



CRE Finance Council

**STATUS OF FEDERAL RULEMAKING AND STUDIES
AFFECTING COMMERCIAL REAL ESTATE SECURITIZATION**

SUBJECT	STATUTORY/ REGULATORY REFERENCE	DESCRIPTION	AGENCY INVOLVED	EFFECTIVE DATE/DEADLINE	STATUS
Risk Retention Rules					
Risk retention	Dodd-Frank §941	Risk retention requirements and limitation on hedging retained risk imposed upon securitizers and/or originators of asset-backed securities.	Jointly by OCC, Federal Reserve, FDIC, SEC, with Financial Stability Oversight Council as coordinator	Rules must be issued 270 days after D-F enactment; Rules must go into effect 2 years after publication of final rules (1 year for residential ABS)	<u>Pending</u> ; proposed rule issued 3/29/11 (see www.sec.gov/rules/proposed/2011/34-64148fr.pdf); comment period closed Aug. 1, 2011 (CREFC comments at CREFC Response Letter to Proposed Risk Retention Rules)
Risk Retention; Shelf Registration	SEC Reg. AB	Risk retention and other requirements for shelf registration.	SEC	n/a	<u>Pending</u> ; re-proposed rules issued 7/26/11 (see www.sec.gov/rules/proposed/2011/33-9244.pdf); comment period closed Oct. 4, 2011 (CREFC comments at CREFC Response to SEC's Reg AB Re-Proposal)
Other Securitization Issues					
Investment Company Act Exemption for ABS	Dodd-Frank §939A	Replacing references to credit ratings with other criteria for ABS issuers to obtain exemption.	SEC	None specified	<u>Concept release</u> ; issued 8/31/11 (see www.sec.gov/rules/concept/2011/ic-29779.pdf) comment deadline Nov. 7, 2011
Conflicts of interest	Dodd-Frank §621	"Material" conflicts of interest between ABS issuers and	SEC	None specified, but prohibition takes effect on the date rules are finalized	<u>Pending</u> ; proposed rules issued 9/19/11 (see www.sec.gov/rules/proposed/2011/34-65355.pdf) comment deadline Dec. 19, 2011

SUBJECT	STATUTORY/ REGULATORY REFERENCE	DESCRIPTION	AGENCY INVOLVED	EFFECTIVE DATE/DEADLINE	STATUS
		investors will be prohibited.			
Volcker rule	Dodd-Frank §619	“Banking entities” including their affiliates prohibited from engaging in proprietary trading or having an interest in or sponsorship of hedge funds or private equity funds except as permitted by the statute or regulations, and subject to regulations regarding conflicts of interest among other matters; however statute is not to be construed to limit or restrict ability to sell or securitize loans in a manner otherwise permitted by law.	OCC, Federal Reserve, FDIC, SEC	Rules must be adopted within 9 months of completing a study of proprietary activities and conflicts of interest; rules must go into effect 12 months after issuance of final rules with extended effective dates for any necessary divestitures	<u>Pending</u> ; proposed rules issued 10/12/11 (see www.sec.gov/rules/proposed/2011/34-65545.pdf); comment deadline Jan. 13, 2012
Disclosure re due diligence services	Dodd-Frank §932	Issuers must disclose findings of any third-party diligence reports regarding assets	SEC	Final rules must be issued 1 year after enactment (July 21, 2011).	<u>Pending</u> ; proposed rule for issuer disclosure issued 10/13/10 (see www.sec.gov/rules/proposed/2010/33-9150.pdf ; final rule deferred (see www.sec.gov/rules/final/2011/33-9176.pdf) (CREFC comments at Council Responds to SEC on Issuer Review of Assets in ABS Offerings)

SUBJECT	STATUTORY/ REGULATORY REFERENCE	DESCRIPTION	AGENCY INVOLVED	EFFECTIVE DATE/DEADLINE	STATUS
		underlying ABS; NRSROs must obtain certification from any third-party diligence service they employ to review ABS that the third-party conducted a thorough review of all information necessary to provide an accurate rating.			
Disclosure of data regarding underlying assets	Dodd-Frank §942 (b)	Issuers must disclose asset-level or loan-level data regarding assets underlying ABS, as well as information concerning broker or originator compensation and risk retained by securitizer or originator.	SEC	Not specified (presumably date of Dodd-Frank enactment)	<u>Rulemaking not yet commenced</u>
Periodic reports for registered ABS	Dodd-Frank §942 (a)	Issuers of registered ABS will be required to file periodic reports under Securities Exchange Act Section 15d unless	SEC	Not specified (presumably date of Dodd-Frank enactment)	<u>Final rule</u> ; issued 8/17/11 (see www.sec.gov/rules/final/2011/34-65148.pdf) (CREFC comments at www.sec.gov/comments/s7-02-11/s70211-5.pdf)

