

Regulation Digest Weekly

September 19th, 2012

Vol. 1 No. 28

Opinion

- Government regulations: Rhetoric vs. reality
- The Stunning Triumph of Cost-Benefit Analysis
- The Psychology of Abundance and the Realities of Regulatory Micromanagement

Marketplace of Ideas

American Action Forum

- The Week in Regulation: September 10-14, *Sam Batkins*
- President Obama's \$488 Billion Regulatory Burden, *Sam Batkins*

Competitive Enterprise Institute

- CEI's Battered Business Bureau: The Week in Regulation, *Ryan Young*

Dēmos

- Impact Of the Independent Regulatory Analysis Act, S. 3468: Further Delaying Needed Safeguards For Our Economy, *Ben Peck*

The George Washington University Regulatory Studies Center

- Public Interest Comment on The Department of Energy's Direct Final Rule: Energy Conservation Standards for Residential Dishwashers, *Sofie Miller*

Government Accountability Office

- USDA and SBA Could Do More to Help Aquaculture and Nursery Producers, *Lisa Shames & William Shear*
- The Department of Health and Human Service's and Environmental Protection Agency's Use of Special Pay Rates for Consultants and Scientists, *Robert Goldenkoff & Robert Cramer*
- New Council and Research Office Should Strengthen the Accountability and Transparency of Their Decisions, *Angela Clowers*
- Impact of the Dodd-Frank Act Depends Largely on Future Rule Makings, *Lawrance Evans*
- Treasury Continues to Implement Its

Feature Story

CFPB Proposes Mortgage Servicing Regulations

The Consumer Financial Protection Bureau published a [proposed rule](#) that would apply Dodd-Frank amendments to Regulation Z, implementing provisions concerning adjustable-rate mortgage disclosures, payoff statements, and payment crediting. "Specifically, this proposal implements Dodd-Frank Act sections addressing initial rate adjustment notices for adjustable-rate mortgages (ARMs), periodic statements for residential mortgage loans, and prompt crediting of mortgage payments and response to requests for payoff amounts. The proposed revisions also amend current rules governing the scope, timing, content, and format of current disclosures to consumers occasioned by the interest rate adjustments of their variable-rate transactions."

Different sections of the proposed rule apply to different loan servicers: "the periodic statement and ARMs disclosure provisions apply only to closed-end mortgage loans, but the prompt crediting and payoff statement provisions apply both to open-end and closed-end mortgage loans. In addition, reverse mortgages and timeshares are excluded from the periodic statement requirement, and certain construction loans are excluded from the ARM disclosure requirements." CFPB additionally convened a Small Business Regulatory Enforcement Fairness Act panel "to assess the impact of the possible rules on small servicers and to help the Bureau determine to what extent it may be appropriate to consider adjusting these standards for small servicers, to the extent permitted by law. Informed by this process, this proposal contains an exemption from the periodic statement requirement for certain small servicers." The Bureau is seeking comment on whether additional small servicer exemptions would be appropriate.

On this rulemaking, The Bureau is working with the Cornell e-Rulemaking Initiative through the site [Regulation Room](#), which is intended "to use different Web technologies and approaches to enhance public understanding and participation in Bureau rulemakings and to evaluate the advantages and disadvantages of these techniques." [Comments](#) are due on October 9th.

In the News

9/12/12

[Congress closer to defining municipal advisers, pressuring SEC](#), *Reuters*
[Why A.I.G. May Not Be Able to Avoid the Volcker Rule](#), *New York Times*

9/13/12

[Bill questions oversight of powerful independent regulation agencies](#), *Morning Sentinel*
[SEC closes probe into Avon's disclosures to analysts](#), *Reuters*
[U.S. swaps regulator says should rely on some foreign rules](#), *Reuters*
[Small business owners' most common misconceptions about FDA compliance](#),

Oversight System for Addressing TARP Conflicts of Interest, *William Woods*

- Better Implementation of Controls for Mobile Devices Should Be Encouraged, *Gregory Wilshusen & Nabajyoti Barkakati*

The Keystone Center

- IMPROVING THE USE OF SCIENCE IN REGULATORY DECISION-MAKING: Dealing with Conflict of Interest and Bias in Scientific Advisory Panels, and Improving Systematic Scientific Reviews, *A Report from the Research Integrity Roundtable*

The Mercatus Center

- Regulation and the International Competitiveness of the U.S. Economy, *Steven Gliberman & George Georgopoulos*

