

# Regulation Digest Weekly

February 20<sup>th</sup>, 2013

Vol. 2 No. 8

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- The crisis of compounding pharmacies
- Mary Jo White's Latest Conflict of Interest
- A Valuable U.S. Export: Banking Regulations
- Two years old, Silica Rule remains mired at OIRA
- The Coming Failure of 'Accountable Care'

## Marketplace of Ideas

### American Action Forum

- The Week in Regulation: February 11 – 15, *Sam Batkins*

### American Enterprise Institute

- FDA safety regs faulted for lax oversight, *Scott Gottlieb*
- FDA regulates Internet search, *Scott Gottlieb*

### Center for Progressive Reform

- National Energy Policies and the Environment: Can the National Environmental Policy Act Provide a Harmonizing Framework?, *Robert Glicksman*
- EPA's IRIS Program Still on GAO High Risk List, *Matt Shudtz*
- Change in Leadership at the SBA Offers Opportunity for Charting a New Course for Controversial Office of Advocacy, *James Goodwin*
- Two Years Later, OSHA's Rule to Protect Workers from Deadly Silica Still in White House Review, *Thomas McGarity*

### Competitive Enterprise Institute

- CEI Podcast For February 14, 2013: Dodd-Frank's Constitutionality, *Ryan Young*

### Consumer Financial Protection Bureau

- Written testimony of Director Richard Cordray before the Senate Committee on Banking, Housing, and Urban Affairs, *Richard Cordray*

## Feature Story

### CFPB Finalizes Mortgage Servicing Rule Amending Regulation X

The Consumer Financial Protection Bureau published a [final rule](#) amending Regulation X, which implements the Real Estate Settlement Procedures Act of 1974, to include statutory requirements of the Dodd-Frank Act. “Specifically, this final rule implements Dodd-Frank Act sections addressing servicers’ obligations to correct errors asserted by mortgage loan borrowers; to provide certain information requested by such borrowers; and to provide protections to such borrowers in connection with force-placed insurance. Additionally, this final rule addresses servicers’ obligations to establish reasonable policies and procedures to achieve certain delineated objectives; to provide information about mortgage loss mitigation options to delinquent borrowers; to establish policies and procedures for providing delinquent borrowers with continuity of contact with servicer personnel capable of performing certain functions; and to evaluate borrowers’ applications for available loss mitigation options.”

As required by the Small Business Regulatory Enforcement Fairness Act (SBREFA), CFPB convened a Small Business Review Panel to determine the effect of this final rule on small entities that service mortgages. In the final rule, the Bureau has concluded that in some circumstances, some small entities can be exempted from some requirements of this rule because they may “already have incentives to provide high levels of customer contact and information” without the CFPB rule. The Bureau defines small entities as those that service fewer than 5,000 mortgage loans, all of which they either own or originated.

## In the News

2/13/13

[Union chief: White House delay on silica rule ‘inexcusable, heartless’, \*The Hill\*](#)  
[Brewers of Corona and Budweiser revise buyout to appease US regulators and push deal through, \*Washington Post\*](#)

[Obama sends labor board nominations to Senate; their past appointments were disputed by court, \*Washington Post\*](#)

[Warren Calls on Republicans to End Block of Consumer Agency Vote, \*Bloomberg\*](#)

[Hedge Funds May Skirt Trade Rules With Banks’ Aid, Gensler Says, \*Bloomberg\*](#)

[Basel III Breaks Urged by Senators for Community Banks, Insurers, \*Bloomberg\*](#)

[John Thomas Founder Belesis Probed by Finra on Stock Sale, \*Bloomberg\*](#)

[Republicans Demand Full Slate From Obama for Labor Board, \*Bloomberg\*](#)

[U.S. Looks to Finalize Basel Rules in Spring, \*Wall Street Journal\*](#)

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[Dodd-Frank Implementation Defended by U.S. Regulators, \*Bloomberg\*](#)

[Housing Industry Pins Hopes on Obama to Soften Down-Payment Rule, \*Bloomberg\*](#)

*Bloomberg*

[Watchdog: ‘Job killing’ regulations have been anything but, \*The Hill\*](#)



