

SUPPORTING STATEMENT
Credit Risk Retention
(OMB No. 3064-NEW)

INTRODUCTION

The FDIC is requesting approval from the OMB to establish a new information collection comprised of disclosure and recordkeeping requirements contained in a notice of proposed rulemaking on Credit Risk Retention, jointly issued by the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board (FRB), the Securities and Exchange Commission (SEC), the Federal Housing Finance Agency (FHFA), and the Department of Housing and Urban Development (HUD), to implement section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), Pub. L. No. 111-2-3, 124 Stat 1376 (2010), codified at 15 USC § 780-11).

JUSTIFICATION

1. Circumstances and Need

Section 941 of Dodd-Frank U.S. requires the FRB, the FDIC, the OCC (collectively, “the federal banking agencies”), the SEC, and in the case of the securitization of any “residential mortgage asset,” together with HUD and FHFA, to jointly prescribe regulations that (i) require a securitizer to retain not less than five percent of the credit risk of any asset that the securitizer, through the issuance of an asset-backed security (ABS), transfers, sells, or conveys to a third party, and (ii) prohibit a securitizer from directly or indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain under section 941 and the agencies’ implementing rules. Exempted from the credit risk retention requirements of section 941 are certain types of securitization transactions, e.g., asset-backed securities (ABS) exclusively collateralized by qualified residential mortgages (QRMs) as that term is jointly defined by the agencies.

In addition, section 941 provides that the agencies must permit a securitizer to retain less than five percent of the credit risk of residential mortgages, commercial mortgages, commercial loans, and automobile loans that are transferred, sold, or conveyed through the issuance of ABS by the securitizer, if the loans meet underwriting standards established by the Federal banking agencies. The proposed rule, therefore, among other things, provides a menu of credit risk retention options from which securitizers can choose for their ABS offerings and sets out the standards, including disclosure and recordkeeping requirements, for each option; identifies the eligibility criteria, including certification and disclosure requirements, that must be met for ABS offerings to qualify for the QRM exemption; provides for the establishment of a premium cash reserve account as a mechanism for capturing the monetization of excess spread for certain of the credit risk retention options and imposes certain conditions that must be met, including certain disclosures, by the sponsor to achieve the objectives of the account; and specifies the underwriting standards for commercial real estate loans, commercial loans, and automobile loans, including disclosure and recordkeeping requirements, that must be met before ABS issuances collateralized exclusively by such loans can qualify for reduced credit risk retention.

2. Use of Information Collected

The recordkeeping requirements relate primarily to (i) the adoption and maintenance of various policies and procedures to ensure and monitor compliance with regulatory requirements and (ii) certifications as to the effectiveness of internal supervisory controls.

The required disclosures for each risk retention option are intended to provide investors with material information concerning the sponsor's retained interest in a securitization transaction (e.g., amount, form and nature of retained interest, material assumptions and methodology, representations and warranties). These disclosures will provide the information considered necessary to adequately assess the investment potential of the transactions. The disclosures also will enable investors and the agencies to monitor a sponsor's compliance with the rule.

The agencies believe that the recordkeeping and disclosure requirements will help address problems in the securitization markets by providing securitizers with an incentive to monitor and ensure the quality of the assets underlying a securitization transaction and by aligning the interests of the securitizer with the interests of investors.

3. Use of Technology to Reduce Burden

Banks may use technology to the extent feasible and/or desirable or appropriate to make the required disclosures and to maintain the required records.

4. Efforts to Identify Duplication

The recordkeeping and disclosure requirements in the rule are new and are not otherwise duplicated.

5. Minimizing the Burden on Small Banks

The proposed rule generally imposes recordkeeping and disclosure burden on sponsors and originators of securitization transactions. Based on a review of September 30, 2010, data from the Consolidated Reports of Income and Condition filed by insured financial institutions and publicly available market data, the Agencies have determined that only six small (assets of \$175 million or less) banking organizations (three of which are FDIC-supervised) currently sponsor securitizations that would be subject to the rule. In addition, only one small banking organization currently originates mortgages at the level necessary (at least 20 percent of the securitized mortgages in a pool) to be subject to potential allocation of a portion of the risk retention requirement under the rule. Nevertheless, the Agencies have requested comment on whether the proposed rule, if adopted in final form, would impose undue burdens for small banking organizations and whether there are ways such potential burdens could be minimized in a manner consistent with the statutory requirements that form the basis for the rule.

6. Consequences of Less Frequent Collection

The disclosure requirements are imposed on a per transaction basis. Less frequent disclosures would impair the ability of investors to adequately evaluate the investment potential of each transaction. The requirement to develop policies and procedures to monitor compliance with regulatory requirements is a one-time burden, although the agencies expect that sponsors will review their policies and procedures as needed to reflect any changed conditions and no less frequently than annually.

7. Special Circumstances

There are no special circumstances.