National Bureau of Economic Research

- The Effects of Environmental Regulation on the Competitiveness of U.S. Manufacturing, *Michael Greenstone, John A. List, Chad Syverson*

New York University Colloquium on Law, Economics, and Politics

- Regulatory Auditing at the Office of Information and Regulatory Affairs, *Charles Cameron & Alex Acs*

OMB Watch

- Cost-Benefit Analysis: The Stunning Triumph of a Flawed Tool, *Katherine McFate*

Penn Program on Regulation

- The Regulatory Week in Review: September 14, 2012, *Mima Mohammed*
- Regulation's Four Core Components, *Cary Coglianese*
- PPR Announces Fall 2012 Risk Regulation Series, *Sean Moloney*
- Trickle-down Regulatory Impact Analysis, *Jerry Ellig, Patrick McLaughlin, & John Morrall*

The Phoenix Center

- What is the Effect of Regulation on Broadband Investment? Regulatory Certainty and the Expectation of Returns, *Larry Spiwak & George Ford*

The World Bank

- Rethinking the Role of the State in Finance, *Global Financial Development Report*

Contact Us

www.regulatorystudies.gwu.edu

Twitter: @RegStudies

Email: regulatorystudies@gwu.edu

Washington Post

[FDA warns of rare chemical burns caused by over-the-counter pain-relieving gels and patches](#), *Washington Post*

[CFTC May Delay Setting Jurisdiction of U.S. Swaps Rules](#), *Wall Street Journal*
[A Warning on Bank Complexity, From Someone Who Would Know](#), *NYT Dealbook*

[4 Years After Lehman's Demise, Regulators Debate Overhaul](#), *NYT Dealbook*
9/14/12

[NYSE fined after some clients got early look at data](#), *Reuters*

[U.S. exchanges weigh "speed bumps" for trading firms](#), *Reuters*

[Bank of America settles loan discrimination charges](#), *Washington Post*

[Regulators close small bank in Missouri, makes total of 42 US failures so far this year](#), *Washington Post*

[Regulator Vows New Rules to Repair Mortgage Markets](#), *Wall Street Journal*

9/15/12

[Report: US banks being investigated over lapses that could have allowed money laundering](#), *Washington Post*

[Report: US banks subject of money-laundering probe](#), *Wall Street Journal*

9/16/12

[Safety regulators investigate police cars made by Ford](#), *Reuters*

9/17/12

[Report: Another 1,500 pages of regulations added last week](#), *Daily Caller*

[Killing Dodd-Frank Softly](#), *The American Prospect*

[More than \\$110 Million in FDA User Fees to be Seized Under Sequestration](#), *Regulatory Focus*

[Russell E. Train, former EPA head, dies at 92](#), *Washington Post*

[Watchdog says NLRB general counsel violated ethics rules in Wal-Mart case](#), *Washington Post*

[Analysis: Banks may retreat from Asia swap markets as regulation bites](#), *Reuters*

[U.S. state officials in stealth mode on health exchanges](#), *Reuters*

[Uncertainty is adding to U.S. jobless rate: Fed paper](#), *Reuters*

[New state regulatory head is no small-business outsider](#), *Reuters*

9/18/12

[Alpha Natural Resources closing eight mines, cutting hundreds of jobs](#),

Washington Post

[Business groups try to make government regulation an issue as fall election draws near](#), *Washington Post*

[FDA working on plan to limit arsenic levels in rice](#), *Washington Post*

[Exclusive: Morgan Stanley infrastructure fund hit by Volcker rule](#), *Reuters*

[Link Between BPA And Childhood Obesity Is Unclear](#), *NPR*

[FDA Transitioning to Tablet-Based Inspection System for Food, Pharmaceutical Facilities](#), *Regulatory Focus*

[Tougher Swap Rules Delayed](#), *Wall Street Journal*

[Advanced Equities Settles SEC Allegations of Misleading Investors](#), *Wall Street Journal*

9/19/12

[Facebook, Google, Amazon join forces in D.C. lobby](#), *Washington Post*

[Breast Ultrasound Device Gets Nod from FDA](#), *Regulatory Focus*

[FDA, Others Plan Meeting to Address Antimicrobial Resistance](#), *Regulatory Focus*

[FDA tests find arsenic in rice](#), *Chicago Tribune*

[Report: Cost of regs \\$1.8 trillion, 20-times Obama's estimate](#), *Washington Examiner*

