

## ORRICK'S GUIDE TO THE NPR

Notice of Proposed Rulemaking	
<b>1. Capital Structure and Financial Assets</b>	<p>The documents creating the securitization must clearly define the payment structure and capital structure of the transaction.</p> <p><b>Resecuritizations:</b> The securitization shall not consist of re-securitizations of obligations or collateralized debt obligations unless the disclosures required in subparagraph (b)(2) below are available to investors for the underlying assets supporting the securitization at initiation and while obligations are outstanding. (b)(1)(A)(i)</p> <p><b>Principal and Interest on the Bonds:</b> The payment of principal and interest on the securitization obligation must be primarily based on the performance of financial assets that are transferred to the issuing entity and, except for interest rate or currency mismatches between the financial assets and the obligations, shall not be contingent on market or credit events that are independent of such financial assets. (b)(1)(A)(ii)</p> <p><b>Unfunded/Synthetic Securitizations:</b> The securitization may not be an unfunded securitization or a synthetic transaction. (b)(1)(A)(ii)</p> <p><b>Capital Structure (residential mortgage securitizations only):</b> The capital structure of the securitization shall be limited to no more than six credit tranches and cannot include “sub-tranches,” grantor trusts or other structures. Notwithstanding the foregoing, the most senior credit tranche may include time-based sequential pay or planned amortization sub-tranches. (b)(1)(B)(i)</p> <p><b>No Bond Level Credit Support / Guarantees (residential mortgage securitizations only):</b> The credit quality of the obligations cannot be enhanced at the issuing entity or pool level through external credit support or guarantees. (b)(1)(B)(ii)</p> <p><b>Liquidity Facilities (residential mortgage securitizations only):</b> Temporary payment of principal and/or interest may be supported by liquidity facilities, including facilities designed to permit the temporary payment of interest following appointment of the FDIC as conservator or receiver. (b)(1)(B)(ii)</p> <p><b>Loan Level Credit Support (residential mortgage securitizations only):</b> Individual financial assets transferred into a securitization may be guaranteed, insured or otherwise benefit from credit support at the loan level through mortgage and similar insurance or guarantees, including by private companies, agencies or other governmental entities, or government-sponsored enterprises, and/or through co-signers or other guarantees. (b)(1)(B)(ii)</p>

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<b>2. Disclosures</b>	<p><b><i>Initial and Periodic Disclosure:</i></b> The documents shall require that, prior to issuance of obligations and monthly while obligations are outstanding, information about the obligations and the securitized financial assets shall be disclosed to all potential investors at the financial asset or pool level, as appropriate for the financial assets, and security-level to enable evaluation and analysis of the credit risk and performance of the obligations and financial assets. (b)(2)(A)(i)</p>
	<p><b><i>Detailed Disclosure / Reg AB:</i></b> The documents shall require that such information and its disclosure, at a minimum, shall comply with the requirements of Regulation AB, or any successor disclosure requirements for public issuances, even if the obligations are issued in a private placement or are not otherwise required to be registered. Information that is unknown or not available to the sponsor or the issuer after reasonable investigation may be omitted if the issuer includes a statement in the offering documents disclosing that the specific information is otherwise unavailable. (b)(2)(A)(i)</p>
	<p><b><i>Transaction Structure / Credit and Payment Performance:</i></b> The documents shall require that, prior to issuance of obligations, the structure of the securitization and the credit and payment performance of the obligations shall be disclosed, including the capital or tranche structure, the priority of payments and specific subordination features; representations and warranties made with respect to the financial assets, the remedies for and the time permitted for cure of any breach of representations and warranties, including the repurchase of financial assets, if applicable; liquidity facilities and any credit enhancements permitted by this rule, any waterfall triggers or priority of payment reversal features; and policies governing delinquencies, servicer advances, loss mitigation, and write-offs of financial assets. (b)(2)(A)(ii)</p>
	<p><b><i>Performance of the Obligations:</i></b> The documents shall require that while obligations are outstanding, the issuing entity shall provide to investors information with respect to the credit performance of the obligations and the financial assets, including periodic and cumulative financial asset performance data, delinquency and modification data for the financial assets, substitutions and removal of financial assets, servicer advances, as well as losses that were allocated to such tranche and remaining balance of financial assets supporting such tranche. if applicable; and the percentage of each tranche in relation to the securitization as a whole. (b)(2)(A)(iii)</p>
	<p><b><i>Compensation / Risk Retention:</i></b> In connection with the issuance of obligations, the nature and amount of compensation paid to the originator, sponsor, rating agency or third-party advisor, any mortgage or other broker, and the servicer(s), and the extent to which any risk of loss on the underlying assets is retained by any of them for such securitization shall be disclosed. The securitization documents shall require the issuer to provide to investors while obligations are outstanding any changes to such information and the amount and nature of payments of any deferred compensation or similar arrangements to any of the parties. (b)(2)(A)(iv)</p>