8. Consultation with Members of the Public

The agencies have published a joint notice of proposed rulemaking seeking public comment on all aspects of the proposal. The request for comment includes specific questions on each aspect of the proposal on which the agencies are seeking feedback. The Agencies will consider all comments received in development of the final rule and will respond to all comments received in the preamble of the final rule document.

9. Payment or Gift to Respondents

No payments or gifts will be provided to respondents.

10. Confidentiality

No assurances of confidentiality have been made by the agencies.

11. Information of a Sensitive Nature

None of the information required to be disclosed or maintained is of a sensitive nature.

12. Estimated Burden

The estimated disclosure and recordkeeping burden, based on assumptions that the FDIC supervises 90 unique sponsors that will initiate an average of 78 transactions per year, is set forth in the following table:

Sections Containing Paperwork	No. of	Hours	Frequenc	Total
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Burden	Respondents¹	Per Response	Number Of Responses	Burden Hours
§ 373.4 – Vertical Risk Retention		0.5		
4(b)(1) – disclosure of amount of each Class of ABS interests retained by sponsor				
4(b)(2) – disclosure of material assumptions and methodology		1.5		
Total disclosure burden § 373.4	78	2.0 hours	1	156
§ 373.5 – Horizontal Risk Retention		0.5		
5(c)(1)(i) – disclosure of amount of residual interest retained by sponsor and amount required to be retained by sponsor				
5(c)(1)(ii) – disclosure of material terms		0.5		
5(c)(2)(i) – disclosure of dollar amount to be placed in cash reserve account and amount required to be placed in account		0.5		
5(c)(2)(ii) – disclosure of material terms governing cash reserve account		0.5		
5(c)(3) – disclosure of material assumptions and methodology		1.5		
Total disclosure burden § 373.5	78	2.5 hours²	1	195
§ 373.6 – L-shaped Risk Retention		3.0		
6(b) – disclosure in compliance with requirements for vertical & horizontal risk retention				
Total disclosure burden § 373.6	78	3.0 hours	1	234
§ 373.7 – Revolving Master Trusts		0.5		
7(b)(1) – disclosure of amount of seller’s interest retained by sponsor and amount sponsor required to retain		Providing to agencies only		
7(b)(2) – disclosure of form and nature of seller’s interest retained by sponsor		0.5		
		Providing to agencies only		

¹ The respondent count for all disclosure requirements is the number of **offerings** per agency. The respondent count for all recordkeeping requirements (except B.8) is equal to the number of **offerings** per agency.

² Securitizers complying with section B.5 will provide **either** the (c)(1) or (c)(2) disclosure but not both. All will comply with the (c)(3) disclosure requirement. To avoid double counting the disclosure burden for section B.5, the burden is only 2.5 hours instead of 3.5 hours.

7(b)(3) – disclosure of material assumptions and methodology		1.5		
Total disclosure burden § 373.7	78	2.5 hours	1	195
§ 373.8 – Representative Sample		80		
8(c) – development of and adherence to documented and auditable policies and procedures				
8(d)(2) – procedures report by independent public accounting firm		40		
8(g)(1)(i) – disclosure of amount of assets included in representative and retained by sponsor and amount required to be included and retained		0.5		
8(g)(1)(ii) – disclosure prior to sale of material characteristics of Designated Pool		10		
8(g)(1)(iii) – disclosure prior to sale of policies and procedures used by sponsor to ensure compliance with (b)(2) and (b(3)		2.0		
8(g)(1)(iv) – disclosure prior to sale confirming that procedures report was obtained		0.25		
8(g)(2) – disclosure after sale of comparison of performance of pool of assets in securitization transaction and assets in representative sample		10		
8(g)(3) – disclosure concerning assets in representative sample		0.5		
Total disclosure burden § 373.8	78	23.25 hours	1	1,813.5
Total recordkeeping burden § 373.8³	90	120 hours	1⁴	10,800
§ 373.9 – Eligible ABCP Conduits		1.5		
9(b)(1) – disclosure of each originator-seller w/retained eligible horizontal				
9(b)(2) -- disclosure of each regulated liquidity provider providing liquidity support to the ABCP conduit and the form, amount, and nature of the support		0.5		
9(c)(2)(i) – policies and procedures to monitor compliance by each originator-		20		

³ Policies and procedures are expected to be created independent of the number of offerings.

⁴ The frequency for recordkeeping is always 1, unless otherwise noted in the rulemaking.