[SEC's 'Conflict Minerals' Rules Open Companies to Activists](#), *Wall Street Journal*

Rulemaking

Federal Trade Commission

FTC Proposes Changes in Fur Labeling Requirements Upon Undertaking Retrospective Review

The Federal Trade Commission published a [proposed rule](#) that would apply changes pursuant to a retrospective review of rules implementing the Fur Products Labeling Act (“Fur Act”), as amended by the Truth in Fur Labeling Act (TFLA). The Fur Act requires products made exclusively or somewhat out of fur to include a 1.75” x 2.75” label indicating the species of animal from which the fur is derived, and also requires the Commission to maintain “a register setting forth the names of hair, fleece, and fur-bearing animals,” called the *Name Guide*, to facilitate correct and identifiable labeling of animal fur products. After a retrospective review of the rules implementing the Fur Act, the Commission is proposing definitional changes to the Name Guide, which has not been updated since 1967. Additionally, the Commission is allowing greater labeling flexibility: fur labels will no longer have a size requirement, need not be in a certain font, and can include additional information on the front and back of the label. Prior to the TFLA amendments, these labeling requirements applied only to fur products of \$150 value or more; this exception is being removed, subjecting all fur products to these labeling requirements if not sold face-to-face by the hunter or trapper. These proposals, particularly the proposal to remove the 1.75” x 2.75” label size requirement, will make it easier to expand the scope of these requirements to smaller fur products of less than \$150 value. [Comments](#) are due on November 16th.

Department of Health and Human Services

HHS Finalizes Significant Rule Changing Examination Requirements for Underground Coal Miners

The Department of Health and Human Services published a significant [final rule](#) modifying existing regulations for the mandatory medical examinations of underground coal miners. These rules were originally established because of the airborne fine dust particles generated by mining activities that can lead to serious health effects for miners, including chronic bronchitis, emphysema, chronic obstructive pulmonary disease, silicosis, and coal workers' pneumoconiosis (CWP). In addition to regulating limits on respirable dust exposure during mining activity, HHS requires that miners receive chest x-rays at certain intervals to identify and track diseases of the lungs and airways caused by fine dust particle exposure. “Significantly, the new rule expands the availability of chest radiographic examinations by establishing additional options for giving, interpreting, classifying, and submitting digitally-acquired radiographs under the same scope as the existing rule does for film radiographs. The final rule establishes the minimum specifications for methods, procedures, quality assurance, documentation, and equipment including computer software for facilities seeking approval to perform and submit digital radiographic examinations as well as the physician readers who interpret, classify, and submit reports using those radiographs.”

Consumer Financial Protection Bureau

CFPB Proposes Mortgage Servicing Regulations Intended to Protect Consumers from Foreclosure

The Consumer Financial Protection Bureau published a [proposed rule](#) that would apply Dodd-Frank amendments to Regulation X, which implements the Real Estate Settlement Procedures Act of 1974 (RESPA). “Specifically, this proposal requests comment regarding proposed additions to Regulation X to address seven servicer obligations: To correct errors asserted by mortgage loan borrowers; to provide information requested by mortgage loan borrowers; to ensure that a reasonable basis exists to obtain force-placed insurance; to establish reasonable information management policies and procedures; to provide information about mortgage loss mitigation options to delinquent borrowers; to provide delinquent borrowers access to servicer personnel with continuity of contact about the borrower's mortgage loan account; and to evaluate borrowers' applications for available loss mitigation options. This proposal would also modify and streamline certain existing servicing-related provisions of Regulation X. For instance, the proposal would revise provisions relating to a mortgage servicer's obligation to provide disclosures to borrowers in connection with a transfer of mortgage servicing, and a mortgage servicer's obligation to manage escrow accounts, including the obligation to advance funds to an escrow account to maintain insurance coverage and to return amounts in an escrow account to a borrower upon payment in full of a mortgage loan.”

On this rulemaking, The Bureau is working with the Cornell e-Rulemaking Initiative through the site [Regulation Room](#), which is intended “to use different Web technologies and approaches to enhance public understanding and

participation in Bureau rulemakings and to evaluate the advantages and disadvantages of these techniques.” [Comments](#) are due on October 9th.