## Federal Regulations Advisor

- ACUS Spring Committee Meetings – Studies Worth Following, *Leland Beck*
- Monday Morning Regulatory Review – 2/18/13, *Leland Beck*

## The George Washington University Regulatory Studies Center

- Congressional Oversight: Police Controls or Fire Alarms?, *Steve Balla*

## Government Accountability Office

- Financial Crisis Losses and Potential Impacts of the Dodd- Frank Act, *Angela Clowers*
- Interstate and Intrastate Natural Gas Permitting Processes Include Multiple Steps, and Time Frames Vary, *Franklin Rusco*

## Great Lakes Legal Foundation

- EPA Accepting Comments on New Climate Change Plan

## The Mercatus Center

- Rahm’s Rule of Crisis Management: A Footnote to the Theory of Regulation, *Bruce Yandle*
- EVENT: Regulatory Oversight Essentials, Part I: Finding Rules and Resources, February 21<sup>st</sup> 12:00pm - 1:00pm

## Penn Program on Regulation

- The Regulatory Week in Review: February 15, 2013, *RegBlog Staff*
- Climate Change and the North American Wolverine, *Christina Reichert*
- Will OMB Make the Right Decision on Menu Labeling?, *Erik Lieberman*

## Public Citizen

- Regulation Issue: Industry’s Complaints About New Rules Are Predictable—and Wrong, *Adam Crowther*
- As it turns out, life does imitate art, *Adam Crowther*

## Contact Us

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[Senators urge regulators to scrap down payment rule](#), *The Hill*

[Warren fights for CFPB again, but this time as a senator](#), *Washington Post*

[FAA seeks proposals for 6 sites to test drones over US skies, outlines plan to protect privacy](#), *Washington Post*

[FDA says weight loss supplements from Florida company contain risky drug ingredient](#), *Washington Post*

[McDonnell to feds: Virginia will use federal health exchange but retain oversight on providers](#), *Washington Post*

[FAA vows to address privacy concerns with drone flights](#), *The Hill*

[Move to freeze NLRB heats up following Obama re-nominations](#), *The Hill*

[Health groups push FDA to crack down on sugary drinks](#), *The Hill*

[Insurance lobby huddles with White House on ‘reasonable rates’ requirement](#), *The Hill*

[GOP bills target ‘overreaching’ EPA](#), *The Hill*

[FDA extends consideration of disputed ‘Frankenfish’ plan](#), *The Hill*

[Senate Dems hold the line on consumer bureau](#), *The Hill*

[SEC will narrow definition of U.S. municipal adviser -chairman](#), *Reuters*

[Drone Tests Must Adhere to Privacy Rules, U.S. FAA Says](#), *Bloomberg*

[Regulators Urged to Focus on Dodd-Frank Before Too-Big-to-Fail](#), *Bloomberg*

[RBC Begins Disclosing Structured-Note Value Before SEC Guidance](#), *Bloomberg*

[Housing Industry Hopes Obama Line Will Soften Mortgage Rule](#), *Bloomberg*

[Wall Street Setting Itself Up For Next Derivatives Crisis, Market Participants](#)

[Warn](#), *Huffington Post*

[Elizabeth Warren Embarrasses Hapless Bank Regulators At First Hearing](#)

[\(VIDEO\)](#), *Huffington Post*

[SEC Needs Additional Funds to Implement Dodd-Frank: Chairman](#), *Insurance Journal*

[Insider Emerges as Top Contender for EPA Job](#), *Wall Street Journal*

[Sen. Warren Grills Top Regulators](#), *Wall Street Journal*

[Fed Slows Down Bid to Curb Banks' Exposure to One Another](#), *Wall Street Journal*

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[FAA moves closer to widespread US drone flights with plan for 6 test sites across the country](#), *Washington Post*

[MF Global CFTC Proposal Said to Jeopardize Futures Brokerages](#), *Bloomberg*

[Healthcare rule caps prescription drug profit](#), *The Hill*

[Could Dodd-Frank be unconstitutional?](#), *Washington Post*

[SEC developing new fraud detection technology](#), *Washington Post*

[Report: SEC investigating trading around Heinz deal](#), *Washington Post*

[American Electric Pollution Costs to Fall on Lower Coal Use](#), *Bloomberg*

[Barnier Says U.S. Risks Conflicts If Bank, Derivative Rules Vary](#), *Bloomberg*

