



## Insights

# FDIC Adopts Final Credit Risk Retention Rule

**Regulatory Updates - SFI**  
**October 21, 2014**

At an open meeting this morning, October 21, 2014, in a 4-1 vote, the Federal Deposit Insurance Corporation (the "**FDIC**") adopted final rules to implement the credit risk retention requirements of Section 15G of the Securities Exchange Act of 1934, which were added to that statute pursuant to Section 941 of the Dodd-Frank Act. Section 15G and the final rules generally require the securitizer of asset-backed securities ("**ABS**"), including privately-placed issuances, to retain not less than 5 percent of the credit risk of the assets collateralizing the ABS and restrict the transfer, hedging, or pledge of that credit risk. Section 15G includes various exemptions from these requirements, including an exemption for ABS that are collateralized exclusively by residential mortgages that qualify as "qualified residential mortgages" ("**QRMs**"), as defined in the final rules.

The FDIC, together with the SEC, Federal Reserve, OCC, FHFA, and HUD (collectively, the "**Joint Regulators**"), initially proposed the credit risk retention rules in April 2011, and, in response to extensive comments, re-proposed the rules in August 2013. The FDIC, OCC, and FHFA have each acted to adopt the final rules, and the other Joint Regulators are expected to take action in the coming days.

In the FDIC's meeting this morning, statements were largely focused on the QRM definition, which conforms to the definition of a "qualified mortgage" ("**QM**") as defined by the Consumer Financial Protection Bureau ("**CFPB**"), with ongoing periodic review of that definition by the Joint Regulators in response to market developments.

The FDIC also indicated that the final rules retain much of the framework from the August 2013 re-proposal, but with some changes in response to market comment. Consistent with that re-proposal, unless an exemption is available, securitizers must retain risk in accordance with the standardized risk retention options (i.e., an eligible horizontal residual interest, an eligible vertical interest or a combination of both), or in accordance with one of the risk retention options available for specific types of securitizations, such as master trusts (referred to in the final rules as "revolving pool securitizations") and asset-backed commercial paper ("**ABCP**").

With regard to the standardized risk retention options, the Joint Regulators:

- Eliminated the proposed cash flow restriction on the eligible horizontal residual interest; and
- Eliminated the proposed requirement that an eligible vertical interest be measured using fair value.

More generally, the Joint Regulators declined to adopt a representative sample risk retention option, noting that "the recommendations made by commenters would be insufficient to address concerns about the practicality of obtaining an adequate and truly representative sample." The final rules do, however, address specific commenter concerns relating to the several risk retention options available for specific types of securitizations, including certain limited changes with respect to ABCP and several refinements designed to expand the availability of the seller's interest option for revolving pool securitizations.

Regarding the transition period, the effective date of the final rules will be:

- One year following publication of the final rules in the *Federal Register* for residential mortgage-backed securities; and
- Two years following publication of the final rules in the *Federal Register* for all other securitization transactions.

This overview is based on the remarks of the FDIC staff at this morning's open meeting. We will provide further information and analysis upon further review of the adopting release and the final rules.

For a copy of the final rules released by the OCC, [click here](#).