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Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attn.: Elizabeth M. Murphy, Secretary

Board of Governors of the Federal Reserve System
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Washington, DC 20551
Attn.: Robert deV. Frierson, Secretary

Federal Housing Finance Agency
Constitution Center, (OGC) Eighth Floor
400 7th Street, SW
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Attn.: Alfred M. Pollard, General Counsel

Federal Deposit Insurance Corporation
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Washington, DC 20429
Attn.: Comments, Robert E. Feldman,
Executive Secretary

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

Via Federal eRulemaking Portal: www.regulations.gov

OCC (Docket Number OCC-2013-0010); SEC (Release No. 34-64603, File Number S7-14-11); FRB (Docket No. R-1411); FHFA (RIN 2590-AA43); FDIC (RIN 3064-AD74); and HUD (Comments/RIN 2501-AD53)

Re: Credit Risk Retention

Ladies and Gentlemen:

SLM Corporation ("SLM" or "we" or "our") is pleased to submit this comment letter to the Office of the Comptroller of the Currency, Treasury ("OCC"), the Board of Governors of the Federal Reserve System ("FRB"), the Federal Deposit Insurance Corporation ("FDIC"), the U.S. Securities and Exchange Commission ("Commission"), the Federal Housing Finance Agency ("FHFA") and the Department of Housing and Urban Development ("HUD") (collectively, the "Joint Regulators") on their Notice of Proposed Rulemaking published in the Federal Register on September 20, 2013 ("Re-Proposal") regarding credit risk retention. [1]

We have carefully considered the Re-Proposal and the surrounding analytical framework and are supportive of the goals of promoting sound lending practices and liquid financial markets. We continue

[1] Re-Proposal, 78 Fed. Reg. 57,931(Sept. 20, 2013).

to believe that (i) risk retention requirements, when based on specific types of assets and specific transaction structures, are appropriate to align the interests of investors and issuers by properly incentivizing issuers to monitor and ensure the quality of the assets underlying securitization transactions and (ii) exemptions for those assets where there is little or no risk are also appropriate.

Therefore, we submit that the final rule should include an exemption from risk retention for ABS collateralized or otherwise backed solely by loans originated under the Federal Family Education Loan Program ("FFELP")[2], an approach that would be consistent with the approach adopted in the Re-Proposal for other Federally-guaranteed loan programs. We also submit that the final rule should permit issuers several alternative forms of risk retention including a simplified representative sample test similar to the FDIC's Safe Harbor and a simple balance sheet transaction test where it is clear from the transaction structure that at least 5% of the risk has been retained.

Background on SLM

SLM, the parent of Sallie Mae, Inc., is the nation's leading saving, planning and paying for education company. SLM was formed in 1972 as the Student Loan Marketing Association, a federally chartered government sponsored enterprise ("GSE"), with the goal of furthering access to higher education by providing liquidity to the student loan marketplace. On December 29, 2004, we completed the privatization process that began in 1997 and resulted in the wind-down of the GSE.

Our primary business is to originate, service and collect loans made to students and/or their parents to finance the cost of their education. Until June 30, 2010, we provided funding, delivery and servicing support for education loans in the United States through our participation in the FFELP and our origination of private education loans which are not federally guaranteed. The FFELP was discontinued effective July 1, 2010 pursuant to the Health Care and Education Reconciliation Act of 2010. Although we no longer originate loans under the FFELP, as of September 30, 2013, we own directly or indirectly approximately $106 billion of FFELP loans which we expect will pay down over the next 25 years. We are a servicer of student loans for the United States Department of Education ("Department of Education") and originate and service private education loans.

In addition, we provide a number of other FFELP related services including guarantee servicing, default aversion counseling and defaulted loan collections.

1. *The Final Rule Should Exempt FFELP Loans from Risk Retention Requirements*

As stated above, we continue to believe that the final rule should include an exemption from risk retention for ABS collateralized or otherwise backed solely by FFELP loans ("FFELP ABS") for several reasons.

