Howey test but are not registered with the Commission are excluded from SIPA's definition of ''securities''—and thus the protections afforded to securities customers under SIPA may not apply; (b) describe the risks of fraud, manipulation, theft, and loss associated with digital asset securities; (c) describe the risks relating to valuation, price volatility, and liquidity associated with digital asset securities; and (d) describe, at a high level that would not compromise any security protocols, the processes, software and hardware systems, and any other formats or systems utilized by the broker-dealer to create, store, or use the broker-dealer's private keys and protect them from loss, theft, or unauthorized or accidental use; [22] and

9. The broker-dealer enters into a written agreement with each customer that sets forth the terms and conditions with respect to receiving, purchasing, holding, safekeeping, selling, transferring, exchanging, custodying, liquidating and otherwise transacting in digital asset securities on behalf of the customer.[23]

V. Request for Comment

The Commission is seeking comment on the specific questions below. When responding to the request for comment, please explain your reasoning.

1. What are industry best practices with respect to protecting against theft, loss, and unauthorized or accidental use of private keys necessary for accessing and transferring digital asset securities? What are industry best practices for generating, safekeeping, and using private keys? Please identify the sources of such best practices.

2. What are industry best practices to address events that could affect a broker-dealer's custody of digital asset securities such as a hard fork, airdrop, or 51% attack? Please identify the sources of such best practices.

3. What are the processes, software and hardware systems, or other formats or systems that are currently available to broker-dealers to create, store, or use private keys and protect them from loss, theft, or unauthorized or accidental use?

4. What are accepted practices (or model language) with respect to disclosing the risks of digital asset securities and the use of private keys? Have these practices or the model language been utilized with customers?

5. Should the Commission expand this position in the future to include other businesses such as traditional securities and/or non-security digital assets? Should this position be expanded to include the use of non-security digital assets as a means of payment for digital asset securities, such as by incorporating a *de minimis* threshold for non-security digital assets?

6. What differences are there in the clearance and settlement of traditional securities and digital assets that could lead to higher or lower clearance and settlement risks for digital assets as compared to traditional securities?

7. What specific benefits and/or risks are implicated in a broker-dealer operating a digital asset alternative trading system that the Commission should consider for any future measures it may take?

By the Commission.

Dated: December 23, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–28847 Filed 2–25–21; 8:45 am]

BILLING CODE 8011–01–P

[22] The broker-dealer will need to retain these written disclosures in accordance with the broker-dealer record retention rule. *See* 17 CFR 240.17a–4(b)(4).

[23] The broker-dealer will need to retain these written agreements in accordance with the broker-dealer record retention rule. *See* 17 CFR 240.17a–4(b)(7).

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 10

Wage and Hour Division

29 CFR Parts 516, 531, 578, 579, and 580

RIN 1235–AA21

Tip Regulations Under the Fair Labor Standards Act (FLSA): Delay of Effective Date

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Final rule; delay of effective date.

SUMMARY: Consistent with the Presidential directive as expressed in the memorandum of January 20, 2021 from the Assistant to the President and Chief of Staff, entitled ''Regulatory Freeze Pending Review,'' this action finalizes the Department of Labor's (''the Department'') proposal to delay until April 30, 2021, the effective date of the rule titled Tip Regulations Under the Fair Labor Standards Act (FLSA), published in the **Federal Register** on December 30, 2020, to allow the Department to review issues of law, policy, and fact raised by the rule before it takes effect.

DATES: As of February 26, 2021, the effective date of the regulation titled Tip Regulations Under the Fair Labor Standards Act (FLSA), published in the **Federal Register** on December 30, 2020 (85 FR 86756), is delayed until April 30, 2021.

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this final rule may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats. Questions of interpretation or enforcement of the agency's existing regulations may be directed to the nearest Wage and Hour Division (''WHD'') district office. Locate the nearest office by calling the WHD's toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto WHD's website at *https://www.dol.gov/agencies/whd/contact/local-offices* for a nationwide listing of WHD district and area offices.