[Banks Underestimate Currency-Trade Loss Risk: Basel Group](#), *Bloomberg*

[Regulators close down Chicago bank, represents 3rd US bank failure of 2013](#), *Washington Post*

[Banks Win Swap-Collateral Reprieve as Regulators Rewrite Rules](#), *Bloomberg*

[FINRA Expands Review of Disclosures by 15 Dark Pool Operators](#), *Bloomberg*

[Barnier Says U.S. Risks Conflict on Derivative Rules](#), *Bloomberg*

[Futures Brokers Say CFTC Rule Could Put Them Out of Business](#), *Bloomberg*

[SEC freezes Swiss account over Heinz mega-deal](#), *The Hill*

[FDA delays next step in food safety rule; liberal lawmaker smells something rotten](#), *The Hill*

[U.S. chemical companies eye gains from U.S.-EU trade talks](#), *Reuters*

[Regulators Close Bank in Illinois](#), *Wall Street Journal*

[Turn \\$90,000 Into \\$1.8 Million: An SEC Guide](#), *Wall Street Journal*



# THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC  
REGULATORY STUDIES CENTER

[Stricter Capital Requirements Still on Track](#), *Wall Street Journal*  
[Regulator Probes Dark Pools](#), *Wall Street Journal*

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[Myriad agencies oversee and inspect cruise ships, with no central clearinghouse for consumers](#), *Washington Post*

[New report says federal regulators haven't kept safety promises made after 2009 air crash](#), *Washington Post*

[State by state: Status of insurance exchanges and Medicaid expansion in Obama's health law](#), *Washington Post*

[States or the feds: Who will do a better job covering uninsured Americans under Obama's law?](#), *Washington Post*

[Suspicious Heinz Trades Before Takeover Spur SEC Lawsuit](#), *Bloomberg*

[White House unveils awaited Affordable Care Act profit margin rule](#), *The Hill*

[SEC Freezes Swiss Account Over Heinz Trades](#), *Wall Street Journal*

2/18/13

[Housing stakeholders warn against strict mortgage down-payment requirements](#), *The Hill*

[SEC Chairman Elisse Walter presses her agenda, says she's more than a caretaker](#), *Washington Post*

[Elizabeth Warren's first grilling of regulators is a YouTube hit](#), *Los Angeles Times*

[Deal on Bank-Capital Rules Nears](#), *Wall Street Journal*

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[SAC's Cohen May Face SEC Suit as Deposition Hurts Case](#), *Bloomberg*

[FDA Looks to Finally Implement Pediatric Data Requirements for Most Device Submissions](#), *Regulatory Focus*

[How a Private Anti-Counterfeiting Initiative Could Pressure Regulators to Improve Drug Quality](#), *Regulatory Focus*

[Under Obamacare, who even counts as a tobacco user?](#), *Washington Post*

[Is the banking system healthy?](#), *Washington Post*

[CME Derivatives Skirting Dodd Frank Rules Attract CFTC Review](#), *Bloomberg*

[SEC's Walter Seeks Rule Requiring Exchanges to Test Technology](#), *Bloomberg*

[New England fishermen write lawmakers with plea as deep cuts in catch threaten fleet's future](#), *Washington Post*

[Reg Watch: DOJ begins review of gun safety](#), *The Hill*

[INFOGRAPHIC: Business group points to 'tidal wave' of regulations](#), *The Hill*

[Consumer bureau's work 'confusing,' 'duplicative,' Chamber says](#), *The Hill*

[Child Cancer Survival Imperiled by Lack of New Drugs](#), *Bloomberg*

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[Analysis: Obama's options on tackling climate include appliances, power plants](#), *Washington Post*

[Heinz Deal Trading Triggers FBI Criminal Investigation](#), *Bloomberg*

[CME Derivatives That Skirt Dodd-Frank Attracting Review by CFTC](#), *Bloomberg*

