

## **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. 34-73407,<sup>1</sup> the Commission adopted a final 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 final rule is titled “Regulation RR.”

The final rule generally requires 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 final rule 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 final 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. 34-73407 (October 22, 2014) [79 FR 77602].

<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 final rule includes 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 final rule 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 final rule.

### **3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY**

The final 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 rule.

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

The final 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 final rule, the risk retention requirements would apply to "sponsors," as defined in the proposed rule. As discussed in Release No. 34-73407, 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 rule 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 final rule. 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

The Commission issued a proposing release<sup>4</sup> and a re-proposing release<sup>5</sup>, both soliciting comment on the implementation of the recordkeeping and disclosure requirements for the Credit Risk Retention rule. In response to the solicitations for comment in the proposing and re-proposing releases, sponsors, investors and other market participants provided comments. In addition, the Commission and staff participated in ongoing dialogues with the representations of various market participants through public conferences and meetings. The Commission considered all comments received prior to publishing the final rule as required by 5 CFR 1320.11(f). While commenters provided qualitative comments on the possible costs of the rule, the Agencies did not receive any quantitative comments on the PRA analysis.

Comments received on both the proposal and the re-proposal are available at <http://www.sec.gov/comments/s7-14-11/s71411.shtml>. A copy of the adopting release is attached.

## 9. PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

## 10. CONFIDENTIALITY

Not applicable.

## 11. SENSITIVE QUESTIONS

No information of a sensitive nature would be required under this collection of information. The information collection collects basic Personally Identifiable Information (PII) that may include name, business address, and residential address (for sole proprietor only), telephone/cellular/facsimile number, email address, and Tax ID Number (TIN). The information collection is covered under the System of Records Notices (SORN), which may be found at the following link: <http://www.sec.gov/about/privacy/sorn/secsorn6.pdf>. The Privacy Impact Assessment (PIA) is provided as a supplemental document.

## 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 17,774 hours, as shown in the table below. The table provides the estimated annual burden for the 181 sponsors and 854 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.

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<sup>4</sup> Credit Risk Retention, Release No. 34-64148 (Mar. 30, 2011) [76 FR 24090].

<sup>5</sup> Credit Risk Retention, Release No. 34-70277 (Aug. 28, 2013) [78 FR 57927].

The Agencies estimate that approximately 270 unique sponsors conduct ABS offerings per year. This estimate was based on the average number of ABS offerings from 2004 through 2013 reported by the ABS database Asset-Backed Alert for all non-CMBS transactions and by Commercial Mortgage Alert for all CMBS transactions. Of the 270 sponsors, 67 percent (181) of these sponsors were assigned to the Commission.<sup>6</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 2013 (1,275 total annual offerings per year).<sup>7</sup> The following additional estimates were made:

- 12 offerings per year would be subject to disclosure and recordkeeping requirements under §\_\_.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 §§\_\_.13 and \_\_.19(g), 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 FDIC; 13 offerings per year for the OCC; and 67 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 FDIC; 16 offerings per year subject to §\_\_.15 for the OCC, and 80 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 FDIC; 5 offerings per year subject to each section for the OCC, and 27 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., 1,055)<sup>8</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 1,055 offerings per year by 67 percent, which equals 707 offerings per year. This number was then divided by the number of

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<sup>6</sup> The remaining 13 percent were assigned to the OCC, 12 percent were assigned to the FDIC, and 8 percent were assigned to the Board.

<sup>7</sup> We use the ABS issuance data from Asset-Backed Alert on the initial terms of offerings, and supplement that data with information from Commercial Mortgage Alert. This estimate includes registered offerings, offerings made under Securities Act Rule 144A, and traditional private placements. We also note that this estimate is for offerings that are not exempted under §§ \_\_.19(a)-(f) and \_\_.20 of the proposed rule.