SUPPLEMENTARY INFORMATION:

I. Background

In the Consolidated Appropriations Act of 2018 (''CAA''), Congress amended section 3(m) of the Fair Labor Standards Act (''FLSA'' or ''Act'') to prohibit employers from keeping tips received by their employees, regardless of whether the employers take a tip credit under section 3(m). On December 30, 2020, the Department published Tip Regulations Under the Fair Labor Standards Act (FLSA) (the ''Tip Rule'') in the **Federal Register** to address these amendments. *See* 85 FR 86756. The Tip Rule would also codify the Wage and Hour Division's (''WHD'') guidance regarding the tip credit's application to tipped employees who perform tipped and non-tipped duties. *See id.* The effective date of the Tip Rule was March 1, 2021. *See id.*

In a memorandum dated January 20, 2021 titled ''Regulatory Freeze Pending Review,'' published in the **Federal Register** on January 28, 2021 (86 FR 7424) (''Regulatory Freeze Memorandum''), the Assistant to the President and Chief of Staff, on behalf

of the President, directed the heads of Executive Departments and Agencies to consider delaying the effective dates of all regulations that had been published in the **Federal Register** but had not yet taken effect; the Tip Rule falls into this category. The Regulatory Freeze Memorandum states that the purpose of such delays is for agencies to review any questions of fact, law, and policy that the rules may raise. The memorandum notes certain exceptions that do not apply here. On January 20, 2021, the Office of Management and Budget (OMB) also published OMB Memorandum M–21–14, Implementation of Memorandum Concerning Regulatory Freeze Pending Review, which provides guidance regarding the Regulatory Freeze Memorandum. *See* M–21–14, Implementation of Memorandum Concerning Regulatory Freeze Pending Review, *https://www.whitehouse.gov/wp-content/uploads/2021/01/M-21-14-Regulatory-Review.pdf* (last visited Feb. 19, 2021). OMB Memorandum M–21–14 explains that pursuant to the Regulatory Freeze Memorandum, agencies ''should consider postponing the effective dates for 60 days and reopening [the] rulemaking processes'' for ''rules that have not yet taken effect and about which questions involving law, fact, or policy have been raised.'' *Id.* In accordance with the Regulatory Freeze Memorandum and OMB Memorandum M–21–14, on February 5, 2021, the Department published in the **Federal Register** the proposed delay of the effective date for the Tip Rule (86 FR 8325) by 60 days to April 30, 2021.

The Department explained that delaying the effective date of the Tip Rule would provide the Department additional opportunity to review and consider the questions of law, policy, and fact raised by the rule, as contemplated by the Regulatory Freeze Memorandum and OMB Memorandum M–21–14, before the rule goes into effect. The Department added that it could consider whether the Tip Rule properly implements the CAA Amendments to section 3(m) of the FLSA, which prohibit employers from keeping tips for any purpose; whether the Tip Rule adequately considered the possible costs, benefits, and transfers between employers and employees related to the codification of its guidance regarding the tip credit's application to tipped employees who perform tipped and non-tipped duties; and whether the Tip Rule otherwise effectuates the CAA amendments to the FLSA, including the statutory provision for civil money penalties for violations of section 3(m)(2)(B) of the Act. Additionally, on January 19, 2021, Attorneys General from eight states and the District of Columbia filed a complaint for declaratory and injunctive relief in the United States District Court for the Eastern District of Pennsylvania, in which they argued that the Department violated the Administrative Procedure Act in promulgating the Tip Rule.[1] The complaint argues that the Tip Rule makes several changes to the Department's regulations that are contrary to the FLSA and the CAA, specifically, the Tip Rule's codification of WHD's guidance regarding the tip credit's application to tipped employees who perform tipped and non-tipped duties, the rule's revisions to portions of its Civil Money Penalty (CMP) regulations on willful violations, and the rule's imposition of a willfulness requirement for CMPs for section 3(m)(2)(B) violations, and it argues that the Department failed to justify the changes made in the Tip Rule or consider the impact of these changes on workers. The delay of the Tip Rule's effective date would also give the Department the opportunity to review and consider the rule in light of the issues raised by that complaint.

The Department invited public comment on the proposed delay. The comment period ended on February 17, 2021.