First, under the Re-Proposal, securitizations involving FFELP loans are treated differently than securitizations backed by other types of federally-insured or guaranteed assets. Under § __.19(b)(1) of the Re-Proposal, securitizations that are collateralized by "residential, multifamily, or health care facility mortgage loan assets that are insured or guaranteed (in whole or in part) as to the payment of principal and interest by the United States or an agency of the United States"[3] are exempt from the proposed rule's risk retention requirements.[4] FFELP loans are guaranteed at between 97-100% (as to both principal and

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[2] See the Appendix for a general description of the FFELP.

[3] Re-Proposal, 78 Fed. Reg. 57,931 at 58,043.

[4] We note that the Joint Regulators have clarified in re-proposed §__.19(b)(1)(i) that this exemption would apply whether the government guarantee is "in whole or in part." As noted in the Joint Regulators original proposal regarding credit risk retention (the "Original Release"), this provision would exempt such transactions as

interest) by the federal government.[5] Given this high level of Federal guarantee, there is no reason to treat FFELP loans differently for risk retention purposes than these other assets that carry, in some cases lower levels of, Federal insurance or guarantees.

We also respectfully disagree with the Re-Proposal's assertion that risk retention for FFELP ABS could still provide a benefit since "[s]ponsors would therefore be encouraged to select assets for securitization with high quality underwriting standards." FFELP loans were required to be originated in full compliance with the Higher Education Act and the FFELP rules and regulations. The Department of Education and the FFELP regulations specified all permissible criteria for origination. FFELP originators were prohibited by law from overlaying differing underwriting criteria on top of those required by the FFELP rules or regulations. Rather, the FFELP program was intended to provide access to all students attending eligible institutions and to further that goal loans originated under FFELP were not subject to traditional underwriting. The relevant credit feature of FFELP loans for purchasers of FFELP ABS is therefore the underlying Federal government guarantee. This correlation was recently addressed by Fitch Ratings when, on October 16, 2013, they placed 766 "AAA" rated tranches of FFELP student loan ABS on Rating Watch Negative solely because Fitch Ratings revised its U.S. sovereign rating the day before. In their ratings action, Fitch Ratings stated that "The ratings on these ABS tranches are strongly linked to the U.S. sovereign rating, since the underlying collateral in these transactions is guaranteed against default by the U.S. Department of Education which carries the full faith and credit of the U.S. government." [6]

On a going forward basis, given that FFELP loans can no longer be originated, a complete exemption of ABS collateralized or otherwise backed 100% by FFELP loans would in no way encourage lower underwriting standards.[7]

The Re-Proposal also suggests that imposing risk retention requirements may help facilitate appropriate risk management practices for servicing FFELP Loans.[8] We believe that risk retention is not needed to encourage proper servicing. Similar to FFELP origination standards, the Department of Education and the FFELP regulations specify rigid servicing standards, which, if not met, can result in the partial or complete loss of the government guarantee. As stated in the Original Release, one justification of the exemption is that "federal department or agency issuing, insuring or guaranteeing the ABS or collateral would monitor the quality of the assets securitized, consistent with the relevant statutory authority."[9] This is clearly the case with FFELP loans where the Department of Education sets the standards by which FFELP loans were originated and serviced. In addition, as part of the Department of Education's active management of the FFELP, it requires annual lender and servicer compliance audits to

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securitizations of mortgage loans insured by the Federal Housing Administration (the "FHA") or guaranteed by the Department of Veterans Affairs (the "VA") or the Department of Agriculture Rural Development ("Rural Development"). While the FHA insures the lender at approximately 100 percent of losses including advanced taxes, insurance and foreclosure costs, the VA guarantees "between 25 percent and 50 percent of lender losses in the event of residential borrower defaults," and Rural Development "guarantees a sliding amount against loss of up to 90 percent of the original loan amount for single family loans." *See* page 24,136 of the Original Release, 76 Fed. Reg. 24,090 (April 29, 2011).

