

July 29, 2011

Office of the Comptroller of the
Currency
250 E. Street, SW.
Mail Stop 2-3
Washington, DC 20219
Docket No. OCC-2011-002

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

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

Regulations Division
Office of General Counsel
Department of Housing and Urban
Development
451 7th Street, SW.
Room 10276
Washington, DC 20410-0500
Docket No. FR-5504-P-01

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW.
Washington, DC 20429
RIN 3064-AD74

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE.
Washington, DC 20549-1090
File Number S7-14-11

Department of Treasury
1500 Pennsylvania Avenue, NW
Washington DC 20220

**RE: Credit Risk Retention: RIN 1557-AD40; 7100 AD 70; 3064-AD74;
3235-AK96; 2590-AA43; 2501-AD53**

Ladies and Gentlemen:

The First Marblehead Corporation (“First Marblehead”) is writing to provide comments on *Credit Risk Retention; Proposed Rule, 76 F.R. 24090* (April 29, 2011) (the “Proposed Rule”). The Proposed Rule was published by the various agencies listed above (collectively, the “Agencies”) pursuant to the requirements of Section 941(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”).



On June 10, 2011, the American Securitization Forum (the “ASF”), submitted a comment letter to the Agencies regarding the Proposed Rule. First Marblehead is an active member of the ASF and generally supports the comments made by the ASF in its letter. First Marblehead would, however, like to make the additional comments set forth below.

Background

First Marblehead is a Delaware corporation with its principal offices located in Boston, Massachusetts. First Marblehead offers outsourcing services to national and regional financial and educational institutions for designing and implementing education loan programs. These school-certified loan programs are designed to be marketed through educational institutions or to prospective student borrowers and their families directly and to generate portfolios intended to be held by the originating lender or financed in the capital markets.

First Marblehead has structured and facilitated 38 securitizations consisting entirely of private education loans (such loans, “Private Student Loans”), with more than \$17 billion in asset-backed securities issued. Private Student Loans are funded by private sector lenders and are not guaranteed by the U.S. government. Among student-loan asset-backed issuers and sponsors, First Marblehead’s business is distinguished by a long-standing, exclusive focus on Private Student Loans.

Private Student Loans are intended to be used by borrowers who have first utilized other sources of education funding, including government loan programs, scholarships, grants and other aid. For the 2009-2010 academic year, First Marblehead believes that there was a “funding gap” in post-secondary education in the United States of approximately \$133 billion between the costs of attendance and these other sources of education funding, based on information from the National Center for Education Statistics and the College Board. Enrollment in post-secondary education institutions is likely to continue to increase over the next several years, as will costs of attendance. As a result, Private Student Loans will continue to be a necessary source of financing for students and their families after applying personal savings and other funding sources, and exhausting all available government loan programs, scholarships, grants and other aid.

Basis for Qualifying Private Student Loan Exemption

Section 941(b) of the Dodd-Frank Act provides the Agencies with broad authority to exempt certain asset classes from the Risk Retention requirement, so long as such exemption helps to ensure high quality underwriting standards and encourages appropriate risk management practices. Pursuant to such authority, the Proposed Rule contains exemptions from the Risk Retention requirement for securitization transactions in which the underlying securitized

assets are qualifying residential mortgage loans, commercial loans, commercial real-estate loans or automobile loans.

Clearly, there are important public policy considerations served by granting an exemption to securitizations of well-underwritten residential mortgage loans, commercial loans, commercial real-estate loans and automobile loans. However, few matters of public policy are more important than ensuring that students have access to a variety of cost-effective options to finance the cost of higher education. If this public policy is to be achieved, the return of a vibrant market for securitizations backed by Private Student Loans is essential.

