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Transmittal – See OCC 2020-11

Credit Risk Retention: Final Rule

Summary

The Office of the Comptroller of the Currency (OCC), 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 (collectively, the agencies) have issued a final rule to 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. The final rule requires sponsors of asset-backed securities to retain at least 5 percent of the credit risk of the assets underlying the securities and does not permit sponsors to transfer or hedge that credit risk during a specified period. The final rule applies to asset-backed securities issued on or after December 24, 2015, if the securities are backed by residential mortgages. The final rule applies to all other classes of asset-backed securities issued on or after December 24, 2016.

To

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

Note for Community Banks and Savings Associations

The final rule imposes requirements primarily on firms that package financial assets into asset-backed securities by organizing and initiating a securitization transaction. Because OCC-supervised community banks and savings associations rarely act in this role, the rule affects only a limited number of these institutions.

Highlights

- The final rule defines qualified residential mortgage (QRM) to include all loans that meet the qualified mortgage (QM) definition issued by the Consumer Financial Protection Bureau (CFPB).[1] Securitizations of QRMs are exempt from risk retention requirements.
- The final rule does not include cash flow restrictions on the eligible horizontal residual interest, which is a first-loss asset-backed security interest that satisfies the risk retention requirements.

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 through better underwriting and due diligence. The final rule provides securitization sponsors with various options for meeting the risk retention requirements.

The final rule includes a variety of exemptions from these requirements for certain types of assets and securitizations, as contemplated by Dodd-Frank. Dodd-Frank includes an exemption for residential mortgage-backed securities collateralized by residential mortgages that meet the standard for QRMs. In the final rule, a QRM includes any residential mortgage loan that is a QM. The agencies believe that allowing all QMs to qualify as QRMs appropriately minimizes regulatory compliance burdens, as loan originators would not need to apply different criteria to assess whether a loan meets both the QM and QRM definitions. Furthermore, the final rule assists in meeting the goals of preserving access to affordable credit for various types of borrowers and facilitating the return of private capital to the mortgage market. In addition, the agencies expand the residential mortgage exemption to include all residential mortgage loans made by certain nonprofit community-focused mortgage lenders, as well as loans on three- to four-family owner-occupied residential buildings that otherwise meet the QM standards. Both these categories of loans are outside the scope of the QM definition issued by the CFPB.

The final rule also includes a reduced risk retention requirement for asset-backed securities collateralized by commercial loans, commercial real estate loans, or automobile loans that meet certain underwriting standards. These underwriting standards are designed to ensure that the loans backing the asset-backed securities are of very low credit risk.

Further Information

For any questions about the final rule, please contact Joseph Smith, Credit and Market Risk, at (202) 649-6220.

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[1] A QM is defined in section 129C of the Truth in Lending Act (15 USC 1639c) and in CFPB regulations issued under that law.

Related Link

- Final Rule (PDF)