SUBJECT	STATUTORY/ REGULATORY REFERENCE	DESCRIPTION	AGENCY INVOLVED	EFFECTIVE DATE/DEADLINE	STATUS
		exempted by SEC.			
Disclosures re reps and warranties and repurchase requests	Dodd-Frank §943	Securitizer must disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by the securitizer.	SEC	Rules must be issued 180 days after Dodd- Frank enactment (January 17, 2011)	<u>Final rule</u> ; issued 1/20/11 (see www.sec.gov/rules/final/2011/33-9175.pdf) (CREFC comments at Council Responds to SEC on Representations and Warranties, Repurchase Requests)
Due diligence analysis and disclosure in ABS offerings	Dodd-Frank §945	Registration statement rules for ABS will require that issuer “perform a review of the assets underlying” the ABS offering and “disclose the nature of the review.”	SEC	Rules must be issued 180 days after enactment (January 17, 2011)	<u>Final rule</u> ; issued 1/20/11 (see www.sec.gov/rules/final/2011/33-9176.pdf) (CREFC comments Council Responds to SEC on Issuer Review of Assets in ABS Offerings)
Credit Rating Agency Issues					
Elimination of Credit Rating Agency exemption for Reg. FD requirements	Dodd-Frank §939B	Eliminate exemption of information shared with CRAs from Regulation FD requirements, which requires issuers to disclose material non- public information to the general public at or about	SEC	Reg. FD must be amended 90 days after Dodd-Frank enactment (October, 19, 2010).	<u>Final rule</u> ; issued 9/29/2010 (see http://www.sec.gov/rules/final/2010/33-9146.pdf).

SUBJECT	STATUTORY/ REGULATORY REFERENCE	DESCRIPTION	AGENCY INVOLVED	EFFECTIVE DATE/DEADLINE	STATUS
		the same time as disclosures are made to analysts, etc.			
Disclosures re reps and warranties	Dodd-Frank §943	NRSROs must disclose in credit reports a description of representations, warranties, and enforcement mechanisms available to investors and comparison of same to those in “similar issuances.”	SEC	Rules must be issued 180 days after Dodd-Frank enactment (January 17, 2011).	<u>Final rule</u> ; issued 1/20/2011 (see http://www.sec.gov/rules/final/2011/33-9175.pdf) (CREFC comments at Council Responds to SEC on Representations and Warranties, Repurchase Requests)
Removal of references to credit ratings in agency rules and forms	Dodd-Frank §939A	Each agency must review its regulations and propose revisions that eliminate references to or reliance on credit ratings, replacing ratings with other standards of credit-worthiness as the agency deems appropriate.	“Each federal agency.”	Review must be completed 1 year after enactment (July 21, 2011); no set deadline for elimination of ratings in rules and forms.	<u>Final rule</u> ; SEC changes to Form S-3 and F-3 eligibility issued 7/27/11 (see www.sec.gov/rules/final/2011/33-9245.pdf) (CREFC comments at www.sec.gov/comments/s7-18-08/s71808-27.pdf)**
“Universal” ratings symbols	Dodd-Frank §938	NRSROs must have policies and procedures to apply any rating	SEC	Final rules must be issued 1 year after enactment (July 21, 2011).	<u>Pending</u> ; proposed rule issued 6/22/11 (see http://www.sec.gov/rules/proposed/2011/34-64514.pdf) (addressing only Dodd-Frank § 938(a); NRSROs must explain what symbols mean, and symbols must be employed

SUBJECT	STATUTORY/ REGULATORY REFERENCE	DESCRIPTION	AGENCY INVOLVED	EFFECTIVE DATE/DEADLINE	STATUS
		symbol in a consistent manner for all types of securities for which the symbol is used, but are not prohibited from using “distinct sets of symbols to denote credit ratings for different types of securities.”			consistently for the securities to which the symbols are applied); comment period closed 8/8/11.
Franken amendment	Dodd-Frank §939F	Unless an SEC study concludes that an alternative system would better serve the public interest and protect investors, SEC must implement system for independent entity to assign NRSRO to conduct initial rating of structured finance products.	SEC	Study is due 24 months after date of enactment (July 21, 2012); no deadline for adopting rules.	Study pending; <u>rulemaking not yet commenced.</u>
Studies					
Combined effect of risk retention	Dodd-Frank §941 (c)	Study of combined impact of risk retention rules and FAS	Federal Reserve	90 days after enactment (October 19, 2010)	<u>Complete</u> ; study issued Oct. 2010 (see http://www.federalreserve.gov/boarddocs/rptcongress/securitization/riskretention.pdf)

