

Regulation Digest Weekly

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- Small businesses have indeed 'built that'
- Blowing the Whistle On Whistleblowers
- Regulation, The Democrats, and The Parallel Universe

Marketplace of Ideas

American Action Forum

- The Impact of Federal Regulations on U.S. Manufacturing, *Thomas Hemphill*
- The Week in Regulation: September 17-21, *Sam Batkins*

American Enterprise Institute

- What happens when local phone service is deregulated?, *Jeffrey Eisenach, Kevin W. Caves*
- Shadow Financial Regulatory Committee, Statement No. 329: Financial stability and the regulation of money market mutual funds, *Franklin Edwards*
- Shadow Financial Regulatory Committee, Statement No. 330: LIBOR Reform, *Sheila Bair & Robert Eisenbeis*
- Shadow Financial Regulatory Committee, Statement No. 331: Specialized corporate disclosure provisions in the Dodd-Frank Act, *Cathy Schrand & Richard Herring*
- Could the Republicans survive Dodd-Frank?, *Peter Wallison*
- The Internet doesn't need more regulation, *Jeffrey Eisenach*

Competitive Enterprise Institute

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

Federal Deposit Insurance Corporation

- 2011 FDIC National Survey of Unbanked and Underbanked Households, *Susan Burhouse & Yazmin Osaki*

Feature Story

NCUA Proposes Allowing Federal Credit Unions to Purchase Treasury Inflation Protected Securities

The National Credit Union Administration published a [proposed rule](#) that would allow federal credit unions (FCUs) to buy Treasury Inflation Protected Securities (TIPS) by amending its current investment regulation. "The Board believes TIPS will provide FCUs with an additional investment portfolio risk management tool that can be useful in an inflationary economic environment... The Board also believes FCUs have the ability to manage the risks associated with TIPS and can benefit from including them in their overall investment portfolio. In addition to analyzing the nature and performance of TIPS in the marketplace, NCUA has monitored FCU usage of TIPS through a long-term investment pilot program. The results of the pilot program are consistent with the Board's opinion that TIPS are an appropriate investment for FCUs and can be a valuable portfolio management tool when there are inflationary risks in the economy." TIPS were prohibited as investment vehicles for FCUs because they increase with inflation and decrease with deflation, as measured by the Consumer Price Index (CPI). The CPI is currently a prohibited index for variable rate instruments, and FCUs are prohibited by 12 CFR §703.14 from purchasing TIPS for this reason. By allowing a previously prohibited activity, the Administration states that the proposed rule "reduces compliance burden and extends regulatory relief while maintaining existing safety and soundness standards." [Comments](#) are due on November 26th.

In the News

9/19/12

- [FDA Takes a Growing Interest in Winery Safety](#), *Wine Spectator*
- [GOP 'war on coal' bill gets veto threat](#), *The Hill*
- [U.S. needs arsenic limits in rice: Consumer Reports](#), *Reuters*
- [Swap dealing non-banks to CFTC: Give us more time](#), *Reuters*
- [Goldman CEO sees tougher regulation as necessary](#), *Reuters*

9/20/12

- [Panel sets floor votes on climate science, EPA mine veto power](#), *The Hill*
- [\\$1.8 trillion shock: Obama regs cost 20-times estimate](#), *Washington Examiner*
- [US Chamber, others ask appeals court to uphold ruling against EPA in veto of W.Va. mine permit](#), *Washington Post*
- [Behind the Scenes, Some Lawmakers Lobby to Change the Volcker Rule](#), *New York Times*
- [Senate panel looks into high-frequency stock trades](#), *Washington Post*
- [SEC's Schapiro: U.S. risk council must push for money market reforms](#), *Washington Post*
- [U.S. power market regulator threatens to suspend JPMorgan](#), *Reuters*
- [FINRA pushing to make broker records more accessible to investors](#), *Reuters*

Federal Regulations Advisor

- Monday Morning Regulatory Review – 9/24/12, *Leland Beck*

The George Washington University Regulatory Studies Center

- Independent Regulatory Agencies Should be More Accountable, *Susan Dudley*

Journal of Environmental Studies and Sciences

- The social cost of carbon in U.S. regulatory impact analyses: an introduction and critique, *Laurie Johnson & Chris Hope*

