

## **SUPPORTING STATEMENT FOR PROPOSED RULES UNDER THE SECURITIES ACT OF 1934 AND DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT**

This supporting statement is part of a submission under the Paperwork Reduction Act of 1995, 44 U.S.C. §3501, *et seq.*

### **A. JUSTIFICATION**

#### **1. CIRCUMSTANCES MAKING THE COLLECTION OF INFORMATION NECESSARY**

In Release No. 34-64148,<sup>1</sup> the Commission proposed a new rule, jointly with other Federal Agencies,<sup>2</sup> to implement section 15G of the Securities and Exchange Act of 1934 (15 U.S.C. § 78o-11), as added by section 941(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act).<sup>3</sup> The proposed rule would be titled “Regulation RR”.

The proposal would generally require a securitizer of any asset-backed security (ABS) to retain an economic interest equal to not less than five percent of the credit risk of the assets collateralizing the security that the securitizer transfers, sells, or conveys to a third party in a transaction within the scope of section 15G. The proposal specifies the permissible types, forms, and amounts of credit risk retention, and establishes certain exemptions for securitizations collateralized by assets that meet specified underwriting standards or that otherwise qualify for an exemption, including an exemption for ABSs that are collateralized exclusively by residential mortgages that qualify as “qualified residential mortgages” (QRMs), as defined in the proposed rule by the Agencies.

The information collection pursuant to Regulation RR is triggered by specific events. There are no required reporting forms associated with Regulation RR.

#### **2. PURPOSE AND USE OF THE INFORMATION COLLECTION**

The purpose of Regulation RR is to implement section 15G of the Exchange Act, as added by Section 941(b) of the Dodd-Frank Act. Section 15G generally requires the securitizer of asset-backed securities to retain not less than five percent of the credit risk of the assets collateralizing the asset-backed securities. Section 15G includes a variety of exemptions from these requirements, including an exemption for asset-backed securities that are collateralized

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<sup>1</sup> Credit Risk Retention, Release No. 34-64148 (March 30, 2011) [76 FR 24090].

<sup>2</sup> The Agencies that are party to this rulemaking are the Office of the Comptroller of the Currency (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); U.S. Securities and Exchange Commission (Commission); Federal Housing Finance Agency (FHFA); and Department of Housing and Urban Development (HUD) and are collectively referred to as the Agencies. For the purposes of this supporting statement the OCC, Board, and FDIC are collectively referred to as the Federal banking agencies.

<sup>3</sup> Pub. L. No. 111-203, 124 Stat. 1376 (2010).

exclusively by residential mortgages that qualify as “qualified residential mortgages,” as such term is defined by the Agencies by rule.

The proposed rules include disclosure requirements that are an integral part of and specifically tailored to each of the permissible forms of risk retention. The disclosure requirements are integral to the proposed rules because they would provide investors with material information concerning the sponsor’s retained interests in a securitization transaction, such as the amount and form of interest retained by sponsors, and the assumptions used in determining the aggregate value of ABS to be issued (which generally affects the amount of risk required to be retained). Further, the disclosures would provide investors and the Agencies with an efficient mechanism to monitor compliance with the risk retention requirements of the proposed rules.

**3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY**

The proposed rule does not contain any express requirement that the collection of information be electronically filed with the Commission using the Commission’s Electronic Data Gathering and Retrieval (EDGAR) system.

**4. DUPLICATION OF INFORMATION**

We are not aware of any rules that conflict with or substantially duplicate the final rules.

**5. REDUCING THE BURDEN ON SMALL ENTITIES**

The proposed rule implements the risk retention requirements of section 15G of the Exchange Act, which, in general, requires the securitizer of an asset-backed securities (ABS) to retain not less than five percent of the credit risk of the assets collateralizing the ABS. Under the proposed rule, the risk retention requirements would apply to “sponsors”, as defined in the proposed rule. As discussed in Release No. 34-64148, based on our data, we did not find a significant number of sponsors that are small entities. As such, the Commission does not believe that the final rules would have a significant economic impact on a substantial number of small entities.

**6. CONSEQUENCES OF NOT CONDUCTING COLLECTION**

The disclosure requirements provide investors with material information concerning the sponsor’s retained interests in a securitization transaction, as well as provide investors and the Agencies with an efficient mechanism to monitor compliance with the risk retention requirements of the proposed rules. Less frequent collection would frustrate the statutory intent of Section 15G of the Exchange Act because investors in ABS would have less information on which to base an investment decision.