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	<p><b><i>Loan Level Information (residential mortgage securitizations only):</i></b> Prior to issuance of obligations, sponsors shall disclose loan level information about the financial assets including, but not limited to, loan type, loan structure (for example, fixed or adjustable, resets, interest rate caps, balloon payments, etc.), maturity, interest rate and/or Annual Percentage Rate, and location of property. (b)(2)(B)(i)</p> <p><b><i>Origination Standards (residential mortgage securitizations only):</i></b> Prior to issuance of obligations, sponsors shall affirm compliance with all applicable statutory and regulatory standards for origination of mortgage loans, including that the mortgages are underwritten at the fully indexed rate relying on documented income, and comply with existing supervisory guidance governing the underwriting of residential mortgages, including the Interagency Guidance on Non- Traditional Mortgage Products, October 5, 2006, and the Interagency Statement on Subprime Mortgage Lending, July 10, 2007, and such additional guidance applicable at the time of loan origination.</p> <p>Sponsors shall disclose a third party due diligence report on compliance with such standards and the representations and warranties made with respect to the financial assets. (b)(2)(B)(ii)</p> <p><b><i>Other Interests In Same Property (residential mortgage securitizations only):</i></b> The documents shall require that prior to issuance of obligations and while obligations are outstanding, servicers shall disclose any ownership interest by the servicer or an affiliate of the servicer in other whole loans secured by the same real property that secures a loan included in the financial asset pool. The ownership of an obligation, as defined in this regulation, shall not constitute an ownership interest requiring disclosure. (b)(2)(B)(iii)</p>
<b>3. Documentation and Record Keeping</b>	<p><b><i>Rights and Responsibilities in Documentation:</i></b> The documents creating the securitization must clearly define the respective contractual rights and responsibilities of all parties and include the requirements described below and use as appropriate any available standardized documentation for each different asset class.</p> <p>The documents shall set forth all necessary rights and responsibilities of the parties, including but not limited to representations and warranties and ongoing disclosure requirements, and any measures to avoid conflicts of interest. (b)(3)(A)(i)</p> <p><b><i>Authority to Act:</i></b> The contractual rights and responsibilities of each party to the transaction, including but not limited to the originator, sponsor, issuing entity, servicer, and investors, must provide sufficient authority for the parties to fulfill their respective duties and exercise their rights under the contracts and clearly distinguish between any multiple roles performed by any party. (b)(3)(A)(i)</p>

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	<p><b><i>Servicing Agreements (residential mortgage securitizations only):</i></b> Servicing and other agreements must provide servicers with full authority, subject to contractual oversight by any master servicer or oversight advisor, if any, to mitigate losses on financial assets consistent with maximizing the net present value of the financial asset. Servicers shall have the authority to modify assets to address reasonably foreseeable default, and to take such other action necessary to maximize the value and minimize losses on the securitized financial assets applying industry best practices for asset management and servicing. (b)(3)(B)(i)</p>
	<p><b><i>Servicer to Act for Benefit of All Investors (residential mortgage securitizations only):</i></b> The documents shall require the servicer to act for the benefit of all investors, and not for the benefit of any particular class of investors. (b)(3)(B)(i)</p>
	<p><b><i>Loss Mitigation – Timing (residential mortgage securitizations only):</i></b> The servicer must commence action to mitigate losses no later than ninety (90) days after an asset first becomes delinquent unless all delinquencies on such asset have been cured. (b)(3)(B)(i)</p>
	<p><b><i>Servicer Records (residential mortgage securitizations only):</i></b> A servicer must maintain sufficient records of its actions to permit appropriate review. (b)(3)(B)(i)</p>
	<p><b><i>Advancing (residential mortgage securitizations only):</i></b> The servicing agreement shall not require a primary servicer to advance delinquent payments of principal and interest for more than three payment periods, unless financing or reimbursement facilities are available, which may include, but are not limited to, the obligations of the master servicer or issuing entity to fund or reimburse the primary servicer, or alternative reimbursement facilities. Such “financing or reimbursement facilities” under this paragraph shall not depend on foreclosure proceeds. (b)(3)(B)(ii)</p>
<b>4. Compensation</b>	<p><b><i>Compensation of Transaction Participants (residential mortgage securitizations only):</i></b> The documents shall require that any fees or other compensation for services payable to credit rating agencies or similar third-party evaluation companies shall be payable, in part, over the five (5) year period after the first issuance of the obligations based on the performance of surveillance services and the performance of the financial assets, with no more than sixty (60) percent of the total estimated compensation due at closing. (b)(4)(i)</p>
	<p><b><i>Servicer Compensation (residential mortgage securitizations only):</i></b> Compensation to servicers shall provide incentives for servicing, including payment for loan restructuring or other loss mitigation activities, which maximizes the net present value of the financial assets. Such incentives may include payments for specific services, and actual expenses, to maximize the net present value or a structure of incentive fees to maximize the net present value, or any combination of the foregoing that provides such incentives. (b)(4)(ii)</p>

