



Regulation Digest Weekly



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Competitive Enterprise Institute

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Feature Story

FEC Proposes Rule Changing Political Donation Requirements for Corporate LLPs

The Federal Elections Commission published a [proposed rule](#) that would treat certain Limited Liability Partnerships (LLPs) as corporations for the purposes of political contributions. Currently, partnerships are allowed to make contributions of up to \$2,500 per candidate per election to federal office, \$30,800 aggregate annually to national party committees, and \$5,000 aggregate annually to other political committees. Corporations, however, are prohibited from making political contributions for federal elections, but may use general funds to establish separate segregated funds (SSFs) that are granted limited contribution and expenditure functions. "The Commission proposes to revise its rules on partnerships so that LLPs opting for association treatment ("Corporate LLPs") would be treated as corporations in 11 CFR part 114. Corporate LLPs would no longer themselves be able to make contributions or to attribute them to their partners. Instead, Corporate LLPs could establish SSFs that could solicit contributions from their restricted classes, and would be able to use those funds to make contributions to candidates and political committees. In contrast, LLPs that do not "check the box" pursuant to the Internal Revenue Service's provisions would be able to make contributions and those contributions would continue to be attributed to the partnership and its partners."

FEC contends that this rule will not affect a significant number of small entities. "The only economic impact attributable to these proposed rules would be the costs incurred by limited liability partnerships that wish to establish and administer separate segregated funds. This activity is entirely voluntary and any costs associated with it would fall only on entities choosing to establish and administer a separate segregated fund. Therefore, the attached proposed rule would not have a significant impact on a substantial number of small entities." [Comments](#) are due on February 11th, 2013.

In the News

12/12/12

- [At federal government agencies, survey finds sagging job satisfaction](#), *Washington Post*
- [Federal regulators find radioactive contamination at former rocket test site near Los Angeles](#), *Washington Post*
- [Wall Street nemesis Warren to join Senate Banking Committee](#), *Reuters*
- [U.S. regulator wins legal victory over mutual funds](#), *Reuters*
- [CFTC Defeats Challenge to Mutual Fund Commodities Rule](#), *Bloomberg*
- [MetLife Deposit Sale Approved, Easing Bank-Status Exit](#), *Bloomberg*
- [Health Canada, FDA Announce First-Ever Approval Under Joint Review Process](#)



Consumer Financial Protection Bureau

- Key Dimensions and Processes in the U.S. Credit Reporting System: A review of how the nation's largest credit bureaus manage consumer data

Federal Regulations Advisor

- CFTC Pool Operator Rule Upheld – Broader Lessons Need Consideration, *Leland Beck*
- Monday Morning Regulatory Review – 12/17/12, *Leland Beck*
- Rules and Ripeness: Commitment to Changing Rules During Litigation, *Leland Beck*

Foundations and Trends® in Microeconomics

- OSHA's Role in Promoting Occupational Safety and Health, *John D. Leeth*

Government Accountability Office

- Agencies' Efforts to Analyze and Coordinate Their Rules, *Angela Clowers*
- Consistent Incident Reporting and Analysis Needed to Achieve Program Objectives, *Stephen Lord*
- DOD Decision Makers Need Additional Analyses to Determine Costs and Benefits of Returning Excess Equipment, *Cary Russell*

Heritage Foundation

- Beware! Regulations Incoming!, *Rich Tucker*
- Soot, Soot Riot: EPA's New Rule Costly and Unnecessary, *Nick Loris*

The Mercatus Center

- Regulatory Benefits: Examining Agency Justification for New Regulations, *Sherzod Abdukadirov*

OMB Watch

- VIDEO: Celebrate the People Who Keep Us Safe at the Holidays!

Penn Program on Regulation

- House Bill Aims to Merge the SEC and CFTC, *Margot Campbell*
- The Regulatory Week in Review: December 14, 2012, *Mima Mohammed*
- FTC Initiates Review of Fred Meyer Guides, *Damini Ghosh*