The application of the Risk Retention requirement to all securitizations of Private Student Loans is unnecessary and threatens to hinder the recovery of the Private Student Loan securitization market. As noted by the Board of Governors of the Federal Reserve System in its *Report to the Congress on Risk Retention* (October 2010) (the “FRB Risk Retention Report”),¹ “[p]rivate student loan originations have contracted in recent years, falling from \$22 billion in the 2007-2008 school year to an estimated \$11 billion in the 2008-2009 school year.”² The FRB Risk Retention Report cites several factors for this marked contraction, including “difficulties in the securitization market that reduced the amount of funds available for loan originations.”³ The FRB Risk Retention Report goes on to caution that “[r]isk retention requirements may increase the cost of funding of private student loan originations and thus damp lender enthusiasm for this market even further.”⁴

Private Student Loans, by definition, are a form of unsecured consumer lending. As such, we are not requesting that the Joint Regulators provide a complete “all-or-nothing” exemption for Private Student Loans. Rather, First Marblehead respectfully requests that the Agencies provide a reduced Risk Retention framework for securitization transactions backed by Private Student Loans that meet the underwriting and other criteria described below (“Qualifying Private Student Loans”). First Marblehead believes that the framework for Qualifying Private Student Loans as proposed in this letter will help to promote responsible underwriting and sound risk management practices on the part of originators by incentivizing those that do so with reduced Risk Retention requirements. We also believe that such a framework can provide better transparency to investors in any securitization transactions backed by Private Student Loans, as less risky assets will be more clearly differentiated. Finally, First Marblehead strongly believes that this is an important step in restoring the flow of private capital into the market for Private Student Loans and reducing the funding cost of Private Student Loans.

¹ The FRB Risk Retention Report is available at: <http://www.federalreserve.gov/boarddocs/rptcongress/securitization/riskretention.pdf>.

² See p. 80 of the FRB Risk Retention Report.

³ *Id.*

⁴ *Id.*, at 81.

Proposed Framework for Qualifying Private Student Loans

A. Exemption for Securitization Transactions Backed by Qualifying Private Student Loans

The Risk Retention requirement in the Proposed Rule should not apply to securitization transactions in which some or all of the securitized Private Student Loans meet the mandatory criteria described below. Instead, we propose a sliding Risk Retention scale for such Qualifying Private Student Loans with 5% on the high end and 0% on the low end, based on the secondary analyses described below.

Consistent with the various qualifying asset exemptions in the Proposed Rule, a sponsor should not lose the exemption for Qualifying Private Student Loans if, after the closing date, it is determined that one or more of the securitized Private Student Loans did not meet the Qualifying Private Student Loan criteria. In that case, the sponsor should be required to repurchase the noncompliant Private Student Loan within 90 days of the date on which such noncompliance was discovered.

B. Definition of “Qualifying Private Student Loan”

There are a number of key attributes which distinguish Private Student Loans from other segments of consumer lending. Unlike auto loans and mortgages, these loans are not secured by any collateral. These loans also tend to be longer in duration and, in some cases, do not require any payments while in school. These loans also benefit from the potential increase in future earnings which college graduates typically enjoy. As a result of these factors, traditional risk assessment tools such as LTV or DTI can be problematic. First Marblehead believes that there are other attributes which can serve in their place when used in tandem, and we respectfully propose the following initial guidelines to be applied at the individual loan level:

Mandatory Criteria: In order for a loan to be considered a Qualifying Private Student Loan, it must meet the following conditions:

1. The FFELP/FDLP cohort default rate for the school at which the student is attending or planning to attend must be less than or equal to 10%;
2. The school must certify the loan amount to ensure that it does not exceed the cost of education at that institution less any other forms of financial aid including federal grant and loan programs;
3. The loan proceeds must be used to cover current educational expenses, excluding any past due balances;
4. All funds must be disbursed directly to the school; and

5. The loan must have a cosigner possessing at least 21 months of credit experience in the form of open trade lines or other forms of credit.

Any loan that does not possess all of the above mentioned characteristics would not be considered a Qualifying Private Student Loan.