[White House could name Gina McCarthy to EPA Wednesday](#), *Washington Post*

## Rulemaking

### Federal Deposit Insurance Corporation

#### FDIC Proposes Rule Restricting Applicability of "Insured Deposits" to Domestic Branches of U.S. Banks

The Federal Deposit Insurance Corporation published a [proposed rule](#) clarifying the scope of the FDIC insured deposit program, and limiting the applicability of deposit insurance to the domestic branches of U.S. banks. "The FDIC is proposing to amend its deposit insurance regulations, with respect to deposits payable in branches of United States insured depository institutions ("United States bank" or "bank") outside of the United States. The proposed rule would clarify that deposits in these foreign branches of United States banks are not FDIC-insured deposits. This would be the case whether or not they are dually payable both at the branch outside the United States



and at an office within the United States. As discussed further below, a recent proposal by the United Kingdom's Financial Services Authority (“U.K. FSA”) makes it very likely that large United States banks will be changing their United Kingdom foreign branch deposit agreements to make them payable both in the United Kingdom and the United States. This action has the potential to increase significantly the exposure of the Deposit Insurance Fund (“DIF”) and operational complexities were such deposits to be treated as insured. The purpose of this proposed rule is to preserve confidence in the FDIC deposit insurance system, ensure that the FDIC can effectively carry out its critical deposit insurance functions, and protect the DIF against the uncertain liability that it would otherwise face as a global deposit insurer. Should a United States bank make its foreign deposits dually payable, those deposits would be considered “deposit liabilities” under the Federal Deposit Insurance Act’s (“FDI Act”) depositor preference regime, and would therefore be on an equal footing with domestic deposits in the event of the bank's liquidation.” [Comments](#) are due on April 21<sup>st</sup>.

## **Consumer Financial Protection Bureau**

### **CFPB Finalizes Dodd-Frank Rule Amending the Truth in Lending Act (Regulation Z)**

The Consumer Financial Protection Bureau published a [final rule](#) amending Regulation Z, which implements the Truth in Lending Act (TILA). “This final rule implements provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act regarding mortgage loan servicing. Specifically, this final rule implements Dodd-Frank Act sections addressing initial rate adjustment notices for adjustable-rate mortgages, periodic statements for residential mortgage loans, prompt crediting of mortgage payments, and responses to requests for payoff amounts. This final rule also amends current rules governing the scope, timing, content, and format of disclosures to consumers regarding the interest rate adjustments of their variable-rate transactions.” Concurrently with the publication of this rule, the Bureau published a [final rule](#) that amends Regulation X dealing with mortgage servicing rules.

### **CFPB Finalizes Loan Originator Compensation Rule Amending Regulation Z**

The Consumer Financial Protection Bureau published a [final rule](#) amending the Truth in Lending Act to implement changes made in the Dodd-Frank Act. The amendments made by the Dodd-Frank Act are intended to protect consumers by ensuring that loan originators have adequate qualifications and reducing the incentives for loan originators to steer consumers toward loans with certain terms. “The final rule implements requirements and restrictions imposed by the Dodd-Frank Act concerning loan originator compensation; qualifications of, and registration or licensing of loan originators; compliance procedures for depository institutions; mandatory arbitration; and the financing of single-premium credit insurance. The final rule revises or provides additional commentary on Regulation Z's restrictions on loan originator compensation, including application of these restrictions to prohibitions on dual compensation and compensation based on a term of a transaction or a proxy for a term of a transaction, and to recordkeeping requirements. The final rule also establishes tests for when loan originators can be compensated through certain profits-based compensation arrangements. At this time, the Bureau is not prohibiting payments to and receipt of payments by loan originators when a consumer pays upfront points or fees in the mortgage transaction. Instead the Bureau will first study how points and fees function in the market and the impact of this and other mortgage-related rulemakings on consumers' understanding of and choices with respect to points and fees.”

