American SECURITIZATION FORUM®

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Re: RIN 1557-AD40; 7100 AD 70; 3064-AD74; 3235-AK96; 2590-AA43; 2501-AD53

Ladies and Gentlemen:

The American Securitization Forum ("ASF")[1] appreciates the opportunity to submit this supplemental letter in response to the request of the Joint Regulators for comments regarding their notice of proposed rulemaking (the "Proposed Regulations") entitled "Credit Risk Retention" (RIN 1557-AD40; 7100 AD 70; 3064-AD74; 3235-AK96; 2590-AA43; 2501-AD53),[2] issued pursuant to Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"). Section 941 requires the Federal Deposit Insurance Corporation (the "FDIC"), the Federal Reserve Board of Governors (the "Board"), the Office of the Comptroller of the Currency (the "OCC"), the Securities and Exchange Commission (the

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[1] The American Securitization Forum is a broad-based professional forum through which participants in the U.S. securitization market advocate their common interests on important legal, regulatory and market practice issues. ASF members include over 330 firms, including issuers, investors, servicers, financial intermediaries, rating agencies, financial guarantors, legal and accounting firms, and other professional organizations involved in securitization transactions. The ASF also provides information, education and training on a range of securitization market issues and topics through industry conferences, seminars and similar initiatives. For more information about ASF, its members and activities, please go to www.americansecuritization.com.

[2] *See* http://edocket.access.gpo.gov/2011/pdf/2011-8364.pdf.

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"SEC") and, in the case of a securitization of any "residential mortgage asset," the Federal Housing Finance Agency ("FHFA") and the Department of Housing and Urban Development ("HUD" and collectively, the "Joint Regulators") to jointly implement rules to require any securitizer to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells or conveys to a third party. ASF supports reforms within the securitization market and we commend the Joint Regulators for seeking industry input on this critically important issue. Over the past decade, ASF has become the preeminent forum for securitization market participants including investors, issuers and broker-dealers, among others, to express their views and ideas. ASF was founded as a means to provide industry consensus on market and regulatory issues, and we have established an extensive track record of providing meaningful comment to various regulators on issues affecting our market. We are hopeful that the comments included in this letter will assist the Joint Regulators in crafting regulations that ultimately meet the goals of Dodd-Frank while also promoting a vibrant securitization market.

ASF supports efforts to align the incentives of originators and securitizers with those of securitization investors and we believe these incentives should encourage the application of sound underwriting standards by both the originator and securitizer in connection with the assets that are securitized. We believe that risk retention can aid in achieving this goal so long as the requirements are tailored to each asset class, taking into consideration that the forms of credit risk retention may differ by asset type. This fundamental premise was outlined in a series of preliminary comment letters[3] that ASF submitted to each of the Joint Regulators last year and in our primary comment letter in response to the Proposed Regulations that was submitted on June 10, 2011 ("ASF Primary Risk Retention Comment Letter")[4]. Today, we submit this supplemental comment letter ("ASF Auto Risk Retention Comment Letter") to address our auto sponsor ("Auto Sponsor") and auto investor members' views on the "Qualifying Automobile Loan" ("QAL") criteria set forth in the Proposed Regulations.

In preparing the Proposed Regulations, the Joint Regulators undertook the complex task of evaluating the diverse characteristics of securitized assets and the structures historically used in securitizations. We applaud the hard work of the Joint Regulators in developing the Proposed Regulations and their efforts to tailor the Proposed Regulations to each asset class and securitization structure. However, we believe that the time-intensive task of creating risk retention rules that both protect investors and encourage a robust and efficient securitization market is far from complete. ASF believes it is critically important for the Joint Regulators to appropriately implement the risk retention portion of Dodd-Frank and we strongly urge them to reconsider their proposals and offer a new set of proposed rules that better align the incentives and needs of borrowers, lenders and investors in the auto sector in particular.

[3] See our Preliminary Comment Letter on Auto ABS at http://www.americansecuritization.com/uploadedFiles/ASF_Auto_Risk_Retention_Letter_11.22.10.pdf.

[4] *See* http://www.americansecuritization.com/uploadedFiles/ASF_Risk_Retention_Comment_Letter.pdf.

I. Views of the Auto Sponsors on Qualifying Automobile Loan Securitizations

The Auto Sponsors had initially hoped that the proposal for securitizations of Qualifying Automobile Loans would allow regular prime retail loan securitizations to be subject to reduced risk retention requirements. Asset-backed securities ("ABS") that are backed by prime retail loans have historically been collateralized and structured to ensure exceptionally strong performance, as illustrated by the fact that investors in these public securitizations have never suffered any missed interest payments or principal losses. Furthermore, there have historically been far more ratings upgrades than downgrades as a result of asset performance and conservative transaction structures in the motor vehicle ABS sector.[5] Unfortunately, the Qualifying Automobile Loan exemption proposals are drafted so narrowly and with such a focus on underwriting standards and loan characteristics that (incorrectly) assume a significant overlap between the motor vehicle and residential mortgage markets that they are presently unusable.

The Auto Sponsors do not originate retail loans using the criteria set forth in the Proposed Regulations, and doing so would have a significant and adverse impact not only on a business model that proved to be resilient through the recent financial crisis but also on the core mission of those Auto Sponsors that are captive auto finance companies—to assist their parent manufacturers in selling cars. From a business perspective, the Auto Sponsors cannot customize their origination standards to allow them to create pools of the proposed Qualifying Automobile Loans because (i) this would likely restrict consumers' access to credit and drive away all but the least creditworthy customers;[6] (ii) the criteria regarding loan-to-value, debt-to-income and other numeric standards do not comport with their general business models; and (iii) as discussed in more detail below, any effort to implement a "parallel" origination and securitization structure under which qualifying assets could be generated would be so expensive and difficult to administer that its cost would eclipse any possible benefits the Auto Sponsors would recognize from lower mandated risk retention.

In short, the Auto Sponsors do not believe that a motor vehicle ABS transaction has ever been executed where the collateral would meet the criteria set forth in the Proposed Regulations or that attempting to originate qualifying collateral would be economical for them. Unless the Qualifying Automobile Loan provisions are reworked significantly, the Auto Sponsors expect that those provisions will remain wholly unused, despite the clear Congressional intent to foster such an asset class.

In the following sections, the principal issues that arise under the proposed Qualifying Automobile Loan rules are described and then an alternative regime is set forth under which a sponsor could qualify for a reduction in its mandated risk retention to 2.5% of the related securitization's aggregate ABS interests if the related asset pool met certain characteristics that are measured on a pool-wide basis. While the Auto Sponsors strongly believe that the pool-

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[5] For example, during the period from January 1, 2001 through June 30, 2011, Standard & Poor's issued 687 upgrades of classes of retail automobile loan ABS, compared to just 39 downgrades for pool credit related reasons

[6] More creditworthy borrowers presumably would be able to receive financing from lenders that were following today's standard origination processes and were not demanding additional documentation in order to conform to the Qualifying Automobile Loan rules.

based exemption described in Section I.b is the most appropriate for Qualifying Automobile Loan securitizations, Section I.c describes modifications to the proposed loan-by-loan criteria that would make that approach workable for motor vehicle ABS by employing more appropriate loan standards and also allowing blended pools of qualifying and non-qualifying loans. Annex A sets forth the Auto Sponsors' suggested modifications to the language of the Proposed Regulations that are discussed throughout the following sections.

a. Principal Issues with the Qualifying Automobile Loan Proposals

The Auto Sponsors believe that in preparing the Qualifying Automobile Loan section the drafters made a fundamental error in attempting to analogize to the residential mortgage asset class.[7] The risk profile of a residential mortgage—a relatively large, long-lived obligation that is secured by an asset the value of which may fluctuate unpredictably and that is securitized in relatively small, and therefore relatively concentrated, pools—is indeed different from that of an auto loan—a smaller, shorter-lived obligation that is secured by an asset that depreciates predictably and that is typically securitized as part of a large, very diverse pool. Furthermore, vehicle assets are, within their various subclasses, largely homogeneous assets that are not particularly interest rate sensitive, are rarely refinanced and are collateralized by an asset that is easily and quickly liquidated following repossession.