seller				
9(c)(2)(ii) – notice to holders of ABS interests that originator-seller is non-compliant with (a)(1)		1.0		
Total disclosure burden § 373.9	78	3.0 hours	1	234
Total recordkeeping burden § 373.9	78	20 hours	1	1,560
§ 373.10 – Commercial Mortgage-Backed Securities		0.25		
10(a)(5)(i) – disclosure of name and form of organization of third-party purchaser				
10(a)(5)(ii) – disclosure of third-party purchaser’s experience		5.0		
10(a)(5)(iii) – disclosure of other material information		1.0		
10(a)(5)(iv) and (v) – disclosure of amount of eligible horizontal residual interest retained by third-party purchaser and amount that sponsor would have been required to retain		0.5		
10(a)(5)(vi) – disclosure of material terms of eligible residual horizontal interest retained by third-party purchaser		0.5		
10(a)(5)(vii) – disclosure of material assumptions and methodology		1.5		
10(a)(5)(viii) – disclosure of representations and warranties concerning assets and factors used to determine assets should be included in pool		10		
10(b)(2)(A) – policies and procedures to monitor third-party purchaser compliance		20		
10(b)(2)(B) – notice to holders of ABS interests of third-party purchaser non-compliance		1.0		
Total disclosure burden § 373.10	78	19.75 hours	1	1,540.5
Total recordkeeping burden § 373.10	78	20 hours	1	1,560
§ 373.12 – Premium Cash Reserve Account		0.25		
12(d)(1) – disclosure of dollar amount				
12(d)(2) and (3) – disclosure of material assumptions and methodology used in determining fair value and aggregate amount of ABS interest		1.5		

Total disclosure burden § 373.12	3	1.75 hours	1	5.25
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§ 373.13 – Allocation of Risk Retention to an Originator 13(a)(2) – disclosure of name and form of organization of any originator w/acquired and retained interest		1.5		
13(b)(2)(A) – policies and procedures to monitor originator compliance		20		
13(b)(2)(B) – notice to holders of ABS interests of originator non-compliance		1.0		
Total disclosure burden § 373.13	3	2.5 hours	1	7.5
Total recordkeeping burden § 373.13	3	20 hours	1	60
§ 373.15 – Exemption for qualified residential mortgages 15(b)(4)(i) – depositor certifies that it has evaluated the effectiveness of its internal supervisory controls		40		
15(b)(4)(iii) – sponsor provides a copy of the certification		0.25		
15(e)(3) – disclosure of amount of repurchased loan(s) and the cause for repurchase		1.0		
15(d)(13)(i) and (ii) – disclosure by creditor – one-time update to mortgage transaction documents ⁵		8.0		
Total disclosure burden § 373.15⁶	37	1.25 hours	1	46.25
Total recordkeeping burden § 373.15	37	40 hours	1	1,480
One-time disclosure burden §373.15(d)(13)⁷	4,715	8 hours	1	37,720
§ 373.18 – Underwriting standards for qualifying commercial loans 18(b)(7)(i) – depositor certifies that it has evaluated the effectiveness of its internal supervisory controls		40		
18(b)(7)(iii) – sponsor provides a copy of the certification		0.25		
18(c)(3) – disclosure of buy-back		1.0		

⁵ The burden for this requirement is taken by the FDIC, Fed, and OCC only for all creditors.

⁶ Each agency will take their percent of 100 for section D.15.

⁷ Respondent count is the total number of FDIC-supervised institutions.

requirement				
Total disclosure burden § 373.18⁸	15	1.25 hours	1	18.75
Total recordkeeping burden § 373.18	15	40 hours	1	600
§ 373.19 – Underwriting standards for qualifying CRE loans		40		
19(b)(10)(i) – depositor certifies that it has evaluated the effectiveness of its internal supervisory controls				
19(b)(10)(iii) – sponsor provides a copy of the certification		0.25		
19(c)(3) – disclosure of buy-back requirement		1.0		
Total disclosure burden § 373.19	15	1.25 hours	1	18.75
Total recordkeeping burden § 373.19	15	40 hours	1	600
§ 373.20 – Underwriting standards for qualifying auto loans		40		
20(b)(9)(i) – depositor certifies that it has evaluated the effectiveness of its internal supervisory controls				
20(b)(9)(iii) – sponsor provides a copy of the certification		0.25		
20(c)(3) – disclosure of buy-back requirement		1.0		
Total disclosure burden § 373.20	15	1.25 hours	1	18.75
Total recordkeeping burden § 373.20	15	40 hours	1	600
Total burden for DFA § 941				59,463

13. Estimate of Total Annual Cost Burden

Under the rule’s new credit risk retention requirements, sponsors of securitizations will be required to maintain certain records and make certain disclosures at the time of and subsequent to securitization transactions. There will likely be certain additional costs (excluding recordkeeping and disclosure costs) associated with implementing the rule related to developing and maintaining software, data systems, and data processing capabilities. However, it is difficult to develop estimates of capital and start-up costs and operating and systems maintenance costs that distinguish between those pertaining to these disclosure and recordkeeping requirements and those otherwise related to satisfying the requirements of the rule.

⁸ Each agency will take burden for 25 % of 40 transactions for sections D.18, D.19, and D.20.

14. Estimate of Total Annual Cost to the Federal Government

The FDIC does not expect to incur material incremental costs in connection with monitoring compliance with the recordkeeping and disclosure requirements.

15. Reason for Change in Burden

This is a new information collection.

16. Publication

The information collected will not be published by the FDIC.

17. Display of Expiration Date

The expiration date will be set forth in the preamble to the final rule.

18. Exceptions to Certification

This is not a statistical information collection. Therefore, the FDIC cannot appropriately certify that the information collection “uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected.”

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.