### **CFPB Finalizes Interim Final Rule on Records and Information Disclosure**

The Consumer Financial Protection Bureau published a [final rule](#) on the disclosure of records and information that addresses the public comments received on the Bureau's 2011 [interim final rule](#) to establish procedures to facilitate public interaction with the Bureau. The final rule addresses procedures to implement Freedom of Information Act (FOIA) requirements within the CFPB, the protection and disclosure of confidential information in the course of the Bureau's work, and procedures to implement requirements of the Privacy Act. “The Bureau recognizes that much of the information that it will generate and obtain during the course of its activities will be commercially, competitively, and personally sensitive in nature, and generally warrants heightened protection...Notwithstanding these concerns, there are instances in which the disclosure of confidential information will be necessary or appropriate for the Bureau to accomplish its statutory mission, such as the investigation and resolution of consumer complaints or the enforcement of Federal consumer financial laws. Disclosures may also serve the public interest where Federal and State agencies share elements of the Bureau's mission and where, by sharing information, they can do their jobs more effectively.”



## Consumer Product Safety Commission

### CPSC Publishes Guidance on Phthalate Content in Children's Toys

The Consumer Product Safety Commission published a final [guidance document](#) defining “inaccessible component parts” for the purposes of the implementation of the Consumer Product Safety Improvement Act of 2008 (CPSIA). The CPSIA instructs the Commission to prohibit certain products containing phthalates. This prohibition, however, does not apply to parts of children's toys which are not accessible to a child through the normal and reasonably foreseeable use and abuse of such product, or *inaccessible component parts*. The Commission defines inaccessible component parts as parts that are located within a product, whether visible to the user or no, and that are not capable of being touched or mouthed by a child. “An inaccessible part is one that may be enclosed in any type of material, e.g., hard or soft plastic, rubber, or metal (with the exception of vinyl or other plasticized materials covering mattresses or other sleep surfaces for children age 3 and younger); To assess whether a part is inaccessible, the accessibility probes defined in the Commission's existing regulations for evaluating accessibility of sharp points or sharp metal or glass edges (16 CFR 1500.48 and 1500.49) are appropriate. An “accessible phthalate-containing component part” would be considered one that contacts any portion of the specified segment of the accessibility probe. An “inaccessible phthalate-containing component part” would be considered as one that cannot be contacted by any portion of the specified segment of the accessibility probe.”

## Federal Trade Commission

### FTC Extends Comment Period for Used Car Rule

The Federal Trade Commission published an [extension](#) of the comment period for its proposed rule, *Used Motor Vehicle Trade Regulation Rule*, for 30 days. The Commission “invites public comment on the following four proposed changes to the Buyers Guide: Adding boxes to the back of the Buyers Guide where dealers would have the option to indicate manufacturers' and other third-party warranties; adding a statement to the Buyers Guide encouraging consumers to seek vehicle history information and directing consumers to an FTC Web site for more information about vehicle histories; adding catalytic converters and airbags to the List of Systems on the back of the Buyers Guide; and adding a statement in Spanish to the English Buyers Guide directing consumers who cannot read the Buyers Guide in English to ask for a copy of it in Spanish.” [Comments](#) are now due on March 13<sup>th</sup>.

## Environmental Protection Agency

### EPA Rule Revises Definition of Volatile Organic Compounds for Preparation of State Implementation Plans

The Environmental Protection Agency published a [proposed rule](#) and an accompanying [direct final rule](#) amending the definition of volatile organic compounds (VOCs) for the purpose of attainment of the national ambient air quality standards (NAAQS) for ozone. This proposed rule, which will be acted upon unless EPA receives significant adverse comment on the direct final rule, would exempt *trans* 1-chloro-3,3,3-trifluoroprop-1-ene from the definition of VOCs “on the basis that this compound makes a negligible contribution to tropospheric ozone formation.” [Comments](#) are due on April 1<sup>st</sup>.

