

## **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. 34-70277,<sup>1</sup> the Commission re-proposed rules, 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 rules 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 ABS that is collateralized exclusively by residential mortgages that qualify as “qualified residential mortgages,” 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 ABS to retain not less than five percent of the credit risk of the assets collateralizing the ABS. Section 15G includes a variety of exemptions from these requirements, including an exemption for ABS that are collateralized exclusively by residential mortgages that qualify as “qualified residential mortgages,” as such term is defined by the Agencies by rule.

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<sup>1</sup> Credit Risk Retention, Release No. 34-70277 (Aug. 28, 2013) [78 FR 57928].

<sup>2</sup> The agencies that are party to this rulemaking are the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the U.S. Securities and Exchange Commission (Commission) and, in the case of the securitization of any “residential mortgage asset,” together with the Federal Housing Finance Agency (FHFA) and the Department of Housing and Urban Development (HUD), and are collectively, and as appropriate, 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).

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 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. 34-70277, 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 September 20, 2013, a joint notice of proposed rulemaking was published in the *Federal Register* (78 FR 57928) requesting comment on the implementation of the recordkeeping and disclosure requirements for the Credit Risk Retention rules. The comment period expires on October 30, 2013.

**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 12,355 hours, as shown in the table below. The table provides the estimated annual burden for the 107 sponsors and 574 offerings per year assigned to the Commission to which Regulation RR applies.

To determine the total paperwork burden for the requirements contained in 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. The Agencies estimate that approximately 249 unique sponsors conduct ABS offerings per year. This estimate was based on the average number of ABS offerings from 2004 through 2012 reported by the ABS database AB Alert for all non-CMBS transactions and by Securities Data Corporation for all CMBS transactions. Of the 249 sponsors, 43 percent (107) of these sponsors were assigned to the Commission.<sup>4</sup>

Next, the Federal banking agencies and the Commission estimated the burden per response that would be associated with each disclosure and recordkeeping requirement, and then estimated how frequently the entities would make the required disclosure by estimating 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 2012 (1,334 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 supplement that data with information from Securities Data Corporation. This estimate includes registered offerings, offerings made

- 12 offerings per year would be subject to disclosure and recordkeeping requirements under sections §\_\_.11, which are divided equally among the four Agencies (i.e., 3 offerings per year per Agency);
- 100 offerings per year would be subject to disclosure and recordkeeping requirements under section §\_\_.13, which are divided proportionately among the four 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
- 120 offerings per year would be subject to disclosure requirements under §\_\_.15, which are divided proportionately among the four Agencies based on the entity percentages described above (i.e., 10 offerings per year subject to §\_\_.15 for the Board, 14 offerings per year subject to §\_\_.15 for the OCC; 44 offerings per year subject to §\_\_.15 for the FDIC, and 52 offerings per year subject to §\_\_.15 for the Commission). Of these 120 offerings per year, 40 offerings per year would be subject to disclosure and recordkeeping requirements under §§\_\_.16, \_\_.17, and \_\_.18, respectively, which are divided proportionately among the four 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 Subpart B of the proposed rule, the Agencies multiplied the number of offerings estimated to be subject to the base risk retention requirements (i.e., 1,114)<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 1,114 offerings per year by 43 percent, which equals 479 offerings per year. This number was then divided by the number of base risk retention options under Subpart B of the proposed rule (i.e., nine)<sup>7</sup> 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 479 offerings per year by nine options, resulting in 53 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 by the number of burden hours estimated for the respective section, then adding these subtotals together. For example, under §\_\_.10, the Commission multiplied the estimated number of offerings per year for §\_\_.10 (i.e., 53 offerings per year) by the estimated annual frequency of the response for §\_\_.10 of one response, and then by the disclosure burden hour estimate for §\_\_.10 of 4.0 hours. Thus, the estimated annual burden hours for respondents to which the Commission accounts for the burden hours under §\_\_.10 is 212 hours ( $53 * 1 * 4.0 \text{ hours} = 212 \text{ hours}$ ).

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under Securities Act Rule 144A, and traditional private placements. We also note that this estimate is for offerings that are not exempted under §§ \_\_.19 and \_\_.20 of the proposed rule.

<sup>6</sup> Estimate of 1,334 offerings per year minus the estimate of the number of offerings qualifying for an exemption under §\_\_.13 and §\_\_.15 (220 total).

<sup>7</sup> For purposes of this calculation, the horizontal, vertical, and combined horizontal and vertical risk retention methods under the standard risk retention option are each counted as a separate option under Subpart B of the proposed rule.

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

	<i>Estimated number of offerings</i>	<i>Estimated annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours<sup>8</sup></i>
<b>§__4, Standard Risk Retention</b>				
<b>Horizontal Interest</b>				
Recordkeeping	53	1	0.5	27
Disclosures	53	1	3.0	159
Payment Date Disclosures	53	12	1.0	636
<b>Vertical Interest</b>				
Recordkeeping	53	1	0.5	27
Disclosures	53	1	2.5	133
<b>Combined Horizontal and Vertical Interests</b>				
Recordkeeping	53	1	0.5	27
Disclosures	53	1	4.0	212
Payment Date Disclosures	53	12	1.0	636
<b>§__5, Revolving Master Trusts</b>				
Recordkeeping	53	1	0.5	27
Disclosures	53	1	4.0	212
<b>§__6, Eligible ABCP Conduits</b>				
Recordkeeping	53	1	20.0	1,060
Disclosures	53	1	3.0	159
<b>§__7, Commercial MBS</b>				
Recordkeeping	53	1	30.0	1,590
Disclosures	53	1	20.75	1,100
<b>§__8, FNMA and FHLMC</b>				
<b>ABS</b>				
Disclosures	53	1	1.5	80
<b>§__9, Open Market CLOs</b>				
Disclosures	53	1	20.25	1,073
<b>§__10, Qualified Tender</b>				
<b>Option Bonds</b>				
Disclosures	53	1	4.0	212
<b>§__11, Allocation of Risk</b>				
<b>Retention to an Originator</b>				
Recordkeeping	3	1	20.0	60
Disclosures	3	1	2.5	8
<b>§__13, Exemption for</b>				
<b>Qualified Residential</b>				
<b>Mortgages</b>				

<sup>8</sup> Rounded to nearest whole number.

Recordkeeping	43	1	40.0	1,720
Disclosures	43	1	1.25	54
<b>§__.15, Exemptions for Qualifying Commercial Loans, Commercial Real Estate Loans, and Automobile Loans</b>				
Disclosures	52	1	20.0	1,040
<b>§__.16, Underwriting Standards for Qualifying Commercial Loans</b>				
Recordkeeping	17	1	40.0	680
Disclosures	17	1	1.25	21
<b>§__.17, Underwriting Standards for Qualifying CRE Loans</b>				
Recordkeeping	17	1	40.0	680
Disclosures	17	1	1.25	21
<b>§__.18, Underwriting Standards for Qualifying Automobile Loans</b>				
Recordkeeping	17	1	40.0	680
Disclosures	17	1	1.25	21
<b>Total</b>				12,355

We estimate the proposed new Regulation RR will result in a total annual estimated cost burden of \$1,539,125 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.