**Supporting Statement for the**
**Recordkeeping and Disclosure Requirements Associated with Regulation RR**
**(FR RR[1]; OMB No. 7100-0372)**

## Summary

The Board of Governors of the Federal Reserve System (Board), under authority delegated by the Office of Management and Budget (OMB), has extended for three years, without revision, the Recordkeeping and Disclosure Requirements Associated with Regulation RR (FR RR; OMB No. 7100-0372). In 2014, the Board, Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC) (collectively, the Federal banking agencies), U.S. Securities and Exchange Commission (SEC), Federal Housing Finance Agency (FHFA), and Department of Housing and Urban Development (HUD) (collectively, the agencies) adopted a joint final rule (credit risk retention rule) that implemented the credit risk retention requirements of section 15G of the Securities Exchange Act of 1934 (Exchange Act),[2] which was added by section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[3] The Board's credit risk retention rule, which applies to any securitizer of asset-backed securities (securitizer) that is a state member bank (SMB) or a subsidiary of an SMB, is codified in the Board's Regulation RR - Credit Risk Retention (12 CFR 244). The SEC's rules regarding credit risk retention (17 CFR 246) apply to any securitizer that is not an insured depository institution (IDI) or a subsidiary of an IDI. Regulation RR and the SEC's credit risk retention rule include a number of mandatory recordkeeping and disclosure requirements.

The Board's FR RR information collection accounts for the burden associated with the Board's Regulation RR, as well as the burden associated with the SEC's credit risk retention rule for securitizers that are, or are a subsidiary of, a bank holding company, savings and loan holding company, intermediate holding company, Edge or agreement corporation, foreign banking organization, or nonbank financial company supervised by the Board. The estimated total annual burden for the FR RR is 2,114 hours.

## Background and Justification

As required by section 15G of the Exchange Act, the credit risk retention rule generally (1) requires a securitizer to retain not less than 5 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 (2) prohibits a securitizer from directly or indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain under section 15G and the agencies' implementing rules. The rule provides a number of options, described further below, for complying with section 15G's risk retention requirements.

The credit risk retention rule exempts certain types of securitization transactions from

[1] The internal Agency Tracking Number previously assigned by the Board to this information collection was "Reg RR." The Board is changing the internal Agency Tracking Number to "FR RR" for the purpose of consistency.
[2] 15 U.S.C. § 78o-11.
[3] Public Law 111-203, 124 Stat. 1376 (2010)

these risk retention requirements and authorizes the agencies to exempt or establish a lower risk retention requirement for other types of securitization transactions. In addition, the rule provides that a securitizer may retain less than 5 percent of the credit risk of commercial mortgages, commercial loans, and automobile loans that are transferred, sold, or conveyed through the issuance of ABS interests by the securitizer if the loans meet underwriting standards established by the Federal banking agencies.

The credit risk retention rule sets forth permissible forms of risk retention for securitizations that involve issuance of ABS, as well as exemptions from the risk retention requirements. The agencies believe that the recordkeeping and disclosure requirements associated with the various forms of risk retention enhance market discipline, help ensure the quality of the assets underlying a securitization transaction, and assist investors in evaluating transactions. No other federal law mandates these recordkeeping and disclosures requirements.

**Description of Information Collection**

The recordkeeping and disclosure requirements in the credit risk retention rule are set forth below. Compliance with the information collection is mandatory.

**Standard Risk Retention.** Section 244.4 of Regulation RR and section 246.4 of the SEC's credit risk retention rule set forth the conditions that must be met by sponsors of a securitization that elects to use the credit risk retention rule's standard risk retention option, which may consist of an eligible vertical interest or an eligible horizontal residual interest, as defined by the rule, or any combination thereof. Sections 244.4(c) of Regulation RR and section 246.4(c) of the SEC's credit risk retention rule set forth the disclosure requirements for a sponsor that uses the standard risk retention option.