II. Comments and Decision

A total of 19 organizations timely commented on the notice of proposed rulemaking (''NPRM'') (86 FR 8325, February 5, 2021) during the 12-day comment period that ended on February 17, 2021, which may be viewed on *www.regulations.gov,* document ID WHD–2019–0004–0475. The Department received comments from a broad array of stakeholders, including Attorneys General from eight states and the District of Columbia, a law firm, industry groups, non-profit organizations, and advocacy organizations. Seventeen commenters supported the Department's proposal to delay the Tip Rule's effective date. Two of the commenters opposed the proposed delay.

Supporters of the proposed delay in the Tip Rule's effective date stated that the rule raises questions of law, policy, and fact that warrant further review and consideration by the Department in accordance with the Regulatory Freeze Memo. Advocacy organizations such as the National Employment Law Project (NELP), Network Lobby for Catholic Social Justice, and the National Women's Law Center stated that the Department should specifically reconsider the following changes, which they argued are harmful to workers and inconsistent with the FLSA and the CAA amendments: The Tip Rule's codification of WHD's guidance regarding the tip credit's application to tipped employees who perform tipped and non-tipped duties; the Tip Rule's revisions to portions of its CMP regulations on willful violations; and the Tip Rule's incorporation of the CAA's language regarding CMPs for section 3(m)(2)(B) violations into the Department's regulations. Advocacy organizations and Attorneys General for eight states and the District of Columbia also stated that the Department should consider the issues of law raised in the January 19, 2021 complaint.

The Economic Policy Institute supported the proposed delay because it would give the Department time to reassess the Tip Rule's analysis of the economic impact of codifying WHD's guidance regarding the tip credit's application to tipped employees who perform tipped and non-tipped duties, which it argued was flawed. Multiple commenters, such as Restaurant Opportunities Center United and the Leadership Conference on Civil Rights, stated that the Department should delay the Tip Rule in light of the COVID–19 pandemic, indicating that tipped workers have been particularly harmed by the pandemic and that it has led to a restructuring of the restaurant industry. Additionally, NELP stated that a delay in the Tip Rule's effective date is appropriate to avoid additional compliance costs and training that employers would incur if the rule becomes effective and then is revised by the Department after its review.

Two commenters opposed any delay in the effective date. The Center for Workplace Compliance (CWC) stated that it does not believe a delay in the Tip Rule's effective date is necessary; it largely dedicated its comment to explaining why it supports the Rule. The Department disagrees; as discussed below, the Department concludes that supporters of the proposed delay have identified issues of fact, law, and policy raised by the Tip Rule that merit further review in accordance with the Regulatory Freeze Memo. The National Federation of Independent Businesses (NFIB) expressed its support for the Tip Rule as well, and stated that instead of delaying the rule's effective date, the Department should allow it to go into effect and then consider whether to propose any changes. The Department disagrees with this approach. Allowing

[1] *Commonwealth of Pennsylvania et al.* v. *Scalia et al.,* No. 2:21–cv–00258 (E.D. Pa., Jan. 19, 2021).

the Tip Rule to go into effect while the Department undertakes a further review of the Tip Rule could lead to confusion and uncertainty among workers and employers in the event that the Department proposes revisions to the rule following its review.

In addition to opposing a delay in the effective date, the NFIB questioned whether this rulemaking could properly become effective before the Tip Rule's original effective date. NFIB believes that a delay of the Tip Rule's effective date must be published 30 days before it takes effect. The Department disagrees. Section 553(d) of the Administrative Procedure Act provides that substantive rules should take effect not less than 30 days after the date they are published in the **Federal Register** unless ''otherwise provided by the agency for good cause found.'' 5 U.S.C. 553(d)(3). The Department finds that it has good cause to make this rule effective immediately upon publication because allowing for a 30-day delay between publication and the effective date of this rulemaking would result in the Tip Rule taking effect before the delay begins, which would undermine the purpose for which this rule is being promulgated and result in additional confusion for regulated entities. The Regulatory Freeze Memorandum was issued on January 20, 2021, only 40 days before the Tip Rule's original effective date of March 1, 2021. It would not have been practicable to issue an NPRM proposing to delay the Tip Rule and allow for ample time for public comment on that proposal in time to publish a final rule not less than 30 days before March 1. Moreover, this rulemaking institutes a 60-day delay of the Tip Rule, rather than itself imposing any new compliance obligations on employers; therefore, the Department finds that a lapse between publication and the effective date of this rule delaying the Tip Rule's effective date is unnecessary. Because allowing for a 30-day period between publication and the effective date of this rulemaking is both unnecessary and impracticable, this final rule delaying the Tip Rule's effective date is effective immediately upon publication.