The Mercatus Center

- Blowing the Whistle On Whistleblowers, *Hester Peirce*

National Association of Manufacturers/National Federation of Independent Businesses

- NFIB and NAM Survey of Small Businesses and Manufacturers:

◦ Executive Summary

◦ Presentation: Summary of Findings

Penn Program on Regulation

- Predicting the Cost of Financial Reform, *Brian Ryoo*

- The Regulatory Week in Review: September 21, 2012, *Mima Mohammed*

Pepper Hamilton, LLP

- Agency Efforts to Circumvent Rulemaking Requirements Proliferating, *Jane Luxton*

U.S. House of Representatives Committee on the Judiciary

- Government Regulatory Policies and the Delayed Economic Recovery, *John Taylor*

- Statement of Amb. C. Boyden Gray: Regulation Nation: The Obama Administration's Regulatory Expansion vs. Jobs and Economic Recovery, *C. Boyden Gray*

- Hearing on Regulation Nation: The Obama Administration's Regulatory Expansion vs. Jobs and Economic Recovery, *Lisa Heinzerling*

- Testimony of Robert L. Luddy: Regulation Nation: The Obama Administration's Regulatory Expansion vs. Jobs and Economic Recovery, *Robert Luddy*

Yale Journal on Regulation

- Rational Boundaries for SEC Cost-Benefit Analysis, *Bruce Kraus & Connor Raso*

[Behind the Scenes, Some Lawmakers Lobby to Change the Volcker Rule](#), *New York Times*

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

9/21/12

[WHY IT MATTERS: New rules aim to head off another economic cataclysm but come with costs](#), *Washington Post*

[California regulator defends CO2 market design](#), *Reuters*

[House approves GOP plan to quash coal, gas rules in election-year swipe at Obama](#), *Washington Post*

[US futures regulator calls for speedy conflict of interest rules](#), *Reuters*

[Costly swaps rules shift players into futures: O'Malia](#), *Reuters*

[Analysis: Housing regulators loosen rules, but at what cost?](#), *Reuters*

[Three states join lawsuit challenging Dodd-Frank law](#), *Reuters*

[Cancer Center Announces \\$3 Billion Anti-Cancer Initiative, With Focus on Regulatory Challenges](#), *Regulatory Focus*

[FDA Plans to Evaluate Risk-Benefit Paradigms for 20 Disease Areas](#), *Regulatory Focus*

[Influencing Dodd-Frank](#), *New York Times*

[WHY IT MATTERS: Wall Street regulation and reform, Wall Street Journal Regulatory Expansion Versus Economic Expansion in Two Recoveries](#), *Economics One*

9/22/12

[Obama's Half-Trillion in Regulations? Sam Batkins Explains](#), *Real Clear Policy*

9/23/12

[Woes in Virginia coal fields, energy policy move to fore in U.S. Senate race](#), *Washington Post*

9/24/12

[Obama contradicts himself on his administration's regulatory policies](#), *Daily Caller*

['Free' Checking Costs More](#), *Wall Street Journal*

[Merrill fined \\$500,000 for not filing reports: FINRA](#), *Reuters*

[CFTC's Gensler calls for independent compiler of Libor](#), *Reuters*

[Bank fees further erode free checking accounts](#), *Associated Press*

[FDA Launches New Task Force to Assess Regulatory Hurdles Facing Development of Antibiotics](#), *Regulatory Focus*

[Proposed Changes to Antibiotic Regulation Given More Time for Public Comment](#), *Regulatory Focus*

[Feds order Discover to refund \\$200M to cardholders](#), *Associated Press*

[As Wall Street Fights Regulation, It Has Backup on the Bench](#), *New York Times*

[White House said to plan executive order on cybersecurity](#), *Reuters*

[U.S. regulator calls for overhaul of Libor](#), *Reuters*

[U.S. regulator fines Discover for deceptive marketing](#), *Reuters*

[US regulator says it's time to restructure or replace system for setting key interest rate](#), *Washington Post*

[Gensler Calls for Libor Replacement](#), *Wall Street Journal*

9/25/12

[Banks must accept tighter rules, rethink profit goals: RBA](#), *Reuters*

[FDA Given New Authority to Oversee Clinical Trials Data Reporting](#), *Regulatory Focus*