A reasonable period of time prior to the sale of an ABS issued in the same offering of ABS interests, a sponsor retaining any eligible horizontal residual interest (or funding a horizontal cash reserve account), is required to disclose to potential investors: the fair value (or a range of fair values and the method used to determine such range) of the eligible horizontal residual interest that the sponsor expects to retain at the closing of the securitization transaction; the material terms of the eligible horizontal residual interest; the methodology used to calculate the fair value (or range of fair values) of all classes of ABS interests; the key inputs and assumptions used in measuring the estimated total fair value (or range of fair values) of all classes of ABS interests, including, to the extent applicable, certain enumerated items; and a description of the reference data set or other historical information used to develop the key inputs and assumptions. A reasonable time after the closing of the securitization transaction, the sponsor must disclose: the fair value of the eligible horizontal residual interest retained by the sponsor; the fair value of the eligible horizontal residual interest required to be retained by the sponsor; and a description of any material differences between the methodology used in calculating the fair value disclosed prior to sale and the methodology used to calculate the fair value at the time of closing. If the sponsor retains risk through the funding of an eligible horizontal cash reserve account, the sponsor must also disclose the amount placed by the sponsor in the horizontal cash reserve account at closing, the fair value of the eligible horizontal residual interest that the sponsor is required to fund through such account, and a description of such

account.

For eligible vertical interests, a reasonable period of time prior to the sale of an ABS issued in the same offering of ABS interests, the sponsor is required to disclose to potential investors: the form of the eligible vertical interest; the percentage that the sponsor is required to retain; and a description of the material terms of the vertical interest and the amount the sponsor expects to retain at closing. A reasonable time after the closing of the securitization transaction, the sponsor must disclose the amount of vertical interest retained by the sponsor at closing, if that amount is materially different from the amount disclosed earlier.

Section 244.4(d) of Regulation RR and section 246.4(d) of the SEC's credit risk retention rule require a sponsor to retain the certifications and disclosures by section 244.4 of Regulation RR and section 246.4 of the SEC's credit risk retention rule. The sponsor must retain these records until three years after all ABS interests are no longer outstanding.

**Revolving Pool Securitizations.** Section 244.5 of Regulation RR and section 246.5 of the SEC's credit risk retention rule require sponsors relying on the revolving pool securitization risk retention option to disclose in writing to potential investors, a reasonable period of time prior to the sale of an ABS, the material terms of the seller's interest and the percentage of the seller's interest that the sponsor expects to retain at the closing of the transaction. A reasonable time after the closing of the transaction, the sponsor must disclose in writing: the amount of the seller's interest that the sponsor retained at closing, if materially different from the amount previously disclosed; the material terms of any horizontal risk retention offsetting the seller's interest under sections 244.5(g), 244.5(h), and 244.5(i) of Regulation RR or sections 246.5(g), 246.5(h), or 246.5(i) of the SEC's credit risk retention rule, as applicable; and the fair value of any horizontal risk retention retained by the sponsor. Additionally, a sponsor must retain these disclosures in its records until three years after all are ABS interests are no longer outstanding.

**Eligible ABCP Conduits.** Section 244.6 of Regulation RR and section 246.6 of the SEC's credit risk retention rule address the requirements for sponsors utilizing the eligible asset-backed commercial paper (ABCP) conduit risk retention option. The sponsor must disclose to each purchaser of ABCP, before or at the time of the first sale of ABCP to such purchaser and at least monthly thereafter to each holder of commercial paper issued by the ABCP conduit: the name and form of organization of the regulated liquidity provider that provides liquidity coverage to the eligible ABCP conduit, including a description of the material terms of such liquidity coverage, and notice of any failure to fund; and with respect to each ABS interest held by the ABCP conduit, the asset class or brief description of the underlying securitized assets, the standard industrial category code for each originator-seller that retains an interest in the securitization transaction, and a description of the percentage amount and form of interest retained by each originator-seller.