After reviewing timely comments submitted, the Department agrees with the supporters of the proposed delay in the Tip Rule's effective date that the Tip Rule raises multiple issues of law, policy, and fact that warrant additional review and consideration in accordance with the Regulatory Freeze Memo. These issues include the Tip Rule's codification of WHD's guidance regarding the tip credit's application to tipped employees who perform tipped and non-tipped duties; the Tip Rule's revisions to portions of its CMP regulations on willful violations; the Tip Rule's incorporation of the CAA's language regarding CMPs for section 3(m)(2)(B) violations into the Department's regulations; and the Tip Rule's analysis of the economic impact of codifying WHD's guidance regarding the tip credit's application to tipped employees who perform tipped and non-tipped duties. As numerous advocacy organizations and the Attorneys' General for eight states and the District of Columbia noted in their comments, a delay in the Tip Rule's effective date would also give the Department more time to review the issues of law raised in the January 19 complaint. Allowing the Tip Rule to go into effect while the Department undertakes a review of these issues identified by commenters could lead to confusion among workers and employers in the event that the Department proposes to revise the Tip Rule after its review; delaying the Tip Rule would avoid such confusion. Additionally, the Department agrees with NELP that a delay in the Tip Rule's effective date would prevent employers from incurring potentially unnecessary additional costs to familiarize themselves with the Tip Rule if the Department elects to propose revising the Tip Rule following its review. To give the Department additional time to review issues of law, policy, and fact raised by the Tip Rule before the Tip Rule goes into effect, the Department therefore finalizes the proposed delay in effective date.

Signed this 24th day of February, 2021.

Milton A. Stewart,

Acting Secretary of Labor.

[FR Doc. 2021–04118 Filed 2–24–21; 4:15 pm]

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2020–10]

Modernizing Recordation of Notices of Termination

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule; statement of policy.

SUMMARY: The Copyright Office is amending certain regulations governing the recordation of notices of termination to improve efficiency in processing. This final rule adopts regulatory language set forth in the Office's June 2020 notice of proposed rulemaking and notification of inquiry with some modifications in response to public comments. The Office also addresses public comments submitted in response to the subjects of inquiry published in the notification of inquiry.

DATES: Effective March 29, 2021.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel, by email at *regans@copyright.gov,* Kevin R. Amer, Deputy General Counsel, by email at *kamer@copyright.gov,* or Nicholas R. Bartelt, Attorney-Advisor, by email at *niba@copyright.gov.* Each can be contacted by telephone at (202) 707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

The Copyright Office is in the midst of a multi-year modernization of its services and systems. One component of this comprehensive modernization initiative is the development of an online electronic system to process documents submitted for recordation, including notices of termination. In April 2020, the Office launched a limited pilot of this new system to allow pilot participants to submit certain transfers of ownership and other documents pertaining to copyright for recordation. Since then, the Office has recorded over 900 documents through the system while expanding functionality for the growing number of pilot users. Before implementing features to permit electronic recordation of notices of termination, the Office issued a notice of proposed rulemaking on June 3, 2020 (the ''NPRM'') to update its regulations governing recordation of notices of termination, clarify examination practices concerning terminations relating to multiple grants, and to solicit public comment on two related subjects of inquiry.[1]

A. Current Rules and Practices for Recording Notices of Termination

In enacting the Copyright Act of 1976, Congress created a process for authors to reclaim previously-granted rights in their works by terminating grants after a period of years has elapsed. As explained in the NPRM, authors may accomplish this by selecting an effective date of termination within a five-year window that is set by statute, preparing a notice of termination containing this date and other information necessary to identify which grant(s) of rights in which work(s) are being terminated,

[1] Modernizing Recordation of Notices of Termination, 85 FR 34150 (June 3, 2020) (notice of proposed rulemaking; notification of inquiry).