Regulatory Focus

12/13/12

[Election over, administration unleashes new rules](#), *Associated Press*
[New tobacco products grind to a halt under review law; some say companies skirt requirement](#), *Washington Post*
[Republicans Seek Delay of Obama Rules on U.S. Health Law](#), *Bloomberg*
[U.S. Banks to Make Another Push Against Volcker Rule](#), *Bloomberg*
[CFTC Needs 6-Month Delay in Overseas Rules, Chilton Says](#), *Bloomberg*
[HHS: Exchanges 'will be ready' in 2014](#), *The Hill*
[U.S. Watching Regulatory Changes Abroad](#), *Wall Street Journal*
[Smoking Cessation Drug Chantix May Increase Cardiovascular Adverse Events](#), *FDA Says*, *Regulatory Focus*
[Fat-Passenger Bus Tests No Longer Necessary, U.S. Says](#), *Bloomberg*
[BlackRock Favors Withdrawal Fees for Money Market Funds](#), *Bloomberg*
[Tougher Fracking Regulations Backed by 66%, Poll Shows](#), *Bloomberg*
[Industry, green groups brace for soot rule](#), *The Hill*

12/14/12

[EPA Said to Tighten Soot Rules That Industry Fought](#), *Bloomberg*
[EPA to tighten soot rules by 20 percent](#), *Washington Post*
[EPA to tighten soot standards by 20 percent in first major regulation since election](#), *Washington Post*
[Fed proposes tougher capital rules for foreign banks](#), *Washington Post*
[Fed Targets Foreign Banks](#), *Wall Street Journal*
[U.S. Tightens Soot Standards](#), *Wall Street Journal*
[Are Digital Foxes Guarding the Web's Privacy Hen House?](#), *Wall Street Journal*

12/16/12

[Internet regulation seen at national level as treaty talks fail](#), *Reuters*

12/17/12

[Google Said to End FTC Probe With Letter Promising Change](#), *Bloomberg*
[ATF, charged with regulating guns, lacks resources and leadership](#), *Washington Post*
[Audio Records of Swaps and Futures Trades Required by CFTC](#), *Bloomberg*
[Use of Alias E-Mail Addresses by EPA Heads Being Probed](#), *Bloomberg*
[Fed's Stein Defends Proposed Rules for Foreign Banks](#), *Wall Street Journal*

12/18/12

[FTC orders data brokers to reveal business practices](#), *The Hill*
[FTC to unveil new children's online privacy rules in Capitol Hill event](#), *The Hill*
[Backlog for Food Safety Regulations Includes Both FDA and USDA](#), *Food Safety News*
[News Summary: Software industry says new child privacy rules for phone apps will be costly](#), *Washington Post*
[Debate raging behind cellphones: Cost, value of new rules governing children's online privacy](#), *Washington Post*
[FDA Seeks to Balance Opioid Pain Needs With Addict Risks](#), *Bloomberg*
[Basel Seeks Tougher Bank Capital Rules for Securitizations](#), *Bloomberg*
[Google-FTC Probe, CFTC-Audio Rule, JPMorgan: Compliance](#), *Bloomberg*
[NRC, utility spar over monitors proposed at troubled San Onofre nuke plant in Calif](#), *Washington Post*
[Justice Department reaches settlement with Penguin Group Inc. on e-book pricing with Apple](#), *Washington Post*
[EPA IG audits administrator's private e-mail account](#), *Washington Post*
[NYSE exec says exchanges moving closer to "kill switch"](#), *Reuters*
[Muni board seeks feedback on all regulations in sweeping review](#), *Reuters*
[AT&T Wins FCC Permission to Buy Airwaves From Comcast](#), *Bloomberg*



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[SEC Revokes Toronto Firm's Registration Over Manipulation](#), *Bloomberg*
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[EPA administrator eyes ivory tower](#), *Washington Post*

[The Risks of Red Tape During a Recession](#), *Bloomberg TV*

[SEC Said to Weigh EX-CFTC Director as General Counsel](#), *Bloomberg*

[AmEx's Chenault Said to Be Discussed for Treasury Post](#), *Bloomberg*

[Regulating U.S. Colleges for Student Debts Seen Winning Support](#), *Bloomberg*

[New online privacy rules for kids aimed at shielding personal data from advertisers, marketers](#), *Washington Post*

Rulemaking

Environmental Protection Agency

EPA Proposes \$600 Million Rule Setting Quality Standards for Florida Waters, \$53 Million in Benefits

The Environmental Protection Agency published a [proposed rule](#) establishing new standards for nitrogen and phosphorous pollution in Florida's estuaries, coastal waters, and inland flowing waters such as rivers, streams, and canals. A report by Florida's Department of Environmental Protection estimates that 14 percent of Florida estuaries and 1.6 percent of Florida coastal waters are impaired by nitrogen and phosphorous pollution, along with 8 percent of assessed streams and rivers and 5 percent of assessed lakes. EPA estimates that the costs of the standard will outweigh the benefits by about 6-1 on the low end or by about 12-1 on the high end: "The final conclusion of this assessment is that the incremental costs associated with the proposed rule range between \$239.0 million and \$632.4 million per year (2010 dollars) and total monetized benefits may be in the range from \$39.0 to \$53.4 million annually. EPA's analysis describes additional benefits that could not be monetized." [Comments](#) are due on February 19th, 2013.