This inappropriate paralleling is evident in a number of the loan-level requirements in the Qualifying Automobile Loan section. First, there is a focus on debt and income verifications at origination, which have traditionally been required for only the lowest quality motor vehicle originations and have proven unnecessary due to the low principal balances of retail loans and based on the performance of all but the riskiest auto loans. Second, there is a proposed 20% down payment requirement in a market where advance rates above 100% are standard.[8] Third, the proposed requirement that the originator or its agent hold the certificate of title on the related loan could not be implemented for motor vehicles that are titled in the eleven states that require the consumer, rather than the lender, to hold the certificate of title or in the one state that holds all vehicle titles with a lien, and does not address the recent proliferation of electronic titling of motor vehicles. Other features, such as the proposed maximum loan term of 60 months in a market where 72-month lending has been a standard market feature for many years, on both new and used vehicles, simply illustrate a misunderstanding of what constitutes a "standard" product in the motor vehicle marketplace. In addition, the requirement to obtain two credit reports has been statistically demonstrated by one Auto Sponsor to be no more predictive than a single report. Finally, the requirement for straight-line amortization does not recognize that the retail auto finance industry almost uniformly uses simple interest loans where level monthly payments are made and allocated first to interest accrued and then to principal, based on the date the payment is received by the financing company.

[7] The stated intention to apply standards of unsecured installment loans to the Qualifying Automobile Loan proposals is also inappropriate because in vehicle financing there is collateral, and an understanding that the collateral is a depreciating asset, which makes this type of lending fundamentally different from unsecured lending.

[8] Vehicle loans also regularly finance taxes, titling fees, ancillary products, service contracts, insurance policies and/or balances refinanced on trade-in vehicles. The Proposed Regulations not only require a minimum 20% down payment but also demand that the customer pay 100% of the title, tax, registration and dealer-imposed fees.

Furthermore, the Auto Sponsors believe that the proposed exemption is under-inclusive in that it omits many types of motor vehicle transactions that are made using high-quality underwriting standards and that give rise to loans that would be appropriately securitized without mandated 5% risk retention. For example, in omitting loans to individuals who will use their vehicles for commercial uses by mandating that all loans be made to individuals to secure vehicles used for personal or family use and by failing to include motorcycles in the list of permissible "passenger vehicles", the Proposed Regulations focus on a particular subset of the motor vehicle sector that omits equally creditworthy and low-risk products that should have equivalent access to the exemption. ***The Auto Sponsors request that Section ___.16 be modified so that the defined term "automobile loan" also includes motorcycle financing and financing for commercial users.***

The restrictions in the Proposed Regulations on used vehicle financing also disregard the slower expected depreciation schedules for those vehicles and the higher values that are maintained for many used vehicles due to the "certified pre-owned" programs maintained by many manufacturers, whereby high quality vehicles coming off short term leases are remarketed and are subject to extended warranties. Therefore, in our pool-based proposal in Section I.b, below, we have eliminated the proposed limitations on used vehicles and in our alternate, modified loan-by-loan proposal in Section I.c, below, we have revised the limitations on including used vehicles to allow more flexibility to include them and still achieve reduced levels of mandatory risk retention.

b. Reduced Mandatory Risk Retention Based on Pool-wide Characteristics

The Auto Sponsors believe that the most appropriate way in which reduced risk retention for quality auto loans should be implemented is by focusing on a securitization's entire asset pool based principally upon weighted averages of specified pool characteristics. As the Auto Sponsors indicated in November 2010 in ASF's Preliminary Comment Letter on Auto ABS[9] to the Joint Regulators, this methodology was previously utilized by the Federal Reserve Bank of New York to determine eligibility for borrowings under the Term Asset-Backed Securities Loan Facility ("TALF") where, for example, weighted average FICO Score was used to distinguish between prime and subprime automobile loans for determining the appropriate haircut levels. We note that while Sections 15G(c)(1)(B)(ii) and 15G(c)(2) of the Securities Exchange Act of 1934 (as amended by the Dodd-Frank Act) together permit the establishment of asset classes, such as auto loans, for which the rules allow reduced risk retention if each of the underlying assets meet certain asset-specific underwriting criteria, Section 15(G)(e)(1) also permits exceptions to the rule requiring 5% risk retention without reference to underwriting standards and without requiring that each loan in the pool meet any particular standards. We believe, therefore, that Section 15(G)(e)(1) provides statutory authority for our proposal to craft a pool-based reduced risk retention regime for prime retail loan ABS that supplements the provisions in Section ___.20 that focus on loan-by-loan characteristics.

9 *See* http://www.americansecuritization.com/uploadedFiles/ASF_Auto_Risk_Retention_Letter_11.22.10.pdf.

The Auto Sponsors suggest that a partial exemption for retail loan ABS should be crafted so that a transaction would qualify for reduced risk retention if the pool met all of the criteria of any of Option I, Option II or Option III below:

	A	B	C	D
	Weighted Average FICO Score[10]	Maximum Weighted Average LTV	Maximum Original Term (Greater than 60 months)	Maximum Original Term (Greater than 72 months)
Option I	700-724	110%	50%	0%
Option II	725-739	120%	65%	5%
Option III	740+	135%	80%	10%

Column A: FICO scores at origination, calculated assuming that individual obligors without FICO scores have a FICO score of 300 and excluding non-individual obligors, both of which are consistent with the weighted average FICO score calculation that was employed for TALF. Individuals may not have FICO scores because they have minimal or no recent credit history. Weighted by the principal balance of each loan as of the cutoff date.
Column B: The loan-to-value ratio would be calculated at the time of origination based on the original amount financed under the automobile loan (or, at the option of the sponsor and as disclosed to investors, the original amount financed under the automobile loan minus the amount that finances "add-on" products, such as extended warranties, service contracts or insurance)[11] divided by either the manufacturer dealer invoice price or manufacturer's suggested retail price for the related motor vehicle (if it is a new vehicle) or the value as set forth in a standard industry guide for used vehicles, such as the NADA Official Used Car Guide or the Kelley Blue Book (or if no value is available in a standard industry guide, the manufacturer dealer invoice price or manufacturer's suggested retail price). Weighted by the principal balance of each loan as of the cutoff date.
Column C: Percentage equal to the aggregate principal balance of the loans with original terms of greater than 60 months divided by the pool balance, each as of the cutoff date.
Column D: Percentage equal to the aggregate principal balance of the loans with original terms of greater than 72 months divided by the pool balance, each as of the cutoff date.

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[10] As is more fully described in Section I.c.1 below, the Auto Sponsors believe that FICO Scores are an appropriate metric to use in assessing the credit quality of prime automobile loans.