### EPA Direct Final Rule Revises Deadline for Submission of Natural Gas Best Available Monitoring Methods

The Environmental Protection Agency published a [direct final rule](#) and an accompanying [proposed rule](#) that would revise the deadline by which natural gas and petroleum source categories must submit requests for use of best available monitoring methods pursuant to the Greenhouse Gas Reporting Rule. “EPA currently has authority to review and finalize best available monitoring method request determinations during the reporting year in which the use of best available monitoring methods are sought. However, making this annual deadline earlier will create a more realistic schedule for processing best available monitoring method requests and will improve EPA's ability to inform owners or operators of EPA's final determination prior to the reporting year for which such methods are sought. For example, in 2012, the EPA received more requests than anticipated, many of which were quite technical in nature. Based on a review of those requests, the EPA has determined that, additional time is needed to carefully review requests it may receive in future years, and in cases where the EPA deems it necessary, to afford time to request further information or to clarify questions or concerns about the request. The September 30 deadline does not provide a realistic time period to sufficiently review and process the requests and notify all owners or operators of final determinations.” [Comments](#) are due on March 20<sup>th</sup>.



## Agencies

### Department of Justice

#### DOJ Initiates a Review of Gun Safety Technologies

The Department of Justice published a [notice](#) announcing that the Department's National Institute of Justice (NIJ) is initiating a review of existing and emerging gun safety technologies, pursuant to President Obama's plan to reduce gun violence. After this review of technologies, NIJ will issue a report on the availability and use of gun safety technologies. "NIJ seeks input from all interested stakeholders to help inform its technology assessment and market research of existing and emerging gun safety technologies that would be of interest to the law enforcement and criminal justice communities and others with an interest in gun safety. Representative stakeholders include, but are not limited to, law enforcement, gun safety subject matter experts, firearms manufacturers, firearms experts, manufacturing engineers, biometrics specialists, radio frequency identification (RFID) engineers, microelectronics experts, or others with relevant training and experience." [Comments](#) are due by 5:00pm on April 8<sup>th</sup>.

### Food and Drug Administration

#### FDA Extends Comment Period for Draft Environmental Assessment of Genetically-Engineered Salmon

The Food and Drug Administration published a [notice](#) extending the public comment period for two draft environmental review documents related to the approval of genetically-engineered salmon: a draft environmental assessment, and a finding of no significant impact for the conditions for use specified in materials submitted by AquaBounty Technologies, Inc., in support of a new animal drug application. "The Agency believes that a 60-day extension allows adequate time for interested persons to submit comments without significantly delaying the Agency's decision on whether to finalize these documents or prepare an [environmental impact statement]." [Comments](#) are due on April 26<sup>th</sup>.

### Administrative Conference of the United States

#### ACUS Announces Meetings of the Committees on Regulation, Rulemaking

The Administrative Conference of the United States announced a series of [public meetings](#) of the Committee on Regulation and the Committee on Rulemaking throughout March and April. The Committee on Regulation will meet to consider a revised report by Professor Wendy Wagner on the use of science by regulatory agencies, and a report by Curtis Copeland on the use of benefit-cost analysis by independent regulatory agencies. The Committee on Rulemaking will meet to discuss "a draft report and recommendations on the policy and legal issues implicated by agency use of social media to support rulemaking." ACUS is an independent federal agency that provides recommendations to the federal government for improving the administrative process. Members of the public can [RSVP](#) two business days prior to the meetings.

### National Transportation Safety Board

#### NTSB Announces Public Forum on Status of Positive Train Control Implementation

The National Transportation Safety Board published a [notice](#) announcing a public forum on February 27<sup>th</sup> at 9:00am entitled "Positive Train Control: Is it on Track?" The forum will explore three topic areas: the current status of positive train control (PTC) regulatory implementation; the current status of PTC technical implementation; and PTC systems as envisioned PTC systems as being implemented. "The NTSB has repeatedly concluded that technological solutions, such as Positive Train Control (PTC), have great potential to reduce the number of serious train accidents by providing safety redundant systems to protect against human performance failures. Because of the NTSB's longstanding interest in this issue, the Board placed a recommendation to implement PTC on the NTSB's Most Wanted List of Transportation Safety Improvements at the inception of the list in 1990, and it remained on the list until after the Rail Safety Improvement Act of 2008 was enacted. This act requires each Class I railroad over which poison- or toxic-by-inhalation (PIH or TIH) hazardous materials are transported and each entity providing regularly scheduled intercity or commuter rail passenger transportation to implement a PTC system by December 31, 2015."