Department of Homeland Security

DHS Proposes Rule to Curb Sexual Abuse in DHS Confinement Facilities

The Department of Homeland Security published a [proposed rule](#) that would seek to curb sexual abuse within DHS confinement facilities, which include longer-term immigration detention facilities and shorter-term holding facilities. However, the rule would not apply to contract detention facilities or to state- and locally-run intergovernmental service agreement facilities. "The proposed rule, if made final, would require prevention planning; prompt and coordinated response and intervention; training and education of staff, contractors, volunteers and detainees; proper treatment for victims; procedures for investigation, discipline and prosecution of perpetrators; data collection and review for corrective action; and audits for compliance with the standards."

Following the example of the Department of Justice's June 2012 [prison rape rule](#), DHS uses a breakeven analysis to examine the costs and benefits of the proposed rule: "DHS estimates that the costs of these standards would be approximately \$57.7 million over the period 2013-2022, discounted at 7 percent, or \$8.2 million per year when annualized at a 7 percent discount rate... The RIA concludes that when all facilities and costs are phased into the rulemaking, the breakeven point would be reached if the standards reduced the annual number of incidents of sexual abuse by 55 from the estimated benchmark levels, which is 79 percent of the total number of assumed incidents in ICE confinement facilities, including an estimated number of those who may not have reported an incident." [Comments](#) are due on February 19th, 2013.

Securities and Exchange Commission

SEC Publishes Exemption from Some Credit Default Swap Rules

The Securities and Exchange Commission published a [notice](#) announcing the exemption of customer-related positions in credit default swaps (CDS) to provide for the facilitation of portfolio margining treatment. "Portfolio margining of index CDS (subject to CFTC regulations) and single-name CDS (subject to SEC regulations) can offer many benefits to investors and the markets, including promoting greater efficiencies in clearing with respect to off-setting positions and thereby aligning costs more closely with overall risks presented by an investor's portfolio. Further, portfolio margining may help to alleviate excessive margin calls, improve cash flows and liquidity, and reduce volatility. At the same time, facilitating portfolio margining for customer-owned swaps requires careful consideration to ensure that customer protection concerns are appropriately addressed, as well as to promote appropriate risk management and disclosure. The Commission is mindful of the need to address these



issues. Accordingly, after careful consideration of the requests before the Commission, comments received, and the relevant statutory provisions, the Commission is acting to provide conditional exemptive relief to facilitate portfolio margining treatment for customer-related positions in CDS that are cleared pursuant to the terms of this Order.” [Comments](#) are due on February 19th, 2013.

Commodity Futures Trading Commission

CFTC Finalizes Credit Default Swap Clearing Rule

The Commodity Futures Trading Commission published a [final rule](#) establishing clearing requirement for certain classes of credit default swaps (CDS) and interest rate swaps (IRS) by a derivatives clearing organization (DCO) registered with the Commission under the Commodity Exchange Act (CEA), as amended by the Dodd-Frank Act. “Without central clearing [during the financial crisis] a market participant bore the risk that its counterparty would not fulfill its payment obligations pursuant to a swap's terms (counterparty credit risk). As the financial crisis deepened, this risk made market participants wary of trading with each other. As a result, markets quickly became illiquid and trading volumes plummeted... Both regulators and market participants alike recognized that risk exposures would have been monitored, measured, and collateralized through the process of central clearing.”

The Commission was required by the CEA to assess the costs and benefits of the rule before promulgation. “There are also significant benefits associated with increased clearing, including reducing and standardizing counterparty credit risk, increased transparency, and easier access to the swap markets. These effects together will contribute significantly to the stability and efficiency of the financial system. The Commission lacks data to quantify these benefits with any degree of precision. The Commission notes, however, that the extraordinary financial system turbulence of 2008 has had profound and long-lasting adverse effects on the economy, and therefore reducing systemic risk provides significant, if unquantifiable, benefits.”