[11] Sponsors may find that it is appropriate to exclude these amounts because they are often cancellable at the borrower's option, in which case any unused premium or similar cost is typically applied to reduce the outstanding principal balance of the related loan. Individual sponsors should be allowed to determine whether, because of the seasoning of a related pool, their historical experience with borrowers cancelling these add-on products, the prevalence of financed add-on products in a particular pool and any other material factors, it is appropriate to exclude these amounts from the loan-to-value calculation. As stated above, a sponsor would be required to disclose to investors whether they used this alternative to calculate loan-to-value ratios.

In order to provide investors with a more complete picture of the underlying asset pool's composition, the Auto Sponsors also believe that it is appropriate to disclose additional data regarding FICO scores, loan-to-value ratios and original loan terms. If a sponsor wished to benefit from reduced risk retention it would also be required to provide tabular disclosure regarding the pool in which ranges of each of these values are presented and the number, principal balance, and pool percentage of the subset of the loans in each band would be disclosed. The added disclosure would allow investors to perform a distribution analysis to alleviate any concerns they may have about "barbelling" in pools (i.e., a scenario where the weighted averages are achieved by including loans with characteristics that are far lower than the average but that are counterbalanced by other loans with characteristics that are far higher than the average). The sponsor would also be required to disclose the manner in which it calculated the loan-to-value ratios for the loans.

The Auto Sponsors suggest that a pool constructed according to one of these sets of criteria be subject to a ***reduced level of mandatory risk retention equal to 2.5% of the securitization's ABS interests because Auto Sponsors are not recommending a complete exemption from the risk retention requirements for a qualifying pool.*** Investors and regulators would be assured that ABS interests backed by pools featuring these characteristics are of the highest quality and that a lower level of risk retention that corresponds to the level retained in many prime automobile loan ABS today would be appropriate.[12] The Auto Sponsors also believe that this three-tier approach appropriately accounts for variations in the prime retail vehicle loan ABS marketplace, where certain characteristics that investors may expect to contribute to less predictable pool performance (e.g., a greater concentration of loans with original terms of greater than 60 months) are offset by other characteristics that give confidence that the pool as a whole has the highest credit quality (e.g., higher weighted average FICO scores). This approach would allow the Auto Sponsors to construct conforming securitizations from their regularly originated assets in the same manner as they presently create pools, albeit with a focus on higher quality assets.

The levels that are set forth above would allow most Auto Sponsors to take advantage of reduced mandatory risk retention for the majority of their prime retail loan securitizations. For the reasons set forth above and in the Auto Section of the ASF Primary Risk Retention Comment Letter, the Auto Sponsors believe that their stable transaction structures and the historically strong performance of their prime retail loan ABS support this reduction. Furthermore, they are truly concerned that if the only options for reduced risk retention captured only the "super-prime" portion of the current prime loan marketplace, then there would be significant negative consequences to this ABS sector.

[12] It should be noted that the Auto Sponsors' willingness to craft Qualifying Automobile Loan provisions based on a reduced level of risk retention rather than a complete exemption from the risk retention requirements is strongly linked to the proposals set forth in the Auto Section of the ASF Primary Risk Retention Comment Letter that would modify the Proposed Regulations to make them appropriate and workable for motor vehicle ABS. Without those revisions, even this reduced level of risk retention would be unduly burdensome for the Auto Sponsors and require significant, costly modifications to their existing securitization programs.

For the Auto Sponsors' that regularly securitize portfolios of prime retail loans, the automobile loan portfolios typically include prime-quality loans that are nonetheless at the lower end of the levels set forth above and they expect to continue originating loans to those consumers under their usual underwriting guidelines. If the exemptions were set so high that those loans could not be included in a securitization benefitting from reduced risk retention, then the Auto Sponsors would need to consider establishing parallel securitization programs, one for qualifying "super-prime" loans and one for non-qualifying prime loans. The Auto Sponsors consider this problematic for a number of reasons.

First and foremost, this bifurcation would falsely signal to investors that the non-qualifying securitizations were of a lower credit quality or otherwise less reliable or predictable than the conforming securitizations. In fact, the Auto Sponsors believe those assets would be representative of their portfolios' general performance and that encouraging a contrary market perception would undercut investor confidence in their securitizations and increase costs. For sponsors that have spent decades building and maintaining predictable, reliable securitization programs, this negative investor perception would be damaging and very counterproductive. This would also likely erect barriers to entry for new prime loan securitizers who would be forced to bear these incremental costs from the outset of their programs and might therefore find it to be inefficient to initiate securitization programs, which would be detrimental both to them and to the consumers they otherwise would serve. Maintaining conforming and non-conforming securitization programs would also double the expense of running a prime loan ABS platform, an expense that likely would not be outweighed by the reduced risk retention on the qualifying securitizations. Furthermore, while any "super-prime" securitizations would likely continue to reflect the Auto Sponsors' traditional market pricing, the remaining prime securitizations likely would require higher pricing to induce investor participation, further increasing their cost of securitization. Finally, the Auto Sponsors fear that bifurcating their securitizations into conforming "super-prime" issuances and non-conforming issuances of their remaining prime assets would result in transactions that perform differently from their historical, blended pools and that neither they nor their investors would be able to look to static pool and other historical data from their legacy securitizations to forecast performance on their new, segregated securitizations. Furthermore, historical data on these new, atypical pools may not be available in an Auto Sponsor's systems and databases and the Auto Sponsors would be unable to provide "vintage origination data" as mandated by Regulation AB for these asset pools.

c. Qualifying Automobile Loan Exemption

While the Auto Sponsors believe the most useful and appropriate form of reduced risk retention in the motor vehicle ABS marketplace is the weighted averages-based approach set forth above, if you believe that it is also necessary to have reduced risk retention regulations that reflect loan-by-loan characteristics then the Auto Sponsors could support such an adjustment under certain very limited circumstances. First, the standards for qualifying assets would need to be significantly revised so that they accurately reflect top-quality origination standards presently employed in the marketplace and to avoid expensive changes to the Auto Sponsors' origination and servicing systems and to their longstanding business practices. Second, so that sponsors are not forced to maintain parallel "qualifying" and "non-qualifying" securitization programs, the

Auto Sponsors request that the exemption allow blended pools of qualifying and non-qualifying assets, with the level of mandated risk retention reduced according to the pool concentration of qualifying assets.

1. Product Standards: As described above, the standards set forth in Section ___.20(b) are largely inapplicable to retail auto loan originations. As an alternative, the Auto Sponsors believe that Section ___.20(b) should be revised as follows:

> Clause (b)(1): The requirements in clause (i) that require confirmation of particular credit-related characteristics for a borrower and in clause (ii) that require determination of a borrower's debt-to-income ("DTI") ratio should be eliminated. As set forth below, they instead believe that confirming that a borrower has a particular FICO Score is an appropriate method for assessing the likelihood that the borrower will perform its obligations under its loan than individual instances of delinquency, repossession or other negative credit history because these credit performance attributes are captured by, and reflected in, the FICO Score. The prohibition against including currently delinquent loans that is set forth in clause (b)(8) and the loan-level representations in the transaction documents further ensure that these high-quality loans are well-performing assets at the time of the securitization.
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> Furthermore, the Auto Sponsors do not regularly use, and do not believe that other auto loan originators regularly use, borrower DTI ratios as a key component in determining whether to originate a prime auto loan because it is not a significantly predictive factor to determine whether a prime auto loan borrower will repay its loan. The Auto Sponsors also believe that focusing on DTI ratios is inappropriate for prime auto loan borrowers because they have found that these borrowers often prioritize payment of their auto loans over other debt obligations, both because their auto loan payments are often lower than their other monthly obligations (e.g., mortgage payments) and because they require automobiles for their day-to-day lives and cannot risk having their vehicles repossessed.
>
> As an alternative, the Auto Sponsors believe that FICO Scores are an appropriate method to assess borrowers' credit quality. FICO Scores are a widely used metric that have been used by originators for many years to track credit quality in the origination of retail loans. For many of the Auto Sponsors who originated prime retail loans, FICO Scores are an important factor in determining whether, and on what terms, they will originate a retail loan. The Auto Sponsors also note that all of them capture FICO Scores, thereby making this a criterion that can reliably be presented to investors in disclosure materials to allow comparability across securitization programs. Auto Sponsors believe that investors in motor vehicle ABS understand the predictive value of FICO Scores and review and give significant weight to the disclosure regarding FICO Scores in offering documents and in assessing the credit quality of asset pools.
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> For these reasons, the Auto Sponsors propose to include a matrix that allows them to consider an auto loan to be "qualifying" if (i) the related borrower has a FICO Score ranging from 680 to 699 and the loan-to-value ratio ("LTV") for the related loan is no greater than 105%, (ii) the borrower has a FICO Score ranging from 700 to 724 and the