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<b>5. Origination and Retention Requirements</b>	<p><b><i>Retention of Risk:</i></b> The sponsor must retain an economic interest in a material portion, defined as not less than five (5) percent, of the credit risk of the financial assets. This retained interest may be either in the form of an interest of not less than five (5) percent in each of the credit tranches sold or transferred to the investors or in a representative sample of the securitized financial assets equal to not less than five (5) percent of the principal amount of the financial assets at transfer. (b)(5)(A)(i)</p>
	<p><b><i>No Hedging or Transfer:</i></b> This retained interest may not be transferred or hedged during the term of the securitization. (b)(5)(A)(i)</p>
	<p><b><i>Reserve Fund (residential mortgage securitizations only):</i></b> The documents shall require the establishment of a reserve fund equal to at least five (5) percent of the cash proceeds of the securitization payable to the sponsor to cover the repurchase of any financial assets required for breach of representations and warranties. The balance of such fund, if any, shall be released to the sponsor one year after the date of issuance. (b)(5)(B)(i)</p>
	<p><b><i>Origination Standards (residential mortgage securitizations only):</i></b> The assets shall have been originated in compliance with all statutory, regulatory, and originator underwriting standards in effect at the time of origination. Residential mortgages included in the securitization shall be underwritten at the fully indexed rate, based upon the borrowers' ability to repay the mortgage according to its terms, and rely on documented income and comply with all existing supervisory guidance governing the underwriting of residential mortgages, including the Interagency Guidance on Non-Traditional Mortgage Products, October 5, 2006, and the Interagency Statement on Subprime Mortgage Lending, July 10, 2007, and such additional regulations or guidance applicable to insured depository institutions at the time of loan origination. Residential mortgages originated prior to the issuance of such guidance shall meet all supervisory guidance governing the underwriting of residential mortgages then in effect at the time of loan origination. (b)(5)(B)(ii)</p>
<b>6. Other Requirements</b>	<p><b><i>Arms Length Transaction:</i></b> The transaction should be an arms length, bona fide securitization transaction, and the obligations shall not be sold to an affiliate or insider. (c)(1)</p>
	<p><b><i>Securitization Agreements:</i></b> The securitization agreements are in writing, approved by the board of directors of the bank or its loan committee (as reflected in the minutes of a meeting of the board of directors or committee), and have been, continuously, from the time of execution in the official record of the bank. (c)(2)</p>
	<p><b><i>Ordinary Course:</i></b> The securitization was entered into in the ordinary course of business, not in contemplation of insolvency and with no intent to hinder, delay or defraud the bank or its creditors. (c)(3)</p>
	<p><b><i>Adequate Consideration:</i></b> The transfer was made for adequate consideration. (c)(4)</p>

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	<p><b>Perfected Security Interest:</b> The transfer and/or security interest was properly perfected under the UCC or applicable state law. (c)(5)</p> <p><b>Separate Agreements:</b> The transfer and duties of the sponsor as transferor must be evidenced in a separate agreement from its duties, if any, as servicer, custodian, paying agent, credit support provider or in any capacity other than the transferor. (c)(6)</p> <p><b>Records:</b> The sponsor shall separately identify in its financial asset data bases the financial assets transferred into any securitization and maintain an electronic or paper copy of the closing documents for each securitization in a readily accessible form, a current list of all of its outstanding securitizations and issuing entities, and the most recent Form 10-K, if applicable, or other periodic financial report for each securitization and issuing entity. To the extent the sponsor serves as servicer, custodian or paying agent provider for the securitization, the sponsor shall not commingle amounts received with respect to the financial assets with its own assets except for the time necessary to clear any payments received and in no event greater than a two day period. The sponsor shall make these records readily available for review by the FDIC promptly upon written request. (c)(7)</p>
<b>7. Safe Harbor</b>	<p><b>Participations.</b> With respect to transfers of financial assets made in connection with participations, the FDIC as conservator or receiver shall not, in the exercise of its statutory authority to disaffirm or repudiate contracts, reclaim, recover, or recharacterize as property of the institution or the receivership any such transferred financial assets provided that such transfer satisfies the conditions for sale accounting treatment set forth by generally accepted accounting principles, except for the “legal isolation” condition that is addressed by this paragraph. (d)(1)</p> <p><b>Transition Period Safe Harbor.</b> With respect to any participation or securitization (i) for which transfers of financial assets were made or (ii), for revolving trusts, for which obligations were issued, on or before September 30, 2010, the FDIC as conservator or receiver shall not, in the exercise of its statutory authority to disaffirm or repudiate contracts, reclaim, recover, or recharacterize as property of the institution or the receivership any such transferred financial assets notwithstanding that such transfer does not satisfy all conditions for sale accounting treatment under generally accepted accounting principles as effective for reporting periods after November 15, 2009, provided that such transfer satisfied the conditions for sale accounting treatment set forth by generally accepted accounting principles in effect for reporting periods before November 15, 2009, except for the “legal isolation” condition that is addressed by this paragraph and the transaction otherwise satisfied the provisions of Rule 360.6 in effect prior to the effective date of this regulation. (d)(2)</p>