**7. SPECIAL CIRCUMSTANCES**

None

**8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY**

On April 29, 2011, a joint noticed of proposed rulemaking was published in the *Federal Register* (76 FR 24090) requesting comment on the implementation of the recordkeeping and disclosure requirements for the Credit Risk Retention rules. The comment period expires on June 20, 2011.

**9. PAYMENT OR GIFT TO RESPONDENTS**

Not applicable.

**10. CONFIDENTIALITY**

Not applicable.

**11. SENSITIVE QUESTIONS**

Not applicable.

**12/13. ESTIMATES OF HOUR AND COST BURDENS**

The estimated total annual burden for the recordkeeping and disclosure requirements of this information collection by the Commission is 37,166 hours, as shown in the table below. The table provides the estimated annual burden for the 1,500 creditors and 104 sponsors assigned to the Commission to which Regulation RR applies.

To determine the number of respondents (or offerings per year) for the requirements contained in §§ \_\_.4, \_\_.5, \_\_.6, \_\_.7, \_\_.8, \_\_.9, and \_\_.10 of this proposed rule the Federal banking agencies and the Commission first estimated the universe of sponsors that would be required to comply with the proposed disclosure and recordkeeping requirements. Based on 2010 data reported on the commercial bank Call Report (FFIEC 031 and 041) and from the ABS database, AB Alert, approximately 243 unique sponsors conduct ABS offerings per year. Of the 243 sponsors, 43 percent (91) of these sponsors were assigned to the Commission.<sup>4</sup>

To determine the number of respondents (or offerings per year) for the requirements contained in §§ \_\_.12, \_\_.13, \_\_.15, \_\_.18, \_\_.19, and \_\_.20 the Federal banking agencies and the Commission estimated the proportionate amount of offerings per year for each agency. In making this determination, the estimate was based on the average number of ABS offerings from 2004 through 2009 (1,700 total annual offerings per year).<sup>5</sup> The following additional estimates were made:

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<sup>4</sup> The remaining 12 percent were assigned to the OCC, 37 percent were assigned to the FDIC, and 8 percent were assigned to the Board.

<sup>5</sup> We use the ABS issuance data from Asset-Backed Alert on the initial terms of offerings, and we supplement that data with information from Securities Data Corporation (SDC). This estimate includes registered offerings and

- 12 offerings per year would be subject to disclosure and recordkeeping requirements under sections §\_\_.12 and §\_\_.13, which are divided equally among the four agencies (i.e., 3 offering per year per agency);
- 100 offerings per year would be subject to disclosure and recordkeeping requirements under section §\_\_.15, which are divided proportionately among the agencies based on the entity percentages described above (i.e., 8 offerings per year for the Board; 12 offerings per year for the OCC; 37 offerings per year for the FDIC; and 43 offerings per year for the Commission); and
- 40 offerings per year will be subject to disclosure and recordkeeping requirements under §\_\_.18, §\_\_.19, and §\_\_.20, respectively, which are divided proportionately among the agencies based on the entity percentages described above (i.e., 3 offerings per year subject to each section for the Board, 5 offerings per year subject to each section for the OCC; 15 offerings per year subject to each section for the FDIC, and 17 offerings per year subject to each section for the Commission).

To obtain the estimated number of responses (equal to the number of offerings) for each option in Part B of the proposed rule (Sections \_\_.3 through \_\_.12), the Agencies multiplied the number of offerings estimated to be subject to the base risk retention requirements (i.e., 1,480)<sup>6</sup> by the sponsor percentages described above. The result was the number of base risk retention offerings per year per agency. For the Commission, this was calculated by multiplying 1,480 offerings per year by 43 percent, which equals 636 offerings per year. This number was then divided by the number of base risk retention options (7) to arrive at the estimate of the number of offerings per year per agency per base risk retention option. For the Commission, this was calculated by dividing 636 offerings per year by 7 options, resulting in 91 offerings per year per base risk retention option.