LTV is no greater than 110%, (iii) the borrower has a FICO Score ranging from 725 to 739 and the LTV is no greater than 120% or (iv) the borrower has a FICO Score that is 740 or greater and the LTV is no greater than 135%. The Auto Sponsors believe that this approach appropriately accounts for variations in the prime retail loan ABS marketplace, where a higher FICO Score has reliably been found to correspond to a lower risk of borrower delinquency or default, even on loans with higher loan-to-value ratios. The Auto Sponsors also propose that LTV should be calculated based on the standardized definition that is set forth in Section I.b, above. The Auto Sponsors believe that this standardized definition provides an accurate measure of this ratio while also providing investors with a comparable computation across different motor vehicle ABS programs.

<u>Clause (b)(2)</u>: The Auto Sponsors propose to modify this clause to provide that an originator must obtain a copy, either physical or electronic, of a single credit report from a consumer reporting agency within thirty days of making a credit decision regarding the auto loan.[13] This time period is appropriate because, unlike in the residential mortgage sector, an auto loan is generally funded very shortly after a credit decision is made and the related contract is signed.

<u>Clause (b)(3)</u>: The Auto Sponsors propose to eliminate this clause requiring a specified down payment on each loan and instead would rely on the maximum loan-to-value ratios for each qualifying Automobile Loan that are set forth under the revised clause (b)(1).

<u>Clause (b)(4)</u>: In eleven states the borrower, rather than the lender, is required to hold the certificate of title and in one state the certificate of title for a vehicle that has a lien indication is maintained by the state itself. Therefore, this clause has been modified to provide that any physical[14] certificates of title must be held by or on behalf of the securitization's servicer or its affiliate or agent in those cases where that is permissible under applicable law. This modification also accounts for the fact that in many cases a servicer retains physical possession of the certificates of title but in other cases a collateral agent or subservicer is engaged to hold the certificates of title. In any case, this ensures that physical certificates of title will be held by an appropriate party to the securitization at all times that it is possible to do so under applicable law.

<u>Clause (b)(5)</u>: 72 month loans have been commonplace in the auto loan sector, and in motor vehicle ABS, for many years and the Auto Sponsors have not identified any increased incidence of loss, default or delinquency on those loans that would justify excluding them from the Qualifying Automobile Loan rules. Therefore, the Auto Sponsors have modified this clause to provide that for new vehicles the term of the contract may be up to 72 months from the contract date.

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[13] Section I.a, above, also describes the reliability of using a single credit report.

[14] The Auto Sponsors have made these provisions apply only to physical certificates of title and not to electronic certificates of title. Electronic certificates of title are currently in use in approximately thirteen states and the Auto Sponsors expect that more states will move to this system in the coming years. There is no need to afford similar protections as those for physical certificates of title because these electronic titles are effectively maintained by the related state, rather than by the borrower or the lender.

Clause (b)(6): The Auto Sponsors have modified this clause in two ways. First, they have indicated that the model year of a used vehicle may not be greater than six years old as of the related contract date. Second, they have modified the Proposal regarding the permissible length of a contract relating to a used vehicle by providing that the term may not be greater than (i) 72 months, if the used vehicle is up to or including four years old as of the contract date, (ii) 60 months, if the used vehicle is five years old as of the contract date or (iii) 48 months, if the used vehicle is six years old as of the contract date. They believe that these limitations on loan terms accurately reflect the industry's standards for used vehicle underwriting while also accounting for any increased likelihood or severity of loss when financing older model used vehicles. They also reflect the prevalence and market acceptance of 72 month loans, as described in the preceding section.

Clause (b)(7)(ii)(A): Because auto loans are "simple interest" loans rather than "straight line amortization" loans, the Auto Sponsors propose to modify this clause to provide that the terms of the contract must provide for a level monthly payment that fully amortizes the amount financed over the term of the loan. They believe that this achieves the result that was intended by the Proposed Regulations while properly reflecting the amortization methodology that is almost universally used in the auto loan marketplace.

Clause (b)(7)(ii)(C): The Auto Sponsors propose to change this clause to mandate that the first payment on the automobile loan must be made within 45 days of the loan's contract date, rather than its date of origination. These two dates may differ and it has been their practice always to use the proposed formulation in setting the borrower's initial payment date. They do not believe that there would be any benefit to changing their origination practices to reflect this incremental change.

Clause (b)(8): It is not possible for the Auto Sponsors to select an asset pool for a motor vehicle ABS transaction on the cutoff date and then assess on the closing date whether each auto loan in the pool is current as of that day and either remove from the pool any loan that is not current or modify their risk retention at closing to reflect any delinquencies that exist on that date. Additionally, this standard, which would remove from the Qualifying Automobile Loan pool any loan on which $1 of a scheduled payment is one day past due is far more stringent than investors have ever demanded or expected. For many years the standard practice in motor vehicle ABS has been for the transaction documents to contain a representation that as of the cutoff date, no auto loan in the asset pool is more than 30 days contractually delinquent (as defined under the related servicer's collection policies). The Auto Sponsors propose that this same standard apply in determining whether an auto loan should be treated as a Qualifying Automobile Loan.

To ensure that this test properly reflects the related loan's status at closing, the Auto Sponsors additionally propose that the date on which this testing occurs must be within 62[15] days of the closing date. This standard will allow them to continue to assemble their

[15] This allows sponsors to set a long first collection period that potentially spans two 31-day months.

asset pools according to a transaction schedule that gives them sufficient time to collect the necessary data to present to investors while also confirming that any loan that met the Qualifying Automobile Loan standards on the cutoff date has not become severely delinquent by closing. The Auto Sponsors have also added a requirement that, as of the cutoff date, no payment may have been extended on any Qualifying Automobile Loan to further ensure that these assets are performing well at the time they are added to the asset pool.

Clause (b)(9): The Auto Sponsors have removed this clause in its entirety. Insofar as they will be obligated to disclose the manner in which they are meeting the risk retention obligations in the materials that they provide to investors at or prior to closing, they will already be obligated to ensure that the information is correct so that they do not run afoul of the securities laws. The Auto Sponsors would specifically note that the reviews that will be mandated beginning in 2012 under Rule 193 of the Securities Act and the corresponding disclosures that will be required pursuant to revised Item 1111 of Regulation AB (together enacting the provisions of Section 945 of the Dodd-Frank Act) will ensure that this disclosure regarding the pool assets is complete and accurate.