Department of Transportation

NHTSA Proposes Rule Requiring Cars be Equipped with Event Data Recorders

The National Highway Traffic Safety Administration published a [proposed rule](#) requiring light vehicles manufactured after September 2014 to be equipped with an event data recorder (EDR), which must meet the EDR requirements established by NHTSA in a 2006 rulemaking. An EDR is a device attached to a motor vehicle “to record technical information about the status and operation of vehicle systems for a very brief period of time (i.e., a few seconds) and in very limited circumstances (immediately before and during a crash), primarily for the purpose of post-crash assessment of vehicle safety system performance.” This information is used to better understand the circumstances leading up to a vehicle crash. “The agency is issuing this proposal because we believe that, without a regulation, EDRs will remain absent from the estimated 8 percent of the current light vehicle fleet that lacks an EDR. We believe that requiring all light vehicles required to have frontal air bags to be equipped with EDRs would help improve vehicle safety for consumers, while imposing relatively limited costs on the automobile industry.” NHTSA estimates that requiring installation of an EDR will cost \$20 per vehicle, or \$26.4 million when applied to the 1.32 million vehicles affected by this rule. [Comments](#) are due on February 11th, 2013.

FTA Withdraws Proposed Rule Increasing Passenger Weight Assumption for Bus Testing

The Federal Transit Administration published a [withdrawal](#) of a proposed rule that would have increased the assumed size of bus passengers, affecting bus requirements for safety tests. “This action withdraws a notice of proposed rulemaking (NPRM) that would have amended the Federal Transit Administration's (FTA's) bus testing regulation to increase the assumed average passenger weight value used for ballasting test buses from the current value of 150 pounds to a new value of 175 pounds. This increase was proposed to better reflect the actual weight of the average American adult and to provide accurate information to the transit agencies that purchase such vehicles. In light of recent legislation directing FTA to establish new pass/fail standards that require a more comprehensive review of its overall bus testing program, FTA is withdrawing the rulemaking.”

National Credit Union Administration

NCUA Finalizes Rule Removing References to “Credit Ratings” Pursuant to Dodd-Frank

The National Credit Union Administration published a [final rule](#) removing references to “credit ratings” in existing rules and replacing them with other appropriate standards, as required by the Dodd-Frank Act. “For regulations pertaining to investment securities, the NPRM replaced minimum rating requirements with a requirement that the federal credit union (FCU) or corporate credit union (corporate) conduct and document a credit analysis demonstrating that the issuer of the security has a certain, specified capacity to meet its financial commitments...”



For regulations pertaining to counterparty transactions, the NPRM replaced minimum rating requirements with a requirement that the credit union conduct a credit analysis of the counterparty based on a standard approved by the credit union's board. For provisions not related to investment and counterparty suitability, the NPRM generally deleted references to ratings without requiring a substitute analysis.”

Agencies

Food and Drug Administration

FDA Seeks Comments, Information on Initiating Risk Assessment for Food Allergen Thresholds

The Food and Drug Administration published a [notice](#) requesting comments and information on the initiation of a risk assessment to be used for establishing thresholds for food allergens. “The establishment of regulatory thresholds or action levels for major food allergens would help us determine whether, or what type of, enforcement action is appropriate when specific problems are identified and also help us establish a clear standard for evaluating claims in [Food Allergen Labeling and Consumer Protection Act] petitions that an ingredient “does not cause an allergic response that poses a risk to human health” or “does not contain allergenic protein.” Regulatory thresholds also would help industry to conduct allergen hazard analyses and develop standards for evaluating the effectiveness of allergen preventive controls.” The FDA Threshold Working Group determined that using a risk assessment would be the best approach for establishing an allergen threshold. FDA is particularly looking for comments to define allergens that pose risks to human health, identify which food allergens are the greatest public health concerns, identify the size of the at-risk population, and discuss dietary exposure pattern information. [Comments](#) are due on February 12th, 2013.