<sup>8</sup> Estimate of 1,275 offerings per year minus the estimate of the number of offerings qualifying for an exemption under §\_\_.13, §\_\_.15 and §\_\_.19(g) (220 total).

base risk retention options under Subpart B of the proposed rule (i.e., nine)<sup>9</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 707 offerings per year by nine options, resulting in 79 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., 79 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 6.0 hours. Thus, the estimated annual burden hours for respondents to which the Commission accounts for the burden hours under §\_\_.10 is 474 hours (79 \* 1 \* 6.0 hours = 474 hours).

**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>10</sup></i>
<b>§__ B.4, Standard Risk Retention</b>				
<b>Horizontal Interest</b>				
Recordkeeping	79	1	0.5	40
Disclosures	79	1	5.5	435
<b>Vertical Interest</b>				
Recordkeeping	79	1	0.5	40
Disclosures	79	1	2.0	158
<b>Combined Horizontal and Vertical Interests</b>				
Recordkeeping	79	1	0.5	40
Disclosures	79	1	7.5	593
<b>§__ B.5, Revolving Master Trusts</b>				
Recordkeeping	79	1	0.5	40
Disclosures	79	1	7.0	553
<b>§__ B.6, Eligible ABCP Conduits</b>				
Recordkeeping	79	1	20.0	1,580
Disclosures	79	1	3.0	237
<b>§__ B.7, Commercial MBS</b>				

<sup>9</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.

<sup>10</sup> Rounded to nearest whole number.

Recordkeeping	79	1	30.0	2,370
Disclosures	79	1	20.75	1,639
<b>§ B.8, FNMA and FHLMC</b>				
Disclosures	79	1	1.5	119
<b>§ B.9, Open Market CLOs</b>				
Disclosures	79	1	20.25	1,600
<b>§ B.10, Qualified Tender Option Bonds</b>				
Disclosures	79	1	6.0	474
<b>§ C.11, Allocation of Risk Retention to an Originator</b>				
Recordkeeping	3	1	20.0	60
Disclosures	3	1	2.5	8
<b>§§ D.13 and .19(g), Exemption for Qualified Residential Mortgages and Qualifying 3-to-4 Unit Residential Mortgage Loans</b>				
Recordkeeping	67	1	40.0	2,680
Disclosures	67	1	1.25	84
<b>§ D.15, Exemptions for Qualifying Commercial Loans, Commercial Real Estate Loans, and Automobile Loans</b>				
Recordkeeping	80	1	0.5	40
Disclosures	80	1	20.0	1,600
<b>§ D.16, Underwriting Standards for Qualifying Commercial Loans</b>				
Recordkeeping	27	1	40.5	1,094
Disclosures	27	1	1.25	34
<b>§ D.17, Underwriting Standards for Qualifying CRE Loans</b>				
Recordkeeping	27	1	40.5	1,094
Disclosures	27	1	1.25	34
<b>§ D.18, Underwriting Standards for Qualifying Automobile Loans</b>				
Recordkeeping	27	1	40.5	1,094
Disclosures	27	1	1.25	34
<b>Total</b>				<b>17,774</b>

For disclosures made at the time of the securitization transaction,<sup>11</sup> the Commission allocates 25 percent of these hours (1,773 hours) to internal burden for all sponsors. For the remaining 75 percent of these hours, (5,319 hours), the Commission uses an estimate of \$400 per hour for external costs for retaining outside professionals totaling \$2,127,750. For disclosures made after the time of sale in a securitization transaction,<sup>12</sup> the Commission allocated 75 percent of the total estimated burden hours (1,565 hours) to internal burden for all sponsors. For the remaining 25 percent of these hours (522 hours), the Commission uses an estimate of \$400 per hour for external costs for retaining outside professionals totaling \$208,650.

We estimate the new Regulation RR will result in a total annual estimated cost burden of \$2,336,400 in professional costs.