5 Federal agencies have determined that loans originated under the FFELP are directly guaranteed by the U.S. government and are paid from federal funds. *See* Federal Housing Finance Agency Regulatory Interpretation 2009-RI-01, dated June 4, 2009, which cites the use of federal funds to pay for default claims and concludes that "the federal guarantee for defaulted [guaranteed student loans originated under FFELP] does run to the direct benefit of the holder of those loans."

6 See "Fitch Places 'AAAsf' Rated U.S. FFELP Student Loan Tranches on Rating Watch Negative", October 16, 2013 at http://www.fitchratings.com/creditdesk/press_releases/detail.cfm?pr_id=805180.

7 Re-Proposal, 78 Fed. Reg. at 57,971.

8 *Id.*

9 Original Release at page 24,137.

be conducted by an independent third party. In addition, we believe that the substantial incentive provided by the potential loss of the government guarantee for improper servicing is sufficient to align issuer incentives with the holders of the FFELP ABS.[10] As stated above, the manner in which FFELP loans are serviced is mandated by the Department of Education. If a servicer fails to service a FFELP loan in accordance with those requirements, the loan can lose its government guarantee. In securitization transactions, servicers whose improper servicing results in a loss of guarantee are required to repurchase the non-compliant loan at a price at least equal to the amount of the guarantee (97% to 100%) or make the issuing entity whole for the loss of the guarantee. As a result, FFELP securitization trusts do not have servicing risk similar to other assets classes in the ABS markets. Continued non-compliance can also risk the servicer's status as an "eligible servicer" under the FFELP rules and regulations.[11] Thus, risk retention, in addition to the transactional safeguards already in place, would do nothing to foster proper servicing of FFELP loans.

In the alternative, if the Joint Regulators do not find the above arguments compelling enough to warrant a complete exemption of FFELP loans, we submit that the 5% risk retention requirement should apply solely to the portion of each FFELP loan pool—up to 3%—that is *not* guaranteed. In other words, the 5% risk retention requirement should apply to, at most, 0.15% of each FFELP loan pool.[12]

Although FFELP loans are no longer originated, an exemption from risk retention for FFELP loans is still justified by the market place. Many entities which currently hold FFELP loans have substantial financing needs. FFELP loans were commonly originated by banks, thrifts, nonprofit organizations, independent finance companies, and credit unions, and were often held in an investment portfolio or securitized. There were approximately $291 billion in outstanding FFELP loans at September 30, 2012.[13] A significant portion of those FFELP loans will need to be financed in the securitization markets over the next few years. The funds from these securitizations may be used by student loan providers to make new private education loans to help students and their families bridge the funding gap between the cost of education and funds currently available under the Federal Direct Loan Program.

2. *The Final Rule Should Permit Several Alternative Forms of Risk Retention.*

We believe that the Re-Proposal should permit sponsors to elect from several different ways to meet the risk retention requirements thus permitting sponsors/issuers to better adapt the risk retention rules to their specific organization and business models. We therefore propose the addition of the following alternative forms of risk retention: (1) a simplified form of the "Representative Sample" method ("Representative Sample") of risk retention, available if the sponsor continues to hold similar unsecuritized assets representing at least 5% of the amount of the securitized assets and (2) an exemption for an on-balance sheet transaction where the structure of the transaction clearly demonstrates at least 5% risk retention.[14]

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[10] A FFELP servicer must properly administer the loans or else compensate the owner of the loan for the loss of the guarantee. In addition, should such losses become systemic, the potential loss of its status as an "eligible servicer" of FFELP loans could endanger the servicer's entire business operations, a feature that on its own provides sufficient incentive to maintain the requisite servicing standards.

[11] *See* 34 C.F.R. §682.705 for suspension provisions and §682.706 for termination provisions.

[12] At such a level, the required risk retention has essentially become *de minimis,* further supporting the argument that FFELP ABS should be removed entirely from the risk retention requirements, as it is for other federally guaranteed asset types.

[13] *See* U.S. Department of Education, "FY 2012 Agency Financial Report – U.S. Department of Education," page 68.

