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January 8, 2015

The Honorable Tim Johnson
Chairman
The Honorable Mike Crapo
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Jeb Hensarling
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Department of the Treasury, Office of the Comptroller of the Currency; Federal Reserve System; Federal Deposit Insurance Corporation; Federal Housing Finance Agency; Securities and Exchange Commission; Department of Housing and Urban Development: Credit Risk Retention*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Treasury, Office of the Comptroller of the Currency; Federal Reserve System; Federal Deposit Insurance Corporation; Federal Housing Finance Agency; Securities and Exchange Commission; Department of Housing and Urban Development (collectively, the agencies) entitled “Credit Risk Retention” (RINs: 1557-AD40, 7100-AD70, 3064-AD74, 2590-AA43, 3235-AK96, 2501-AD53). We received the rule from the Securities and Exchange Commission on October 24, 2014. It was published in the *Federal Register* as a final rule on December 24, 2014, with an effective date of February 23, 2015. 79 Fed. Reg. 77,602.

The final rule implements the credit risk retention requirements of section 15G of the Securities Exchange Act of 1934, as added by section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.¹ Section 15G generally requires the securitizer of asset-backed securities to retain not less than 5 percent of the credit risk of the assets collateralizing the asset-backed securities. Section 15G includes a variety of exemptions from these requirements, including an exemption for asset-backed securities that are collateralized exclusively by residential mortgages that are “qualified residential mortgages” as defined in the rule.

¹ 15 U.S.C. § 78o–11.

Enclosed is our assessment of the agencies' compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that the agencies complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

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Securities and Exchange Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMPTROLLER OF THE CURRENCY;
FEDERAL RESERVE SYSTEM;
FEDERAL DEPOSIT INSURANCE CORPORATION;
FEDERAL HOUSING FINANCE AGENCY;
SECURITIES AND EXCHANGE COMMISSION;
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
ENTITLED
"CREDIT RISK RETENTION"
(RINs: 1557-AD40, 7100-AD70, 3064-AD74, 2590-AA43, 3235-AK96, 2501-AD53)

(i) Cost-benefit analysis

The Office of the Comptroller of the Currency (OCC), Federal Reserve System (the Board), Federal Deposit Insurance Corporation (FDIC), Federal Housing Finance Agency (FHFA), Securities and Exchange Commission (SEC), and Department of Housing and Urban Development (HUD) (collectively, the agencies) analyzed the costs and benefits of this final rule. Specifically, SEC included an economic analysis in the final rule. SEC noted that some of the economic effects stem from the statutory mandate whereas others are affected by the discretion the agencies exercised in implementing the mandate with this rule, and these two types of impacts may not be entirely separable.

The benefits of this rule include requiring the retention of credit risk by sponsors of asset-backed securities that is intended to address misaligned incentives by requiring originators and sponsors to internalize some of the same risks as investors in those asset-backed securities. Under risk retention requirements, securitized loans should be less subject to the lax lending and credit enhancement standards that imposed large losses on asset-backed securities investors during the financial crisis. However, requiring sponsors to retain risk in the portfolios of assets they securitize could impose significant costs on financial markets. Currently, sponsors who do not retain 5 percent of the securitization deploy those funds to other uses, such as repaying lines of credit used to fund securitized loans, holding other assets or making new loans, which may earn a different interest rate and have a different risk exposure. Tying up capital as a result of the imposition of risk retention requirements could pose an opportunity cost to sponsors who do not currently retain risk and could limit the volume of securitizations that they can sponsor. These costs would likely be passed on to borrowers, either in terms of increased borrowing costs or loss of access to credit.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

The agencies determined that this final rule would not have a significant impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

OCC determined that this final rule is likely to result in the expenditure by the private sector of \$100 million (\$152 million, adjusted for inflation) or more in any one year. OCC therefore prepared a budgetary impact analysis and identified and considered alternative approaches.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On April 29, 2011, the agencies published a proposed rule, inviting and receiving public comments. 76 Fed. Reg. 24,090. On September 20, 2013, the agencies then published a revised proposed rule with significant modifications. 78 Fed. Reg. 57,928. The agencies received comments on the revised proposed rule from more than 250 persons, institutions, or groups, including nearly 150 unique comment letters.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

The agencies determined that this final rule contains an information collection requirement under the Act entitled “Credit Risk Reduction.” FDIC, OCC, and SEC submitted the requirement to the Office of Management and Budget (OMB) for review and the Board reviewed it under the authority delegated to the Board by OMB. The total estimated annual burden is 17,768 hours. FHFA and HUD determined that this rule does not contain any FHFA or HUD information collection requirements under the Act.

Statutory authorization for the rule

The agencies promulgated this final rule under the authority of section 15G of the Securities Exchange Act of 1934. 15 U.S.C. §78o–11.