Department of Health and Human Services

CDC Releases Final Guidance on Dampness in Office Buildings and Schools

The Centers for Disease Control and Prevention (CDC) in conjunction with the National Institute for Occupational Safety and Health (NIOSH) published a [final guidance](#)/NIOSH Alert on respiratory diseases caused by exposure to dampness in nonindustrial buildings such as office buildings and schools. Dampness is defined as excessive and unwanted moisture, which can result in the growth of mold, fungi, and bacteria. “Research studies have shown that dampness-related exposures from building dampness and mold have been associated with respiratory symptoms, asthma, hypersensitivity pneumonitis, rhinosinusitis, bronchitis, and respiratory infections in research studies. Individuals with asthma or hypersensitivity pneumonitis may be at risk for progression to more severe disease if the relationship between illness and exposure to the damp building is not recognized and exposures continue.” CDC and NIOSH recommend that employers and building owners always respond to occupant health concerns, regularly inspect areas such as roofs and crawlspaces for evidence of dampness, repair moisture-damaged building materials, and inform occupants of the respiratory effects of building dampness.

ATSDR Releases Final Toxicological Profiles for Ten Priority Hazardous Substances

The Agency for Toxic Substances and Disease Registry published a [notice](#) announcing the release of final toxicological profiles for ten priority hazardous substances, including radon, chromium, cadmium, and carbon monoxide. The Administrator of ATSDR is statutorily required to “prepare toxicological profiles for each substance included on the priority list of hazardous substances (also called the Substance Priority List). This list identifies 275 hazardous substances that ATSDR (in cooperation with EPA) has determined pose the most significant potential threat to human health... In addition, ATSDR has the authority to prepare toxicological profiles for substances not found at sites on the National Priorities List.”

Department of Commerce

NOAA Seeks Review Editors for National Climate Assessment Draft Report

The National Oceanic and Atmospheric Administration is [seeking](#) nominations of review editors for the draft report of the National Climate Assessment and Development Advisory Committee (NCADAC). The report is intended to synthesize and summarize the science and information on the current and future domestic impacts of climate change. Review editors will be “responsible for compliance review to determine whether or not public, Federal Agency, and National Research Council comments have been adequately addressed by the chapter authors. Review Editors must be subject matter experts, and may not be members of the NCADAC or members of chapter author teams.” The chapters requiring review are as follows: Our Changing Climate; Water Resources; Energy Supply and Use; Transportation; Agriculture; Forestry; Ecosystems and Biodiversity; Human Health; Water, Energy, and Land



Use; Urban Systems; Infrastructure, and Vulnerability; Tribal, Indigenous, and Native Lands and Resources; Land Use and Land Cover Change; Rural Communities; Biogeochemical Cycles; Northeast Region; Southeast and Caribbean Region; Midwest Region; Great Plains Region; Southwest Region; Northwest Region; Oceans and Marine Resources; Coastal Zone Development and Ecosystems; Decision Support; Mitigation, Adaptation; Research Agenda for Climate Change Science; The NCA Long-Term Process.

NOAA Announces Meeting of National Climate Assessment and Development Advisory Committee

The National Oceanic and Atmospheric Administration [announced](#) a conference call meeting of the National Climate Assessment and Development Advisory Committee (NCADAC) on Friday, January 11th, from 11:00am – 1:00pm. “The committee's mission is to synthesize and summarize the science and information pertaining to current and future impacts of climate change upon the United States; and to provide advice and recommendations toward the development of an ongoing, sustainable national assessment of global change impacts and adaptation and mitigation strategies for the Nation. Within the scope of its mission, the committee's specific objective is to produce a National Climate Assessment.” The meeting will only be open to public participation during a 10-minute period from 12:45 – 12:55pm, during which public statements and comments may be made to the Committee.

Department of Labor

OSHA Announces Public Meetings on the Prevention of Backover Injuries and Fatalities

The Occupational Safety and Health Administration [announced](#) informal stakeholder meetings on January 8th, 2013, and February 5th, 2013 to discuss the prevention of backover injuries and fatalities. “New technologies have been developed to address backing hazards, including: Cameras and proximity sensing technology, such as radar and sonar, and new types of audible alarms that focus the alarm's sound or are combined with lights. In addition, internal traffic plans that control the flow of traffic and limit backing can help prevent backovers. The Agency is considering whether these technologies or other approaches, including training for drivers and spotters, can better address the risks of backing equipment which have an obstructed view to the rear.” OSHA is interested in hearing from stakeholders on the risks of backovers, the effectiveness of current measures in preventing backovers, the number of vehicles or employees affected, and the potential costs of protective measures.

Export-Import Bank

Ex-Im Bank Receives Application for \$100+ Million to Fund Export of Locomotive Kits 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 locomotive kits to South Africa. If approved, these exports would be used by the State-Owned Freight Transport Company to facilitate South African freight transit. [Comments](#) are due on January 14th, 2013.