A sponsor relying on the eligible ABCP conduit risk retention option shall maintain and adhere to policies and procedures to monitor compliance by each relevant originator-seller. If the ABCP conduit sponsor determines that an originator-seller is no longer in compliance, the sponsor must promptly notify the holders of the ABCP in writing of the name and form of organization of any originator-seller that fails to properly retain risk; the amount of ABS interests

issued by an intermediate special purpose vehicle (SPV) of such originator-seller and held by the ABCP conduit; the name and form of organization of any originator-seller that hedges, directly or indirectly through an intermediate SPV; the risk retention in violation of the rule; the amount of ABS interests issued by an intermediate SPV of such originator-seller and held by the ABCP conduit; and any remedial actions taken by the ABCP conduit sponsor or other party with respect to such ABS interests.

**Commercial Mortgage-Backed Securities.** Section 244.7 of Regulation RR and section 246.7 of the SEC's credit risk retention rule set forth the requirements for sponsors relying on the commercial mortgage-backed securities risk retention option, and requires a sponsor to make, a reasonable period of time prior to the sale of the ABS as part of the securitization transaction, the following disclosures to potential investors: the name and form of organization of each initial third-party purchaser; each initial third-party purchaser's experience in investing in commercial mortgage-backed securities; other material information regarding each initial third-party purchaser or each initial third-party purchaser's retention of the interest; the fair value and purchase price of the eligible horizontal residual interest retained by each third-party purchaser; the fair value of the eligible horizontal residual interest that the sponsor would have retained if the sponsor had relied on retaining an eligible horizontal residual interest under the standard risk retention option; a description of the material terms of the eligible horizontal residual interest retained by each initial third-party purchaser, including the same information as is required to be disclosed by sponsors retaining horizontal interests pursuant to section 244.4; the material terms of the applicable transaction documents with respect to the Operating Advisor; and representations and warranties concerning the securitized assets, a schedule of any securitized assets that are determined not to comply with such representations and warranties, and the factors used to determine that such securitized assets should be included in the pool notwithstanding that they did not comply with the representations and warranties. A sponsor relying on the commercial mortgage-backed securities risk retention option is also required to include in the underlying securitization transaction documents certain provisions related to the appointment of an operating advisor, to maintain and adhere to policies and procedures to monitor compliance by third-party purchasers with regulatory requirements, and to notify the holders of the ABS interests in the event of noncompliance by a third-party purchaser with such regulatory requirements.

**Federal National Mortgage Association and Federal Home Loan Mortgage Corporation ABS.** Section 244.8(c) of Regulation RR and section 246.8(c) of the SEC's credit risk retention rule require that a sponsor relying on the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation risk retention option disclose to investors a description of the manner in which it has met the credit risk retention requirements.

**Open Market Collateralized Loan Obligations (CLOs).** Section 244.9 of Regulation RR and section 246.9 of the SEC's credit risk retention rule set forth the requirements for sponsors relying on the open market CLO risk retention option.[4] A reasonable period of time

[4] In 2018, the U.S. Court of Appeals for the District of Columbia Circuit held that mangers of open-market CLOs are not "securitizers" under section 15G of the Exchange Act and therefore may not be made subject to the agencies' credit risk retention rule. See Loan Syndications and Trading Association v. Securities and Exchange Commission, 882 F.3d 220 (D.C. Cir. 2018).

prior to the sale of ABS in the securitization transaction, a sponsor must disclose to potential investors a complete list of, and certain information related to, every asset held by an open market CLO and the full legal name and form of organization of the CLO manager.

**Qualified Tender Option Bonds.** Section 244.10 of Regulation RR and section 246.10 of the SEC's credit risk retention rule set forth the requirements for sponsors relying on the qualified tender option bond risk retention option, and requires the disclosure, a reasonable period of time prior to the sale of the ABS as part of the securitization transaction, to potential investors of: the name and form of organization of the qualified tender option bond entity, a description of the form and subordination features of the retained interest in accordance with the disclosure obligations associated with the standard risk retention option, the fair value of any portion of the retained interest that is claimed by the sponsor as an eligible horizontal residual interest, and the percentage of ABS interests issued that is represented by any portion of the retained interest that is claimed by the sponsor as an eligible vertical interest. In addition, to the extent any portion of the retained interest claimed by the sponsor is a municipal security held outside of the qualified tender option bond entity, the sponsor must disclose the name and form of organization of the qualified tender option bond entity, the identity of the issuer of the municipal securities, the face value of the municipal securities deposited into the qualified tender option bond entity, and the face value of the municipal securities retained outside of the qualified tender option bond entity by the sponsor or its majority-owned affiliates.