**b) Detailed table of proposed changes to annual cost burden in Collection of Information.**

	<i>Estimated annual burden hours</i>	<i>Burden hours for disclosures at the time of transaction</i>	<i>Cost burden for disclosures at the time of transaction</i>	<i>Burden hours for disclosures after the time of sale</i>	<i>Cost burden for disclosures after the time of sale</i>	<i>Total cost burden</i>
<b>§ B.4, Standard Risk Retention Horizontal Interest</b>						
Disclosures	434.5	316	\$94,800	118.5	\$11,850	\$106,650
<b>Vertical Interest</b>						
Disclosures	158	118.5	\$35,550	39.5	\$,3950	\$39,500
<b>Combined Horizontal and Vertical Interests</b>						
Disclosures	592.5	592.5	\$177,750			\$177,750

**§ B.5, Revolving Master**

<sup>11</sup> These are the disclosures required by §§ .4 (c)(1)(i) and (iii), and (c)(2)(i) (as applicable to horizontal interests, vertical interests, or any combination of horizontal and vertical interests); §§ .5(k)(1)(i), (iii) and (iv) ; .6(d); .7(b)(7)(i) through (viii); .8(c); .9(d); 10(e); .11(a)(2); .13(b)(4)(iii); .15(a)(4) and (b)(3); .16(a)(8)(iii); .17(a)(10)(iii); .18(a)(8)(iii); and .19(g)(2).

<sup>12</sup> These are the disclosures required by §§ .4 (c)(1)(ii) and (c)(2)(ii) (as applicable to horizontal interests, vertical interests, or any combination of horizontal and vertical interests); §§ .5(k)(1)(ii); .6(f)(2)(ii); .7(c)(2)(B); .9(d)(1); .11(b)(2)(B); .13(c)(3); .16(b)(3); .17(b)(3); .18(b)(3); and .19(g)(3).

<b>Trusts</b>						
Disclosures	553	513.5	\$154,050	39.5	\$3,950	\$158,000
<b>§__B.6, Eligible ABCP Conduits</b>						
Disclosures	237	158	\$47,400	79	\$7,900	\$55,300
<b>§__B.7, Commercial MBS</b>						
Disclosures	1639.25	1560.25	\$468,075	79	\$7,900	\$475,975
<b>§__B.8, FNMA and FHLMC</b>						
Disclosures	118.5	118.5	\$35,550			\$35,550
<b>§__B.9, Open Market CLOs</b>						
Disclosures	1599.75	1599.75	\$479,925	1580	\$158,000	\$637,925
<b>§__B.10, Qualified Tender Option Bonds</b>						
Disclosures	474	474	\$142,200			\$142,200
<b>§__C.11, Allocation of Risk Retention to an Originator</b>						
Disclosures	7.5	4.5	\$1,350	3	\$300	\$1,650
<b>§§__D.13 and __.19(g), Exemption for Qualified Residential Mortgages and Qualifying 3- to-4 Unit Residential Mortgage Loans</b>						
Disclosures	83.75	16.75	\$5,025	67	\$6,700	\$11,725



<b>§ D.15, Exemptions for Qualifying Commercial Loans, Commercial Real Estate Loans, and Automobile Loans</b>	Disclosures	1600	1600	\$480,000			\$480,000
<b>§ D.16, Underwriting Standards for Qualifying Commercial Loans</b>	Disclosures	33.75	6.75	\$2,025	27	\$2,700	\$4,725
<b>§ D.17, Underwriting Standards for Qualifying CRE Loans</b>	Disclosures	33.75	6.75	\$2,025	27	\$2,700	\$4,725
<b>§ D.18, Underwriting Standards for Qualifying Automobile Loans</b>	Disclosures	33.75	6.75	\$2,025	27	\$2,700	\$4,725
<b><i>Total</i></b>				\$2,127,750		\$208,650	\$2,336,400

**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**

The Commission is not seeking approval to omit the expiration date.

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

Not applicable.

**B. STATISTICAL METHODS**

Not applicable.