Protection Agency [announced](#) that it is holding a January 7th workshop involving members of the public to assess the efficacy of Agency policies intended to reduce ambient levels of fine particulate matter, PM_{2.5}, which the Agency monetizes as a co-benefit in many clean air rules. “The purposes of this workshop are to



(1) Discuss previous accountability work, (2) identify data needs, and (3) discuss approaches that may be used to prospectively design research to assess the public health benefits from implementation of these large-scale changes in levels of air pollution. Consistent with the recent North American Research Strategy for Tropospheric Ozone report titled, “Technical Challenges of Multipollutant Air Quality Management” this workshop aims to ensure that the necessary methods and data will be available to verify the relationship between reductions in air pollution emissions, ambient concentrations, human exposures and public health benefits to determine *whether the regulations are implemented as originally projected and the intended benefits are realized.*”

EPA Announces IRIS Stakeholder Meeting on November 13th

The Environmental Protection Agency is holding a [stakeholder meeting](#) on November 13th on the Integrated Risk Information System (IRIS). “The goal of the meeting is to hear the views of the IRIS Program's many stakeholders about IRIS and changes that are underway to improve the Program. We are committed to proactively engaging stakeholders, increasing transparency, and using the best available science to develop IRIS assessments. This public meeting is the beginning of an ongoing dialogue about IRIS. Environmental protection decisions, based in part on EPA's IRIS assessments, can have potentially large impacts on the environment, human health and the economy. Because of this, it is important that EPA benefit from stakeholder and scientific engagement to support the best decisions possible.” While in-person registration is now closed due to capacity, those interested in attending the meeting via webinar are still encouraged to [RSVP](#).

EPA Waives Low-Sulfur Diesel Fuel Requirement in New Jersey Following Hurricane Sandy

The Environmental Protection Agency granted a [waiver](#) to Governor Chris Christie and the state of New Jersey under the authority of the Clean Air Act, permitting New Jersey residents to use high-sulfur heating oil in generators used for emergency purposes. “EPA Administrator Lisa P. Jackson determined that, as a result of effects of Hurricane Sandy, extreme and unusual supply circumstances exist, which may result in a temporary shortage of diesel fuel compliant with federal regulations. The federal waivers will help ensure an adequate supply of fuel for emergency response in New Jersey. The waiver temporarily allows the use of heating oil in emergency generators and pumps if ultra low-sulfur fuel is not available.” Under this waiver, the sale, distribution, and use of high-sulfur diesel fuel is permitted in New Jersey through November 13th.

EPA Renews Charter for Clean Air Act Advisory Committee

The Environmental Protection Agency [announced](#) the renewal of the Clean Air Act Advisory Committee (CAAAC) for a two-year period following the Agency's determination that CAAAC is “a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The purpose of CAAAC is to provide advice and recommendations to the EPA Administrator on policy issues associated with implementation of the Clean Air Act.”

Export-Import Bank

Ex-Im Bank Announces Application for \$100 Million to Fund Boeing Exports to South Africa

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 Africa. “The aircraft will be used to provide short-haul passenger air service within South Africa and between South Africa and nearby African countries.” [Comments](#) are due on December 3rd.

Department of Commerce

ITA Solicits Comment on International Lumber Subsidy Programs

The International Trade Administration is [seeking](#) public comments on “any subsidies, including stumpage subsidies, provided by certain countries exporting softwood lumber or softwood lumber products to the United States during the period January 1 through June 30, 2012.” The Secretary of Commerce is statutorily mandated to report twice annually to Congress on any softwood lumber import subsidies. “Parties should include in their comments: (1) The country which provided the subsidy; (2) the name of the subsidy program; (3) a brief description (at least 3-4 sentences) of the subsidy program; and (4) the government body or authority that provided the subsidy.” [Comments](#) are due in PDF form by 5:00pm, December 6th.