[Is the government making Washington rich? \(In charts, of course\)](#), *WonkBlog*

[FINRA to ramp up scrutiny of costs, benefits of rules](#), *Reuters*

[IMF says banks skirt rules, financial system unwell](#), *Reuters*

Contact Us

www.regulatorystudies.gwu.edu

Twitter: @RegStudies

Email: regulatorystudies@gwu.edu

[Day-Trading Firm Fined Over Manipulative Dealings](#), *Wall Street Journal*
[Audit Firms See Gold in Minerals Rule](#), *CFO Journal*

9/26/12

[Regulator Sees Flaws in Credit-Score Information](#), *Wall Street Journal*
[FDA Finds Arsenic in Many Rice Products](#), *Reg Blog*

Rulemaking

National Credit Union Administration

NCUA Proposes Rule Expanding Applicability of Small Entity Consideration Under Regulatory Flexibility Act

The National Credit Union Administration published a [proposed rule](#) that would raise the threshold for which Federally-Insured Credit Unions are considered “small entities” for the purposes of the Regulatory Flexibility Act (RFA). The RFA requires federal agencies to consider the impact of proposed and final rules on small entities, and requires NCUA to prepare an analysis to describe significant economic impacts that proposed rules could be expected to have on small entities. Since 2003, “small entity” in this context has been defined as a credit union with less than \$10 million in assets; NCUA proposes in this rule to redefine “small entity” as a credit union with less than \$30 million in assets, expanding the applicability of RFA requirements for rulemaking. Enlarging this definition will require NCUA to undertake more regulatory analyses for rules that will significantly affect small entities. NCUA speculates that finalizing this rule would “result in more robust consideration of regulatory relief for more small credit unions in future rulemakings. The amended regulations would grant immediate and prospective relief from regulatory burden to a larger group of small credit unions.” [Comments](#) are due on October 26th.

Small Business Administration

SBA Final Rule Redefines Which Health Care and Social Assistance Businesses are “Small”

The Small Business Administration published a [final rule](#) increasing small business size standards “for 28 industries in North American Industry Classification System (NAICS) Sector 62, Health Care and Social Assistance, and retaining the current standards for the remaining 11 industries in that Sector. As part of its ongoing comprehensive review of all size standards, SBA evaluated every industry in NAICS Sector 62 to determine whether the existing size standards should be retained or revised.” Implementing this new definition, an additional [4,100](#) firms are estimated by SBA to be considered small businesses. “This will result in an increase in the small business share of total industry receipts for the Sector from about 30 percent under the current size standard to nearly 32 percent under the proposed standards. The revised size standards will enable more small businesses to retain their small business status for a longer period. Many have lost their eligibility and find it difficult to compete at current size standards with companies that are significantly larger than they are.”

Determination of which businesses are “small businesses” is necessary because the purpose of the Small Business Act is to help small businesses compete in the marketplace, necessitating standards to define which businesses qualify as small businesses. Businesses that will acquire small business status because of this rule will become newly eligible for Federal small business assistance programs, including the SBA's financial assistance programs, economic injury disaster loans, and Federal procurement programs intended for small businesses.

SBA Final Rule Expands “Small Business” Size Standards for Real Estate and Leasing Industries

The Small Business Administration published a [final rule](#) increasing small business size standards “for 21 industries and one sub-industry in North American Industry Classification System (NAICS) Sector 53, Real Estate and Rental and Leasing, and retaining the current standards for the remaining four industries in that Sector. As part of its ongoing comprehensive review of all size standards, SBA evaluated all size standards for industries in NAICS Sector 53 to determine whether they should be retained or revised.” This change in definition will classify an additional [13,000](#) firms as small businesses, or 5 percent of the total firms in this industry sector with receipts-based size standards. Determination of which businesses are “small businesses” is necessary because the purpose of the Small Business Act is to help small businesses compete in the marketplace, necessitating standards to define which businesses qualify as small businesses. Businesses that will acquire small business status because of this rule will become newly eligible for Federal small business assistance programs, including the SBA's financial assistance programs, economic injury disaster loans, and Federal procurement programs intended for small businesses.