SUBJECT	STATUTORY/ REGULATORY REFERENCE	DESCRIPTION	AGENCY INVOLVED	EFFECTIVE DATE/DEADLINE	STATUS
		166/167 and recommendations for eliminating any negative impacts on continued viability of ABS markets and on availability of credit for new lending			
Impacts of risk retention	Dodd-Frank §946	Study of macroeconomic impacts of risk retention rules with an emphasis on potential beneficial effects for stabilizing the real estate market	Financial Stability Oversight Council	180 days after enactment (January 17, 2011)	<u>Complete</u> ; study issued 1/18/11 (see http://www.treasury.gov/press-center/press-releases/Pages/tg1027.aspx)
Volcker rule	Dodd-Frank §619	Study and recommendations on implementing restrictions on proprietary activities of banking entities and non-bank financial companies supervised by the Federal Reserve	Financial Stability Oversight Council	Study and recommendations must be completed within 6 months after enactment (January 21, 2011)	<u>Complete</u> ; study issued 1/18/11 (see http://www.treasury.gov/initiatives/Documents/Volcker sec 619 study final 1 18 11 rg.pdf) (CREFC comments at Council Comments on 'Volcker Rule')

SUBJECT	STATUTORY/ REGULATORY REFERENCE	DESCRIPTION	AGENCY INVOLVED	EFFECTIVE DATE/DEADLINE	STATUS
		to promote safety and soundness, protect taxpayers, limit risky activities, and reduce conflicts of interest between these entities and their customers, among other issues			
Volcker rule	Dodd-Frank §989	Study of risks presented by proprietary trading by banking entities and their affiliates, including systemic and other risks posed, whether proprietary trading creates conflicts of interest with customers, whether there are adequate disclosures about risks and	GAO	Study must be completed within 15 months of enactment (October 21, 2011)	<u>Complete</u> ; study issued 7/13/11 (see http://www.gao.gov/products/GAO-11-529)

SUBJECT	STATUTORY/ REGULATORY REFERENCE	DESCRIPTION	AGENCY INVOLVED	EFFECTIVE DATE/DEADLINE	STATUS
		conflicts, and whether banking entities have adequate controls concerning risk and conflicts of interest			
Credit rating transparency	Dodd-Frank §939(h)	Study and report to Congress on feasibility and desirability of standardizing credit rating terminology and market stress conditions under which ratings are evaluated.	SEC	Report due 1 year after enactment (July 21, 2011).	<u>Study commenced</u> ; request for comment issued 12/10/10 (see http://www.sec.gov/rules/other/2010/34-63573.pdf), comment period closed 2/7/11 (CREFC comments at www.sec.gov/comments/4-622/4622-8.pdf)
Franken amendment	Dodd-Frank §939F	Study and report to Congress credit rating process for structured finance products and conflicts of interest associated with issuer-pays model and feasibility of	SEC	Report to Congress due 24 months after date of Dodd-Frank enactment (July 21, 2012).	<u>Study commenced</u> ; request for comment issued 5/10/11 (see www.sec.gov/rules/other/2011-34-64456.pdf), comment period closed 9/13/11 (CREFC comments at www.sec.gov/comments/4-629/4629-17.pdf)

SUBJECT	STATUTORY/ REGULATORY REFERENCE	DESCRIPTION	AGENCY INVOLVED	EFFECTIVE DATE/DEADLINE	STATUS
		establishing system for independent entity to assign NRSROs to conduct initial ratings, and recommendations for any necessary statutory or regulatory changes. (Rules to implement such a system must be adopted “as the SEC determines is necessary or appropriate in the public interest or for the protection of investors.”)			
NRSRO independence	Dodd-Frank §939C	Study and report to Congress on how independence of NRSROs affects the ratings they issue, management of conflicts of interest, and	SEC	Report due 3 years after date of enactment (July 21, 2013).	<u>Study not yet commenced.</u>

SUBJECT	STATUTORY/ REGULATORY REFERENCE	DESCRIPTION	AGENCY INVOLVED	EFFECTIVE DATE/DEADLINE	STATUS
		potential impact of rules that would prohibit an NRSRO hired to perform a rating from providing the issuer with other services.			