



## FEDERAL RESERVE SYSTEM

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice, request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Recordkeeping and Disclosure Requirements Associated with Regulation RR (FR RR; OMB No. 7100-0372).<sup>1</sup>

**DATES:** Comments must be submitted on or before [insert date 60 days after publication in the Federal Register].

**ADDRESSES:** You may submit comments, identified by *FR RR*, by any of the following methods:

- Agency Website: <https://www.federalreserve.gov/>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.
- E-mail: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include the OMB number in the subject line of the message.
- FAX: (202) 452-3819 or (202) 452-3102.
- Mail: Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20<sup>th</sup> Street and Constitution Avenue, NW, Washington, DC 20551.

All public comments are available from the Board's website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information.

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<sup>1</sup> 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.

Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue, NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer – Shagufta Ahmed – Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17<sup>th</sup> Street, NW, Washington, DC 20503, or by fax to (202) 395-6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB’s public docket files, if approved. These documents will also be made available on the Board’s public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer – Nuha Elmaghrabi – Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-3829.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to

approve a collection of information, the Board will consider all comments received from the public and other agencies.

### **Request for Comment on Information Collection Proposal**

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

- a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;
- b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;
- c. Ways to enhance the quality, utility, and clarity of the information to be collected;
- d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and
- e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

### **Proposal under OMB Delegated Authority to Extend for Three Years, Without Revision, the Following Information Collection:**

*Report title:* Recordkeeping and Disclosure Requirements Associated with Regulation RR.

*Agency form number:* FR RR.

*OMB control number:* 7100-0372.

*Frequency:* Event generated; annual.

*Respondents:* 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.

*Estimated number of respondents:* 10.

*Estimated average hours per response:*

**Sections 244.4 and 246.4 - standard risk retention:** horizontal interests: recordkeeping - 0.5 hours, disclosures - 5.5 hours; vertical interests: recordkeeping - 0.5 hours, disclosures - 2.0 hours; combined horizontal and vertical interests: recordkeeping - 0.5 hours, disclosures - 7.5 hours;

**Sections 244.5 and 246.5 - revolving master trusts:** recordkeeping - 0.5 hours, disclosures - 7.0 hours;

**Sections 244.6 and 246.6 - eligible asset-backed commercial paper (ABCP) conduits:** recordkeeping - 20.0 hours, disclosures - 3.0 hours;

**Sections 244.7 and 246.7 - commercial mortgage-backed securities:** recordkeeping - 30.0 hours, disclosures - 20.75 hours;

**Sections 244.8 and 246.8 - FNMA and FHLMC asset-backed securities (ABS):** disclosures - 1.5 hours;

**Sections 244.9 and 246.9 - open market collateralized loan obligations (CLOs):** disclosures - 20.25 hours;

**Sections 244.10 and 246.10 - qualified tender option bonds:** disclosures - 6.0 hours;

**Sections 244.11 and 246.11 - allocation of risk retention to an originator:** recordkeeping - 20.0 hours, disclosures - 2.5 hours;

**Sections 244.13, 244.19(g), 246.13, and 246.19(g) - exemption for qualified residential mortgages and qualifying 3-to-4 unit residential mortgage loans:** recordkeeping - 40.0 hours, disclosures - 1.25 hours;

**Sections 244.15 and 246.15 - exemption for qualifying commercial loans, commercial real estate loans, and automobile loans:** recordkeeping - 0.5 hours, disclosures - 20.0 hours;

**Sections 244.16 and 246.16 - underwriting standards for qualifying commercial loans:** recordkeeping - 40.5 hours, disclosures - 1.25 hours;

**Sections 244.17 and 246.17 - underwriting standards for qualifying commercial real estate (CRE) loans:** recordkeeping - 40.5 hours, disclosures - 1.25 hours; and

**Sections 244.18 and 246.18 - underwriting standards for qualifying automobile loans:** recordkeeping - 40.5 hours, disclosures - 1.25 hours.

*Estimated annual burden hours:* 2,114.

*General description of report:* The recordkeeping and disclosure requirements in the credit risk retention rule are set forth below. Compliance with the information collections is mandatory.

**Standard Risk Retention.** Section 244.4 of Regulation RR and section 246.4 of the Securities and Exchange Commission's (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 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 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. A reasonable period of time 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, 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 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, as well as 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, CRE 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 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.

*Legal authorization and confidentiality:* The FR RR is authorized pursuant to section 15G of the Securities Exchange Act, which authorizes the Board, jointly with the Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (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 the agency:* The credit risk retention rule was adopted on an interagency basis. The Board consulted with the OCC, FDIC, and SEC with respect to the proposed extension, without revision, of this collection of information.

Board of Governors of the Federal Reserve System, September 24, 2019.

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**Michele Taylor Fennell,**

*Assistant Secretary of the Board.*

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