SBA Final Rule to Expand “Small Business” Size Standards for Educational Services Industry

The Small Business Administration published a [final rule](#) increasing small business size standards “for nine industries in North American Industry Classification System (NAICS) Sector 61, Educational Services, and retaining the current size standards for the remaining eight industries and one sub-industry (“exception”) in this Sector. As part of its ongoing comprehensive review of all size standards, SBA evaluated every industry in NAICS Sector 61 to determine whether the existing size standards should be retained or revised.” Altering this definition will classify an additional 1,500 firms as “small businesses,” which will “result in an increase in the small business share of total industry receipts in those industries from about 18 percent under the current size standards to 23 percent under the revised size standards.” Determination of which businesses are “small businesses” is necessary because the purpose of the Small Business Act is to help small businesses compete in the marketplace, necessitating standards to define which businesses qualify as small businesses. Businesses that will acquire small business status because of this rule will become newly eligible for Federal small business assistance programs, including the SBA's financial assistance programs, economic injury disaster loans, and Federal procurement programs intended for small businesses.

Department of Interior

NIGC Finalizes Gaming Rule for Class II Gaming in Indian Casinos

The National Indian Gaming Commission (NIGC) published a [final rule](#) amending its existing minimum internal control standards (MICS) for Class II gaming, including card games, bingo, drop and count, surveillance, and gaming promotions and player tracking. Past Commission rules established minimum internal control standards to reduce the risk of loss to casinos caused by customer or employee access to cash and cash equivalents by establishing “standards and procedures that govern cash handling, documentation, game integrity, auditing, surveillance, and variances, as well as other areas.” The Commission notes that, pertaining to MICS for Class II gaming, “Commenters [had] suggested removing the procedural requirements and measuring compliance by the extent to which tribes have successfully achieved a regulatory standard, rather than the extent to which tribes have followed step-by-step procedures in the MICS. *The Commission declines to take this approach and believes the standards set forth in this part are both appropriate and sufficiently detailed to be implemented by tribes.*”

Despite many commenters’ concern that these standards may limit technology within casinos, the “Commission declines to add a general statement that nothing in this part is intended to limit technology,” and instead says so in the rule’s supporting documents. Commenters had also requested that the Commission include in the text of the rule language recognizing that tribes are the primary regulatory authority for Class II gaming; the Commission, once again, declined.

Department of Veterans Affairs

VA Direct Final Rule Exempts In-Home Telehealth Care from Copayment Requirements

The Department of Veterans Affairs published the finalization of a [direct final rule](#) amending the VA’s regulations governing VA services not subject to copayment requirements for inpatient hospital care or outpatient medical care. Specifically, the direct final rule exempts in-home video telehealth care from required copayments. In the VA’s [Impact Analysis](#) for the rule, the Department explained that this change will offer veterans an incentive to use alternative approaches to VA health care, such as in-home telehealth care, with only a minimal loss of revenues to the VA. The direct final rule did not receive any adverse comment, and is being finally promulgated without change.

Department of Agriculture

APHIS Finalizes Rule Expanding Plum Pox Compensation

The Animal and Plant Health Inspection Service finalized an [interim final rule](#) to compensate owners of non-fruit-bearing ornamental tree nurseries whose trees are required by state or federal governments to be destroyed in order to prevent the spread of plum pox. The final rule also increases the allowable compensation for owners of commercial stone fruit orchards and fruit tree nurseries whose trees are destroyed in the state and federal efforts to eradicate plum pox. Two commenters—a state agricultural agency and an organization of state plant regulatory agencies—generally supported this action. One additional commenter asked that the Agency define a “commercial” fruit orchard or nursery, which APHIS declined to do. The interim rule was finalized without change.

Agencies

Department of Agriculture

USDA Passes Goal of \$250 Million in Guaranteed Loans for Smart Grid Technologies

The Department of Agriculture [announced](#) that the Department had passed \$250 million in loan guarantees for smart grid technologies in Virginia, Iowa, Minnesota, Texas, Missouri, and four other states. “The funding helps electric utilities upgrade, expand, maintain and replace rural America's electric infrastructure. USDA Rural Development also funds energy conservation and renewable energy projects... *Rural Development has an active portfolio of more than \$172 billion in loans and loan guarantees.* These programs are designed to improve the economic stability of rural communities, businesses, residents, farmers and ranchers and improve the quality of life in rural America.”