Clause (c): Beginning in 2012, Rule 15Ga-1 of the Securities Exchange Act and revised Items 1104 and 1111 of Regulation AB (together enacting provisions of Section 943 of the Dodd Frank Act) will require sponsors to report on and disclose demands to repurchase assets from their securitizations due to breaches of representations and warranties. Therefore, the Auto Sponsors propose that this clause relating to the repurchase of any auto loans that were improperly characterized as Qualifying Automobile Loans be eliminated and that instead sponsors be required to make representations and warranties in their transaction documents that each auto loan that is treated as a Qualifying Automobile Loan for the purpose of reducing the mandated level of risk retention meets all of the requirements for qualification. If any such loan was subsequently found not to meet those requirements, a mechanism would thereby exist in the transaction documents to cause it to be repurchased from the asset pool and Rule 15Ga-1 and Regulation AB would together ensure the reporting and disclosure of any demand for those repurchases.

Assets with the foregoing characteristics are regularly originated by the Auto Sponsors today and represent their most reliably high-performing originations. Therefore, as the concentration of these high-quality assets increases in a motor vehicle ABS pool, the level of mandatory risk retention should correspondingly decrease.

In order to give effect to these revisions, the definition of "originator" that is set forth in Section ___.2 should also be revised. This term is not defined in Regulation AB but since that regulation was enacted the market convention for motor vehicle ABS has been that even if a loan is originated in the name of a third-party, if there is another entity whose underwriting criteria were utilized in approving and funding the loan and if that other entity acquired the loan from the third-party, then that entity, rather than the third-party, would be the "originator." For instance, if a motor vehicle dealer worked with a finance company to apply that finance company's underwriting criteria to a proposed loan and then sold the loan to the finance company upon, or promptly following, origination, then the finance company, rather than the dealer, would be the "originator."

2. Reduced Retention: The Auto Sponsors do not expect to use Qualifying Automobile Loan provisions that rely on asset-level characteristics even if the foregoing changes were made unless they could blend pools of qualifying and non-qualifying assets. Because no Auto Sponsor expects that it would ever originate only qualifying assets, if blended pools were prohibited the sponsors would have to establish parallel securitization programs, one for qualifying assets and one for non-qualifying assets. The Auto Sponsors have determined that they would not do this for the reasons set forth at the end of Section I.b above. As stated throughout this section, the Auto Sponsors have traditionally maintained significant exposures to their securitizations and expect to do so in the future. At best, executing a qualifying securitization would prevent their having to retain a degree of additional exposure, but not to a degree that would offset the expense.

The Auto Sponsors also note that it is appropriate to allow this reduced retention based upon the amount of the pool composed of Qualifying Automobile Loans at closing and not to adjust the reduction in mandatory risk retention based on variables such as the expected amortization schedules of the qualifying and non-qualifying loans, the relative remaining terms of the respective sub-pools or other characteristics.[16] The Qualifying Automobile Loan criteria as the Auto Sponsors have modified them in this section ensure that motor vehicle ABS that are supported by these quality assets "are collateralized by high-quality, low credit risk loans" (Release at 24134) the presence of which merits a reduction in mandatory risk retention. The purpose of the Proposed Regulations is not to ensure that motor vehicle ABS transactions will amortize in a particular way or that investors will benefit from a pool that remains composed of a static ratio of qualifying vs. non-qualifying loans for the life of the transaction. Furthermore, the Auto Sponsors would expect that the usual pool selection criteria that are utilized in selecting asset pools, and the loan-level representations and warranties that are disclosed to investors, also help ensure that the high-quality features of the Qualifying Automobile Loans will not be undercut by other factors.

Therefore, the Auto Sponsors request that they be able to securitize blended pools of qualifying and non-qualifying assets. ***In those cases, (i) the provisions of Section ___.20 (revised as described above) would apply only to those assets that the sponsor represents at closing are qualifying assets and (ii) Section __.17 would be revised by the following proviso "; provided, that if less than 100% of the assets in the asset pool supporting a securitization satisfy the standards provided in Section ___.20, then the risk retention requirements in subpart B of this part shall apply to that securitization transaction but the economic interest in the credit risk of the securitized assets in accordance with any one of Sections ___.4 through ____.8 will equal 5% multiplied by a fraction, the numerator of which is the aggregate principal balance as of the cutoff date for the securitization of those assets in the related asset pool that do not satisfy the standards provided in Section ___.20 and the denominator of***

[16] Attempting to segregate an asset pool into qualifying and non-qualifying subpools to test for these factors would also introduce a level of operational complexity to pool selection that is inconsistent with current best practices and would be very difficult to implement, to maintain and to properly disclose to investors.

which is the aggregate principal balance as of the cutoff date for the securitization of the entire asset pool."

II. Views of the Auto Investors on Qualifying Automobile Loan Securitizations

Our auto investor members generally agree with the Auto Sponsors that the historical performance of auto ABS has been strong. Despite this strong performance, auto investors are supportive of the Joint Regulators' proposals to require risk retention in auto ABS transactions on all but the highest quality auto loans. While auto investors agree with the Joint Regulators that the proposed underwriting standards for QALs are "very conservative" and that conservative underwriting criteria are "appropriate for a zero percent risk retention requirement,"[17] auto investors believe that some of the criteria should be modified as set forth in this section.

The Joint Regulators have interpreted Dodd-Frank to require that the mandated exemption for auto loans be conditioned upon loan-by-loan criteria. The general standards for risk retention are set forth in Section 941, which requires a securitizer to retain "(i) not less than 5 percent of the credit risk for any asset" or "(ii) less than 5 percent of the credit risk for an asset" if the originator of the asset meets underwriting standards to be prescribed by the Joint Regulators. In addition, Section 941 requires that the regulations "shall establish asset classes with separate rules for securitizers of different classes of assets, including residential mortgages, commercial mortgages, commercial loans, auto loans, and any other class of assets that the Federal banking agencies and the SEC deem appropriate" and, for each asset class established, the regulations "shall include underwriting standards established by the Federal banking agencies that specify the terms, conditions, and characteristics of a loan within the asset class that indicate a low credit risk with respect to the loan."

Auto investors agree with the Joint Regulators that the language contained in Section 941 of Dodd-Frank requires a downward adjustment of the 5% risk retention requirement and that such adjustment is predicated on loan-by-loan criteria that indicate a low credit risk. Auto investors note that the Auto Sponsors have also produced a pool-based proposal outside of the mandated QAL exemption that would result in a 2.5% risk retention requirement should the assets in a pool meet various weighted average pool characteristics. While a pool-based approach may be consistent with the construction of current prime auto loan securitizations, auto investors believe that there are numerous criteria that should exist with respect to every loan that is accorded a reduction in risk retention and that criteria based on weighted averages raise concerns about "barbelling" (i.e., where stated weighted averages are achieved by including loans with characteristics that are far lower than the average but that are counterbalanced by other loans with characteristics that are far higher than the average). For these reasons, our auto investor members focus their comments on the proposed loan-by-loan QAL criteria as set forth in the Proposed Regulations.