**Allocation of Risk Retention to an Originator.** Section 244.11 of Regulation RR and section 246.11 of the SEC's credit risk retention rule set forth the conditions that apply when the sponsor of a securitization allocates to originators of securitized assets a portion of the credit risk the sponsor is required to retain. The sponsor must provide the same disclosures required by section 244.4(c) of Regulation RR or section 246.6(c) of the SEC's credit risk retention rule, as applicable, and must also, a reasonable period of time prior to the sale of the ABS as part of the securitization transaction, disclose the following to potential investors: the name and form of organization of any originator that acquired and retained (or will acquire and retain) an interest in the transaction; a description of the form, amount and nature of such interest; and the method of payment for such interest. A sponsor relying on this section is also required to maintain and adhere to policies and procedures that are reasonably designed to monitor originator compliance with the retention amount, hedging, transferring, and pledging requirements and to promptly notify the holders of the ABS interests issued in the transaction in the event of originator non-compliance with such requirements.

**Exemption for Qualified Residential Mortgages and Exemptions for Securitizations of Certain Three-to-Four Unit Mortgage Loans.** Sections 244.13 and 244.19(g) of Regulation RR and sections 246.13 and 246.19(g) of the SEC's credit risk retention rule provide exemptions from the risk retention requirements for qualified residential mortgages and qualifying three-to-four unit residential mortgage loans that meet certain criteria, including that the depositor with respect to the securitization transaction certify that it has evaluated the effectiveness of its internal supervisory controls and concluded that the controls are effective, and that the sponsor provide a copy of the certification to potential investors prior to sale of asset-backed securities in the issuing entity. In addition, sections 244.13(c)(3) and 244.19(g)(3) of Regulation RR and sections 246.13(c)(3) and 246.19(g)(3) of the SEC's credit risk retention

rule provide that a sponsor that has relied upon the exemptions will not lose the exemptions if, after closing of the transaction, it is determined that one or more of the residential mortgage loans does not meet all of the criteria, provided that the depositor complies with certain specified requirements, including prompt notice to the holders of the asset-backed securities of any loan that is required to be repurchased by the sponsor, the amount of such repurchased loan, and the cause for such repurchase.

**Qualifying Commercial Loans, Commercial Real Estate Loans, and Automobile Loans.** Section 244.15 of Regulation RR and section 246.15 of the SEC's credit risk retention rule provide exemptions from the risk retention requirements for qualifying commercial loans that meet the criteria specified in section 244.16 of Regulation RR or section 246.16 of the SEC's credit risk retention rule, qualifying commercial real estate (CRE) loans that meet the criteria specified in section 244.17 of Regulation RR or section 246.17 of the SEC's credit risk retention rule, and qualifying automobile loans that meet the criteria specified in section 244.18 of Regulation RR or section 246.18 of the SEC's credit risk retention rule. A sponsor must disclose to potential investors, a reasonable period of time prior to the sale of asset-backed securities of the issuing entity: a description of the manner in which the sponsor determined the aggregate risk retention requirement for the securitization transaction after including qualifying commercial loans, qualifying CRE loans, or qualifying automobile loans with 0 percent risk retention. In addition, the sponsor is required to disclose descriptions of the qualifying commercial loans, qualifying CRE loans, and qualifying automobile loans (qualifying assets), and descriptions of the assets that are not qualifying assets, and the material differences between the group of qualifying assets and the group of assets that are not qualifying assets with respect to the composition of each group's loan balances, loan terms, interest rates, borrower credit information, and characteristics of any loan collateral. Additionally, a sponsor must retain the above disclosures in its records until three years after all ABS interests are no longer outstanding.

