

October 23, 2014

Federal Regulators Approve Final Risk Retention Rule

Earlier this week, the Board of Governors of the Federal Reserve System, the Department of Housing and Urban Development (HUD), the Federal Deposit Insurance Corporation (FDIC), the Federal Housing Finance Agency (FHFA), the Office of the Comptroller of the Currency (OCC), and the Securities and Exchange Commission (SEC) jointly signed off on a final Risk Retention Rule required under Section 941 of the Dodd–Frank Act.

Several news stories highlighted the contentious vote at the SEC, where the rule was approved on a 3-2 vote, with Republican Commissioners Michael Piwowar and Daniel Gallagher voting no. [Gallagher](#) said that the rule “take[s] the policies that *lost* the last war and adopt them as the government’s preparation to win the next,” while [Piwowar](#) said he has “considerable skepticism as to whether taxpayer-backed GSE-sponsored securitizations will ever be subject to the risk retention requirements and be forced to operate on the same level playing field as private securitization.”

Read the approved rule [HERE](#).

Read the FDIC staff recommendation memo, which includes a summary of the Final Rule, [HERE](#).

Finally, the press release issued by all six agencies follows.

Six Federal Agencies Jointly Approve Final Risk Retention Rule

Six federal agencies approved a final rule requiring sponsors of securitization transactions to retain risk in those transactions. The final rule implements the risk retention requirements in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

The final rule is being issued jointly by the Board of Governors of the Federal Reserve System, the Department of Housing and Urban Development, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, the Office of the Comptroller of the Currency, and the Securities and Exchange Commission. As provided under the Dodd-Frank Act, the Secretary of the Treasury, as Chairperson of

the Financial Stability Oversight Council, played a coordinating role in the joint agency rulemaking.

The final rule largely retains the risk retention framework contained in the proposal issued by the agencies in August 2013 and generally requires sponsors of asset-backed securities (ABS) to retain not less than five percent of the credit risk of the assets collateralizing the ABS issuance. The rule also sets forth prohibitions on transferring or hedging the credit risk that the sponsor is required to retain.

As required by the Dodd-Frank Act, the final rule defines a "qualified residential mortgage" (QRM) and exempts securitizations of QRMs from the risk retention requirement. The final rule aligns the QRM definition with that of a qualified mortgage as defined by the Consumer Financial Protection Bureau. The final rule also requires the agencies to review the definition of QRM no later than four years after the effective date of the rule with respect to the securitization of residential mortgages and every five years thereafter, and allows each agency to request a review of the definition at any time. The final rule also does not require any retention for securitizations of commercial loans, commercial mortgages, or automobile loans if they meet specific standards for high quality underwriting.

The final rule will be effective one year after publication in the Federal Register for residential mortgage-backed securitizations and two years after publication for all other securitization types.