Under Section I.c above, the Auto Sponsors set forth a series of recommendations for how to modify the proposed QAL criteria to comport with current industry practice. For many

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[17] See proposing release, pg. 24130.

of these recommendations, auto investors believe that the rationale described by the Auto Sponsors is correct. For example, auto investors agree with the comments set forth by the Auto Sponsors concerning: (i) the removal of the debt-to-income provisions (clause (b)(1)(ii)); (ii) the proposed change to the time period within which a credit report can be obtained (clause (b)(2)(i)); (iii) the elimination of a strict downpayment requirement[18] ((clause (b)(3)); (iv) the proposed changes to the criteria for holding certificates of title (clause (b)(4)), (v) the proposed changes to the maximum loan terms for new and used vehicles (clauses (b)(5) and (6)); (vi) the proposal to remove the straight line amortization requirement and replace it with a "level payment" requirement to accommodate simple interest loans (clause (b)(7)(ii)(A)); (vii) the proposed change to make the first payment within 45 days of the loan's contract date (clause (b)(7)(ii)(C)); (viii) the proposed change relating to QALs being no more than 30 days delinquent as of the cutoff date, which is no more than 62 days prior to closing (clause (b)(8)); and (ix) the addition of a requirement that no payment have been extended as of the cutoff date. Auto investors suggest that the Joint Regulators revise the applicable QAL criteria according to these recommendations. With respect to the other requirements contained in the proposed QAL criteria, auto investors have views that differ from the Auto Sponsors in varying degrees depending on the particular requirement. We address each in the following paragraphs.

Auto investors agree with the Auto Sponsors on a few aspects of the Joint Regulators' proposed definition of "automobile loan," which sets the universe of loans that may be considered for compliance with the QAL criteria. Auto investors agree that loans by individuals that use vehicles for commercial use should be included as part of the definition (but believe that such loans should constitute only a small amount of any auto ABS pool). Auto investors also agree that medium and heavy trucks should be excluded from the definition because they are generally considered a different asset class with different performance attributes than consumer auto loans. Auto investors do not believe, however, that motorcycles should be considered "automobile loans" because motorcycles are less likely to be used by consumers to drive to their place of business and are generally considered recreational rather than essential vehicles.

Auto investors also agree that requiring a qualified pool to consist entirely of QALs could create inefficiencies in the securitization process. To alleviate this problem, auto investors recommend that the Joint Regulators enable QALs and non-QALs to be blended in the same pool resulting in a ratable reduction in the required risk retention. However, it is important to note that differing terms and/or payment speeds on the QAL loans in a blended pool may result in less risk retention on the non-QAL portion of the pool than would have been the case if blending did not occur. For example, let us assume that a pool was composed of 50% QALs and 50% non-QALs, representing an even distribution in the pool based on unpaid principal balance. Under a blending regime, the risk retention required on such a pool would be reduced to 2.5% because, effectively, 0% retention would be held on the QALs and 5% would be held on the non-QALs. If all the QALs had terms of 60 months and the non-QALs had terms of 72 months, the pool after 60 months would be composed solely of non-QALs (assuming no prepayments or losses on any of the loans) but the retention, if originally held at the pool level, would still be hovering around

[18] Later in this section, the auto investors set forth their views concerning the appropriate maximum LTV that would replace the downpayment requirement.

2.5%. To ensure that such a non-QAL pool has the required risk retention of 5%, a provision would have to be incorporated into the Proposed Regulations that required the risk retention on blended pools to be unaffected by the payment speed or term of the QALs. Such a provision could be met by holding the retention at the loan-level or structuring the securitization such that payment speed and loan term would not impact the amount of retention held over time.

Investors also agree that FICO scores are an important part of analyzing auto ABS and that the Joint Regulators should consider adding them to the QAL criteria. However, auto investors disagree with the Auto Sponsors that FICO scores should replace the other indicators of credit history set forth in the proposed QAL criteria (clauses (b)(1)(i)(B), (C), (D) and (E)). Investors do not like the idea of relying solely on FICO scores to gauge credit history because such scores differ among consumer reporting agencies and their metrics may change over time. Instead, investors believe that having other indicators of credit history, such as a borrower not being 60 days delinquent on any debt in the past 24 months or being a debtor in bankruptcy or subject to a judicial judgment, foreclosure or repossession in the past 36 months, are appropriate for a loan that will not be subject to any risk retention requirement. Furthermore, auto investors note that the Auto Sponsors often rely on their own proprietary scoring models as better indicators of credit worthiness than FICO, which provides further reason to include the additional requirements. While auto investors acknowledge that not all "prime" auto loans will comply with each of the proposed credit history requirements, they believe that allowing QALs to be blended with non-QALs in the same pool will appropriately allow such loans to be a part of a "prime" pool that has a reduced amount of risk retention. All that being said, auto investors believe that the proposed credit history criteria are likely too strict and will leave out creditworthy borrowers who may have accidentally missed a payment on a debt. To alleviate this concern, our auto investor members suggest striking the 30 day past due requirement (clause (b)(1)(i)(A)).

Auto investors believe that using a matrix consisting of different combinations of FICO and LTV is more appropriate than simply having the one downpayment requirement set forth in the Proposed Regulations. However, it is very difficult for our auto investor members, who lack the comprehensive loan data maintained by Auto Sponsors, to determine the relative risks of each of the options contained in the matrix proposed by the Auto Sponsors. For this reason, they would prefer a more conservative approach than what the Auto Sponsors have proposed, both in terms of the matrix and the definition of LTV. For the FICO/LTV matrix, auto investors suggest eliminating the fourth option (minimum FICO of 740 with maximum LTV of 135%) and making the third option a minimum FICO of 725 with a maximum LTV of 115%. In addition, auto investors believe that a standard LTV calculation is critical to ensuring a standardized QAL, and would suggest a more conservative approach than that proposed by the Auto Sponsors. First, the denominator of the equation should be the lower of the sales price and the dealer invoice price (or in the case of used vehicles, the lower of the sales price and the applicable standard industry guide). Second, investors would not carve out "add-on" products from the equation. While investors acknowledge that "add-ons" can be cancelled, such amounts are part of the total amount financed and ultimately securitized. The Auto Sponsors may also have different standards as to what constitutes an "add-on" product, which would make it difficult to standardize an LTV calculation that incorporated such a product.

Auto investors note that there is a timing issue with respect to the determination of a loan as a QAL and its inclusion in a securitization. The timing incorporated into all of the credit history metrics is keyed off of the origination of the loan. Investors acknowledge that is a logical result for purposes of determining whether a loan has been originated in such a manner to be of sufficient quality to not require risk retention. However, if a loan is seasoned for a substantial amount of time prior to securitization, there is a risk that such loan could fail certain of the credit history tests included in QAL after origination and still be included in a qualified pool at the time of securitization. For example, if a consumer had no 60 day delinquent obligations in the two years prior to origination, but the consumer then went 60 days down on an obligation prior to securitization, such a loan could still be included as a QAL. Our auto investors members want to make sure that the Joint Regulators are aware of this issue and suggest that they consider whether risk retention would be appropriate for such a loan.

Auto investors support the inclusion within the QAL criteria of the certification of the depositor's internal controls for ensuring compliance with the QAL criteria (clause (b)(9)). While investors acknowledge that the securities laws would provide some comfort in ensuring accurate disclosure regarding QALs, they note that a regulation requiring certification of appropriate internal controls for ensuring compliance with the QAL criteria would provide greater incentive to ensure that loans included in a QAL pool are, in fact, QALs. Investors also support including the buyback provision for loans that are later determined to not be QAL (clause (c)). While buybacks have not been an issue in the auto space, the QAL determination adds an incremental obligation of issuers for purposes of underwriting a loan and ensuring it complies with the QAL criteria. Investors believe that including the repurchase requirement in the regulations, rather than a representation and warranty in the transaction documents, will appropriately put the QAL enforcement obligation on the regulators rather than investors. Investors also note that requiring a QAL representation and warranty along with buyback provisions in the transaction documents would likely result in varying transaction provisions across issuers and believe that the standardized requirement contained in the Proposed Regulations is the better outcome.

