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September Second Half Developments

Overview

The banking agencies have published their proposals for how to determine whether a party engaged in a securitization has kept the 5% of the risk that was required by Dodd-Frank. This proposal to require banks to keep some "skin in the game" was thought to encourage better practices in securitization and discourage the types of junk securities that were sold to so-called sophisticated investors. There was already a proposal on this topic back in April 2011, and this version has even more exemptions. This proposal is complicated by the various exemptions that are available for mortgages—even though these securities almost single-handedly sunk the entire economy. The agencies intend to jointly approve any written interpretations, written responses to requests for no-action letters and general counsel opinions, or other written interpretive guidance, so good luck receiving any regulatory help on this matter. The Fed has published some interim guidance on how to apply the capital rules as part of the stress tests required at larger banking organizations

Interagency Credit Risk Retention

On September 20, 2013, the banking agencies published their proposed rule on credit risk retention to revise the proposed rule the agencies published in the Federal Register on April 29, 2011, and to implement the credit risk retention requirements as added by section 941 of the Dodd-Frank Act. The law requires the securitizer of asset-backed securities to retain not less than 5 percent of the credit risk of the assets collateralizing the asset-backed securities. There are a variety of exemptions from these requirements, including an exemption for asset-backed securities that are collateralized exclusively by residential mortgages that qualify as "qualified residential mortgages," as such term is defined by the agencies by rule. See the proposed rule at:
http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-21677.htm
Original Proposal: http://edocket.access.gpo.gov/2011/2011-8364.htm

President Extends Trading with the Enemy Act Authority to Cuba

On September 17, 2013, President Obama published a determination to continue the authority provided under the Trading with the Enemy Act to transactions with Cuba. See the President's

determination at:
http://www.gpo.gov/fdsys/pkg/FR-2013-09-17/html/2013-22758.htm

Credit Union Ownership of Fixed Assets

On September 18, 2013, the NCUA published its final rue regarding ownership of fixed assets by Credit Unions. The new rule does not add any additional authorities for Credit Unions but instead clarifies the existing regulations. In general, an FCU may only invest in property it intends to use to transact credit union business or in property that supports its internal operations or serves its members. See the final rule at:
http://www.gpo.gov/fdsys/pkg/FR-2013-09-18/html/2013-22729.htm
Proposed: http://www.gpo.gov/fdsys/pkg/FR-2013-03-20/html/2013-06352.htm

Credit Union Charitable Donations

On September 19, 2013, the NCUA published notice that it intends to amend its regulations to clarify that a federal credit union (FCU) is authorized to fund a charitable donation account (CDA), a hybrid charitable and investment vehicle, as an activity incidental to the business for which an FCU is chartered, provided the account is primarily charitable in nature and meets other regulatory conditions. See the proposed rule at:
http://www.gpo.gov/fdsys/pkg/FR-2013-09-19/html/2013-22734.htm

Temporary Cease and Desist Orders from the BCFP

On September 26, 2013, the BCFP published and interim final rule on temporary cease and desist orders. On June 29, 2012, the Bureau published a final that does not apply to the issuance of temporary cease-and-desist orders. The Bureau now issues this interim final rule governing such issuance and seeks public comments. See the interim final rule at:
http://www.gpo.gov/fdsys/pkg/FR-2013-09-26/html/2013-23229.htm

Stress Tests at Large Banks

On September 30, 2013, the Fed published an interim final rule that gives most banks a one year transition period whereby the banks would not be required to reflect the revised regulatory capital framework that the Board approved on July 2, 2013 (revised capital framework) in their stress tests for the stress test cycle that begins October 1, 2013. Instead, these banks would use the Board's current regulatory capital rules. See the interim final rule at:
http://www.gpo.gov/fdsys/pkg/FR-2013-09-30/html/2013-23619.htm

Revised Capital Framework for Capital Rules and Stress Tests

On September 30, 2013, the Fed published its interim final rule that amends the capital plan and

stress test rules to require a bank holding company with total consolidated assets of $50 billion or more to estimate its tier 1 common ratio using the methodology currently in effect in 2013 under the existing capital guidelines (not the rules as revised on July 2, 2013). The interim final rule also clarifies when a banking organization would estimate its minimum regulatory capital ratios using the advanced approaches for a given capital plan and stress test cycle and makes minor, technical changes to the capital plan rule. See the interim final rule at: http://www.gpo.gov/fdsys/pkg/FR-2013-09-30/html/2013-23618.htm

This advisory is a service of Connell & Andersen LLP for our clients and friends. It is not a full recitation of all developments. The descriptions are summaries of complex and detailed laws and regulations and may be incomplete or misleading. We invite any of our readers to contact us to discuss any items contained herein for further elaboration.