C. Apportionment of Risk Retention Levels for Qualified Private Student Loans

For loans deemed to be Qualified Private Student Loans as defined above, an additional assessment of risk is required in order to determine the appropriate level of Risk Retention for that loan. This assessment includes the following three analyses:

- ***FICO Score Analysis:*** The FICO Score upon which the credit decision was made would be evaluated as follows:

<u>Score Range</u>	<u>Initial Risk Retention</u>
719 and below	5%
720 to 740	4%
741 to 760	3%
761 to 780	2%
781 to 800	1%
801 and above	0%

- ***Repayment Type Analysis:*** After being assigned to an initial Risk Retention bucket as described above, each Qualifying Private Student Loan would be evaluated and its bucket modified by its repayment type as follows:

<u>Repay Type</u>	<u>Impact on Initial Risk Retention</u>
Deferment of P&I while enrolled	+1%
Deferment of principal while enrolled	+0%
P&I payments not deferred while enrolled	-1%

- ***Loan Term Analysis:*** The final analysis to be performed focuses on the duration of the loan, allowing for additional modification to the initial Risk Retention bucket as follows:

<u>Repayment Term</u>	<u>Impact on Initial Risk Retention</u>
>15 years	+1%
>10 and <=15 years	+0%
<= 10 years	-1%

Risk Retention for a Qualifying Private Student Loan would be capped at 5% with a floor of 0% regardless of the results of the secondary analyses, however.

Example: To better demonstrate how the framework would operate, assume that we have a Private Student Loan which meets all of the mandatory criteria and possesses the following additional characteristics:

FICO underwritten to:	770
Repayment Type:	Full Deferment of P&I
Repayment Term:	20 years

As a result of these factors, the final Risk Retention level would be set as follows:

Initial Risk Retention Bucket:		2%
Adjustment based on Repay Type:	+	1%
Adjustment based on Repay Term:	+	1%
Final Risk Retention Bucket:		4%

This calculation would be performed on each Private Student Loan in the pool and the overall Risk Retention requirement for the portfolio would be the weighted average of the Risk Retention amounts for each loan in the pool. This analysis would also be disclosed in any offering documents used to market a transaction.

D. Risk Management and Monitoring Requirement

Consistent with the risk management and monitoring requirement for the qualifying asset exemptions in the Proposed Rule, for a securitization transaction relying on the Qualifying Private Student Loan exemption, the depositor should be required to certify that it has (a) evaluated the effectiveness of its internal supervisory controls with respect to the process for ensuring that the specified portion⁵ of the Private Student Loans that collateralize the asset-backed securities being issued meet all of the Qualifying Private Student Loan criteria set forth above and (b) concluded that its internal supervisory controls are effective (such certification, the “Depositor Certification”). The evaluation of the effectiveness of the depositor’s internal supervisory controls described above should be required to 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 pool of securitized assets collateralizing the asset-backed securities. The sponsor should be required to provide, or cause to be provided, a copy of the Depositor Certification to potential investors a

⁵ For transactions relying on the proportional exemption as describe above in “*Exemption for Securitization Transactions Backed by Qualifying Student Loans*,” the specified portion would be the portion of the pool of securitized Private Student Loans consisting of Qualifying Private Student Loans.

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.

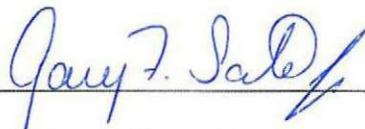
Conclusion

It is crucial that students have access to a variety of cost-effective options to finance the cost of higher education. A vibrant market for securitizations backed by well-underwritten Private Student Loans is essential in providing students with that access. Section 941(b) of the Dodd-Frank Act provides the Agencies with broad authority to exempt certain asset classes from the Risk Retention requirement. The proposed framework for the exemption of Qualifying Private Student Loans will help to reduce the cost of funding of Private Student Loans and at the same time further the important policy purpose of ensuring that securitization transactions are backed by well-underwritten assets. Accordingly, the Agencies should provide an exemption from the Risk Retention requirement for securitizations of Qualifying Private Student Loans.

First Marblehead appreciates this opportunity to comment. Should you have any questions about the foregoing, please feel free to contact Gary Santo by phone at (617) 638-2022 or by e-mail at GSanto@fnd.com.

Very truly yours,

THE FIRST MARBLEHEAD
CORPORATION

By:  _____

Name: Gary F. Santo, Jr.

Title: Managing Director

Group Head, Capital Markets