*   *   *   *

ASF very much appreciates the opportunity to provide the foregoing comments in response to the Joint Regulators' Proposed Regulations. Should you have any questions or desire any clarification concerning the matters addressed in this letter, please do not hesitate to contact me at 212.412.7107 or at tdeutsch@americansecuritization.com, or Evan Siegert, ASF Managing Director, Senior Counsel, at 212.412.7109 or at esiegert@americansecuritization.com.

Sincerely,

Tom Deutsch

Tom Deutsch
Executive Director
American Securitization Forum

ANNEX A

ASF Auto Sponsor's[19] Proposed Language for Modifications to Qualifying Automobile Loan Provisions

Following are the suggested revisions to the text of the Proposed Regulations that are discussed throughout Section I of the comment letter. Proposed additions to the text of the Proposed Regulations are marked with ***bold italics*** and proposed deletions from the text are marked with ~~strikethroughs~~.

§ __.16 <u>Definitions applicable to qualifying commercial mortgages, commercial loans and auto loans</u>.

. . .

<u>Automobile Loan</u>:

(1) Means any loan to an individual to finance the purchase of, and is secured by a first lien on, a passenger car or other passenger vehicle, such as a minivan, van, sport-utility vehicle, ***motorcycle***, pickup truck, or similar light truck ~~for personal, family, or household use~~; or

(2) Does not include any:

(i) Loan to finance fleet sales;

(ii) Personal cash loan secured by a previously purchased automobile; or

(iii) Loan to finance the purchase of ~~a commercial vehicle or~~ farm equipment that is not used for personal, family, or household purposes;

(iv) Lease financing; or

(v) Loan to finance the purchase of a vehicle with a salvage title.

<u>LTV Ratio</u> means, at the time of origination of an automobile loan, (1) the original amount financed under the automobile loan divided by (2) either (A) for a new vehicle, the manufacturer dealer invoice price or the manufacturer's suggested retail price for the related motor vehicle or (B) for a used vehicle, the value set forth in a standard industry guide for used vehicles (or if no value is available in a standard industry guide, the manufacturer dealer invoice price or the manufacturer's suggested retail price) for the related motor vehicle; <u>provided</u> <u>that</u> the sponsor may elect to deduct the amount financed under the automobile loan for "add-on" products, such as extended warranties, service contracts or insurance, from clause (1) of this definition so long as it shall provide, or cause to be provided, to potential investors a reasonable period of

[19] ASF auto investors have set forth their comments on these proposed modifications in Section II of this letter.

time prior to the sale of the asset-backed securities in the securitization transaction and, upon request, to the Commission and its appropriate Federal banking agency, if any, disclosure in written form under the caption "Credit Risk Retention" describing the amounts deducted in reliance on this proviso.

[The definitions of "Debt to income (DTI) ratio", "purchase price", "trade-in-allowance" and clause (1) of "total debt" may be deleted as they are no longer used with the below revisions to § __.20]

§ __.17 Exceptions for qualifying commercial loans, commercial mortgages, and auto loans.

The risk retention requirements in subpart B of this part shall not apply to securitization transactions that satisfy the standards provided in §§ __.18, __.19, or __.20 of this part; ***provided, that if less than 100% of the asset pool supporting a securitization is comprised of assets that satisfy the standards provided in Section ___.20, then the risk retention requirements in subpart B of this part shall apply to that securitization transaction but the economic interest in the credit risk of the securitized assets in accordance with any one of Sections ___.4 through ____.8 will equal five percent multiplied by a fraction, the numerator of which is the aggregate principal balance as of the cutoff date for the securitization of those assets in the related asset pool that do not satisfy the standards provided in Section ___.20(b) and the denominator of which is the aggregate principal balance as of the cutoff date for the securitization of the entire asset pool.***

§ __.20 Underwriting standards for qualifying auto loans

(a) General. The securitization transaction is collateralized ~~solely (excluding cash and cash equivalents)~~ ***in whole or in part*** by one or more automobile loans, each of which meets all of the requirements of paragraph (b) of this section.

(b) Underwriting, product and other standards.

(1) ~~Prior to origination of the automobile loan~~, ***Within 30 days of making a credit decision on the automobile loan,*** the originator ***obtains an electronic or hard copy of***

~~(i) Verified and documented that within 30 days of the date of origination:~~

~~(A) The borrower was not currently 30 days or more past due, in whole or in part, on any debt obligation;~~

~~(B) Within the previous twenty-four (24) months, the borrower has not been 60 days or more past due, in whole or in part, on any debt obligation;~~

~~(C) Within the previous thirty-six (36) months, the borrower has not:~~

~~(1) Been a debtor in a proceeding commenced under Chapter 7 (Liquidation), Chapter 11 (Reorganization), Chapter 12 (Family Farmer or Family Fisherman plan), or Chapter 13 (Individual Debt Adjustment) of the U.S. Bankruptcy Code; or~~

~~(2) Been the subject of any Federal or State judicial judgment for the collection of any unpaid debt;~~

~~(D) Within the previous thirty-six (36) months, no one-to-four family property owned by the borrower has been the subject of any foreclosure, deed in lieu of foreclosure, or short sale; or~~

~~(E) Within the previous thirty-six (36) months, the borrower has not had any personal property repossessed;~~

~~(ii) Determined and documented that, upon the origination of the loan, the borrower's DTI ratio is less than or equal to thirty-six (36) percent.~~

~~(A) For the purpose of making the determination under paragraph (b)(1)(ii) of this section, the originator must:~~

~~(1) Verify and document all income of the borrower that the originator includes in the borrower's effective monthly income (using payroll stubs, tax returns, profit and loss statements, or other similar documentation); and~~

~~(2) On or after the date of the borrower's written application and prior to origination, obtain~~ a credit report regarding the borrower from a consumer reporting agency that compiles and maintain files on consumers on a nationwide basis (within the meaning of 15 U.S.C. 1681a(p)) and ~~verify that all outstanding debts reported in the borrower's credit report are incorporated into the calculation of the borrower's DTI ratio under paragraph (b)(1)(ii) of this section~~ ***confirms that (A) if the borrower has a FICO score of at least 680 but less than 700, then the automobile loan has an LTV Ratio of no greater than 105%, (B) if the borrower has a FICO score of at least 700 but less than 725, then the automobile loan has an***

LTV Ratio of no greater than 110%, (C) if the borrower has a FICO score of at least 725 but less than 740, then the automobile loan has an LTV Ratio of no greater than 120% or (D) if the borrower has a FICO score of 740 or greater, then the automobile loan has an LTV Ratio of no greater than 135%;

~~(2) An originator will be deemed to have met the requirements of paragraph (b)(1)(i) of this section if:~~

~~(i) The originator, no more than 90 days before the closing of the loan, obtains a credit report regarding the borrower from at least two consumer reporting agencies that compile and maintain files on consumers on a nationwide basis (within the meaning of 15 U.S.C. 1681a(p));~~

~~(ii) Based on the information in such credit reports, the borrower meets all of the requirements of paragraph (b)(1)(i) of this section, and no information in a credit report subsequently obtained by the originator before the closing of the mortgage transaction contains contrary information; and~~

~~(iii) The originator obtains electronic or hard copies of such credit reports.~~

~~(3) At closing of the automobile loan, the borrower makes a down payment from the borrower's personal funds and trade-in allowance, if any, that is at least equal to the sum of:~~

~~(i) The full cost of the vehicle title, tax, and registration fees;~~

~~(ii) Any dealer-imposed fees; and~~

~~(iii) 20 percent of the vehicle purchase price.~~

(***2***~~4~~) ***If the certificate of title for the vehicle is issued in a physical, as opposed to electronic, form, the*** ~~The~~ transaction documents require ***that such certificate of title is held by or on behalf of the servicer of the automobile loan, its affiliate or an agent thereof, if allowed or required by applicable law,*** ~~the originator, subsequent holder of the loan, or an agent of the originator or subsequent holder of the loan to maintain physical possession of the title for the vehicle~~ until the loan is repaid in full and the borrower has otherwise satisfied all obligations under the terms of the ***contract*** ~~loan agreement~~.