Environmental Protection Agency

EPA Finalizes CAA Residual Risk and Technology NESHAPS Review

The Environmental Protection Agency published a [final rule](#) finalizing the residual risk and technology review conducted for regulation of hard and decorative chromium electroplating and chromium anodizing tanks, and steel pickling—HCl process facilities and hydrochloric acid regeneration plants. These source categories are currently regulated under the National Emission Standards for Hazardous Air Pollutants (NESHAPs). After conducting the risk and technology review, EPA is reducing emission limits for total chromium and is mandating a phase-out the use of perfluorooctane sulfonic acid based fume suppressants. “[The] EPA has determined it is appropriate to promulgate emissions limits and surface tension limits that are moderately lower than the limits in the current regulation for new and existing hard chromium electroplating, decorative chromium electroplating, and chromium anodizing sources. These amendments will reduce chromium emissions (a known human carcinogen) and the risk associated with those emissions. This action also includes housekeeping requirements to minimize fugitive emissions from affected sources. In addition, this action eliminates the use of fume suppressants that contain perfluorooctane sulfonic acid (PFOS), which has been shown to be persistent, bioaccumulative and toxic.” For chromium electroplating NESHAPs, the upfront cost of reducing emissions by 224 lbs/year is anticipated to be \$8.2 million with recurring annual costs of an additional \$2.4 million.

Agencies

Securities and Exchange Commission

SEC Announces Roundtable Discussion on Potential High-Frequency Trading Regulations

The Securities and Exchange Commission [announced](#) its intent to hold a roundtable discussion on Tuesday, October 2nd to discuss the promotion of stability in markets that rely on highly automated systems for conducting trades. “The roundtable at the Securities and Exchange Commission's Washington, DC headquarters is open to the public and will be webcast. As previously announced, the event will begin with a discussion on preventing errors, focusing on current best practices and practical constraints for creating, deploying and operating mission-critical systems, including those used to automatically generate and route orders, match trades, confirm transactions, and disseminate data. The afternoon session will focus on error response, with experts discussing how the market might employ independent filters, objective tests, and other real-time processes or crisis-management procedures to detect, limit, and possibly terminate erroneous market activities when they occur, thereby limiting the impact of such errors.”

Department of Health and Human Services

CDC, FDA, and NIH Host Public Meeting on Combating Antimicrobial Resistance

The Centers for Disease Control and Prevention, in conjunction with the Food and Drug Administration and the National Institutes of Health, announced a [public meeting](#) on Thursday, November 15th to “solicit input from the public regarding the Interagency Task Force on Antimicrobial Resistance (ITFAR) activities including the Annual Progress Report and the Action Plan... The public meeting process provides an opportunity for the public to comment on the activities of the ITFAR to date. In addition, the ITFAR invites written comments or oral presentations by interested persons on the Annual Report as well as the four focus areas of the Action Plan: Surveillance, Prevention and Control, Research, and Product Development... Comments and suggestions from the public on the Annual Report or any of the focus areas of the Action Plan will be reviewed and carefully considered by the ITFAR. The public should be aware that this meeting agenda does not include development of consensus positions, guidelines, interrogatories, or discussions or endorsement of specific commercial products.” [Comments](#) are due on November 5th.

Department of Commerce

ITA Seeks Applicants for Manufacturing Council Membership

The International Trade Administration is [seeking applicants](#) for 25 open membership positions in the Manufacturing Council, which advises the Secretary of Commerce “on matters relating to the competitiveness of the manufacturing sector and to provide regular communication between Government and the manufacturing sector. The Manufacturing and Services division of the International Trade Administration oversees the administration of the Council and collaborates with Congress and other stakeholders to increase the global competitiveness of the U.S. manufacturing sector.” Applications are due November 2nd.

Export-Import Bank

Ex-Im Bank Receives Application for \$100 Million to Fund Boeing Exports to United Arab Emirates

The Export- Import Bank published a [notice](#) announcing the receipt of a request for a long-term loan or loan guarantee in excess of \$100 million to fund the export of Boeing aircraft into the United Arab Emirates. The exported aircraft are intended to facilitate airline service between the United Arab Emirates and other countries. [Comments](#) are due on October 15th.

Ex-Im Bank Receives Application for \$100 Million to Fund Boeing Exports to Poland

The Export- Import Bank published a [notice](#) announcing the receipt of a request for a long-term loan or loan guarantee in excess of \$100 million to fund the export of Boeing commercial aircraft into Poland. The exported commercial aircraft are intended to be used for long-haul passenger air service between Poland and North America, and between Poland and Asia. [Comments](#) are due on October 15th.