[14] For example, in SLM's private education securitization program, we are retaining at least a five percent residual interest in each securitization and are keeping our securitizations on balance sheet.

A. *A Simplified Representative Sample Similar to the FDIC's Safe Harbor.*

We agree that the original Representative Sample proposal was impractical and too burdensome to be useful to many sponsors. However, we also believe that the Representative Sample approach can still be useful for sponsors who do not securitize all of their assets and/or originate and self-service the majority of their assets. We therefore request that a simplified version of the Representative Sample method similar to the FDIC's Safe Harbor[15] under 12 C.F.R. § 360.6 (the "FDIC Safe Harbor")[16] be included in the final rule.

It is important for the Joint Regulators to note that the Representative Sample method is one of the few permitted forms of risk retention under the existing FDIC Safe Harbor for securitizations. We note that several banks have issued asset backed securities under the FDIC Safe Harbor, all without any of the complexity required under the Original Proposal.[17] The only requirement under the FDIC Safe Harbor is that the retained sample is, in fact, representative. There are no onerous requirements for the selection of the securitized pool and the retained pool, no servicing requirements, and no required reports from independent accountants. Given that this simpler approach is working now for risk retention under the FDIC Safe Harbor, we believe that it should be available for risk retention under these rules.

We also note that the Representative Sample is one of the alternative methods of risk retention permitted under Article 122a of the European Union's Capital Markets Directive.[18] If the Representative Sample method of risk retention is not permitted in the United States, it may place U.S. issuers at a competitive disadvantage against ABS issuers from outside the United States.

We believe that the most important requirement for a representative sample is that the securitized assets and the retained representative pool are selected from a common pool of assets on a random basis. If this condition is satisfied, particularly for transactions involving pools with large numbers of obligors such as student loans or auto loans/leases, all of the objectives of the risk retention rules will have been satisfied without the additional complications of the Original Proposal.

In implementing a Representative Sample method in the final rule, we would also suggest a minor technical change to Original Proposal's requirement that "individuals responsible for servicing the assets" in the unsecuritized pool and the ABS pool be unable to "determine whether an asset is owned or held by the sponsor or owned or held by the issuing entity."[19] While it is certainly feasible for collections personnel to be unaware of whether an asset is owned or held by the sponsor or issuing entity, however, we believe that operationally that could require system changes for multiple servicers. In the alternative, we would propose a simple requirement that the servicer employ the same servicing policies and procedures on the unsecuritized pool as on the ABS pool.

We believe it is essential that the final rule include the representative sample alternative.

B. *On-Balance Sheet Transactions Where The Structure Of The Transaction Clearly Demonstrates At Least 5% Risk Retention.*

As discussed above, Sallie Mae and its subsidiaries are the originators and servicer of substantially all of the assets included in our ABS transactions and usually hold the first loss residual interest in the transaction. We believe this is true for several of our competitors in the market as well. As

[15] FDIC's Safe Harbor, 12 C.F.R. § 360.6.
[16] 12 C.F.R. § 360.6 (2013).
[17] Original Proposal.
[18] Article 122a of the [Capital Requirements Directive] 2006/48/EC
[19] Original Proposal, § __.8(e), 76 Fed. Reg. 24,160.

presently structured, in our private education loan securitization program, we retain at least a five percent residual interest in each securitization and keep our securitizations on balance sheet. In almost all of our private education loan securitizations, the principal amount of the bonds issued is clearly less than 95% of the principal amount of the securitized loans.[20] In addition, in our transactions, the weighted average interest rate on the receivables exceeds the weighted average interest rate on the bonds sold to investors ("excess spread"), and distributions to the residual holder are always at the bottom of the distribution waterfall.[21] In these simplified transaction structures, it is beyond doubt that at least 5% of the credit risk is retained by the sponsor. We believe structures similar to ours do not pose the risks of "abuse" that led the regulators to require fair value in the Re-Proposal or to require the PCCRA in the Original Proposal. Therefore, transactions such as these should have a "safe harbor" where it is clear that at least 5% of the credit risk has been retained.