**Underwriting Standards for Qualifying Commercial Loans, Underwriting Standards for Qualifying CRE Loans, and Underwriting Standards for Qualifying Automobile Loans.** Sections 244.16, 244.17, and 244.18 of Regulation RR and sections 246.16, 246.17, and 246.18 of the SEC's credit risk retention rule each require that the depositor of an asset-backed security certify that it has evaluated the effectiveness of its internal supervisory controls and concluded that its internal supervisory controls are effective, the sponsor is required to provide a copy of the certification to potential investors prior to the sale of asset-backed securities in the issuing entity; and the sponsor must promptly notify the holders of the asset-backed securities of any loan included in the transaction that is required to be cured or repurchased by the sponsor, including the principal amount of such loan and the cause for such cure or repurchase. Additionally, a sponsor must retain the disclosures required in sections 244.16(a)(8), 244.17(a)(10) and 244.18(a)(8) of Regulation RR or sections 246.16(a)(8), 246.17(a)(10) and 246.18(a)(8) of the SEC's credit risk retention rule, as applicable, in its records until three years after all ABS interests are no longer outstanding.

## Respondent Panel

The FR RR respondent panel comprises securitizers that are, or are a subsidiary of, a state member bank, bank holding company, savings and loan holding company, intermediate holding

company, Edge or agreement corporation, foreign banking organization, or nonbank financial company supervised by the Board.

**Time Schedule for Information Collection**

The recordkeeping and disclosure requirements associated with this information collection are event-generated.

**Public Availability of Data**

There is no data related to this information collection available to the public.

**Legal Status**

The FR RR is authorized pursuant to section 15G of the Exchange Act, which authorizes the Board, jointly with the OCC, FDIC, and SEC, to prescribe risk retention regulations (15 U.S.C. § 78o-11). The FR RR is mandatory.

The FR RR contains recordkeeping and disclosure requirements that are not submitted to the Board, so the issue of confidentiality will not normally arise. If the Board's examiners retain a copy of the records as part of an examination, the records may be exempt from disclosure under exemption 8 of the Freedom of Information Act, which exempts from disclosure matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions" (5 U.S.C. § 552(b)(8)).

**Consultation Outside of the Agency**

The credit risk retention rule was adopted on an interagency basis, as discussed above. The Board consulted with the OCC, FDIC, and SEC with respect to the extension, without revision, of this collection of information.

**Public Comments**

On September 30, 2019, the Board published an initial notice in the *Federal Register* (84 FR 51569) requesting public comment for 60 days on the extension, without revision, of the FR RR. The comment period for this notice expired on November 29, 2019. The Board did receive any comments. On January 17, 2020, the Board published a final notice in the *Federal Register* (85 FR 3045).

**Estimate of Respondent Burden**

As shown in the table below, the estimated total annual burden for the FR RR is 2,114 hours. The burden estimates below were developed by the Board in consultation with the OCC, FDIC, SEC, FHFA, and HUD. To determine the estimated total burden for the recordkeeping and disclosure requirements contained in the credit risk retention rule, the agencies first

estimated the universe of sponsors that would be required to comply with the recordkeeping and disclosure requirements. The agencies estimate that approximately 270 unique sponsors conduct ABS offerings each 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, the agencies have assigned 8 percent of these sponsors to the Board, 12 percent to the FDIC, 13 percent to the OCC, and 67 percent to the SEC. The agencies have determined that these estimates continue to be accurate.