(***3***~~5~~) If the ***automobile*** loan is for a new vehicle, the terms of the ***contract*** ~~loan agreement~~ provide a maturity date for the ***automobile*** loan that does not exceed ~~5 years from the date of origination~~ ***72 months from the contract date of the automobile loan***.

(***4***~~6~~) If the ***automobile*** loan is for a ***used*** vehicle***, the terms of the contract provide a maturity date for the automobile loan that is (i) no more than 72 months from the contract date of the automobile loan, if the used vehicle is up to or including 4 years old as of the contract date; (ii) no more than 60 months from the contract date of the automobile loan, if the used vehicle is 5 years old as of the contract date; or (iii) no more than 48 months from the contract date of the automobile loan, if the used vehicle is 6 years old as of the contract date;*** ~~other than a new vehicle, the term of the loan (as set forth in the loan agreement) plus the difference between the current model year and the vehicle's model year does not exceed 5 years~~***,*** .

(***5***~~7~~) The terms of the loan agreement:

(i) Specify a fixed rate of interest for the life of the loan;

(ii) Provide for a ***level*** monthly payment amount that ***amortizes the amount financed over the term of the automobile loan***;

~~(A) Is based on straight-line amortization of principal and interest over the term of the loan; and~~

~~(B)~~ ***(iii)*** Do not permit the borrower to defer repayment of principal or payment of interest; and

~~(C)~~ ***(iv)*** Require the borrower to make the first payment on the automobile loan within 45 days of the ***contract*** date of ~~origination~~ ***the automobile loan***.

(***6***~~8~~) At the ~~closing of~~ ***cutoff date for*** the securitization transaction, ~~all payments due on the loan are contractually current~~ ***no payment is more than 30 days delinquent (as defined by the servicer's collection policies) and the closing date of the securitization transaction is within 60 days of the cutoff date***; and

(7) As of the cutoff date for the securitization transaction, no payment has been extended on the automobile loan.

~~(9) (i) The depositor of the asset-backed security certifies that it has evaluated the effectiveness of its internal supervisory controls~~

~~with respect to the process for ensuring that all assets that collateralize the asset-backed security meet all of the requirements set forth in paragraphs (b)(1) through (b)(8) of this section and has concluded that its internal supervisory controls are effective;~~

~~(ii) The evaluation of the effectiveness of the depositor's internal supervisory controls referenced in paragraph (b)(9)(i) of this section shall be performed, for each issuance of an asset-backed security, as of a date within 60 days of the cut-off date or similar date for establishing the composition of the asset pool collateralizing such asset-backed security; and~~

~~(iii) The sponsor provides, or causes to be provided, a copy of the certification described in paragraph (b)(9)(i) of this section to potential investors a reasonable period of time prior to the sale of asset-backed securities in the issuing entity, and, upon request, to its appropriate Federal banking agency, if any.~~

~~(c) Buy-back requirement. A sponsor that has relied on the exception provided in this paragraph (a) of this section with respect to a securitization transaction shall not lose such exception with respect to such transaction if, after the closing of the securitization transaction, it is determined that one or more of the automobile loans collateralizing the asset-backed securities did not meet all of the requirements set forth in paragraphs (b)(1) through (b)(8) of this section provided that:~~

~~(1) The depositor has complied with the certification requirement set forth in paragraph (b)(9) of this section;~~

~~(2) The sponsor repurchases the loan(s) from the issuing entity at a price at least equal to the remaining principal balance and accrued interest on the loan(s) no later than 90 days after the determination that the loans do not satisfy all of the requirements of paragraphs (b)(1) through (b)(8) of this section; and~~

~~(3) The sponsor promptly notifies, or causes to be notified, the holders of the asset-backed securities issued in the securitization transaction of any loan(s) included in such securitization transaction that is required to be repurchased by the sponsor pursuant to paragraph (c)(2) of this section, including the principal amount of such repurchased loan(s) and the cause for such repurchase.~~

§ __.24 Partial Exemption for Automobile Loan Securitizations.

(a) General. For a securitization transaction that is collateralized by a pool of automobile loans and which meets all of the requirements of paragraph (b) of this section at the closing of the securitization transaction, the sponsor shall be required to retain an economic interest in the credit risk of the securitized assets in accordance with any one of Section ___.4 through ____.8 in subpart B

of this part equal to 2.5 percent of the par value of all ABS interests in the issuing entity issued as part of the securitization transaction.

(b) <u>Pool Characteristics</u>.

(1) (i) The pool of automobile loans has a weighted average FICO score of 700 or more but less than 725, (ii) the weighted average LTV Ratio of the pool of automobile loans is no greater than 110%, (iii) no more than 50% of the pool of automobile loans has an original loan term of more than 60 months and (iv) no automobile loans have an original term of more than 72 months, or

(2) (i) The pool of automobile loans has a weighted average FICO score of 725 or more but less than 740, (ii) the weighted average LTV Ratio of the pool of automobile loans is no greater than 120%, (iii) no more than 65% of the pool of automobile loans has an original loan term of more than 60 months and (iv) no more than 5% of the pool of automobile loans has an original loan term of more than 72 months , or

(3) (i) The pool of automobile loans has a weighted average FICO score of 740 or more, (ii) the weighted average LTV Ratio of the pool of automobile loans is no greater than 135%, (iii) no more than 80% of the pool of automobile loans has an original loan term of more than 60 months and (iv) no more than 10% of the pool of automobile loans has an original loan term of more than 72 months.

For the purposes of clauses (1)(i), (2)(i) and (3)(i), FICO scores are determined at origination and are calculated assuming that individual obligors without FICO scores have a FICO score of 300; and determining the weighted average by weighting each loan by its principal balance as of the related cutoff date. For the purposes of clauses (1)(ii), (2)(ii) and (3)(ii), the weighted average is determined by weighting each loan by its principal balance as of the related cutoff date. For the purposes of clauses (1)(iii), (2)(iii) and (3)(iii), the relevant percentage is calculated as the aggregate principal balance of all loans with original terms of greater than 60 months and dividing the result by the aggregate principal balance of all loans, all as of the related cutoff date. For the purposes of clauses (2)(iv) and (3)(iv), the relevant percentage is calculated as the aggregate principal balance of all loans with original terms of greater than 72 months and dividing the result by the aggregate principal balance of all loans, all as of the related cutoff date.

(c) <u>Disclosures</u>. A sponsor utilizing this section shall provide, or cause to be provided, to potential investors a reasonable period of time prior to the sale of the asset-backed securities in the securitization transaction and, upon request, to the Commission and its appropriate Federal banking agency, if any, the following disclosure in written form under the caption "Credit Risk Retention":

(1) A description of the methodology used by the sponsor to calculate LTV Ratios for the purposes of this § __.24; and

(2) Data of the type and in the manner required by Item 1111 of Regulation AB regarding the FICO Scores, LTV Ratios and original loan terms of the loans comprising the asset pool.