

RESCINDED

OCC 2011-17

Subject: Proposal to Require Securitization Sponsors to Retain a Portion of the Credit Risk
Date: May 11, 2011

To: Chief Executive Officers of All National Banks, Federal Branches and Agencies, Department and Division Heads, and All Examining Personnel

OCC 2011-23 was replaced by OCC 2013-11

Description: Notice of Proposed Rulemaking

SUMMARY

The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the U.S. Securities and Exchange Commission, the Federal Housing Finance Agency, and the U.S. Department of Housing and Urban Development (the agencies) are seeking comment on a notice of proposed rulemaking (NPR) that would require sponsors of asset-backed securities (ABS) to retain at least 5 percent of the credit risk of the assets underlying the securities and would not permit sponsors to transfer or hedge that credit risk. The proposal would implement the credit risk retention requirements of section 15G of the Securities Exchange Act of 1934 (15 USC 78o-11), as added by section 941 of the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd–Frank).

BACKGROUND

The risk retention requirements added by section 15G are intended to help address problems in the securitization markets by requiring that securitizers, as a general matter, retain an economic interest in the credit risk of the assets they securitize. Requiring a securitizer to retain an interest in the assets it securitizes provides a strong incentive for the securitizer to monitor and ensure the quality of the assets underlying a securitization transaction because it aligns the securitizer's economic interest with those of investors in the asset-backed securities.

Section 15G includes a variety of exemptions from these requirements for assets that the agencies determine pose low credit risk, including an exemption for asset-backed securities that are collateralized exclusively by residential mortgages that meet the standard for "qualified residential mortgages" (QRMs). The proposal would establish a definition for QRMs—incorporating such criteria as borrower credit history, payment terms, and loan-to-value ratio—to ensure the mortgages are of very high credit quality. The proposed rule also has a 0 percent risk-retention requirement for asset-backed securities (ABS) collateralized exclusively by commercial loans, commercial mortgages, or automobile loans that meet certain underwriting standards. As with the standard for QRMs, these underwriting standards for ABS are designed to ensure that the loans backing the ABS are of very low credit risk.

The proposed rule would also recognize that the 100 percent guarantee of principal and interest provided by Fannie Mae and Freddie Mac meets their risk-retention requirements as sponsors of mortgage-backed securities, since it results in Fannie Mae and Freddie Mac retaining more credit risk on the underlying mortgages than the 5 percent minimum required by the statute. This treatment is applicable for as long as Fannie Mae and Freddie Mac are in conservatorship or receivership with capital support from the U.S. government.

The proposed rule would provide securitization sponsors with various options for meeting the risk-retention requirements of Dodd–Frank. The options include

- Retention of risk by holding at least 5 percent of each class of ABS issued in a securitization transaction (also known as vertical retention),
- Retention of a first-loss residual interest in an amount equal to at least 5 percent of the par value of all ABS interests issued in a securitization transaction (horizontal retention),
- An equally divided combination of vertical and horizontal retention,
- Retention of a representative sample of the assets designated for securitization in an amount equal to at least 5 percent of the unpaid principal balance of all the designated assets, and
- For commercial mortgage-backed securities, retention of at least a 5 percent first-loss residual interest by a third party that specifically negotiates for the interest if certain requirements are met.

The NPR was published in the *Federal Register* on April 29, 2011. Comments on the proposal are due on or before June 10, 2011. Because of its length, the NPR is not attached to this bulletin but can be found at <http://www.occ.gov/news-issuances/federal-register/76fr24090.pdf>.

FURTHER INFORMATION

You may direct questions or comments to Jamey Basham, Assistant Director, or Carl Kaminski, Senior Attorney, Legislative and Regulatory Activities Division, at (202) 874-5090.

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