Next, the agencies estimated the burden per response that is associated with each recordkeeping and disclosure 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. To obtain the estimated number of responses (equal to the number of offerings) for each option in subpart B of the rule, the agencies multiplied the number of offerings estimated to be subject to the base risk retention requirements by the sponsor percentages described above. These recordkeeping and disclosure requirements represent less than 1 percent of the Board's total paperwork burden.

| **FR RR** | *Estimated number of respondents*[5] | *Annual frequency* | *Estimated average hours per response* | *Estimated annual burden hours* |
|---|---|---|---|---|
| **Sections 244.4 and 246.4 Standard Risk Retention: Horizontal Interest** | | | | |
| Recordkeeping | 9 | 1 | 0.5 | 5 |
| Disclosure | 9 | 1 | 5.5 | 50 |
| **Vertical Interest** | | | | |
| Recordkeeping | 9 | 1 | 0.5 | 5 |
| Disclosure | 9 | 1 | 2.0 | 18 |
| **Combined Horizontal and Vertical Interests** | | | | |
| Recordkeeping | 9 | 1 | 0.5 | 5 |
| Disclosure | 9 | 1 | 7.5 | 68 |
| **Sections 244.5 and 246.5** | | | | |
| Recordkeeping | 9 | 1 | 0.5 | 5 |
| Disclosure | 9 | 1 | 7.0 | 63 |
| **Sections 244.6 and 246.6** | | | | |
| Recordkeeping | 9 | 1 | 20.0 | 180 |
| Disclosure | 9 | 1 | 3.0 | 27 |
| **Sections 244.7 and 246.7** | | | | |
| Recordkeeping | 9 | 1 | 30.0 | 270 |
| Disclosure | 9 | 1 | 20.75 | 187 |

[5] Of these respondents, none are considered small entities as defined by the Small Business Administration (i.e., entities with less than $600 million in total assets), https://www.sba.gov/document/support--table-size-standards.

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|---|---|---|---|---|
| **Sections 244.8 and 246.8** | | | | |
| Disclosure | 9 | 1 | 1.5 | 14 |
| **Sections 244.9 and 246.9** | | | | |
| Disclosure | 9 | 1 | 20.25 | 182 |
| **Sections 244.10 and 246.10** | | | | |
| Disclosure | 9 | 1 | 6.0 | 54 |
| **Sections 244.11 and 246.11** | | | | |
| Recordkeeping | 3 | 1 | 20.0 | 60 |
| Disclosure | 3 | 1 | 2.5 | 8 |
| **Sections 244.13, 244.19(g), 246.13, and 246.19(g)** | | | | |
| Recordkeeping | 8 | 1 | 40.0 | 320 |
| Disclosure | 8 | 1 | 1.25 | 10 |
| **Sections 244.15 and 246.15** | | | | |
| Recordkeeping | 10 | 1 | 0.5 | 5 |
| Disclosure | 10 | 1 | 20.0 | 200 |
| **Sections 244.16 and 246.16** | | | | |
| Recordkeeping | 3 | 1 | 40.5 | 122 |
| Disclosure | 3 | 1 | 1.25 | 4 |
| **Sections 244.17 and 246.17** | | | | |
| Recordkeeping | 3 | 1 | 40.5 | 122 |
| Disclosure | 3 | 1 | 1.25 | 4 |
| **Sections 244.18 and 246.18** | | | | |
| Recordkeeping | 3 | 1 | 40.5 | 122 |
| Disclosure | 3 | 1 | 1.25 | 4 |
| *Total* | | | | 2,114 |

The estimated total annual cost to the public for this information collection is $121,766.[6]

**Sensitive Questions**

This information collection contains no questions of a sensitive nature, as defined by OMB guidelines.

**Estimate of Cost to the Federal Reserve System**

The estimated cost to the Federal Reserve System is negligible.

[6] Total cost to the public was estimated using the following formula: percent of staff time, multiplied by annual burden hours, multiplied by hourly rates (30% Office & Administrative Support at $19, 45% Financial Managers at $71, 15% Lawyers at $69, and 10% Chief Executives at $96). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor and Statistics (BLS), *Occupational Employment and Wages May 2018*, published March 29, 2019, https://www.bls.gov/news.release/ocwage.t01.htm. Occupations are defined using the BLS Standard Occupational Classification System, https://www.bls.gov/soc/.