



Department of the Treasury  
Office of the Comptroller of the Currency  
250 E Street, SW., Mail Stop 2-3  
Washington, DC 20219  
Re: Docket Number OCC-2011-0002

Ms. Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, NW  
Washington, DC 20551  
Re: Docket No. R-1411

Mr. Robert E. Feldman  
Executive Secretary  
Attention: Comments  
Federal Deposit Insurance Corporation  
550 17th Street, NW  
Washington, DC 20429  
Re: RIN #3064-AD74

Ms. Elizabeth M. Murphy  
Secretary  
U. S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549 - 1090  
Re: S7-14-11

Mr. Alfred M. Pollard  
General Counsel  
Attention: Comments/RIN 2590-AA43  
Federal Housing Finance Agency, Fourth Floor  
1700 G Street, NW  
Washington, DC 20552  
Re: RIN 2590-AA43

Regulations Division  
Office of General Counsel  
Department of Housing and Urban Development  
451 7th Street, SW, Room 10276  
Washington, DC 20410-0500



August 1, 2011

Dear Ladies and Gentlemen:

We appreciate the opportunity to respond to the Agencies' (Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, U.S. Securities and Exchange Commission, Federal Housing Finance Agency, and Department of Housing and Urban Development) proposed rules implementing the Credit Risk Retention requirements of section 15G of the Securities and Exchange Act of 1934, as added by section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Our response is limited to commenting on questions 57 (a) and (b), which relate to the potential involvement of independent public accounting firms.

### **Agreed Upon Procedures**

The proposal seeks comment on question 57 (a) as to whether it is appropriate for the sponsor, as a condition of the "representative sample" method of credit risk retention, to obtain an agreed upon procedures report from an independent public accounting firm.

There are several reasons why an agreed upon procedures report from an independent public accounting firm may not be appropriate, as described below.

- As proposed, the scope of the agreed upon procedures engagement would be limited to performing specified procedures designed to address whether the sponsor has established the minimum policies and procedures described in the proposed rules. In our view, an agreed upon procedures engagement for which the scope is limited solely to performing specified procedures designed to address whether the minimum policies and procedures have been established, versus applied in constructing the representative sample, would not meet the objective of ensuring that the retained assets have the same credit risk as investors in a securitization.
- The proposed rule would also require the sponsor to disclose a description of the policies and procedures used for ensuring that the process for identifying the representative sample has equivalent material characteristics to those of the pool of securitized assets. If the policies and procedures are disclosed, then the performance of an agreed upon procedures engagement designed to address whether the sponsor has established policies and procedures seems unnecessary.



- One condition necessary to perform an agreed upon procedures engagement under the relevant professional standards is that the subject matter to which the procedures are to be applied is subject to reasonably consistent measurement. The sampling method described in the proposed rules may be complex and inefficient to execute, particularly if there are multiple material characteristics that are categorical in nature, and therefore further detailed description of the policies and procedures of how the sampling method should be executed, or inclusion of alternative options for execution, may be necessary to ensure reasonably consistent measurement and determination of the specified procedures. For example, if a sample were determined to be representative for 5 out of 6 material characteristics, an alternative to rejecting the sample and starting over would be to describe appropriate policies and procedures to bolster the original sample so as to be sufficiently representative. Alternatively, the proposed sampling approach could be made simpler by allowing for stratification of the population by all material characteristics, not just unpaid principal balance, and then randomly drawing an appropriate proportion of the sample from each stratum such that the initial sample selected is representative of the material characteristics of the full pool and thereby eliminating the need for the evaluation process or the need to repeat the selection and evaluation process if a sample is deemed to not be representative as is currently proposed.
- The professional standards also require that specified parties take responsibility for the sufficiency of the procedures for their purposes, which is ordinarily obtained in the form of an affirmative acknowledgement from each of the specified parties. The proposed rules do not identify who the intended specified users, e.g., regulatory agencies, investors, etc. of the report would be. The inability to obtain such an acknowledgement may not allow for performance of an agreed upon procedures engagement.
- Another condition under the professional standards is that the use and distribution of an agreed upon procedures report is limited to the specified users. Accordingly, the proposed rule requiring the sponsor to disclose that an agreed upon procedures report was obtained may not be appropriate.

### **Other Mechanisms**

Question 57 (b) asks, if an agreed upon procedures engagement is not considered appropriate, whether there is another mechanism that should be included in the option that helps ensure that the sponsor has constructed the representative sample in conformance with the requirements of the rule.

An alternative to involvement of an independent public accounting firm would be to require a qualified third party to design and execute the sampling plan with supporting documentation that the sample selected is sufficiently representative of the material characteristics of the pool.



An independent public accounting firm could perform an attestation examination engagement to evaluate whether the retained assets were representative of the pool assets for a specific securitization transaction based on the policies and procedures used by the sponsor to construct the representative sample. Similar to an agreed upon procedures engagement as discussed above, the subject matter would need to be subject to reasonably consistent measurement, and therefore the description of the minimum policies and procedures in the proposed rules may have to be more specific to evaluate whether the criteria are suitable as required by professional standards. In contrast to an agreed upon procedures engagement, use of a report on an examination engagement is not limited as long as the sponsor-specific policies used to evaluate the subject matter (i.e., construct the representative sample) are publically available.

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We are available to discuss our response and answer any questions that you may have. Please contact Derrick Stiebler (973-236-4904) for questions regarding our submission.

Yours sincerely,

*PricewaterhouseCoopers LLP*