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	<p><b><i>For Securitizations Meeting Sale Accounting Requirements.</i></b> With respect to any securitization (i) for which transfers of financial assets were made, or (ii) for revolving trusts for which obligations were issued, after September 30, 2010, and which complies with the requirements applicable to that securitization as set forth in Paragraphs (b) and (c), the FDIC as conservator or receiver shall not, in the exercise of its statutory authority to disaffirm or repudiate contracts, reclaim, recover, or recharacterize as property of the institution or the receivership such transferred financial assets, provided that such transfer satisfies the conditions for sale accounting treatment set forth by generally accepted accounting principles in effect for reporting periods after November 15, 2009, except for the “legal isolation” condition that is addressed by this paragraph. (d)(3)</p>
	<p><b><i>For Securitization Not Meeting Sale Accounting Requirements.</i></b> With respect to any securitization (i) for which transfers of financial assets made, or (ii) for revolving trusts for which obligations were issued, after September 30, 2010, and which complies with the requirements applicable to that securitization as set forth in Paragraphs (b) and (c), but where the transfer does not satisfy the conditions for sale accounting treatment set forth by generally accepted accounting principles in effect for reporting periods after November 15, 2009:</p> <ul style="list-style-type: none"> <li>• <b>Monetary Default.</b> If at any time after appointment, the FDIC as conservator or receiver is in a monetary default under a securitization, as defined above, and remains in monetary default for ten (10) business days after actual delivery of a written request to the FDIC pursuant to paragraph (f) hereof to exercise contractual rights because of such monetary default, the FDIC hereby consents pursuant to 12 U.S.C. § 1821(e)(13)(C) to the exercise of any contractual rights, including obtaining possession of the financial assets, exercising self-help remedies as a secured creditor under the transfer agreements, or liquidating properly pledged financial assets by commercially reasonable and expeditious methods taking into account existing market conditions, provided no involvement of the receiver or conservator is required. The consent to the exercise of such contractual rights shall serve as full satisfaction of the obligations of the insured depository institution in conservatorship or receivership and the FDIC as conservator or receiver for all amounts due.</li> </ul>

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	<ul style="list-style-type: none"> <li> <b>Repudiation.</b> If the FDIC as conservator or receiver of an insured depository institution provides a written notice of repudiation of the securitization agreement pursuant to which the financial assets were transferred, and the FDIC does not pay damages, defined below, within ten (10) business days following the effective date of the notice, the FDIC hereby consents pursuant to 12 U.S.C. § 1821(e)(13)(C) to the exercise of any contractual rights, including obtaining possession of the financial assets, exercising self-help remedies as a secured creditor under the transfer agreements, or liquidating properly pledged financial assets by commercially reasonable and expeditious methods taking into account existing market conditions, provided no involvement of the receiver or conservator is required. For purposes of this paragraph, the damages due shall be in an amount equal to the par value of the obligations outstanding on the date of receivership less any payments of principal received by the investors to the date of repudiation. Upon receipt of such payment, the investor's lien on the financial assets shall be released. (d)(4)         </li> </ul>
<b>8. Consent to Certain Actions</b>	<p><b>Consent to certain actions.</b> During the stay period imposed by 12 U.S.C. § 1821(e)(13)(C), and during the periods specified in subparagraph (d)(4)(A) prior to any payment of damages or consent pursuant to 12 U.S.C. § 1821(e)(13)(C) to the exercise of any contractual rights, the FDIC as conservator or receiver of the sponsor consents to the making of required payments to the investors in accordance with the securitization documents, except for provisions that take effect upon the appointment of the receiver or conservator, and to any servicing activity required in furtherance of the securitization (subject to the FDIC's rights to repudiate such agreements) with respect to the financial assets included in securitizations that meet the requirements applicable to that securitization as set forth in paragraphs (b) and (c). (e)</p>