

Proposed Credit Risk Retention Rules Raise Serious Concerns

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The extensive commentary provided to date on the proposed credit risk retention rules (the “Proposed Rules”) under the Dodd-Frank Act raises significant concerns that are critically important to address before the final rules are adopted. The six federal agencies that issued the Proposed Rules – the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, the Securities and Exchange Commission and the Department of Housing and Urban Development (collectively, the “Agencies”) – have indicated that any regulatory guidance on the final risk retention rules will only be offered jointly by the appropriate Agencies responsible for the relevant aspect of the rules. Once the Proposed Rules have been adopted, the process of obtaining guidance from the Agencies will likely be burdened by administrative inertia and the inherent difficulty of inter-agency coordination, particularly when each Agency will undoubtedly have redirected its attention to the next project on its list.

We note that the comment period on the Proposed Rules is formally open until June 10, 2011.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Juliet Cain

+1 212 450 4982
juliet.cain@davispolk.com

James A. Florack

+1 212 450 4165
james.florack@davispolk.com

Ray Ibrahim

+1 212 450 6155
ray.ibrahim@davispolk.com

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