The total estimated annual burden for each Agency was then calculated by multiplying the number of offerings per year per section for such Agency (except with respect to the recordkeeping burden hours under §\_\_.8 and §\_\_.15(d)(13) as described below) by the number of burden hours estimated for the respective section, then adding these subtotals together. For example, under §\_\_.4, the Commission multiplied the estimated number of offerings per year per §\_\_.4 (i.e., 91 offerings per year) by the disclosure burden hour estimate for §\_\_.4 of 2.0 hours. Thus, the estimated annual burden hours for respondents to which the Commission accounts for the burden hours under §\_\_.4 is 182 hours (91 \* 2.0 hours = 182 hours). For the recordkeeping burden estimate under §§\_\_.8(c) and \_\_.8(d)(2), instead of using the number of offerings per year per base risk retention option, the Agencies multiplied the number of recordkeeping burden hours by the number of unique sponsors assigned to such Agency per year (i.e., 104 in the case of the Commission).<sup>7</sup> The reason for this is that the Agencies considered it possible that sponsors may establish these policies and procedures during the year independent on whether an offering was conducted, with a corresponding agreed upon procedures report obtained from a public accounting firm each time such policies and procedures are established.

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offerings made under Securities Act Rule 144A. We also note that this estimate is for offerings that are not exempted under §§ \_\_.21 and \_\_.22 of the proposed rule.

<sup>6</sup> Estimate of 1,700 offerings per year minus the estimate of the number of offerings qualifying for an exemption under §\_\_.15, §\_\_.18, §\_\_.19, and §\_\_.20 (220 total).

<sup>7</sup> 243 \* 43% = 104.

To obtain an estimate for the number of burden hours required by § 15(d)(13), the Agencies multiplied the estimate of the number of creditors assigned to such Agency for purposes of this risk retention rule by an estimate of the number of hours that it will take creditors to perform a one-time update to their systems to account for the requirements of this section, which we estimate to be 8 hours.<sup>8</sup> This estimate was added to the other disclosure and recordkeeping burden estimates as described above to achieve a total estimated annual burden for respondents assigned to the Commission.

**a) Detailed table of proposed changes to annual burden compliance in Collection of Information.**

	<i>Number of respondents</i>	<i>Estimated annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
<b>§ 4, Vertical Risk</b>				
Disclosures	91	1	2.0	182
<b>§ 5, Horizontal Risk</b>				
Disclosures	91	1	2.5	227.5
<b>§ 6, L-Shaped Risk</b>				
Disclosures	91	1	3.0	273
<b>§ 7, Revolving Master Trust</b>				
Disclosures	91	1	2.5	227.5
<b>§ 8, Rep Sample</b>				
Disclosures	91	1	23.25	2115.75
Recordkeeping	104	1	120	12,480
<b>§ 9, Eligible ABCP Conduits</b>				
Disclosures	91	1	3.0	273
Recordkeeping	91	1	20	1,820
<b>§ 10, CMBSs</b>				
Disclosures	91	1	19.75	1,797.25
Recordkeeping	91	1	20	1,820
<b>§ 12, Premium Capture Cash Reserve Account</b>				
Disclosures	3	1	1.75	5.25
<b>§ 13, Allocation of Risk</b>				
Disclosures	3	1	2.5	7.5
Recordkeeping	3	1	20	60
<b>§ 15, Exemption for QRMs</b>				
Disclosures	43	1	1.25	53.75
Recordkeeping	43	1	40	1,720
One-time Disclosure	1,500	1	8.0	12,000
<b>§§ 18, 19, 20, Exemption for Qualified CREs, Commercial Mortgages, and Auto Loans</b>				
Disclosures	51	1	1.25	63.75
Recordkeeping	51	1	40	2,040
<b>Total</b>				<b>37,166</b>

<sup>8</sup> 1,500 creditors \* 8 hours = 12,000 hours

We estimate the proposed new Regulation RR will result in a total annual estimated cost burden of \$2,994,075 in professional costs.

**14. COSTS TO FEDERAL GOVERNMENT**

We estimate that the cost to the Commission for preparing the rules will be approximately \$100,000.

**15. REASON FOR CHANGE IN BURDEN**

This is a new collection of information.

**16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES**

Not applicable.

**17. DISPLAY OF OMB APPROVAL DATE**

Not applicable.

**18. EXCEPTIONS TO CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSIONS**

Not applicable.

**B. STATISTICAL METHODS**

Not applicable.