3. *Duration of Transfer and Hedging Limitations*

We appreciate that the regulators have permitted the transfer and hedging of the retained risk at some point prior to the end of the life of the securitization transaction. Due to the long average lives of student loan assets, however, these provisions are not as useful for student loan securitizations as they may be for other asset classes.

First, under Section __.12(f)(1) of the Re-Proposal, the prohibitions on sale and hedging would expire on or after the date that is the latest of (i) the reduction of the unpaid principal balance of the securitized assets to at or below 33% of the closing date balance, (ii) the reduction of the unpaid principal amount of outstanding ABS to at or below 33% of the closing date balance and (iii) two years after the closing date. However, the average life of a typical FFELP student loan is between 132 months and 270 months and the average life of a typical private education loan is approximately 200 months. Due to the correspondingly longer average life of a typical student loan securitization, we request that student loan sponsors be permitted to sell or hedge their retained interests at an earlier point in time.

Second, the test described above uses the "unpaid principal balance of the securitized assets as of the closing of the securitization transaction." Virtually all student loan, vehicle and equipment sponsors use a cutoff date, often at the end of a calendar month, to determine the balances of the securitized assets for purposes of the securitization transaction. Most sponsors have difficulty determining information about the securitized assets at other times, including on the closing date. We request that the regulators permit the use of the cut-off date balance of the securitized assets rather than the closing date balance.

To accommodate the foregoing concerns, we request that the prohibitions on sale or transfer instead expire on or after the date that is the *earlier* of (i) two years after the closing date and (ii) the later of (A) the reduction of unpaid principal balance of the securitized assets to at or below 33% of the cut-off date balance and (B) reduction of unpaid outstanding principal amount of the ABS sold to third parties to at or below 33% of the closing date balance.

Conclusion

The securitization industry plays a critical role in providing capital and liquidity to virtually every sector of the economy. It ensures that investors have access to the segments of the economy in which

[20] For SLM's 8 private education loan securitizations completed since January 1, 2012, the transactions have issued bonds averaging 21.5% less than the related assets.

[21] We note that the regulators recognized in Request for Comment 2(a) that a first-loss residual position would impose the most economic risk on the sponsor. Therefore, we are providing that the simplified approach would only be available when the sponsor retains a first-loss residual position.

they wish to invest and that consumers and the industry at all levels have access to the liquidity that they need. We have seen firsthand that when the securitization industry properly matches issuer and investor interests, it supports a healthy economy and reduces risks overall. We believe that, if the Joint Regulators adopt the suggestions contained herein with respect to student loans, the resulting credit risk retention rules can achieve their goals without undermining the efficiency and effectiveness of the securitization market.

Should you have any questions, please feel free to contact me at (703) 984-6756.

Sincerely,

SLM CORPORATION

/s/ Eric Watson
Name: Eric Watson
Title: Vice President & Associate General Counsel

Appendix

General Description of the FFELP

The Higher Education Act of 1965, as amended, ("HEA") regulates every aspect of the federally guaranteed student loan program, including underwriting, communications with borrowers, loan originations and default aversion requirements. The guarantee for FFELP Loans generally covers between 97 and 100 percent of the student loan's principal and accrued interest depending on the date the loan was disbursed. New originations for FFELP loans were discontinued effective July 1, 2010, pursuant to the Health Care and Education Reconciliation Act of 2010 ("HCERA"). HCERA did not affect the guarantees on existing loans.

The HEA provided for the origination of FFELP loans, pursuant to mandated standards, to students enrolled at eligible institutions (or to the parents of dependent students) to finance their education. In addition to requiring that the student satisfy the financial need thresholds of the program, the statute provided that the student must be a U.S. citizen, national or permanent resident; be accepted or enrolled at a participating institution (while maintaining satisfactory academic progress); and carry at least one-half of a normal full-time academic workload. Additionally, federally insured consolidation loans have been originated for FFELP borrowers following the completion of their education in order to provide such borrowers with additional repayment options and ease their administration.